

Reviews

English Law and Order

W. R. Cornish†

A History of English Criminal Law and its Administration from 1750, Volume 4: Grappling for Control. By Leon Radzinowicz. London: Stevens & Sons, 1968. Pp. ix, 492. \$16.50.

Twelve years separate the most recent volume of Professor Radzinowicz's *History*¹ from its two predecessors,² and it is now a quarter of a century since he first proclaimed the need for a detailed, wide-ranging account of the operation of criminal law in England since 1750.³ Those who are familiar with his three earlier volumes⁴ will need no reminder of the wealth of information to be found in them and of the lucidity with which it is presented. The fourth volume is similarly characterized by extensive and careful documentation, expansive treatment of the relevant literature of the day, and scrupulous attention to the presentation of conflicting scholarly opinions. At the same time, one may detect a new and welcome determination not to be unduly distracted by the fascination of individual figures and incidents.⁵

Radzinowicz's original plan was to use the mass of largely unstudied material in the various sets of State Papers—Commissions of Inquiry, Accounts and Papers, and Annual Reports. He intended to start

† Visiting Lecturer in Law, University of Adelaide. LL.B. 1959, University of Adelaide; B.C.L. 1962, Oxford University.

1. L. RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: GRAPPLING FOR CONTROL* (1968) [hereinafter cited as VOLUME 4].

2. L. RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: THE CLASH BETWEEN PRIVATE INITIATIVE AND PUBLIC INTEREST IN THE ENFORCEMENT OF THE LAW* (1956) [hereinafter cited as VOLUME 2]; L. RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: CROSS-CURRENTS IN THE MOVEMENT FOR THE REFORM OF THE POLICE* (1956) [hereinafter cited as VOLUME 3].

3. See Radzinowicz, *Sources of Modern Criminal Legislation*, 8 *CAMB. L.J.* 180 (1948).

4. The first volume in the series is L. RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750: THE MOVEMENT FOR REFORM 1750-1833* (1948).

5. Occasionally one wishes that more attention could have been given to particular individuals in VOLUME 4. Radzinowicz's researches have not added much to the strange story of the Chief Bow Street magistrate, Frederick Roe, who for several years sought to undermine the authority of the first Metropolitan Police Commissioners, Rowan and Mayne. According to Charles Reith, Roe attempted to have the Home Secretary pursue a charge that an inspector had raped a prostitute in a police cell, even after a grand jury had thrown out the indictment against the inspector. See C. REITH, *A NEW STUDY OF POLICE HISTORY 171-83* (1956); see generally VOLUME 4, at 174, 197.

by producing a classified bibliography of this material as it related to Criminal Science, "so as to present the foundation of the survey and make it possible for other students to carry out further investigations."⁶ The bibliography was to be followed by descriptive volumes covering the periods 1750-1830, 1830-1895, and 1895 to the present.

The exhaustive detail in which Radzinowicz presented the results of his research rendered that plan infeasible. The proposed bibliography had to yield to the unexpected volume of other material waiting to be unearthed. As well as state papers, there were other departmental records, documents of local authorities, and a mass of books, journals and pamphlets which could not be ignored beside so complete a consideration of official sources. Consequently bibliographical material was not arranged in a single volume, but was appended to the relevant volumes as they appeared. For many generations, scholars will be grateful for these exhaustive collations of material, though cross-references from bibliography to text would render future volumes even more valuable.

The project for a history of English criminal law since 1750 in only three volumes also disappeared under the weight of material. In the four volumes to date, Radzinowicz has largely confined himself to two great reform movements in the period from the mid-eighteenth to the mid-nineteenth century—the establishment of modern police forces and the abolition of most laws imposing capital punishment. *Volume 4*, which covers the period 1830 to 1868, carries the history of both movements forward to points of significant development:⁷ the police, to the County and Borough Police Act of 1856,⁸ which required the establishment of adequate professional forces in rural districts as well as in the municipal boroughs; the death penalty, to 1868, when the horrid practice of public execution was finally abandoned⁹ and by which time the capital offenses had been reduced to murder, treason, and one or two rarities.

