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Kind and Usual Punishment. by Jessica Mitford.

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BOOK REVIEWS

KIND AND USUAL PUNISHMENT. By Jessica Mitford. New York, New York: Alfred A. Knopf, Inc. 1973, 340 pages \$7.95.

Prisons, once largely the concern of the relatively few people directly connected to the criminal justice system, have recently emerged as a problem area subjected to ever widening public scrutiny. News accounts of prison riots and the governmental responses they evoke, a growing collection of powerfully written autobiographies by current and former prisoners, and the increasingly graphic fictional treatment of prison life which is appearing in the popular media have all contributed to this heightened awareness of the operations and impact of our penal institutions.

Had *Kind and Usual Punishment* preceded this current wave of interest in the functioning of the prison system it may well have succeeded in shocking some part of the public into abandoning any notions that prisons were humane and purposeful institutions competently dealing with a complex social issue. However, it would seem that the critical job of overcoming conceptual inertia has already been done. Further elaboration of the nature and particulars of the inadequacies of the prison system, no matter how thorough, will do little to enlighten the developing social debate concerning a more satisfactory method of coping with these problems with which prison is supposed to deal. The key element to be analyzed is not what happens internally in prisons, but why it is that we have developed the institution at all.

Unfortunately it is not to the question of "why" but to the analytically easier issue of "what" that Mitford directs the bulk of her book. She gives detailed attention to the waste and mismanagement within the prison system, to the disproportionate allocation of increasingly large resources to administrative rather than inmate oriented expenses, and to the exploitation of prisoners by drug company researchers and prison industrialists. There is also a description of the arbitrary control exercised by prison officials and parole boards, a control which has been extended since "reformers" have succeeded in instituting wider use of the indeterminate sentence. Despite the success of this portion of the book, Mitford adds nothing new to the fundamental issue of why prisons exist at all. It is unfortunate that this work, which will probably be widely read by an influential and

potentially sympathetic audience, comes to a wavering halt just as it reaches the essential area of inquiry.

The author's failure to adequately explore the question of "why prisons?" is made additionally incomprehensible by the fact that she quickly discounts the most often proffered rationales for the prison system, namely rehabilitation, deterrence, and protection. While Mitford would agree that prisons do succeed in punishing the criminal, the usual justifications for society's exacting its pound of flesh are the same rationales that the book discredits.

Essentially, Mitford's inquiry into the internal operation of the prison concludes that no purpose is served by any of the specific procedures or methods currently in use. However, if this is so, and if we are to assume that prisons do in fact serve some necessary purpose, then we should look for their justification not within their walls but as a function of their symbolic importance to society; a function which is fulfilled by the mere existence of the prison. The author presents evidence that this view is shared by some within the prison hierarchy. The country's youngest warden, speaking on the "Role of the Prison" before a warden's convention is quoted as observing that "[t]he most fundamental role of prison . . . is that of an overt, visible *sign* that laws have been broken. Without the *sign* of the prison, our free democratic society would be in complete chaos!"¹

Here then is evidence that prisons, by their mere presence in our national subconscious, do in fact serve some useful function. Sociologist Kai Erikson offers at least one explanation of this need for a "sign": "Deviant forms of behavior, by marking the outer edges of group life, give the inner structure [of society] its special character and thus supply the framework within which the people of the group develop an orderly sense of their own cultural identity."² Erikson's is not the only thesis which would explain how the prison's role is fulfilled by its very existence. The concept of retribution, alluded to in the book, is one alternative. Still another is in the political need to relieve pressure on governmental units by giving the appearance that something is being done about the problem of crime. It need not be decided here which among these, or other, motivations compel us to perpetuate the prison system. The point being made is that for an explanation to withstand analytical scrutiny it must assign to the

1. Pp. 38-39 (emphasis added).

2. K. ERIKSON, *WAYWARD PURITANS* 13 (1966).

prison system a purpose which is fulfilled no matter how irrational or counter-productive the internal operation of the prison is. The specifics of prison operations are in all probability irrelevant to the prison's social function. How else can the continuance of these otherwise counter-productive antiquities be explained?

The conclusion reached in *Kind and Usual Punishment* reflects the inevitable inconsistency of the author's approach. Mitford finds no acceptable purpose for the existence of prisons and is horrified by their internal operation which she perceives as "inherently unjust and inhumane."³ Yet, she fails to advocate the abolition of the prison, although she does sympathetically cite some authorities who do so. Perhaps, like many of us, she requires the comforting reassurance that the problem of crime is being dealt with. However, it is entirely possible that with a little imagination we can fulfill the prison's symbolic function, and perhaps better achieve those rehabilitative and protective functions it is supposed to effect without continuing the present system and its inevitable quota of human tragedies.

Mitford does give us some valid suggestions for the interim period. She recommends shortening sentences, extending to prisoners those constitutional rights which protect the rest of us from arbitrary governmental action, encouraging the organization of prison groups so that riots will not be the only medium through which prisoners can communicate with officials, and doing away with the indeterminate sentence.

DANIEL NOBEL

THE OMBUDSMAN PLAN. By Donald C. Rowat. Toronto, Ontario: McClelland Ltd. 1973. x+315 pages. \$3.95 (paper).

Donald Rowat has collected in *The Ombudsman Plan* some of his own essays on the subject of the ombudsman and has included the texts of recent acts, book reviews, and an extensive bibliography of recent commentary. As a sequel to his more comprehensive treatise on the subject,¹ this publication reinforces Rowat's case for the adoption of ombudsman plans through analysis of recent develop-

3. P. 297.

1. THE OMBUDSMAN: CITIZEN'S DEFENDER (D. Rowat ed. 1968).