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# Book Review [Ceremonial Chemistry: The Ritual Persecution of Drugs, Addicts, and Pushers]

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## BOOK REVIEWS

CEREMONIAL CHEMISTRY: THE RITUAL PERSECUTION OF DRUGS, ADDICTS, AND PUSHERS. By Thomas Szasz. New York: Anchor Books. 1975. Pp. xvii + 218. Paper. \$2.95.

*Reviewed by Michael Lee Pinkerton\**

Dr. Thomas Szasz, Professor of Psychiatry at the State University of New York, is best known as a prolific and controversial author. Szasz' forte has always been challenging sacrosanct root assumptions and exploding well-accepted myths, and in *Ceremonial Chemistry* he is at his best. In this complex and ambitious book he analyzes the concept of drug addiction and arrives at the unorthodox conclusion that:

there is, in fact, no such thing as "drug addiction." To be sure, some people do take drugs that the authorities do not want them to take; and some people do become used to taking certain substances, or become habituated to them; and the various substances which people take may be legal or illegal, relatively harmless or quite harmful. But the difference between someone "using a drug" and his being "addicted" to it is not a matter of fact, but a matter of our moral attitude and political strategy toward him.<sup>1</sup>

At its most basic level this book is an examination of the social process of identifying deviant elements in society and "scapegoating" them. In ancient times the values used to identify deviants were religious in nature,<sup>2</sup> but Szasz contends that scientific values have come to replace those of the bankrupt religious world-view.<sup>3</sup> Szasz attacks the use of scientific positivism to identify deviants, and both the medical and legal professions are on the receiving end of his vituperous polemics; the former for being among the chief promoters of this phenomenon, and the latter for legitimating it and not protecting the individual from the resulting government encroachment. The law's unquestioning acceptance of positivism and its medical

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1. T. SZASZ, *CEREMONIAL CHEMISTRY: THE RITUAL PERSECUTION OF DRUGS, ADDICTS, AND PUSHERS* 50 (1975) [hereinafter cited as SZASZ].

2. *Id.* at 18-26.

3. *Id.* at 26-34.

progeny is exemplified by statutory schemes that are ultimately based upon the medical model of "mental illness" and/or "competency."<sup>4</sup> Characteristic features of such legislation are provisions for involuntary civil commitment<sup>5</sup> and non-consensual treatment.<sup>6</sup>

While such paternalistic laws are intended to help those who are subjected to their application, Dr. Szasz has consistently maintained that their inevitable effect is an erosion of personal autonomy, and a mechanical non-humanistic conception of mankind.<sup>7</sup>

The casual reader of Szasz may be tempted to classify him as a conventional civil libertarian. This is mistaken.

An account of the drug problem from a conventional civil liberties perspective might run as follows: Persons for various reasons use drugs that are pharmacologically addictive. After a period of time the user becomes an addict—one who is suffering from a disease—and is no longer responsible for his or her actions.<sup>8</sup> This sets the stage for the state, acting pursuant to a *parens patriae* rationale, to intervene into the lives of the addict and those who furnish the drug.

Black markets develop to supply the illegal drug. Because the supply has been artificially reduced by government intervention into the marketplace, selling the drug becomes a high risk profession, the price becomes exorbitant. The addict may find that crimes against property and persons are the most convenient way of obtaining the money needed to pay the resulting inflated prices. Because the drug is not manufactured and distributed with the same quality controls that prescription drugs are, the product is adulterated and of variable strength. This is one major source of the drug related health problems.<sup>9</sup>

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4. See, e.g., CAL. WELF. & INST. CODE § 5325 *et seq.* (West 1970).

5. See Roth, Dayley & Lerner, *Into the Abyss: Psychiatric Reliability and Emergency Commitment Statutes*, 13 SANTA CLARA LAW. 379 (1973).

6. For different approaches to the consensual treatment issue see Barnhart, Pinkerton & Roth, *Informed Consent to Organic Behavior Control*, 17 SANTA CLARA L. REV. 39 (1977); Shapiro, *Legislating the Control of Behavior Control: Autonomy and the Coercive Use of Organic Therapies*, 47 S. CAL. L. REV. 237 (1974).

