

# The Retarded Offender

JONAS ROBITSCHER

RETARDATION IS A CONDITION which affects children more than adults. The attrition rate is high for those low in intelligence, and a figure of three percent, which represents the portion of the newborn which will be diagnosed at some time during life as having mental retardation, drops to a figure of only slightly more than one percent for the population as a whole.<sup>1</sup> The drop results from a significantly higher mortality rate in the more profoundly retarded and also because many in the group labeled mildly retarded during school years disappear from the category in later life by being reabsorbed into the general population.

Retardation has both criminal and civil law ramifications. While retardation in itself does not excuse from criminal responsibility, the degree of retardation is an important consideration in any determination that a retarded defendant is not responsible. In Scotland for more than a century and in England since 1957, when a mental defective is the defendant in a homicide case the court can instruct the jury that it is within its discretion to return a verdict of culpable homicide rather than murder.<sup>2</sup> No United States jurisdiction grants such special diminished responsibility by law to the retarded, but since intention has always been recognized as a factor in criminal actions and since ability to control one's actions has also increasingly been taken into account by the courts, retardation may—but does not always—lead to a lesser charge being brought or a lesser sentence being imposed for a criminal offense.

Retardation is more important in civil law than in criminal law. Comparatively few retarded are involved in the criminal court process, but many are involved in the complicated areas of special institutions, therapeutic commitment, and limitation of civil rights.

In the past, the classification of the retarded was considered to be scientific. The retarded have been seen as suffering from organic or hereditary disorders affecting intellectual development. The degree of retardation was determined by intelligence test performance. Recently we have come to the conclusion that our classification has not always been scientific, that environmental factors are often responsible for the diagnosis of retardation, and that I.Q. by itself is not a reliable criterion for making the diagnosis. Some of the original questioning of the

<sup>1</sup> G. Tarjan, *Psychiat. Spectator*, 4 (2), 18 (1967).

<sup>2</sup> J. Robitscher, *Pursuit of Agreement: Psychiatry and the Law*, (Lippincott, Philadelphia, 1966).

# Rehabilitation And The Retarded Offender

**United States. Law Enforcement  
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## **Rehabilitation And The Retarded Offender:**

Rehabilitation and the Retarded Offender Philip L. Browning, 1976 Outgrowth of a conference sponsored by the Rehabilitation Research and Training Center in Mental Retardation and the President's Committee on Mental Retardation  
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*A Compendium of Selected Criminal Justice Projects* United States. Law Enforcement Assistance Administration, 1975

*Deinstitutionalization and Community Adjustment of Mentally Retarded People* Robert H. Bruininks, 1981 Ce document a t labor afin de soutenir la d marche d int gration sociale des personnes ayant une d ficiencie intellectuelle et les services qui leur sont offerts La d sinstitutionnalisation ayant pris de l expansion aux tats Unis il s agit maintenant d valuer les syst mes de services r sidentiels

**The President's Panel on Mental Retardation** United States President of the United States, 1964

**Hearings** United States. Congress. House, 1965

*Department of health, education, and welfare (exclusive of Public health service)* United States. Congress. House. Committee on Appropriations, 1965

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