

## BOOK REVIEWS

*The Prison: Policy and Practice*, by GORDON HAWKINS, (Chicago: University of Chicago Press 1976) pp. xi and 217, \$10.95 (Hard-bound).

*The End of Imprisonment*, ROBERT SOMMER, (New York: Oxford University Press 1976) pp. vii and 211, \$12.10 (Hard-bound).

*Australian Prisons*, by FIORI RINALDI, (Canberra: F. & M. Publishers 1977) pp. ix and 249, \$14.00 (Hard-bound), \$7.00 (Paper-back).

"Prisoners in Australia have, in the last six years, adopted the stance that it is valid, when all other attempts to gain redress for their grievances have failed, to destroy the system, philosophies and hardware which oppresses them. In this period we have seen Bathurst Jail destroyed, rebellions and major disturbances in Maitland, Parramatta, Goulburn, Bogga Road, Pentridge and Yatala Jails, and many other less forceful demonstrations and strikes, showing prisoners' frustrations, at almost every other maximum and minimum security prison in the nation. It is suggested that this phenomenon of prisoners' aggressive confrontation with the prison system is no mere coincidence. It is the answer to which prisoners have recourse in relation to the barbaric systems which are euphemistically designated correctional institutions".

Submission by Prisoners' Action Group,  
*Penal Philosophies and Practice in the 1970s*,  
Proceedings: Training Project No. 24,  
Australian Institute of Criminology,  
Canberra, 1976, p. 98

What shall we do with prisons? Abolish them or build new ones? Maximize security or minimize it? Increase or reduce the length of sentences? Retrain staff or discipline the inmates? All have been suggested. The prisoners of New South Wales demonstrated their own views in the riot and fire that destroyed Bathurst Jail in February 1974, by demolishing the workshops at Maitland Jail in November 1975, and by ravaging large sections of Long Bay in August 1978. And with some cause. According to the Nagle Royal Commission, the State's most modern prison was worse than those built last century. The three year old \$1.5 million Katingal Maximum Security prison was described by the Royal Commissioner as "an electronic zoo" and it is shortly to be closed. In the light of the New South Wales debacle, the Victorian Government has had second thoughts about building a similar maximum security unit at Castlemaine, but its prison authorities manage to periodically lose control of B Division, Pentridge, the unit in which the bulk of the State's most hardened criminals are held.

The United Nations Standard Minimum Rules for the Treatment of Prisoners declare (Rules 58 and 59) that the purpose and justification of a sentence of imprisonment or a similar measure of deprivation of liberty is ultimately to protect society against crime: "To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners". But the evidence shows that treatment is ineffective and prisons do not rehabilitate. In his assessment of every available study published in the English language on attempts at rehabilitation in correctional institutions, Robert Martinson found that, with few and isolated exceptions, the rehabilitative

efforts reported so far in the literature have had no appreciable affect on recidivism (R. Martinson, "What Works?—Questions and Answers about Prison Reform", (1974) 35 *The Public Interest* 22; D. Lipton, R. Martinson and J. Wilks, *Effectiveness of Correctional Treatment—A Survey of Treatment Evaluation Studies* (Springfield: Praeger 1975)). Though the Martinson findings are open to the view that the rehabilitation programmes are not yet good enough, and that what is required is simply a more wholehearted commitment to the strategy of treatment, the more generally accepted view nowadays is that neither education or psychotherapy at its best can overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behaviour. Rehabilitative programmes are based on a theory of crime as some pathological "disease" state in the individual which presumably can be cured. But such theory overlooks, indeed denies, both the normality of crime in society, and the personal normality of a very large proportion of offenders who are simply responding to the criminogenic features of our social structure.

