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

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.
defendant to defense experts make a great deal more sense than limiting what can be used if the man is guilty. In fact the courts would do well to appoint an expert for the defendant when they believe that he has been forced to give writings improperly. In this way they can be sure that he was not being convicted on inaccurate findings of a prosecution minded expert. Of course, he is still 'testifying against himself.'"

Reputation Testimony and the Informer Privilege—People v. Bell, 209 N.E.2d 366 (Ill. App. 1965). Sentenced to life imprisonment as a previous offender following his conviction for possession of narcotics, defendant appealed on the ground, inter alia, that it was error to allow a witness for the state to testify that the defendant's reputation for credibility was bad without disclosing the names of the persons in the community whose conversations had conveyed that reputation to the witness. The appellate court agreed and reversed for a new trial.

The novel question decided in this case arose when the state called an agent of the federal narcotics bureau to testify that defendant's reputation for truth and veracity in the community in which he resided was bad and that he would not believe him under oath. On cross-examination, defendant asked the witness for the names of the persons "with whom he had talked concerning the defendant." The agent could remember but one name and this he refused to reveal on the ground that it was the name of a government informer and the privilege of the government to protect its informants precluded disclosure.

The appellate court conceded that "Illinois has recognized the privilege against disclosure of the identity of an informer... [in order to]... encourage citizens to communicate information concerning the commission of crimes to law enforcement officials without fear of reprisal." (Emphasis added.) The privilege is not without limitations, however, the court said, and since the effect of the privilege is to suppress otherwise relevant evidence it will be given effect only "if the policy supporting the privilege would be harmed by denying its protection" and must give way if it conflicts with "the fundamental requirements of a fair trial."

Prior decisions of the Supreme Court of Illinois had recognized the privilege principally in those cases where the informer furnished information which established probable cause for arrest or search. "Clearly," the court said, "the basis for informer privilege is more compelling in [those] cases than here. * * * The state saw fit to introduce evidence of bad reputation in order to discredit the defendant's testimony. * * * Since reputation involves opinion and is general or public in nature, it is neither private nor confidential. Thus there was no confidential communication regarding the commission of a crime to support the claimed privilege."

BOOK REVIEWS


"Conceptions and Misconceptions" is the subtitle of this useful and inexpensive pamphlet that examines popular beliefs about a connection between crime and race. The conclusion is that, for the most part, the folk-thought about crime and race is not supported by the available scientific evidence.

* Institute for Behavioral Research, The Washington School of Psychiatry, 1610 New Hampshire Ave., N. W., Washington 9, D.C.

Wolfgang draws considerably on the work of the Pennsylvania school of criminologists, with the city of Philadelphia consequently the source of some of the data, and the "race" in Crime and Race is Negro. Only limited information is included on other non-white groupings, although the findings seem applicable to all minority peoples.

Those aware of the vagueness of the seemingly universal terms "crime" and "race" will find familiar the brief analysis of how lacking in precision these terms are. The summation of scientific findings about race, leading to a rejection of a belief in racial inferiority and of the genetic
explanation of crime, is familiar UNESCO material. Wolfgang acknowledges the existence of the alternative view held by a small number of scientists who support the notion of racial inferiority. Perhaps this pamphlet can offset the steady flow of published material that emerges from those who hold the minority view among scientists.

The convergence of race and crime, with bias both entering into the situation and being compounded by it, is the core of Wolfgang's presentation. Basically an analysis of Uniform Crime Reports, and for popular consumption the statistical analysis gets a little heavy, Wolfgang brings out three points that bias these statistics and make Negroes appear to have a high crime rate: (1) unreported crime is more frequent among higher-status (non-Negro) groups (2) the race of those persons who commit the 70% of offenses known to the police but not cleared by arrest remains unknown and (3) white-collar crime is omitted from Uniform Crime Reports and comparatively few Negroes are in an economic position to even consider engaging in this type of activity.

On the other hand, as Wolfgang points out, permissiveness on the part of the community, police, and courts in regard to crimes committed within minority groups may mean a considerable amount of unreported crime among Negroes may also exist. "Whether such under-reporting adds up to more or less than the under-reporting of white crimes is not known." (p. 50.)

