

publicly bet a British television interviewer that the Wisconsin senator would be the next president, Truman, again quoting Scripture, told a visiting Bishop "that Stalin and his crowd had no moral code . . . and that all I wanted to do was to organize Exodus XX, Matthew V, VI & VII to save morals in the world." He was a Kissinger from Missouri.

And now the Democratic party's image again needs refurbishing. Trumanism is dead, destroyed by the fact that its agenda has been imple-

mented, abroad in Vietnam, at home in our schools and public housing projects. Truman himself, however, remains the last Democratic pied piper whose music was not only followed but believed in. Reissuing the Truman legend may well, therefore, turn out to have been a shrewd publishing venture. Listening to popular music from the good old days is always pleasant. With *Kiss Me Jimmy* having been a box office disaster, this may just be the right time to bring on *Hello, Harry*. □

PSYCHOLOGY AND LAW: CAN JUSTICE SURVIVE THE SOCIAL SCIENCES?

Daniel N. Robinson / Oxford / \$14.95, \$5.95

Walter Berns

The author of this book belongs to no familiar school and the book itself is not readily categorized. He is a psychologist, even a professor of psychology, but the book could not have been written by someone who is only a psychologist. Its perspective is that of legal philosophy, sometimes called jurisprudence, but, again, not the sort of legal philosophy taught in the law schools or characteristic of the work of our jurists. Daniel Robinson is both old-fashioned and thoroughly modern: old-fashioned insofar as he unabashedly discourses on the relation between law and morality, and modern insofar as he knows modern psychology and its works. This combination of talents proves to be formidable; it enables him to understand and to persuade us of the perils involved in allowing the law to be invaded by what he calls "the psychosocial point of view."

Although Robinson, so far as I can recall, never provides an explicit definition of this term, the reader is left in no doubt as to its meaning or, at least, its characteristics. It is the perspective of social science, which claims to be a science but is not (as Robinson demonstrates in his first chapter), but which is nevertheless accepted as science by the law. The psychosocial perspective is a form of reductionism, the attempt made by psychologists and sociologists to reduce individuals to the characteristics of the groups to which they belong and to explain their words and

deeds as manifestations of these characteristics. In this way, complex moral judgments are reduced to, because they are seen as, mere opinions whose causes are psychological or sociological but never moral. In these respects, the psychosocial perspective differs fundamentally from the human perspective. As Robinson also makes clear in his first chapter, the moral response, of which only human beings are capable, is inherent in the concept of justice and in its instrument, the law. As he says, the law is just "when it obliges us to do what we would genuinely desire to do were we to perform the rational analysis that stands behind every genuinely moral wish." But social science denies the existence of rationality in this sense; human beings look for and give reasons, but social science looks for causes and would if it could culminate in neurophysiology or neurology. Such a perspective is a denial of the purpose of law because it is a denial of human freedom.

Robinson traces the effects of the law's adoption of the psychosocial point of view in successive chapters devoted to the criminal law, the right of a testator to dispose of his property as he sees fit, commitments to mental institutions, educational testing, and, in a chapter entitled "Persons: Their Nature and Their Rights," to abortion, the Karen Quinlan problem, and psychosurgery.

The influence of this psychosocial perspective has been greatest in the criminal law, and especially at the

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Who reads The American Spectator?



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point where the law, of necessity, draws the line between responsibility and irresponsibility. Not every person is, at all times, in full possession of those qualities that define a human being and make reasonable the attempt to guide human actions by and in law. Some people are *non compos mentis*, as the Roman law put it, not of sound mind, and to that extent they cannot be held responsible for the acts they commit. In the course of its history, the dimensions of what came to be called the insanity defense have been enlarged and, thanks in our time to the law's reliance on psychology, have also become considerably less distinct.

One reason for this is the psychologist's inability in fact to distinguish between sanity and insanity. He looks for causes but offers characteristics: When called upon to testify in a criminal trial, he is inclined to offer the criminal activity itself as evidence of the disease. As Robinson puts it, instead of being able to show that the criminal act is a consequence of insanity, he would have insanity established by virtue of the act, or by virtue of what is said to be the "fact" that the act could only have been committed by someone who is insane. In this way, the defense tends to be a repetition of the charges leveled in the indictment. Thus, whereas the difference between guilt and innocence continues to depend, as morally it must depend, on the difference between sane and insane, the latter difference has become, thanks to the psychologists, one of unsubstantiated opinion.

Moreover, as Robinson shows but I lack the space to explain, the psychosocial perspective in the law has had the consequence of shifting the burden of proof from the defendant to the prosecution. Where once it was necessary for the defense to prove the fact of insanity, in some jurisdictions the prosecution is now required, once an insanity defense has been offered, to prove the defendant to have been sane when he committed the crime. As one federal court put it recently, to meet its burden the government "must point to affirmative evidence which is adequate to prove sanity without the benefit of a sanity presumption."