7. SZASZ at 143-64.

8. POLICY GUIDE OF THE AMERICAN CIVIL LIBERTIES UNION, Policy No. 213 (1976) [hereinafter cited as ACLU]. See also Mr. Justice Douglas' concurrence in *Robinson v. California*, 360 U.S. 660, 673 (1962): "But we do know that there is 'a hard core' of chronic and incurable drug addicts who, in reality, have lost their power of self-control."

9. See N. KITTRIE, *THE RIGHT TO BE DIFFERENT* (1971).

It is important to note that this conventional civil liberties view does not question the pivotal assumptions inherent in the drug problem: *disease*, *addiction* and *parens patriae*. The usual recommendation to the legislatures is voluntary treatment rather than punishment for the addict, and lighter prison sentences for the pusher.<sup>10</sup>

But Szasz' treatment of these themes is much less compromising. This work is a tapestry of interwoven threads that must be carefully unraveled in order to appreciate their full import. His earlier works reject both the notion of "disease" to explain human problems<sup>11</sup> and the *parens patriae* model of government as a cure for such a "disease."<sup>12</sup> In this book he goes further, and probes into the commonly accepted assumption that addiction is primarily physiological and pharmacological. Dr. Szasz asserts that "our ideas about and interventions in drug taking behavior have only the most tenuous connection with the actual pharmacological properties of 'dangerous drugs'."<sup>13</sup>

Historically, various drugs have been promoted and prohibited (scapegoated) not for reasons of health, but for reasons that Szasz argues are social and moral.<sup>14</sup> When this process of promotion and prohibition is viewed through the value structure of the deterministic philosophy of positivism (which serves as the underpinnings of medical science), those persons who use disapproved drugs are also scapegoated and viewed as "addicts." That is, one who has no free will *vis-a-vis* the drug, and is driven by irresistible impulses.

However, when this promotion/prohibition sequence is analyzed from a non-positivist stance where the salient assumptions are freewill and human responsibility, the result is entirely different. Szasz contends that

addictions are habits; that habits enable us to do some things, and disable us from doing others; and hence, that we may, and indeed must, judge addictions as good or bad according to the value we place on what they enable us to do or disable us from doing. Furthermore, what any particular habit enables a person to do, or disables him from

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10. ACLU, Policies No. 213, 214.

11. T. SZASZ, *THE MYTH OF MENTAL ILLNESS* (1961).

12. T. SZASZ, *LAW, LIBERTY AND PSYCHIATRY* (1963).

13. Szasz, at 169.

14. *Id.* at 69-81 where it is argued that opium prohibition in the United States was originally racially and economically motivated.

doing, may—as we have seen—be either a matter of fact or a matter of attribution.<sup>15</sup>

The biographies of persons as diverse as Sigmund Freud<sup>16</sup> and Malcom X<sup>17</sup> are used by Szasz to demystify drugs and to support his arguments. Both used narcotics for a long period of time; they viewed their habits as enabling them to function in a desirable manner; and both quit using drugs when they came to regard their habits as dysfunctional.

Based on his analysis of the dynamics of drug use, Dr. Szasz concludes that capitalistic individualism and tolerance of deviation provides the most realistic resolution of the drug "problem." Concretely, this means "control not of the drug user but of those who would control how he ought to use drugs."<sup>18</sup> This amounts to the abolition of drug control laws and free market sale of these pharmacological agents. This libertarian solution maximizes individual freedom (in both the economic and personal spheres) and responsibility. It is not an argument promoting drug use, but a call for the individual to accept responsibility for his or her actions, and for the government to leave the individual alone except where he or she has caused *actual*, not *metaphorical*, harm to others. These are, in Szasz' words, the "inalienable rights and irrepudiable duties"<sup>19</sup> of a citizen. Stripped to essentials, the precise object of his attack is excessive government intervention into individuals' lives; the central polemic is authority versus autonomy—external control versus self-control.