Bias against Negroes in a system of administration of justice which is dominated by whites is a possible explanation of seemingly higher rates of crime by Negroes. Wolfgang repeatedly makes the point that adequate scientific studies are lacking here. As he states, at one point, "... keenly sensitive to criticism, and unresponsive to analysis by persons outside their cohesive ingroup, the police and the judiciary have rarely been methodically examined by social scientists armed with hypotheses of discrimination." (p. 45.) The police and the judiciary have no monopoly on this reluctance to be analyzed by outside experts, of course. The willingness of many public agencies to have studies made of their clientele is often matched by the agencies' reluctance to themselves be the subject of scientific investigation.

Differential patterns of release from prisons and differential patterns of arrest of juveniles, whatever the rationale, result in statistics that are a scientifically unacceptable index of the amount of Negro crime or delinquency. An intriguing point in regard to bias is mentioned by Wolfgang but not developed: since crime is defined by those who participate in making the laws, and since Negroes have been largely excluded from this participation, would what is defined as crime be different if Negroes had a voice in these decisions?

Inter-racial crime is a special case of the convergence of crime and race. Those who live in fear of inter-racial violence will be reassured by Wolfgang's presentation of statistics on crime by race of "victim" as well as by the more common analysis only in terms of race of "aggressor." The evidence is overwhelming that whites kill whites and Negroes kill Negroes: similarly, whites rape whites and Negroes rape Negroes. Negroes will find less assurance in the evidence from race riots, although the three riots cited occurred more than forty years ago, that more Negroes than whites are killed in such interracial clashes. The more recent manifestations of inter-racial conflict in the form of assemblies, picketing, boycotts, sit-ins, kneel-ins, and other activities that bring Negroes into contact with the police and the courts are not discussed.

Seeking an explanation of crime by Negroes, and having examined the genetic theory of crime and finding it wanting, Wolfgang concludes, "Criminal behavior is learned, and what is learned comes from experience with our surrounding environment. It is to that environment we must turn our attention." (p. 55.)

Drawing upon the work of Cohen, Cloward, Ohlin, Miller and upon the earlier work of Thrasher, Shaw, and McKay, he concludes that integration of Negroes into the mainstream of American society offers the ultimate solution to the problem of Negro crime. Both formal action by governmental agencies and informal action at a person-to-person level are urged to implement this solution. With the massive social change underway in the United States to secure full participation of Negroes in American society, Wolfgang's proposed solution may soon be given a full-scale test.

Reservations about this publication are relatively minor. The announced stress on the scientific approach to the topics of race and crime makes the last chapter, dramatic in vocabulary and message, seem not in keeping with the preceding analysis. The scientific approach is well-maintained in the earlier chapters except for a gratuitous generalization about totalitarian societies, "No such society has ever existed, nor would we want it." (p. 24.)
As a minimum, the intrinsic interest of the evidence presented by Wolfgang in this pamphlet will hold its readers and provoke thought among them. The sheer weight of the evidence should open again minds that were almost closed on the subject of race and crime.

Arizona State University  FRED B. LINDSTROM


Though intensive efforts are made to learn about and understand political and economic developments in the U.S.S.R., relatively little attention is paid to legal developments there. Such studies as are made usually slight the criminal law side. Nor are English language materials emanating from Russian sources of much help, since these embody a Procrustean bed of Marxist dogma to which all data offered are forced to conform. It is therefore most welcome to have in hand, from an ideologically neutral source, Dr. Feldbrugge's treatise on the General Part of Soviet Criminal Law. His years of association with the Documentation Office for East European Law of the University of Leyden, and his command of Russian, make this a work to be relied upon.

The book begins with a consideration of the place of criminal law in the Soviet legal system, which in turn means in the Soviet political and economic system as a whole; law and legal institutions are viewed as but instruments in achieving the goals of the revolution. This intimate relationship also appears clearly in the chapter on the history of Soviet criminal law which follows, in the description of law study and legal writing in the Soviet Union, in the material on the sources of Soviet criminal law, and in the discussion of the role which Soviet courts play as legislative bodies. The inescapable conclusion must be that if one tries to evaluate Soviet criminal law by using Western European, English or American standards, he will reach grossly erroneous conclusions, attaching exaggerated importance to some things which appear to be actually of minimal importance and overlooking other matters which are of great significance. Fortunately, with Dr. Feldbrugge as a guide most of these pitfalls can be avoided.