In the United Kingdom, the Advisory Council on the Penal System, in a recent controversial call for a reduction in the length of prison sentences, acknowledged that there was no evidence that the length of imprisonment could be justified on the grounds of its utility in preventing recidivism and asserted that in the United Kingdom few people would now claim that the principal role of prison was to reform. But even if prisons cannot rehabilitate offenders to any significant degree, they can at least isolate them from the community and, for a time, prevent them re-offending. If insulating society from intractable offenders is the proper function of prison, are there still not too many offenders, and of the wrong sort, in prison? And if the use of community based alternatives to prison is to become the first line of response to crime, what changes to the nature of prison will be brought about if it is to be restricted to the confinement of only the most recalcitrant and dangerous offenders?

It is in the context of dilemmas such as these that three new books critical of prison have appeared. The first, by a former Assistant Principal of the United Kingdom Prison Staff College and now an Associate Professor of Criminology at Sydney University Institute of Criminology; the second by an American Professor of Psychology and Environmental Studies; and the third by a law teacher at the Australian National University. Rinaldi's book, set in the Australian context, documents the incompetence and barbarisms of which the prisoners complain. It is in the best tradition of exposé criminology, complete with photographs. It contains a wealth of information on the organization and running of Australian prisons, a description of the major conflicts, scandals and notoriety which has attached to each State's prison administration, and catalogues the major issues of prison reform in this country. Though it also contains tantalizing promises of chapters on prison discipline, grievances, compensation for injury, and the civil consequences of conviction, each of which throws up important complex legal and criminological issues, the coverage is much too brief, and at times superficial, to be satisfying.

Sommer sets his writing in the United States, particularly California, which is at the centre of experimental penology. Despite the title of his book, he does not really advocate the entire end of imprisonment. Rather, he calls for a reduction in the number of prisoners and the duration of their incarceration. There are, in fact, very few true abolitionists, and most who are also aim at other social changes so radical and extensive that the absence of prison will be barely noticed in the new social order. Sommer's goal is to reduce the prisons to some 10% of their present population, this being his estimate of the irreducible core of dangerous offenders. Sommer relies heavily on the analogy between prison and mental health institutions, pointing out how the latter have been able to cut down upon their institutional populations. Apart from the fact that the prison authorities have no access to anything analogous to the tranquillizers and psychotropic drugs which the hospitals use to chemically control their patients while they are sent back onto the streets, there is also evidence (see D. Biles and J. Mulligan, "Mad or Bad?—The Enduring Dilemma" (1973) 13 *British Journal of Criminology* 275) that there is a high degree of interchangeability between mental hospitals and prisons, and as intake to one is restricted so police and other authorities will divert their social deviants to the other.

Sommer's special contribution to the prison debate is revealed when he utilizes his skills as a Professor of Psychology in discussing behaviour modification, aversive conditioning and other forms of behaviourism in corrections. He sees the advantages of shaping behaviour by conditioning, particularly the use of token economies providing tangible rewards for good behaviour rather than punishment for undesired conduct. However, he finds that in the prison setting techniques of conditioning, particularly aversive conditioning, too easily become agents of oppression. To describe solitary confinement as a "negative reinforcer" (the courts later called the practice "cruel and unusual punishment") is a perversion of science. Sommer's observation is that, like other promising innovations, the legitimacy of behaviour modification is undermined by its association with imprisonment. No psychologist could practice behaviour modification in a prison and still follow accepted ethical guidelines of informed voluntary consent. Sommer concedes that when he first became involved in correctional issues he thought there was a real place for behaviour modification in the prison system but he concluded that it ought not to be offered

"The problem is not with the methods themselves or with the people using them, but with the coercive environment in which they are used. There can be no such thing as an ethical means of behaviour change in a concentration camp. Though there are differences between the Nazi extermination camps and the American prisons of today, inmates in both institutions lack rights, staff have absolute power, the courts adopt a hands-off attitude, and what happens inside is hidden from public view." (p. 140)

Hawkin's book is the most incisive and analytical of the three. He is no apologist for prison, but he makes the most reasoned case for its retention in a more humane form. He explores the four major critical positions taken against prison, namely, the demand for its abolition, the demand for a return to rigorous punitive regimes, a demand for increased reformatory efforts, and a demand for a reduction in correctional treatment programmes to the minimum required for communal security. Rather than offer some simple formula for the justification of imprisonment, Hawkins argues that confinement in penal institutions is justifiable in different ways in relation to different categories of prisoner and different objectives of imprisonment.