The major flaw of this work is the author's occasional tendency to overstate his case for the sake of rhetorical impact. As a result, the casual reader may misinterpret him and certain segments of the legal community tend to dismiss him in an off-hand fashion. However, his semantic sword has cut both ways; there has been a growing concern in both the legislative and judicial arenas concerning the rights of hospital and mental patients. This is attributable in no small part to the works of Dr. Szasz.

Szasz sharply challenges lawyers, jurists and legislators to modify the system, as there are many laws based on the parens

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15. *Id.* at 79.

16. *Id.* at 69-78.

17. *Id.* at 82-86.

18. *Id.* at xvii.

19. *Id.* at 170.

20. See, e.g., R. NOZICK, ANARCHY, STATE, AND UTOPIA (1974).

patriae doctrine and positivistic conceptions of human problems—laws which inevitably restrict economic freedom and civil liberties and which are generally unquestioned by those who create and enforce them. Szasz is speaking from a respectable political<sup>20</sup> and social-scientific<sup>21</sup> tradition, a tradition that the legal community should not ignore. At the very least, we have the duty to critically examine these issues. As Robert M. Hutchins has observed:

The intellectual community has to think together about important matters: the law is the application of thought to what is perhaps the most important of all matters, the regulation and direction of the common life. . . . Since law is architectonic, which means that it shapes the conduct of society, everything in the society is relevant to it.<sup>22</sup>

The abridgment of the rights of a free people is not to be taken lightly. Laws which restrict our freedom should be carefully scrutinized in order to determine whether they are fulfilling a legitimate purpose. Szasz' book gives us a fresh and cogent perspective from which to examine our current addiction to drug laws.

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21. See, e.g., Q. LAUER, *PHENOMENOLOGY: ITS GENESIS AND PROSPECT* (1965).

22. Quoted in W. DOUGLAS, *GO EAST YOUNG MAN* 170 (1974).



SIMPLE JUSTICE: THE HISTORY OF *Brown v. Board of Education* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY. By Richard Kluger. New York: Alfred A. Knopf. 1976. Pp. x + 823. Cloth. \$15.95.

Reviewed by Richard L. Kuersteiner\*

In *Simple Justice* Richard Kluger has presented a comprehensive, carefully documented analysis of the complex cultural tapestry surrounding the landmark Supreme Court decision of *Brown v. Board of Education*.<sup>1</sup> This momentous holding sounded the death knell for the long established, but pernicious practice of racial segregation in the public schools of America. *Brown* has been given far-reaching applicability and has, in effect, "wiped out all forms of state-sanctioned segregation."<sup>2</sup>

Prior to the *Brown* decision, blacks in America had been relegated to an inferior status. Kluger points out that at the time of the American Revolution slaves comprised nearly one-fifth of the country's population. Since there was concern that "the thinking slave was a potentially rebellious slave,"<sup>3</sup> the black codes in effect in the South prohibited teaching blacks to read or write. Thus, when America was founded most blacks were denied not only their freedom, but also all educational opportunities. In the 1857 decision, *Dred Scott v. Sandford*, the Supreme Court held that blacks were "beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect."<sup>4</sup>

The Emancipation Proclamation signed by President Lincoln in 1863 purported to free all slaves in rebel states. After the Civil War this proclamation was followed by the adoption of the thirteenth and fourteenth amendments to the Constitution which abolished slavery and guaranteed the equal protection of the laws to all citizens of the United States. The Civil Rights Acts of 1870 and 1875 guaranteed privileges such as the

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1. 347 U.S. 483 (1954). The companion case to *Brown* was *Bolling v. Sharpe*, 347 U.S. 497 (1954).

2. R. KLUGER, *SIMPLE JUSTICE* 750 (1976) [hereinafter cited as *SIMPLE JUSTICE*].

3. *Id.* at 28.