The author's treatment of the politico-legal aspects of Soviet criminal law suggests that criminal law itself, as well as the functionaries which administer it, has been the loser in the Marxist game of dialectics. For example, crime has been long explained as a by-product of the capitalist system; as the legacies of pre-revolutionary society dwindled away crime, too, would disappear. Furthermore, the emphasis has been on the state and not on the individual; if punishment serves some public function it does not matter what its impact is on the individual. Accordingly, there has been no official need for studies in criminology or experiments with special types of rehabilitative institutions. The result has been that Russian scholarship in these fields lags far behind that in most other major nations. As another illustration, Marxist doctrine recognizes no supra-national international law; Russian participation in international conventions has hardly been frenetic. This has meant disparity between Soviet law and the law of many other countries, and little opportunity to help develop the growing facilities for international judicial assistance and cooperation. As a third illustration, the concept of *ne bis in idem* has not prevailed in the U.S.S.R., apparently because of its incompatibility with other political aims. This limitation has produced certain developments in the areas of concurrent crime and cumulative punishments which are questionable viewed according to principles accepted in Western Europe or Japan.

However, Dr. Feldbrugge's discussion of prevailing criminal law doctrine in Russia suggests that on the whole the peculiarities of Marxist theory have not managed in fifty years to make Soviet criminal law a totally exotic product. When one pierces through the veil of special terminology he finds concepts of law and individual judicial decisions quite similar to those obtaining in civil law systems generally. For example, crimes are such because they are "socially dangerous acts"; a socially dangerous act is one "directed against the Soviet social or political system, against the socialist economic system, against socialist property, against the person, or the political, labour, property or other rights of the citizen, or against the socialist legal order" (p. 89). Yet in application the concept of *sostav*, the term used to describe the components of a crime, does not appear markedly different from the German *Tatbestand* or the Anglo-American "material elements of the offense"; the differences which exist are attributable to variations in the definitions of specific crimes, which in turn reflect the particular problems of Russian society or the specific concerns of the government. As a second illustration, the official Soviet concept that the social danger-
ousness of the act is the important thing, coupled with an official commitment to determinism (non-free will), should mean that causation in crime is unimportant, that minors can still commit crimes even though they may not be punished for them, and that mental abnormality should be a matter of no formal concern. Yet, as Dr. Feldbrugge's coverage of these problems clearly shows, there are elaborate doctrines of causation which appear to have about the same thrust as their Western European and Anglo-American counterparts, a clear recognition that children below a certain age are not accountable through criminal law processes, and doctrines of insanity which could be applied to reach results not too different from those under the Durham rule or the Model Penal Code definition and which are coupled with provisions for compulsory hospitalization of the mentally ill and the addicted which resemble, for example, those in the new Japanese Draft Penal Code. Concepts of complicity (participation in crime) reflect in verbal form the experiences of the revolution and after, but have in application a coverage substantially the same as that in the civil law; some of the cases invoking doctrines of group responsibility (criminal organizations) look quite similar in both terminology and results to conspiracy prosecutions in the Anglo-American sphere. One comes away from a reading of these portions of Dr. Feldbrugge's work with the somewhat reassured feeling that the main thrust of the criminal law manages to work out to about the same thing in most modern societies, whatever the superficial differences in terminology or the chauvinistic statements of official goals may be.

The third major portion of the book treats with punishment, including the varieties of punishment available, the formal problems of invoking punishments, and the formalities of enforcing penalties. Here, also, one finds great similarity in doctrines of aggravating and mitigating penalties to those in other civil law systems. The chief difference is in the use of "comrades' courts" and "social guardianship", which appear to be aimed specifically at state control of politically or socially deviant behavior, and not intended primarily as rehabilitative agencies in the usual sense, e.g., as in the case of private organizations cooperating with Japanese family courts in the rehabilitation of youthful offenders. It is probably in this area of punishment, however, that the lack of first-hand observation by Western scholars or administrators and of sound studies in criminology from Soviet sources creates the greatest degree of doubt as to whether the system embodied in the statutes and decrees is in fact the system in operation. In making a comparative study one ought always recognize that he may be studying only paper law. In most instances, however, there are many ways in which administrative practices can be ascertained; the lack of criminological material from either Soviet or foreign sources suggests that one should be hesitant about talking positively of the system of punishments in the U.S.S.R.

