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## Criminal Law and Criminology: A Survey of Recent Books

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## RECENT BOOKS

### CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

BARD R. FERRALL\*

#### ECONOMIC CRIME

HANS SJÖGREN & GÖRAN SKOGH EDS., *NEW PERSPECTIVES ON  
ECONOMIC CRIME* (Northampton, MA: Edward Elgar 2004) 168pp

Economic crime (defined as crime committed to gain profit within an otherwise legal business) is growing in its variety, complexity, and international scope, while law enforcement largely remains limited to the national level. Beyond traditional criminological fields, research in economic crime requires contribution from other sciences, such as business administration, economics, and information technology. Much of the study of the corporation as a criminal offender treats it as an individual offender and employs a cost-benefit economic analysis of crime and regulation (i.e., efficient regulation of crime requires imposition of cost to the offender greater than the benefit of committing the offense.) Recent literature has extended this analysis to the relation of control methods external to a corporation (e.g., government or market sanction) and a corporation's internal methods to control crime committed by its members. A key issue is whether the government should sanction the corporation as a whole, and therefore its shareholders, or if sanctions should be limited to the individual managers and employees implicated in the offense. Besides the instance of the corporation as a criminal perpetrator, other types of economic crime victimize the corporation (e.g., embezzlement or cybercrime), make business the object of crime (e.g., insider trading), or involve legal business as the by-product of organized crime. Issues requiring further research include optimal regulation methods and private precautionary measures. Concerns for efficiency, not only of content but of regulatory methods as well, led to the study of other enforcement regimes, such as administrative regulation and private civil litigation.

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One contributor, considering when criminal law is the optimal enforcement method, notes that it is the most costly method both because of higher requirements of proof and procedural safeguards, and because of its burdensome sanctions on the defendants. Most societies use it as the method of last resort and reserve it for the most serious harms. Tension exists between general criminal law, which is concerned with individual fault, and economic regulatory offenses, which are usually concerned with strict liability and corporate action. A regulatory regime should seek to minimize the costs of regulation as well as the cost of unprevented harm. However, applications of the general model that the actor will refrain from economic crime if the cost imposed after apprehension (discounted by the probability of apprehension) exceeds the anticipated profit must consider that presently, in many kinds of economic crime, both the probability of apprehension and the consequent sanction are relatively low. Less coercive, but also less costly, levels of intervention (e.g., formal warnings) may achieve efficient levels of compliance in many instances. But in instances of economic crime requiring full criminal prosecution, consideration should be given to greater sanctions, fewer procedural safeguards, or facilitating victims' compensation claims. Low sanction levels and detection rates also raise questions of efficient deterrence in the specific field of environmental criminal law. Incentives yet unstudied may be at work, such as the adverse publicity of prosecution. Other topics in the collection include insider fraud and tax compliance. The need for further historical research into economic crime is also discussed; it should be studied as a history of changing institutions, law enforcement, and ethical norms.

## JUVENILES

THOMAS GRISSO, *DOUBLE JEOPARDY: ADOLESCENT OFFENDERS WITH MENTAL DISORDERS* (Chicago, IL: University of Chicago Press, 1994) 251pp

The juvenile justice system has not yet responded to the challenges to its custodial, due process, and public safety obligations presented by offenders with mental disorders. Legal concepts of mental disorders developed in adult criminal law have been applied to youths with little jurisprudential consideration of the reality that adolescent psychopathology differs from, and is more complex than, adult psychopathology; it must be understood within the context of adolescent development. Recent findings indicate that much neurological development and organization continue through the teen years. In particular, the prefrontal cortex, an area especially important for abstract reasoning, planning, and organizing information (the "executive cognitive functions"), is not completely developed until late adolescence. These functions are involved in far-reaching legal decisions, such as whether to waive interrogation protections or to choose a plea, required of criminally accused individuals. The question whether a defendant is able to participate in his own defense, and therefore is competent to stand trial, may require, in the case of the juvenile with a mental disorder, an inquiry somewhat different from that in the case of an adult defendant.

Neither statutory nor case law has developed in response to these neurological findings, and agents in the juvenile justice system, such as judges, prosecutors, and perhaps most importantly defense attorneys, have generally not understood the legal implications of the underdeveloped ability of adolescents to grasp the future

implications of their acts and decisions. Adolescent offenders with mental disorders may be further impaired. Although the impact of mental disorders on decision-making and other legally relevant abilities has not been empirically examined, studies indicate that beyond the base of delayed adolescent neurological development, youths with some mental disorders are further impaired in executive cognitive functions. As courts ruled that juveniles had the same constitutional rights as adults, the individual juvenile's decision to waive those rights acquired significant implications, which many adolescents, and especially those with mental disorders, could only incompletely understand.

The author discusses the conceptual problems of identifying which conditions should be considered as implicated in a "mental disorder," as well as the need to consider their severity, chronicity, multiplicity, and functional significance. Of special concern with adolescents is the fluidity or stability of a disorder, and predictive indications of continued disorder in adulthood. The relation of mental disorders to the policy purposes for which we identify them must also be considered. Clinical diagnosis has generally been replaced with various objective, data-based, accountable methods. These provide good information, but their capacity to assist the justice system is limited by a number of factors discussed by the author. Several treatment methods have been shown effective in controlled laboratory experiments, but whether to apply them requires consideration of the sociological context, and few studies exist of their real-world effectiveness. Application of these treatments in the custodial context requires attention to quality, the author argues, else they may be useless or worse than none at all.

The public safety obligations of the juvenile justice system may present the most pressing need for research into adolescent disorders. While an objective, data-based assessment of the probability of continued dangerousness of a confined adult with a mental disorder is reliable within acceptable limits, predictive methods are much less reliable when applied in the fluid context of adolescent development. The juvenile justice system must consider both short-term and long-term public safety. Long-term safety requires reliable treatment methods that remain effective after release, while short-term public safety usually requires authoritarian confinement. Family- and community-based treatment methods have been shown to be most effective in the long term; the juvenile justice system confronts a dilemma, however, because these methods are least successful when administered in the authoritarian context required by short-term public safety.