The development of local professional police forces, which remain a predominant characteristic of police organization in Britain despite recent amalgamations, has attracted the attention of a number of

6. Radzinowicz, *supra* note 3, at 194.

7. No division of history into periods ever works entirely happily. Nevertheless, one wonders whether 1830 was a wise place at which to end the first three volumes. While 1829 represents a watershed in the history of the police in that it saw the creation of Peel's Metropolitan Police, as a breaking point it leaves the reader stranded at an exciting climax. In the history of the reform of capital punishment, 1830 comes in the midst of the successes of the abolitionists.

8. 19 & 20 Vict. c. 69.

9. Capital Punishment Amendment Act, 31 & 32 Vict. c. 24 (1868).

recent writers.¹⁰ Radzinowicz's extended exposition enables him to add considerable life to the shorter accounts of others. He considers in detail the early years of the Metropolitan Police, troubled by constant public outcries against their cost and their danger as a potential instrument of government oppression. He discusses the establishment of professional forces under watch committees in the boroughs created by the Municipal Corporations Act of 1835.¹¹ He traces the gradual growth of county forces, which were originally permitted by the County Police Act of 1839¹² and eventually required by the County and Borough Police Act of 1856.¹³

It is disappointing, however, that Professor Radzinowicz does not discuss the extent to which the Metropolitan Police were sent to help other forces in their infancy, an issue on which there has been some difference of opinion.¹⁴ Moreover, while he devotes a section to variations in the rate of prosecution and conviction during the first three decades of the century, he does not present statistics for the period when the new police were developing. He therefore has nothing to add to the controversy over the extent to which the development of effective police forces in some areas obliged criminals to transfer their activities to towns and parts of the country that had no equivalent police arrangements.¹⁵

The new police did not emerge simply in response to a demand for the reduction of day-to-day crime. The authorities were also compelled to find new techniques for controlling public disturbances. Radzinowicz's emphasis on this facet of police history gives special character and importance to his account. He devotes a chapter to the methods that existed before 1830 for restraining crowds and dispersing rioters.¹⁶ In addition to the existing police forces described in the earlier volumes,¹⁷ the regular military forces and various organizations in which ordinary citizens could enroll to fulfill their general duty to

10. See, e.g., T. CRITCHLEY, *A HISTORY OF THE POLICE IN ENGLAND AND WALES, 900-1966* (1967); J. HART, *THE BRITISH POLICE* (1951); C. REITH, *A SHORT HISTORY OF THE BRITISH POLICE* (1948); C. REITH, *A NEW STUDY OF POLICE HISTORY* (1956); J. TOBIAS, *CRIME AND INDUSTRIAL SOCIETY IN THE 19TH CENTURY* (1967); Hart, *Reform of the Borough Police, 1835-1856*, 70 *ENG. HIST. REV.* 411 (1955).

11. 5 & 6 Will. 4, c. 76.

12. 2 & 3 Vict. c. 93.

13. 19 & 20 Vict. c. 69.

14. Compare T. CRITCHLEY, *supra* note 10, at 145-46, with C. REITH, *BRITISH POLICE AND THE DEMOCRATIC IDEAL 197-98* (1943) and Hart, *supra* note 10, at 421.

15. Cf. J. TOBIAS, *supra* note 10, at 232-36; Hart, *supra* note 10.

16. VOLUME 4, ch. 4.

17. Readers would have been assisted by cross-references to the study of special constables in VOLUME 2, at 215-24. Civilian forces in the late eighteenth century receive substantial treatment in VOLUME 3, at 93-103.

assist in the restoration of public order¹⁸ were relied upon to contain disturbances. The legality of these forces and the problems posed by the organization and armed training of private associations were from time to time the subject of agitated but equivocal advice, as lawyers sought a formula which would include the militia and yeomanry without offering untoward encouragement to working-class radicals.

The justices of the peace bore general obligations to put down disturbances, and Radzinowicz gives an interesting account of the legal and practical problems of command which could arise when the magistrates called in the regular army. It proved impossible to lay down any simple legal prescription as to when and how far the magistrates' commands should be obeyed. Nor was it possible to state precisely what the military should do in the absence of a magistrate to give directions. Occasionally a charge of neglect of duty was successful: Brackley¹⁹ Kennett, Lord Mayor of London, was convicted of this offense after his failure to act during the Gordon Riots of 1780. Two officers were convicted by a court martial for refusing to act against the Reform Bill rioters in Bristol without orders from a magistrate.²⁰ On the other hand, there was the possibility that over-hasty action would lead to conviction for an offense against the person.