Thus, though implicit in the custodial process is the concept of prevention, except in the case of some very persistent offenders subject to preventive detention, very few sentences are based *exclusively* on this conception. In most cases, the assumption is that the offender will be returned to the community and that the community must accept the likelihood of him re-offending. Prison serves a variety of functions, none of which is primary or essential. It substitutes for private vengeance, satisfies the public demand for retribution, provides a symbolic affirmation of public disapproval and serves a preventive function by warehousing and isolating persons posing serious threats to society and its members. But Hawkins too discards treatment as an objective. The rehabilitative ideal borders on farce. He quotes Badillo and Haynes, writing in 1972

"In New York State, which has the highest concentration of psychologists and psychiatrists of any place on earth, there is not one single staff psychiatrist in the State penal system. There are just 60 psychiatrists in the entire American prison system, Federal and State included. Less than 5 cents of each dollar spent for 'corrections' is spent on trying to correct anybody." (pp. 49-50)

In a sensitive chapter entitled "The Other Prisoners", Hawkins casts an experienced eye over the role of prison officers (an area much neglected by serious criminological research, ignored by Sommer and only lightly dealt with by Rinaldi). He not only makes firm and attainable recommendations regarding the improvement of training and performance standards for prison officers; his book also contains chapters and suggestions on prison work and prisoners' rights, and concludes with an examination of the political forces which arrest development and act as impediments to prison change. The role of public and police opinion in prison reform is discussed, together with the effects of the balkanization of the criminal justice system amongst a variety of Government authorities and departments, with poor inter-agency communication and contradictory goals though all ostensibly seek the same ultimate objectives. Hawkin's book is not as depressing as the other two. What he lacks in the local detail of Rinaldi, or the nervous despair of Sommer, he makes up for in the realism and

pragmatism of his proposals for reform. If the prison authorities had responded more willingly to some of the proposals contained in these three works many of the costly confrontations of the last six years could have been avoided.

RICHARD G. FOX\*

*Understanding Income Tax Law the Flow-Chart Way*, E. H. CASTRO, (Sydney, Butterworths, 1978), pp. i-xvi, 1-358.

This guide represents an interesting pedagogical experiment. It is not appropriate to describe it as a text on Australian Taxation Law, for it is basically a reduction of the entire *Income Tax Assessment Act* to diagrammatic form. Practically every page consists of flow-charts in varying degrees of complexity sometimes accompanied by brief additional notes. Each diagram is designed to reduce a particular topic to its component parts for analysis and ease of comprehension. The author, who is a teacher of income tax law to technical college students, pursues the diagrammatic model with passion and even his Preface and Table of Contents have been turned into linked squares and rectangles.

Each topic is introduced by a general diagram offering a birds-eye view of the area to be covered. Then follow detailed charts providing a closer breakdown of the major operative divisions and sections of the *Income Tax Assessment Act*. This approach is buttressed by diagrams comparing main sections in order to highlight their differences and common ground. There are nineteen chapters structured in this fashion and each concludes with a diagrammatic recapitulation of the relationship between the section examined and other parts of the Act.

