

Summer 1981

## Book Reviews

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Book Reviews, 72 *J. Crim. L. & Criminology* 858 (1981)

This Book Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in *Journal of Criminal Law and Criminology* by an authorized editor of Northwestern University School of Law Scholarly Commons.

## BOOK REVIEWS

THE LAW OF DEPRIVATION OF LIBERTY: A STUDY IN SOCIAL CONTROL. By *Fred Cohen*. St. Paul, Minn.: West Publishing Co., 1980. Pp. xxxviii, 755. \$18.95.

Cohen's new *Cases and Materials* admirably fills a void in currently available textual materials for law schools, criminal justice programs, and similar academic endeavors. Shunning traditionally accepted but intellectually limiting divisions of law (e.g., criminal vs. civil), Cohen hews to the central theme of "the most significant areas of law whereby persons may be deprived of their liberty." (at xvii). With this "results orientation," Cohen's materials force the reader into particularly enlightening perspectives on State action.

The organization of the book reflects considerable thought about the role of textual materials and provides rare insight into the concept of law as a "seamless web." In the introductory chapter, the reader is presented with a hypothetical problem which delightfully exemplifies the book's central theme. The police are called at 3:00 a.m. to investigate a middle-aged, nude, possibly drunk, distressingly boisterous, religious zealot in the city park. Followed with a string of questions, this hypothetical problem forces the reader to consider whether this person should be controlled by the agents of society and whether he should be deprived of liberty. If so, how, why, when, where?

Included in this introductory chapter are materials providing a general introduction to the study of legal materials, the value of which will depend upon the course in which the book is being used. Following this introductory chapter are an excellent overview of law and social control and a brief but fully adequate consideration of the constitutional restraints upon cruel and unusual punishment. Thus, in the first third of the book the stage is set, the underlying restraints are laid bare, and one primary societal vehicle for deprivation of liberty (the criminal justice system) is introduced.

The next major portion is devoted to the mentally disabled and the legal processes by which such persons are deprived of liberty. Following consideration of the concept of mental illness (headed by a marvelous confrontation between Thomas Szasz and Bernard Diamond), the civil

commitment process is covered. A short section provides a transition from civil to criminal, and then both competency to stand trial and the insanity defense are briefly sketched. Another short section covers transfer between and release from institutions and the prediction of dangerousness. The mental disability portion of the book closes with a thorough section on treatment, habilitation, and rehabilitation.

Juvenile justice is covered next and is comparatively disappointing. Following the conventional path, Cohen devotes most of this section to the Supreme Court cases which constitutionalized the adjudicatory process and gives too little attention (twenty-five pages) to incarcerated juveniles. Even though this juvenile justice section is fully adequate for the sort of course for which these cases and materials are intended, it would seem that more could have been included concerning the many means society has devised for depriving children of liberty.

The last section of the book presents materials on sexual psychopath and defective delinquency laws. It is an excellent sampling of the constitutional issues, statutory formulations, appellate opinions, and scholars' commentaries. The index at the end of the book is insultingly brief and superficial, but this is endemic in West's American Casebook Series.

The primary handicap Cohen's book carries is that it does not fit neatly into well-established courses in law school or criminal justice curricula. The book's perspective crosses the rigid boundaries of traditional divisions of Anglo-American law and seems to require a course or seminar which does likewise. However, this handicap is also its greatest contribution to academic programs in law and criminal justice. Following this book's lead, rigid categories of instruction and inquiry can be ventilated by reorienting the focus to the essential effect upon the individual as a result of State action through law. "Mad or bad—that is one way to put the question." (at 52). If the result is deprivation of liberty, the traditional label under which the State has acted may pale in comparison to the result for the individual and for society.

VICTOR L. STREIB  
PROFESSOR OF LAW  
CLEVELAND—MARSHALL COLLEGE OF LAW

WOMEN WHO KILL. By *Ann Jones*. New York: Holt, Rinehart & Winston, 1980. Pp. 321. \$15.95.

*Women Who Kill* is an important contribution to both feminist and

criminological literature. Earlier books on women and murder have not seriously attempted to explain the cultural roots of murder, but instead have related entertaining anecdotes intended to perpetuate the view of women driven to kill by passion and jealousy (at xv). Prior academic treatises on women and crime have not focused on women murderers, though there has been some attempt in the academic journals to explain this crime.<sup>1</sup> Thus, this work is the first serious academic attempt to explain homicide by females.

The author, a recipient of a doctorate in literature and intellectual history, attempts to examine female murder from an historical and sociological perspective. She utilizes selected murder cases from colonial times to the present to demonstrate the relationship between female murder and "cultural deformities." In her words, the book "consists of a series of studies, mostly historical, approaching the subject of women and murder from different angles. They are intended to dispel some false notions and to examine the connections among women, society, and killing" (at xvi). The work is a product of four years of research and is amply documented by sixty-five pages of references and notes following the text.