Although the dilemmas of legal responsibility could not be eliminated merely by substituting police for the army, dissatisfaction with existing practices led to the creation of new forces of control. Radzinowicz demonstrates how disquiet spread over the cumbersome solution of employing a military unit in conjunction with untrained justices. The Duke of Wellington was convinced of the special danger of calling in the armed forces to control the civil population by the blundering ineptitude of the yeomanry under the justices during the Peterloo debacle and by his doubts about the loyalty of the troops guarding London during the trial of Queen Caroline. Ten years later, when Peel introduced a bill to create a professional police force in London,²¹ Wellington's support meant that it was enacted.²²

The Metropolitan Police initially faced virulent opposition from

18. In his discussion of the proposition that a soldier, like any other citizen, is bound to prevent a breach of the peace or a felony, Radzinowicz confuses Sir James Mansfield with Lord Mansfield. VOLUME 4, at 125.

19. The name is spelled "Barkley" by Radzinowicz. VOLUME 4, at 135. Kennett was tried by Lord Mansfield, not by Holroyd J. VOLUME 4, at 136. Since the rioters wrecked Lord Mansfield's house, the trial must have had its special tensions. VOLUME 3, at 90.

20. VOLUME 4, at 130-52.

21. Metropolis Police Improvement Bill, H.C. (April 15, 1829), *PARL. DEB.* (2d ser.) col. 867 (1829).

22. VOLUME 4, at 156-60.

many quarters, but the techniques they developed for controlling crowds were an influential factor in turning public opinion in their favor. The mass rallies of the Reform Bill years were kept in check by staffs and baton charges, not by the sabres of St. Peter's Field.²³ While this gesture was not enough to produce immediate acclaim,²⁴ as Professor Radzinowicz comments, "it is remarkable that within five years of its foundation the force had ceased to be regarded, except in the most radical circles, as a threatening innovation."²⁵ When Chartism took a militant turn in 1839, however, it again became necessary to turn to the army to supplement the resources of the Metropolitan Police. Despite increases in the size of the army, the Chartist pressure on the civil authorities continued; and the same year saw the creation of special temporary police forces controlled by the Home Secretary in Birmingham,²⁶ Manchester²⁷ and Bolton,²⁸ as well as the passage of the County Police Act,²⁹ which permitted the county justices of the peace to set up their own forces. The County Police Act constituted an admission, however grudging in many quarters, that the army and the local voluntary organizations were relatively inept means of quelling uprisings. The growth of the police from this time onward quickly reduced the need for military intervention.

In describing these events Radzinowicz makes good use of the abundant material in the Home Office papers and crucial Parliamentary debates and reports, particularly those of the Constabulary and Handloom Weavers Commissioners.³⁰ Only occasionally does the wealth of new material obscure important historical relationships. Radzinowicz's separate descriptions of the hectic Parliamentary histories of the bills for the special town forces and for the County Police forces, for example, divert attention from the fact that the bills proceeded contemporaneously and with considerable speed in light of the op-

23. See generally D. READ, *PETERLOO: THE "MASSACRE" AND ITS BACKGROUND* (1958).

24. Relations between the London police and public reached their lowest point in May 1833, when Melbourne, the Home Secretary, foolhardily declared a mass meeting of the National Union for the Working Classes illegal. In the battle which resulted, one policeman was killed and two others stabbed and seriously wounded. Feelings against the police ran so high that, at the inquest into the policeman's death, the jury returned a verdict of justifiable homicide. At the trial of a man accused of the stabbings, a verdict of acquittal was rendered. VOLUME 4, at 181-183.

25. VOLUME 4, at 190.

26. Birmingham Police Act, 2 & 3 Vict., c. 88 (1839).

27. Manchester Police Act, 2 & 3 Vict., c. 89 (1839).

28. Bolton Police Act, 2 & 3 Vict., c. 95 (1839).

29. 2 & 3 Vict., c. 93 (1839).

