

Fall 1998

Recent Books

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

Recent Books, 89 J. Crim. L. & Criminology 403 (1998-1999)

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.

RECENT BOOKS

CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

BARD R. FERRALL*

CRIME—GOVERNMENT POLICY—UNITED STATES—
HISTORY—20TH CENTURY

CLAIRE BOND POTTER, *WAR ON CRIME: BANDITS, G-MEN, AND THE POLITICS OF MASS CULTURE* (New Brunswick, NJ: Rutgers University Press, 1998) 250 pp.

Most studies of the first decade of J. Edgar Hoover's directorship of the FBI fail to note the consonance of federal policing power in the early 1930's and the overall view of government embodied in the New Deal: that the exercise of governmental power was generally benevolent, and that federal intervention would revitalize, rather than undermine, local institutions. To avoid the mistakes of the first attempt at federal policing—the Bureau of Prohibition—which ended in scandal and failure, Hoover determined, upon his appointment as director in 1924, that the FBI must be composed of professional agents of the highest character, and that the FBI's primary methods must be surveillance and the systemic collection of information. The author describes the appearance of a new type of criminal in the early 30's (bank robbers such as John Dillinger and profit motivated kidnapers such as Alvin Karpis) whose methods overwhelmed the local authorities. These "celebrity bandits" created terror at the local level, but became romantic figures in the national media. All these factors led to the FBI's "war on crime" during the first half of the 1930's. The author describes how Hoover fed the public image of the "G-man" as a counterpart to the new type of criminal. When the "war on crime" ended with the arrest of Alvin Karpis in 1936, the FBI enjoyed great public prestige, and would soon be called on again to use its methods against the agents of the Axis powers.

* Library Assistant, Northwestern University School of Law Library; M.A. University of Denver; J.D. Northwestern University.

CRIMINAL JUSTICE, ADMINISTRATION OF—UNITED STATES

SUSAN ESTRICH, *GETTING AWAY WITH MURDER: HOW POLITICS IS DESTROYING THE CRIMINAL JUSTICE SYSTEM* (Cambridge, MA: Harvard University Press, 1998) 161 pp.

The author criticizes three recent trends in criminal law: First, the misapplication of new theories of excuse to create separate standards of reasonable behavior for different sociological groups rather than to resolve factual questions in the individual case while applying the same general standard of reasonableness. Second, calls for "jury nullification" in inappropriate cases, and manipulative techniques of jury selection, the use of which creates cynicism about the jury system. Third, legislative preemption of judicial sentencing, especially mandatory minimum sentences for drug offenses, and repeat offender statutes. The author asserts that these incidents of legislative preemption may create disincentives to plea bargain, thereby increasing the criminal courts' burden, while failing to achieve the desired effect of reducing crime. This is because most persons sentenced as repeat offenders may already be beyond the age group most at risk to commit crimes. In a final section, the author discusses the criminal defense attorney's need to balance duty to the client with duty to the court and society; most defense attorneys display high integrity, the author believes, despite public perception to the contrary.

DRUG LEGALIZATION—UNITED STATES

ERICH GOODE, *BETWEEN POLITICS AND REASON: THE DRUG LEGALIZATION DEBATE* (NY: St. Martin's Press, 1997) 187 pp.

The author presents the various positions in the debate and distinguishes empirically resolvable issues from those which are differences over values. Considering individually the various substances usually categorized as "drugs", the author summarizes, for the general reader, the pharmacological effects of the substances, and presents what is known about the extent of their use. He describes the legal sanctions currently applied against the different types of drugs, and discusses the comparative advantages and disadvantages of various proposals for legalization or decriminalization. In examining different possible models of drug control, the author stressed the need to acquire as much data as possible to quantify the harms caused by each drug. Different types of drugs may vary widely as to both the extent and the type of harm they cause to the individual user. The harm to society caused by drug use may be determined significantly by factors external to the substance. As a result, extensive controlled clinical research—the method of assessing the pharmacological effect of particular drugs—can not be used to determine the societal effects of drug use. Other important issue in the

drug control debate are whether methods of control cause greater harm than the harms they are aimed to prevent; and whether higher levels of legal sanction cause greater harms without a compensating reduction in drug use. Beyond the problem of quantifying harm, the comparison of different types of harm is an ongoing point of contention in the drug control debate, since the question whether one type of harm is greater than another is largely a value judgment.

HATE CRIMES—UNITED STATES

JAMES B. JACOBS & KIMBERLY POTTER, *HATE CRIMES: CRIMINAL LAW AND IDENTITY POLITICS* (NY: Oxford University Press, 1998) 212 pp.

Recently enacted state and federal laws targeting hate crimes are examined. The authors find inconsistency on various elements, including the definition of "prejudice," the kinds of prejudices to be sanctioned, and the nexus between the perpetrator's prejudice and the predicate criminal act. The authors assert that ambiguities in the various definitions of a "hate crime" undermine consistency in the compilations of hate crime statistics. The authors question whether the data supports claims of a drastic rise in hate crimes in the 1990s. The authors also question whether the current hate crime legislation will actually stimulate increased prosecution of hate crimes, since the underlying crimes, (vandalism, etc.) are often difficult to solve. Moreover, while the expression of societal disapproval of crimes of prejudice provides some justification for hate crime legislation, the authors doubt whether the legislation will actually deter the targeted acts.

PUNISHMENT—UNITED STATES—HISTORY—19TH CENTURY

MARK COLVIN, *PENITENTIARIES, REFORMATORIES, AND CHAIN GANGS: SOCIAL THEORY AND THE HISTORY OF PUNISHMENT IN NINETEENTH-CENTURY AMERICA* (NY: St. Martin's Press, 1997) 294 pp.

The author aims to fill "a gap in the literature by providing in one volume a comprehensive history of the nineteenth-century American penal system, placing it within larger socio-historical developments, and also interpreting historical changes by utilizing various sociological theories." The theories used by the author are those of Emil Durkheim (that punishment functions to maintain the social order—punishment is increased during times of perceived social disintegration as an attempt to maintain

social coherence), Karl Marx (punishment functions to maintain a high supply of labor—prison conditions tend to be worse than those of the lowest substratum of society, thus punishment motivates the unemployed worker to seek employment and to accept low wages), Michel Foucault (punishment is part of society's "technology of power"—penal methods change as society increases its scientific knowledge of human behavior), and Norbert Ellis (as society perceives itself and its institutions as becoming more civilized, penal institutions also change so as to appear more civilized—this did not necessarily mean that the violence and brutality of earlier types of punishment had been eliminated, only that prisons hid such practices from general view). After discussing these four sociological theories, the author applies them to three case studies of penal institutions which developed in 19th century America: the penitentiary system in the Northeast, reformatories for women, and chain gangs, convict leasing and lynching in the post-Civil War South. In each case study, the author presents a history of the development and of the concurrent social conditions. The author then applies each of the social theories to determine the extent to which they can explain the development of the respective penal institution as a response to the surrounding social conditions. While no one theory completely explains any of the case studies, the author finds each theory enlightening in each case study.