Jones clearly states that she has read and retold history from a feminist viewpoint. She criticizes earlier and classical books on females and crime<sup>2</sup> as the product of a reaction against the women's rights movement. Each presented "scientific" conclusions mired in the prevailing cultural stereotypes and each played an important part in the antifeminist backlash. Jones views this earlier "expertise" on females and homicide as fundamentally "alarmist, reactionary, antifeminist, and wrong" (at 5). She sees these earlier works as part of a conspiracy of the "social fathers" (the white, male, and upper class ruling elite) to link rising criminality with the women's rights movement so that the latter might be discredited.

A major thesis of the book is that whenever feminist views experienced an upsurge in American history, the social fathers exploited the media to transform particular female murder cases into morality plays in which feminism was the culprit. Jones attempts to demonstrate that often women were punished severely for "unladylike" conduct or for violating the double sexual standard, rather than for the murder itself. For example, Jones claims that Ruth Snyder, who in 1925 killed her husband with her lover's help, was tried and executed more for adultery than for murder. Jones suggests that the social fathers utilized this case

---

<sup>1</sup> See, e.g., Suval & Brisson, *Neither Beauty Nor Beast: Female Criminal Homicide Offenders*, 2 INT'L J. CRIMINOLOGY & PENOLOGY 23-34 (1974).

<sup>2</sup> See, e.g., F. ADLER, *SISTERS IN CRIME* (1975); O. POLLAK, *THE CRIMINALITY OF WOMEN* (1950).

to demonstrate the dangers of feminism and the full implications of the equality which women sought (at 263). Thus, the social fathers periodically demonstrated to women the consequences of feminism in order to deter the expression of liberation through husband-killing.

In the Ruth Snyder case, Jones suggests that the husband-killing was, in its own way, "as subversive of American domesticity" as the anarchism of Sacco and Vanzetti was of the political and economic order (at 251). She claims that the "limits of acceptable American behavior in the twenties" were drawn by the highly publicized executions of two "bolsheviks" and a "flapper" (at 263). Furthermore, the execution of the political duo prompted outraged demonstrations, while the execution of sexual transgressor Snyder gratified the public.

*Women Who Kill* is comprised of six chapters. Chapter one is a fascinating collection of anecdotes about our "foremothers." Besides outlining the characteristics of the women who immigrated to the colonies, the author details what she alleges to be the type of murder most characteristic of that day—infanticide. Jones points out several factors which promoted infanticide (at 42-62): (1) laws which forbade indentured servant women from marrying before their servitude was completed and extended their servitude if pregnancy was detected; (2) slavery, which made a slave's child a slave, drove some mothers to spare their children by killing them; (3) laws which punished bastardy ensured that many women would turn in desperation to murder; (4) a bastard child could be bound out for up to twenty years or even life and thus some mothers wanted to spare the child that fate. Even though colonial society "provoked" desperate women to infanticide, the penalties for this crime were very severe. The Puritans considered infanticide to be especially heinous since they believed that killing an unbaptized infant condemned its soul to hell. Jones also claims that such murder was considered revolutionary because the woman was, "symbolically at least," asserting that she should not be punished for her sexual misbehavior (at 51). In a patriarchal society this act challenged civil and divine authority.

Chapter two is devoted to several cases of women murdering their husbands or lovers in the nineteenth century. The author appears to suggest that many of the female murderers were "predictable products of their situations—primarily, binding but affectionless marriages combined with a growing societal emphasis on acquisitive individualism that led many women to kill their husbands" (at 128). Furthermore, she indicates that women murderers were viewed as acting without personal volition (at 93). Menstrual tension, hysterical disease, insanity, or a male accomplice usually were blamed.

Chapter three is entitled "Spoiling Maidens" and suggests that in the nineteenth century many women killed due to desperate conditions

induced by the double sexual standards prevailing at the time. Some of these women killed men who seduced them but refused to marry them, while others killed a husband who abused them but would not let them go. In these cases the women tried to save themselves or their reputations by fair means, but finally resorted to murder. The law of the day ostensibly was designed to protect women, but in fact penalized them when they attempted to protect themselves. Some women rebelled (through murder) when they grew discontented with the chivalry men substituted for justice.

Chapter four contrasts the societal reactions to two cases of murder—one involving Bridget Durgan, an Irish servant girl, and the other involving Lizzie Borden, an upper class “lady.” Jones contends that the two cases were identical in all important points except one—social class (at 196). Durgan was viewed as a fiend and “wild beast” and was convicted and executed, since popular ideology believed a servant easily capable of murder. In fact, Jones says that Durgan was executed as an example to all rebellious servants. On the other hand, Borden was acquitted of a similar crime since no one could conceive of a lady committing such an atrocious act.