30. E.g., *First Report from the Commissioners appointed to inquire as to the Best Means of Establishing an Efficient Constabulary Force in the Counties of England and Wales*, 19 PARL. PAPERS 1 (1839); *Reports from Assistant Hand-Loom Weavers Commissioners*, 23 PARL. PAPERS 53 (1840).

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position that they faced. The full impact of the episode is also obscured by a failure to expose the political reasons that led to the bills for Birmingham, Manchester and Bolton. The Whigs had granted each town municipal status in the previous year, and the Tory aristocracy were making a last-ditch effort to obstruct the accession to power of the urban middle class which this status represented.³¹ In Birmingham, the legality of the municipal charter itself was challenged; in all three, political opposition made the creation of municipal police forces difficult.³² The Whigs in these boroughs were infuriated by proposals of the central government³³ which created forces controlled by the Home Secretary, instead of providing the finances necessary for the establishment of locally-controlled municipal forces.

The *History*, despite its title, has thus far not embarked on any systematic account of the development of substantive criminal law or criminal procedure. These topics are developed only insofar as they are incidental to the main themes. In his account of the Chartist disturbances, for instance, Radzinowicz draws particular attention to the liberalism of Lord John Russell, the Home Secretary.³⁴ Russell's views led not only to caution in repressing incipient violence by force, but also to a more restrained use of government informants³⁵ and to a refusal to resort to the oppressive legislation relied on by Pitt and Sidmouth a generation earlier. Radzinowicz employs the *Parliamentary Return relating to Prisoners for Libel, etc.* of 1840³⁶ to refute the theory that where the criminal law was used, arrests were indiscriminate and prosecutions ruthless. The fact that of four hundred persons convicted of political offences in 1839 and early 1840 none were executed and only nineteen were transported (eleven of them for treason or sedition) contrasts markedly with the savage manner in which the agricultural rioters of 1830 were put down.³⁷ The earlier history of offenses against the state is looked at incidentally to provide a clearer view of the progressive nature of Russell's attitudes. Other historians have already explored aspects of "government by indictment" within

31. See T. CRITCHLEY, *supra* note 10, at 80-84.

32. Events in Birmingham, Manchester and Bolton are fully reviewed in F. MATHER, *PUBLIC ORDER IN THE AGE OF THE CHARTISTS* 119-27 (1959).

33. See notes 26-28 *supra* and accompanying text.

34. VOLUME 4, at 239-47.

35. Russell refused to have recourse to unscrupulous infiltrators, though he did obtain information from the new factories inspectorate and by opening mail. VOLUME 4, at 240-241.

36. 38 PARL. PAPERS 691 (1840).

37. See J. & B. HAMMOND, *THE VILLAGE LABOURER 1760-1832*, chs. 10, 11 (4th ed. 1935).

Radzinowicz's period.³⁸ An adequate account of the whole development is badly needed, and one hopes that a future volume in the *History* will take up the task.

The volume under review deals with two other special aspects of policing before 1830—the control of beggars and other vagabonds under the Vagrancy Acts and the use of impressment to dispose of undesirables. The eighteenth century legislation for mopping up vagrants³⁹ was remarkably comprehensive, giving the justices and their officers ample power to deal with suspicious idlers and other unknown quantities. But the full ambit of the law can be seen only when the Vagrancy Acts are considered with the poor law.⁴⁰ Radzinowicz begins by describing the demands for reform of the existing poor law administration.⁴¹ His account of the administration of the law during and after the Napoleonic Wars provides a useful complement to that of the Webbs.⁴² This was the period in which the system of public provision for the destitute under the Poor Law Act of Elizabeth⁴³ suffered unprecedented strain. He concludes with the recommendations of the Poor Law Inquiry Commissioners, which initiated the long campaign to deter paupers from seeking public relief.

Except for passing references, Radzinowicz does not discuss that strange, oppressive adjunct to the poor law—the law of settlement.⁴⁴ According to the preamble to the original statute, the law of settlement was intended to prevent the poor from sliding into beggary and vagabondage.⁴⁵ In giving powers to pass the poor back to their place of settlement under the supervision of a parish officer, the law of settlement certainly performed a function very close to that of passing vagrants back under the Vagrancy Act. Omission of any discussion of the law of settlement is the more to be regretted since its complexities, the product of constant litigation, require the perception of a lawyer-historian.