The design of flow-charts is a skilled and scientific exercise and when a flow-chart becomes sufficiently refined and precise it may operate to serve as an efficient set of logical instructions for solving defined recurrent problems. It is then known as an algorithm. Algorithms are essential for computer based problem solving, but their design is useful in all settings, particularly those in which interpretation of rules is being taught or the application of a given rule to new situations is being attempted. There is, however, a major inherent weakness in the use of algorithms. Though a flow-chart can present rules in a visually more comprehensible form than that of the conventional prose, it cannot resolve all ambiguities and doubts which may arise regarding the interpretation of a rule. Thus since the *Income Tax Assessment Act* does not define what is meant by "income", converting a rule which utilizes this concept into diagrammatic form will not help a student who does not understand the term solve his problem. Of course, it may assist him identify more clearly the source of his difficulties, but for their resolution he must look elsewhere. And this points up a major weakness in Castro's approach. Though he asserts that his flow-chart approach will usefully serve anyone wishing to obtain "in depth knowledge" of the subject, he also intentionally omits all references to case law on the ground that the material is adequately covered in existing texts (none of which he cites) and that "any person with sufficient understanding of the Act should have no difficulty with legal decisions" (p. iii). The glibness of this last statement is somewhat undercut by the author's unwillingness or inability to deal with the jungle of s. 260 which is entirely omitted from analysis (diagrammatic or otherwise) and his quiet passing over of concepts such as "income", "residence" and "domicile" by a bland assertion that these "should be examined through legal precedents" (pp. 15 and 21).

There is no doubt, as Twining and Miers have made clear in their superb book *How to do Things with Rules* (London, Weidenfeld and Nicholson, 1976), that there is substantial teaching and analytical value in presenting legislation in diagrammatic form. And Castro is to be complimented on his vigorous attempt to apply a systematized approach to legislation as complex as that found in the *Income Tax Assessment Act*. Many law teachers and students will benefit from having his diagrams before them as

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they chart their way through its intricacies but, as a work on taxation, it provides, as perhaps was intended, no more than an overview of the legislation for students exposed to the subject for the first time.

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*Life Insurance in Australia*, by A. C. GRAY, (McCarron Bird, Melbourne, 1977), pp. i-viii and 1-316.

Insurance law is one legal area that affects virtually every person. If he is not affected by driving (compulsory third party insurance), he will be generally affected by working (compulsory workers' compensation insurance). If he does not own a house (householder's policy), he may be affected by renting (household contents policy). The subject is well served with several smaller Australian texts, not to mention the standard British texts such as MacGillivray or Ivamy. But the same cannot be said of the financial, economic and social aspects of insurance. True, there are the specialist and extensive printed notes of the Australian Insurance Institute on (mainly) practical aspects of insurance; but books dealing with other aspects of insurance (apart from those published by the Americans) are not plentiful. Perhaps in this regard the starting point could be Professor R. L. Carter's *Economics and Insurance—an introduction to the economic aspects of insurance* (Stockport, Cheshire, P.H. Press Ltd, 1971).

The publication of *Life Insurance in Australia*, therefore, provides a book of some local interest. Its subtitle, "An Historical and Descriptive Account", indicates the author's intention to provide a picture of life insurance in this country. The insurance industry in this country (and in others for that matter), by its very size does indeed warrant detailed and continuing scrutiny by economists, scholars and lawyers. Figures published by the Life Insurance Commissioner (*Thirty-Second Annual Report, 1977*, p. 13) show 1977 investments of life offices, excluding fixed assets, as over \$8,000 million; the equivalent figures for the general insurance industry as at 31 December, 1976 were approximately \$3,000 million (Insurance Commissioner, *Third Annual Report, 1976-77*, pp. 84-5). Hence, any study of insurance has a "lot" to look at.

Many aspects of insurance are little known—indeed, insurance education has escaped tertiary education institutionalization (which brings with it money for research, teaching and scholarship) that has marked accountants, marketers and managers in recent years. Questions such as what is the social role of insurance? What alternatives are there? Is large-scale government investment a good thing? These are the legal-economic areas that are not fully researched. Consequently, in a book with the subtitle "An Historical and Descriptive Account" one would expect to find just this. Its content of facts, figures, names and places certainly provides a valuable record that may not be otherwise available to a legal reader. But wider issues are not canvassed and certainly little creative criticism finds its way into these pages. Rather, a tone of complacency, if not affection, permeates the book. The author's 43 years in the industry could perhaps contribute to this. With this long exposure come the entrenched attitudes of many insurance industry people, and accordingly the author's comments on the 1972-75 Federal Government's initiatives (Life offices "saw in the proposed Insurance Corporation . . . a threat to nationalise them by stealth" pp. 259-60) are not unexpected.