Chapter five, “Let That Be A Lesson,” suggests that selected women murderers were punished by the social fathers as an example to feminists. The chapter is devoted to modern cases—primarily to those of Ruth Snyder (1925) and Alice Crimmins (1967). Jones claims both were prosecuted more for sexual misconduct than for murder (at 259). Furthermore the “anxiety that provoked the war on Alice Crimmins was undoubtedly riled by the renewed women’s movement” (at 278). Since both were rebellious wives out of control, they were threats to the status quo. Thus they can be seen as victims of sexual politics.

The sixth and final chapter is devoted to several modern cases of battered wives who, out of desperation and a lack of alternatives, killed their tormentors. Jones discusses the case of Francine Hughes, who was acquitted, but claims that such acquittals have been the exception and not the rule. Jones suggests the mistaken notion that women are “getting off” has been popularized by the media in a concerted effort to link feminism with an open season on husbands (at 292).

*Women Who Kill* is a valuable contribution to the literature, but its value is limited greatly by two major defects. First, the bias of the author resulted in the selection of cases which she believed proved her points. The disadvantages of proof via anecdote are well known. How many cases does she ignore that would support alternative views to those she expresses? Jones appears to have developed a thesis and then searched for good cases which might illustrate that thesis. At times she seems to overzealously read her own views and theories into the cases she

discusses. For example, she sees all involved in the Lizzie Borden trial as part of a conspiracy to protect the patriarchy. Likewise, her opinion that women who committed infanticide were viewed as revolutionaries, and thus severely punished, appears speculative. Thus, though the author provides much valuable information via case histories of women who kill, one cannot help but wonder to what extent the "meaning" of such cases is the product of her bias rather than what she found in the historical record.

Jones' belief in a conspiracy of the social fathers permeates the book though she provides little evidence one ever existed. She admits it may not be a conscious conspiracy (at 178). By definition would not a conspiracy have to be conscious? Many might agree that wife-beating is a severe problem, but only those who agree with the author's conspiracy thesis would agree that wife-beaters are the "home guard" of the male conspiracy to maintain dominance over women.

The second major defect of the Jones work involves her failure to provide a sociological analysis of women who kill. Since her approach is anecdotal, she provides no data on patterns of female homicide at one point in time or trends in those patterns over time. We are not told if the female offender rate has increased in time, nor is evidence presented to indicate that a particular type of murder has increased or decreased over time. Good sociological analysis always begins with the "facts the theory must fit" but those facts are never presented in this work.

Furthermore, it is difficult to discern just what the author's theory of women who kill really is. The book focuses on the reaction of society to women who kill rather than to a description of the causes of the murderous acts. The author's theory of why women kill is poorly presented, but appears to be that murder is only one of several alternative responses to social and legal deprivations by the social fathers. Yet there is no discussion of why some women respond by killing while others become involved in the feminist movement, go insane, or adjust. And if this view of cause is adopted, how would she explain "men who kill?" Jones begins her work lamenting the tendency to formulate explanations for female murder that view women as somehow different from men and ends with precisely such an explanation.

WILLIAM L. WILBANKS, PH.D.  
DEPARTMENT OF CRIMINAL JUSTICE  
FLORIDA INTERNATIONAL UNIVERSITY

KHAKI-COLLAR CRIME: DEVIANT BEHAVIOR IN THE MILITARY CONTEXT. By *Clifton D. Bryant*. New York: The Free Press, 1979. Pp. vii, 383. \$14.95.

It is the role of the few to break new research ground for the many. With his paradigm in this work, Bryant provides the conceptualizations which can permit those who follow to more thoroughly understand and illuminate the meaning of deviance in a major social institution, the military. In addition to the standard concepts of crimes against property and crimes against persons, Bryant introduces and discusses the notion of crimes against performance. Crimes against performance include, but are not limited to, malingering, mutiny, cowardice, desertion, "conduct unbecoming," dereliction of duty, fragging, fraternizing with the enemy, and black marketeering. Different as it may be, there is nothing startling in labeling military offenses as crimes against performance.

What makes Bryant's description and analysis work is the tripartite framework within which he considers crimes by military personnel against property, persons, and performance (at parts 2, 3, and 4). The contexts within which these crimes are committed are 1) intra-occupational; 2) extra-occupational, crimes against civilians; and 3) inter-occupational, crimes against enemy military personnel. Extra-occupational crimes against civilians can be committed against U.S. or foreign, friendly or enemy civilians. These categories build in considerable redundancy. However, they also permit a series of particular foci that are the principal contribution of *Khaki-Collar Crime*.