38. See, e.g., F. DARVALL, *POPULAR DISTURBANCES AND PUBLIC ORDER IN REGENCY ENGLAND*, ch. 13, 14 (1934); W. WICKWAR, *THE STRUGGLE FOR THE FREEDOM OF THE PRESS, 1819-1832*, ch. 1 (1928).

(1934); W. WICKWAR, *THE STRUGGLE FOR THE FREEDOM OF THE PRESS, 1819-1832* (1928).

39. Vagrancy Act, 17 Geo. 2, c. 5 (1744).

40. See, e.g., Poor Relief Act, 43 Eliz. 1, c. 2 (1601); Poor Relief Act, 9 Geo. 1, c. 7 (1722).

41. The celebrated Speenhamland meeting at which the Berkshire judges accepted a supplementation of income through the poor rate rather than an increase in wages occurred in 1795, not 1793. See VOLUME 4, at 4. It took place after the havoc of three bad winters, not one.

42. S. & B. WEBB, *ENGLISH POOR LAW HISTORY: THE OLD POOR LAW*, ch. 14 (1927).

43. Poor Relief Act, 43 Eliz. 1, c. 4 (1601).

44. An Act for the Better Relief of the Poor of this Kingdom, 13 & 14 Car. 2, c. 12 (1662). See VOLUME 4, at 2.

45. Cf. WEBB, *supra* note 42, at 321-25.

The two chapters on vagrancy⁴⁶ contain an interesting account of the lack of adequate machinery to enforce the Acts and of the consequent development of voluntary associations to act as police for the poor. Bath, a town in which society could be found idly besporting itself within a small area, was naturally attractive to beggars. In 1805, members of the local gentry established the Bath Society for the Suppression of Vagrants, Street Beggars and Imposters, Relief of Occasional Distress and Encouragement of Industry. The Society employed a beadle to work with the town constables in arresting vagrants, paid rewards for each arrest, and instituted a "ticket" system for providing relief in food rather than cash. Other towns followed suit. The London Mendicity Society was not established until 1818, but thereafter employed twelve constables to tackle what was by then an immense problem in the metropolis. Radzinowicz is primarily concerned with the Society's efforts at deterrence. The Society's spirit of deep-rooted censoriousness links it with the Charity Organisation Society of the last quarter of the century.⁴⁷ Like the Charity Organisation Society, however, the London Mendicity Society found that so many applicants sought its aid that it had to undertake charitable relief work.⁴⁸

Impressment finds a place in this volume of Radzinowicz's *History* because the press gang, frequently used against vagrants, made a peculiarly ruthless contribution to the police methods of the time. Ironically, impressment reached its zenith just as the campaign for abolition of the slave trade was gaining momentum. During the Napoleonic Wars, impressment was put to a particularly wide range of uses. The difficulties of recruiting for the navy turned it into a system of ordinary conscription, particularly for the merchant navy, as well as a lure to debtors wishing to escape from interminable imprisonment. It was also a form into which to commute the death penalty and other sentences and a method of clearing the countryside of undesirables. The relation of impressment to other forms of secondary punishment will perhaps be explored in the next volume, which is to deal with the evolution of the penal system. It is needed to complete the picture.

The last part of the present volume returns to the history of the abolition of the death penalty and emphasizes another important con-

46. VOLUME 4, chs., 1, 2.

47. Cf. C. MOWAT, *THE CHARITY ORGANISATION SOCIETY, 1869-1913* (1961); D. OWEN, *ENGLISH PHILANTHROPY: 1660-1960*, at 216-46 (1965).