4. 60 U.S. 393 (1857). See *SIMPLE JUSTICE* at 39.



right to buy and sell property, to enforce contracts, and to have a jury trial that was fair.<sup>5</sup>

As the nineteenth century was drawing to a close, the legal stage was set for the American black to move forward on an equal footing with whites. However, economically and socially he was not, in the minds of those who controlled the power structure in America, ready to take his place with the white man. As a manifestation of this view, the Supreme Court of the United States in *Plessy v. Ferguson*<sup>6</sup> upheld a Louisiana statute that required railway companies to provide "equal but separate accommodations for the white, and colored races"<sup>7</sup> and made it a crime for a person to insist "on occupying a coach or compartment other than the one set apart for his race."<sup>8</sup> Although the thirteenth and fourteenth amendments to the Constitution contained sweeping language guaranteeing freedom and equal protection of the laws to all Americans, a new legal concept, the separate but equal doctrine, had been officially adopted as the law of the land. An examination of subsequent American history shows how difficult it was for black Americans to overcome the pervasive effects of a tradition of non-education as embodied in the black codes, of perceived inferiority and unfitness to associate with whites as articulated in the *Dred Scott* decision, and of an official sanction to segregate by providing separate but equal facilities under the rationale of the *Plessy* decision.

In order to overcome these obstacles, talented, determined black leaders arose to organize and chart the course towards true equal protection under the law. William E. Du Bois was such a leader. After attending Fisk University near Nashville, Tennessee, he won a scholarship to Harvard where he studied philosophy and was one of five commencement speakers. He studied at the University of Berlin and then returned to America in 1895 to become the first black to earn a Ph.D. from Harvard. In 1905 on the banks of Niagara Falls, Du Bois met with twenty-nine carefully selected blacks and founded the Niagara Movement. This was the precursor of the National Association for the Advancement of Colored People which he helped organize in 1910. Du Bois became the "director of pub-

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5. Civil Rights Act of 1870, ch. 114, 16 Stat. 14 (1870) (current version at 42 U.S.C. § 1971 *et seq.* 1970)); Act of 1875, ch. 114, §§ 3-5, 18 Stat. 336-37 (1875) (current version at 42 U.S.C. § 1981 *et seq.* (1970)).

6. 163 U.S. 537 (1896).

7. *Id.* at 541.

8. *Id.* at 537.

licity and research”<sup>9</sup> for the NAACP and established a magazine called *The Crisis* which eventually reached a circulation of more than 100,000. His article on the fire lynching of a black in Pennsylvania shows the tenor of his writing and reflects his views on the prevailing *zeitgeist*:

Ah, the splendor of the Sunday night dance. The flames beat and curled against the moonlit sky. The church bells chimed. The scorched and crooked thing, self-wounded and chained to his cot, crawled to the edge of the ash with a stifled groan, but the brave and sturdy farmers pricked him back with the bloody pitchforks until the deed was done.

. . . . Some foolish people think of punishing the heroic mob, and the governor of Pennsylvania seems to be real provoked. We hasten to assure our readers that nothing will be done. . . . But let every black American gird up his loins. The great day is coming.<sup>10</sup>

Unfortunately, the great day was still in the distant future, but other leaders were emerging. One such leader was Charles H. Houston, a black from Washington, D.C. He studied law at Harvard, and was greatly influenced by Professor Felix Frankfurter, and was elected to the *Harvard Law Review*. He graduated in the upper five percent of his class, remained a year to pursue a Doctor of Juridical Science degree which he received in 1923, and then studied at the University of Madrid where he was awarded a Doctor of Civil Law. Upon returning to Washington he was admitted to the District of Columbia bar where he joined his father in the practice of law.

Howard University established in Washington as a black school in 1867, had been, in Kluger's words “an academic slum since its founding.”<sup>11</sup> Black intellectuals referred to it as a “Dummies' Retreat.”<sup>12</sup> Yet many of America's black professionals had been trained at Howard. In 1926 Mordecai Johnson, a Baptist minister, became the first black president of Howard—a man determined to make it an outstanding university. He selected Charles Houston as the new dean of the law school. Houston wasted little time in cleaning house and bringing in first-rate black legal scholars. During his six year tenure as dean he tightened admission standards, built up the sadly

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9. SIMPLE JUSTICE at 98.

10. *Id.* at 99.

11. *Id.* at 124.