In a work which charts as many new directions as this one does, it is unfair to demand quantities of hard, statistically significant data. A score of Bryant's graduate students and others can provide that as they test his propositions and seek answers to his questions—explicit and implicit.

Bryant closes with a cluster of several points which should guide future research (at epilogue). Brevity here may distort the issues as Bryant draws them, but the flavor of his subject still comes through in the question format below. Does the all-volunteer force of today, except for racial composition, differ significantly from the all-volunteer force of the depression era? If so, how does it differ and with what result? Is it or is it not the differences in the sophistication of weapons and weapons systems that makes today's military personnel appear underprepared and underqualified in contrast to those of the 1930s? Members of the military know how to deal with a trooper who loses his rifle. Do they know how to deal with a trooper who loses his missile? Does the racial and sexual composition of the officer corps and the enlisted ranks make any

difference in the readiness and willingness of the armed forces to fight? If so, what are the differences, and which way do they flow? When members of both sexes are present in either support or combat units, will decorum and conformity prevail or will disruptive rivalries, conflicts, flirtations, romances, and affairs be the order of the day? Will homosexual incidents increase, decrease, or remain about the same? As weapons become more sophisticated, will technological detachment and cultural ethnocentrism combine to increase military atrocities in the future? Does the use of "body counts" to emphasize the benefit side of the cost-benefit ratio encourage such atrocities against friendly as well as hostile civilians? Granted that portable x-rays and computer components are more profitable and marketable, are they stolen and sold by military personnel (and others) more often than rifles, machine guns, saddles, C-rations, etc? Is this generation of draft-eligible men less willing to adapt to the rigors of military routines, regimentation, orders, and battle plans than earlier generations? If so, what is the role of military leadership under the circumstances which exist?

Many of the questions posed can be answered, at least partially, without going to war. Others cannot and, clearly, those answers are not worth the price. The same is true of the following questions which are essentially implicit in this tightly constructed, readable book. I mention the tight construction, because the disorder of the questions below might mislead readers of this review to believe that the book is in less than good order: not true.

The primary problem with this work is conceptual. The subject matter here—crimes committed by military personnel—really appears to be a fertile place to begin to unravel of what deviance consists as a concept. For example, when violations of the Uniform Code of Military Justice, military regulations, or standing orders are condoned or encouraged, who is the deviant? Is it one who condones or encourages, one who commits the specific violations, or both? If it is both, are they equally culpable? Are there gradations of deviance, and if there are, can the gradations be specified and articulated?

Troublesome as situational ethics have been for philosophers and theologians, notions of situational norms, and therefore situational deviance, prove equally elusive for behavioral scientists. Nonetheless, when Lt. William L. Calley gained substantial sympathy, if not support, from the general population, whose norms were violated at My Lai? From what did Calley deviate? How do we know? Do prescribed and proscribed behaviors, published and disseminated, suffice as a basis for determining deviance? What more, if anything, would a typology of deviance anchored to situations permit us to understand about khaki-collar and other crime?

Of much less import is another set of illustrative questions that go to the same issue. For example, if "midnight requisitions" are rampant throughout the armed services, who are the deviants: the supply sergeants who engage in the activity or the ones who do not? If it is encouraged and condoned how do company commanders and supply sergeants survive who refuse to participate? Do midnight requisitions enhance or reduce unit efficiency? If so, at what level is the reduction? Inter-unit, intra-service, or inter-service comparisons of this sort can permit a sharper, tighter conceptualization of deviance and its situational components.

Comparisons of another type are important if we are to avoid playing "ain't it awful." It is awful that military personnel commit crimes. They do come from a larger society, however, where crimes also are committed. Do military computer experts, for example, steal or destroy more electronic components than IBM employees? Although not a military illustration, the General Services Administration (GSA) provides an example for this point. Indications are that the recent GSA scandal revealed that about three to five percent of GSA's budget was lost to unscrupulous dealings by a number of GSA employees. In the private sector, however, most retailers could live with such a percentage of loss to employees and many would be delighted if it were that low. So many military specialties duplicate civilian specialties that this type of comparison between the military and the private sector is possible, and will permit data-based judgments about whether the military is more or less successful in crime reduction than civilians within the same society. Crimes against persons are as susceptible to these kinds of comparisons as crimes against property. For example, are racial attacks more or less frequent in the military than in the broader society? Where is narcotic addiction more prevalent?

Any study which raises this many and more research questions proves its worth by the scope and importance of its subject matter, as well as its clarity of presentation within a forward-looking framework. I commend it.

J. MALCOLM MOORE  
CARL VINSON PROFESSOR  
OF PUBLIC ADMINISTRATION  
GEORGIA COLLEGE