48. This aspect of the Mendicity Society's activities is described in *id.* 111-13.

tribution of Lord John Russell to the progress of criminal law reform. As Home Secretary, he was able to serve the abolitionist cause by diverting the Criminal Law Commissioners from their systematic consideration of the whole substantive criminal law to the question of capital punishment. He then succeeded in persuading Parliament to turn the Commissioners' recommendations for its abrogation into legislation. With this aid, the Commissioners were able to see a more effective return on their capital punishment report than on any other part of their extensive and costly labors. Radzinowicz also provides a fascinating chronicle of the swing in fashionable liberal opinion over the abolition of the death penalty for murder, once it was abolished for lesser crimes. In the 1840's the pendulum hovered on the side of total abandonment of capital punishment. In the 1850's, helped by the sensation of the Smethurst murder trial⁴⁹ and the writings of the young James Fitzjames Stephen,⁵⁰ it moved slowly back. The considerable stir created by the Smethurst trial when the chief scientific witness against the alleged poisoner admitted that his evidence had been given upon a mistaken assumption did not produce a further movement for abolition. Of course, the defect was admitted before the defendant was actually hanged; a real rather than potential martyr would doubtless have better pointed out the irrevocability of the gallows.

Radzinowicz has justified his study of the recent history of English criminal law as having a significant contribution to make to an understanding of the present law, to plans for its reform, and to a proper appreciation abroad of the English system of criminal justice.⁵¹ Not only does his work make these contributions: it has become an important source for all students of Britain's recent social history. In future years it is likely also to play an increasing role in legal education, not merely as an incident to the study of modern criminal law, practice and policy, but for its own sake. After a long period of devotion to technical analysis, a new awareness of the need to broaden the teaching of law by the addition of functional description and criticism is infusing English university law schools. As this trend develops, the study of the interaction of law and other social forces over the past two centuries must assume a new significance. Radzinowicz's explorations have provided a detailed study of important aspects of the

49. VOLUME 4, at 336.

50. See, e.g., Stephen, *Are Madmen Irresponsible?*, 1 SATURDAY REVIEW 298 (1856); Stephen, *The Case of Thomas Smethurst*, 8 SATURDAY REVIEW 248 (1859). Cf. F. STEPHEN, A GENERAL VIEW OF THE CRIMINAL LAW IN ENGLAND 286-317 (2d. ed. 1890).

51. Radzinowicz, *supra* note 3, at 181.

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history of the criminal law. As yet they have few counterparts in other legal fields. It is to be hoped that in future years his will be seen as pioneer work leading to expeditions into other territory than that which he has himself chosen.

Mr. Lin's Accident Case: A Working Hypothesis on the Oriental Meaning of Face in International Relations and the Grand Scheme

Marvin Katz†

Alice's Restaurant is not about Alice but the draft, says Arlo Guthrie. I represented a forty year old Chinese civil engineer in a routine personal injury lawsuit. But this story has to do with ending the war in Vietnam, not the accident case.

Mr. Lin¹ (I shall call my client) was walking across a West Philadelphia street one evening in the autumn of 1963, when, in the words of the police accident report, "veh. # 1 in the process of making a right turn contacted ped. who was crossing 38th St. from the W side to the E side." A witness on the scene described the incident to the police: "The Ped. was walking with his head down & his hands in his pocket & had dark clothes on. The car was going approx. 10 miles an hour. He hit the fellow on his left front fender & bumper & knocked him down. The car stopped right away. He didn't run over the man. When the ped. stepped off of the pavement the light was red for him. It turned green when he was in the street."

The municipal hospital outpatient clinic diagnosed and treated Mr. Lin's injury, a fracture of the pisiform bone of the right wrist, and pronounced the fracture healed two and one-half months after the accident. Mr. Lin claimed he continued to experience headaches, uneasiness, nausea, insomnia, buckling of the knees at unexpected times and pains with abnormal sensations over the right side of his body, including his right thigh, hip, chest, shoulder and neck. He entered a general

† Member of the Pennsylvania Bar. B.A. 1951, Pennsylvania; LL.B. 1954, Yale.

1. Mr. Lin was born and raised in China. At twenty he and his family fled China to Formosa. When he was thirty-two he came to the United States for a master's degree in engineering, then obtained a job here as a civil engineer.

hospital for eight days of studies, including a lumbar puncture and examination of his spinal fluid, but was discharged without relief on a finding of no organic basis for his complaints. Mr. Lin's complaints continued, and I never felt he was faking it to exaggerate his claim.