12. *Id.* at 123.

lacking library, and dramatically improved the quality of its students and of the legal education they received. Howard Law School became highly involved in the civil rights movement and worked closely with the New York headquarters of the NAACP.

With the founding and funding of the NAACP Legal Defense and Education Fund in 1939, the American black now had filled his quiver with the arrows needed to begin a serious legal attack on the *Plessy* rationale and the long line of segregation cases that had relied on the separate but equal doctrine. Thurgood Marshall, who had graduated as valedictorian from Howard Law School in 1933, became chief counsel of the NAACP Legal Defense Fund. Working in concert with other Legal Defense Fund attorneys such as James M. Nabrit, Jr., and William T. Coleman, Jr., and with psychologist Kenneth B. Clark, a strategy was devised for attacking the legality of segregated school facilities. The strategy involved the use of a "two-string bow"<sup>13</sup> in order to end "doghouse education."<sup>14</sup> On the one hand evidence was adduced showing that the racially separate facilities provided by various school districts were equal in name only. The per capita expenditure of funds for teaching white pupils was generally much greater than for blacks, and the Jim Crow physical facilities provided for blacks were often sadly inferior. In addition, the strategy called for the utilization of the second argument, that separate facilities are *inherently* unequal. In order to prove that theory it was necessary to utilize the evidence of psychologists and social scientists to demonstrate the adverse effects of segregation upon black children who were required to attend only those schools that had been designated for them. The NAACP attempted to show empirically that the effect of segregation on black children was a lack of self esteem, and that this lack of esteem was harmful to the psychological well being and fulfillment of the children involved.

In 1951 and 1952 five different class action cases were instituted in order to challenge head-on the legality of racial segregation in the public schools.<sup>15</sup> After appropriate lower court proceedings and appeals (the plaintiffs lost in four of the five cases), the Supreme Court assumed jurisdiction and con-

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13. *Id.* at 293.

14. *Id.* at 302.

15. *Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Bolling v. Sharpe*, 347 U.S. 497 (1954).

solidated the cases for hearing. The result after extensive argument in 1953, and reargument the following term, was the momentous *Brown* decision handed down on May 17, 1954. In an unanimous opinion by Mr. Chief Justice Warren, the Court declared that

in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.<sup>16</sup>

This decision marked the end of an era. Its reverberations were long and loud.

While it is true that one cannot legislate public mores, it is even more difficult to change them by judicial fiat. Realizing the delicacy of the school segregation dilemma, and the inherent human tendency to resist sudden institutional change, the Justices refused the plaintiffs' request to include an absolute timetable for school desegregation in the implementation order for *Brown*. The court chose instead to remand the cases to the district courts "to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases."<sup>17</sup>

Viewed in retrospect two decades later, the wisdom of the *deliberate speed* rule seems apparent for, as shown by the daily news media, there have been many problems, both social and legal, to address in implementing the Supreme Court's guidelines. Although discrimination and bigotry probably can never be totally eliminated, great strides have been made in America toward establishing racial equality. These advances have occurred, to a large degree, as the result of a chain of events which began with the emergence and purposeful organizing of black leaders and the determination of numerous Americans to fight for an overruling of the *Plessy* decision and an end to racial segregation. The *Brown* decision was the penultimate occurrence that stimulated these changes. Its implementation was primarily the responsibility of a number of southern United States district court judges who, for the most part, courageously discharged their duties as the "shock troops of the

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16. 347 U.S. 483, 492. See SIMPLE JUSTICE at 782.

17. *Id.* at 745.

18. J. GOULDEN, THE BENCHWARMERS 3 (1974).

judiciary,"<sup>18</sup> by entering the highly charged courtroom arena to hear and rule upon the welter of school desegregation cases that ensued.

Richard Kluger spent seven years completing *Simple Justice* and the final work product reflects this painstaking effort. The insight provided into the inner workings of the Supreme Court during the give and take of deliberations is of special interest to lawyers, as is the role of the "Superchief," Earl Warren, in obtaining a unanimous decision. This highly readable book is recommended for both lawyers and laymen interested in the history of American civil rights. For this is what *Simple Justice* is all about.