Recent history notwithstanding, the author's historical account is interesting and thorough

"The convicts offered little or no market for life insurance. . . . Life insurance was so little developed in England when the first Fleet sailed for Australia in 1787, that it is improbable that any of its members held life insurance" (pp. 9-10).

However, the author has found evidence of life policies in the 1820s from evidence of the fixing of extra premiums by English life offices specifically for the Australian

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colonies. His evidence for this shows thorough and valuable first hand research of company board minutes, early prospectuses, personal correspondence, early receipts and the like.

The legal structure of insurance companies is considered. Prior to incorporation under the Companies Acts, forms other than the limited liability company which is generally utilized today had to be used, e.g. the trust, or incorporation by private Act of Parliament (for example, *An Act to Incorporate the Australian Mutual Provident Society* was assented to on 18 March, 1857 in New South Wales).

One aspect of any study of insurance (with which the author does not deal) is the investigation of legislation or other government intervention which ensures that an insurance company will be able to meet its debts to policyholders when they fall due. This is certainly one of the cardinal rules of life office investment: the matching of assets and liabilities to ensure that investments will mature in step with expected claims and other contingent liabilities. There are other investment principles followed by life offices which are referred to by the author. Diversification is important to ensure a widely spread and well founded investment portfolio, and such factors as yield vs. risk and marketability of a security are clear indicators of benefit. Life offices also talk of "investment to assist the business" as the third principle of investment. This means that because a life office is seen as trustee of its policyholders' funds, its obligation to its policyholders is to invest with regard being had to the community and to the viability of commercial venture. (See generally pp. 265 ff.) However, the author's outline of the relevant legislation, which only commences with the *Life Assurance Companies Act 1870 (Imp.)*, is valuable. The Imperial Act required a deposit of \$40,000 by each company commencing to carry on life assurance. This Act was copied in the Australian colonies (Victoria 1873—\$10,000; Tasmania 1874; South Australia 1882; Western Australia 1889; Queensland 1901; and never in New South Wales).

However, further to these details of legislative intervention, it must be asked whether government control works. The Insurance Commissioner in his 1977 Annual Report noted the trend of insurers to fail to adequately estimate the level of future claims during periods of high inflation and low profits. Competition, he noted, is "severe". Moreover, he noted that many smaller insurers can and do operate on minimum solvency levels (*Third Annual Report, 1976-77*, p. 22). Initiatives in the United Kingdom, under the *Policyholders Protection Act 1975 (U.K.)* are not raised by the author. The British Act provides for the protection of policyholders or others of an insurance company unable to meet its liabilities under policies issued or securities given by it. The Act authorizes the imposition of levies on the British insurance industry to achieve this purpose. Levies are raised from all authorized insurers and insurance intermediaries. The extent of recovery is 100% in the case of compulsory insurance (workers' compensation and motor vehicle third party) and 90% in the case of other insurances. Is there such a need in this country? The author does not raise the possibility and, as mentioned before, there is little in the book in the way of critical appraisal of the current position.

Overall, then, this book will prove of interest to readers with a legal background. Important historical material is raised, e.g. the Hood and Knibb Royal Commission of 1909 appointed to enquire into the law regulating life, fire and general insurance (which recommended strong federal control of all insurance) (page 174); the draft bill of that period; the Victorian Royal Commission of 1938 appointed to investigate Industrial Insurance (maladministration, diversion of profits, attempts by agents at distortion) which led to the *Industrial Life Assurance Act 1938 (Vic.)*. But no legal references are given and, in contrast to the author's use of primary sources referred to above for early history, later references appear to be taken too often from secondary sources. The book also proves of interest because of the many gems that shine through. For instance, did you know that during the First World War the U.S.A. insured the lives of its soldiers and sailors for about \$US 10,000,000,000? (p. 190). Nor did I!