Over the next few years, Mr. Lin went from doctor to doctor with his complaints but each physician advised him there were no "anatomical," "organic" or "objective" findings to explain his difficulties. He continued to work steadily as a civil engineer, except for one period of eight weeks between jobs when he was laid off for lack of work. As his case reached close to trial, almost six years after the accident, Mr. Lin had spent about \$600 for medical consultations with doctors in three states and was continuing to see various physicians on a sporadic basis.

When the court listed the case for a pre-trial conference, the insurance company opened settlement negotiations with an offer of \$1200 which I transmitted to my client with the request that he discuss with me settlement demand and authorization figures. My client replied that settlement negotiation was impossible and that the matter should be left to trial by the court. Upon further discussion, my client refused to authorize me to make any settlement demand and stated that he did not care about any amount of money, large or small, in settlement, but only that justice be done, that he be made whole again in body and spirit and that the court decide his case. Regardless of what the doctors said, he told me, the injury was still there and presented a problem nobody could solve. He expressed interest in my suggestion for a psychiatric consultation. I discussed the case with a psychiatrist informally. He declined to see Mr. Lin but ventured the view that my client was paranoid, and stated he was glad Mr. Lin did not fall on *his* sidewalk.

When I reported my client's instructions not to negotiate settlement at the pre-trial conference, the judge appointed an impartial psychiatrist to examine Mr. Lin. The doctor diagnosed Mr. Lin's complaint as "psychoneurotic reaction, hysterical conversion" caused in part by the accident, in part by his "somewhat dependent and immature personality" and in part by situational stress.² In response to Mr. Lin's position that he was not interested in any money settlement of his case but rather wanted a court decision and "help" ("He is quite vague as to the kind of help he means"), the doctor suggested that "in the dis-

2. The doctor described Mr. Lin as "a smiling, bowing Chinese with some language impairment who insists I precede him into my office . . ."

position of this case whatever decision is reached by the court be presented to Mr. Lin in a formal way and with appropriate ceremony and I think this will satisfy Mr. Lin and make him feel he has been helped.”

At further conferences with the judge after the impartial psychiatrist's report, the court instructed the lawyers to try to negotiate a settlement figure for the case. With the judge's help as a mediator, counsel agreed that \$5000 was an appropriate settlement figure. I believe that the amount of the settlement was a fair courthouse-steps figure.

The judge then listed the matter for a formal court hearing with Mr. Lin present, an unprecedented procedure to my knowledge.³ By court instruction, each lawyer stated his client's position on liability and damages for the record. Mr. Lin then made his own statement to the court about his persisting symptoms and his request for help and justice. In response to the judge's questions, Mr. Lin reported he was unmarried and did little physical exercise. The judge suggested that Mr. Lin undertake a regular program of physical exercise. The court then reported on the settlement negotiations and recommended the \$5000 settlement figure, which Mr. Lin accepted on the record. As the judge descended the bench and the court stenographer left the courtroom, Mr. Lin signed the settlement papers (which routinely would have concluded the case without any court hearing) and expressed his satisfaction with the result. I have not heard from him since and do not know whether he is now well.

My working hypothesis from Mr. Lin's case is:

- (1) By our standards, the Eastern mind is abnormal;
- (2) By Eastern standards, our view of reality is irrelevant;
- (3) The Eastern values of rectitude and justice over material gain are disproportionate by our standards, and the oriental will run what we consider irrational risks for his values;
- (4) Eastern behavior is influenced more by the ceremony of justice than by the tangible result;⁴
- (5) An unrectified wrong causes great continuing pain;
- (6) Our informal negotiation of differences to achieve a just result does not salve the pain of injustice for an oriental, nor does money by itself do the trick.

My theory is that if the United States submitted to adjudication

3. Except for incompetent persons, minors and decedents.

4. North Korea would not return the Pueblo crew until the United States confessed wrongdoing before the world.

by an international body on the issue of appropriate reparations to the Vietnamese people for the damages of war, we would obtain a material result that would protect our national interests and end the war. Negotiations alone, without more ceremonial recognition of the Vietnamese pain at an unrectified injustice, cannot satisfactorily end the war.