But in this strange world, how does one prove sanity? The government may be able to prove that the defen-

dant stabbed his victim, raped her, stole goods from her house, attempted to sell those goods, borrowed a clean shirt, his own being soiled by the stains of his crime, and, in all respects, acted in the manner of someone who knows that what he did is wrong and is trying his best to conceal the fact that he had done what he did. In short, the government may be able to prove that he acted rationally and, therefore, one would think, responsibly. But, even so, it will not be able to win a conviction so long as a court is willing to accept the word of a psychologist that the defendant suffered from "chronic undifferentiated schizophrenia [that was] probably in existence [at the time of the crime]." In this fashion, the moral purpose of law is defeated by psychiatric musings. As Robinson says, "justice cannot survive this sort of thing." The conclusion he draws in his penultimate chapter concerning the effect of the psychosocial perspective on our understanding of the human person can serve equally well as a conclusion to the book as a whole: All the questions discussed "are moral ques-

tions first, legal ones by practical derivation, and not psychosocial ones at all." To treat them as psychosocial questions is to mistreat them.

My only quarrel is with Robinson's suggestion—or with the impression he manages to leave—that the social sciences are solely responsible for the "untoward" conditions he describes. I do not think it was the psychosocial perspective that caused the abortion decisions; and I am as certain as I can be that it was not the psychosocial disposition that caused the courts to reject the evidence of educational testing. Indeed, he acknowledges this when, with reference to this rejection, he says "we must [now] wonder whether the social sciences can survive this sort of 'justice.'" What was at work here, as well as elsewhere, was the spirit of equality, the seeds of which were planted and had begun to sprout long before there was anything that can fairly be called a social science.

But it is almost churlish to mention so trivial a point. This is a splendid book. □

elder statesman. Even his denunciation of the Carter administration's foolish and craven treatment of the Shah begins on an incongruously Olympian note of injured innocence. Kissinger's sense of responsibility—which I do not wish to impugn—induces him to introduce his arguments with many a ponderous "on the one hand, on the other hand." At times this leads to such analyses as the following:

Nobody should deny the Soviet Union its legitimate security concerns.

but:

We cannot accept a definition of security for the Soviet Union that makes everybody else absolutely insecure.

There is a contradiction here, for the nature of the Soviet regime is such that to survive it must expand or threaten to do so: The loss of Poland (or at this point, Afghanistan) would fatally endanger the Soviet state, as indeed in the long run does the very existence of a free, prosperous, and self-confident West. In practice the West must allow such evils as the subjugation of Eastern Europe to continue—but why give them the sanction of legitimacy?

For the most part these speeches and articles deal with current policy problems: They contain little historical or philosophical reflection, and certainly none that we have not read of elsewhere (for example, Kissinger's admiration for Bismarck). In fact, a number of historical references are embarrassingly faulty—Kissinger incorrectly asserts that the United States "accounted for very little in world economics during the nineteenth century," and claims that eighteenth-century European rulers could not conscript their subjects. There is not even much of an effort to defend the Kissinger record against attack from either Right (e.g., on the overselling of détente) or Left (e.g., Vietnam). The speeches about statesmen—Golda Meir, Anwar Sadat, Nelson Rockefeller—lack the penetration and charm of the character sketches in *White House Years*. In general, where the memoirs are often impassioned or humorous these speeches are stolid and stupefyingly serious.

To repeat, there are no new themes in this book: As in *White House Years* Kissinger condemns America's historical oscillation "between brooding isolation and crusading intervention" and again, as in the memoirs, he promulgates a doctrine of geopolitics or balance of power, which

FOR THE RECORD:
SELECTED STATEMENTS, 1977-1980
Henry Kissinger / Little, Brown & Co. / \$12.95

by Eliot Cohen

It is unfair, perhaps, to expect this volume of Henry Kissinger's speeches and articles to match his brilliant memoirs, but even so, we must admit that *For the Record* is a haphazard and tedious collection. The author juxtaposes eulogies to Golda Meir and Nelson Rockefeller with pronouncements on SALT, the future of international business, and the Iranian revolution. Chronological order, not coherence, is the organizing principle, a fact that reflects ill on a man who rightly prides himself on his

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conceptual understanding of policy problems. Many of the articles are repetitious, which is perhaps not surprising: Anyone who lectures or orates as much as Kissinger must of necessity use stock paragraphs to make the same point to successive audiences. Collections like these of miscellaneous utterances and articles can still repay a skimming, at least, if there are nuggets of insight to be found by an alert reader—think of a volume in *The Collected Essays, Journalism, and Letters of George Orwell*, for example. Unfortunately, however, *For the Record* is no such book. Kissinger's views often make a good deal of sense, as when he urges Western rearmament and a policy of containment *vis-à-vis* the Soviet Union, but the heavy sobriety which pervades the book means that there is little to disagree with, and equally little to stimulate thought.

Kissinger self-consciously wears and refuses to doff the mantle of the

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