In summary, this is a most welcome volume worthy of careful study. It should leave the reader persuaded that the basic thrust of Soviet criminal law, or at least that portion of criminal law which is the concern of the courts and not administrative organs, is like that in most of the rest of the world, and that the gradual lessening of dogmatic controls on every aspect of human life in the U.S.S.R., of which there appears to be some indication today, will promote rather than diminish this similarity. At the same time, the reviewer hopes that a companion work might be forthcoming on the special part of the criminal law, since this may also help to reveal these developments if and as they occur.

B. J. George, Jr.
University of Michigan Law School
Ann Arbor, Michigan


This work, according to its author, was written primarily as a text for college students but also as a possible resource for professionals and the general public. Like most introductory texts, it covers a large body of subject matter: the definition and measurement of delinquency, the development of delinquent behavior, patterns of delinquency, and institutional and legal methods for dealing with it. Unlike most other texts, it devotes somewhat more space to matters of prevention, control and treatment than to explanations of delinquency.

The book has much to recommend it. It is written in a style that is pleasant, clear and straightforward. Its chapters include charts, diagrams and tables which are well integrated with the text and which contribute to the overall quality of the work. Most chapters are built around research findings which should be instructive to the casual reader or helpful to the student who wishes to pursue the original studies themselves.

The book is social-psychological in orientation. The author says, for example, that the section on
causation "applies the concepts of individual growth and developmental social processes to the emergence and development of delinquent behavior in the individual child." (Preface, p.v.) She seriously questions whether delinquents can be distinguished from nondelinquents in terms of heredity or personal pathology and suggests instead that delinquency, like nondelinquency, is a function of the interpersonal relationships and socio-cultural environment which a child experiences.

In taking this position, the book raises some issues which it does not bring to a head, at least so that the beginning student can grapple with them. It suggests that socialization, in no matter what class, ethnic or subcultural context, weighs heavily upon some children. Frustration and dissatisfaction are the result. The child may then be inclined to become delinquent with others who are similarly dissatisfied.

A basic question for either the sociologist or the psychologist is where one should look for the seeds which lead to delinquency. Are they to be found in the early developmental processes of the individual, inherent in later interactional processes with peers or a product of both? Does early frustration produce delinquency or simply make the frustrated person more susceptible to deviant influences? There are some subtle but basic problems.

The issue is not so much whether textbook authors like Professor Cavan can or should try to provide final answers on such questions but whether they should try to do more by way of highlighting for the unsophisticated reader what the major unresolved theoretical and empirical problems are. For example, Aichorn and Sutherland have sharply different theoretical positions on this matter but their theories are not presented.

The failure to make issues more explicit is inherent in the fact that most chapters in this and other texts tend to be discrete units. This one, for example, does a good job of presenting data in each chapter on a specific area and of indicating strengths and weaknesses. The problem is that each chapter does not contribute in some cumulative way to a statement of basic problems and theoretical differences. If any integrating is to be done, the reader has to do it on his own. The important chapters in it could have been made more meaningful had they been directed by some logical scheme toward an explicit summary and discussion of emergent issues. A chapter or chapters could have been devoted to this task.

The section on court and treatment processes presents a thorough discussion of the juvenile court, its philosophy and jurisdiction, the philosophy and use of probation, the nature and use of training schools and emergent trends in rehabilitation. Wherever possible attempts are made to present research findings on the relative merits of different programs. But in most cases the analysis has to rely upon descriptive information and statements of philosophy because so little "hard" data are available.

This part of the analysis might have been enriched through greater reference to theoretical materials. The whole body of literature on the nature of correctional organizations as social systems was scarcely utilized. Yet, writings by Clemmer, Schrag, Ohlin, Sykes, McCleery, Goffman, Messinger, Wheeler, Garabedian and others would have had important implications for juvenile as well as adult systems. They are a vital part of any scientific approach to the problem.

In fairness to Cavan, it should be noted that few texts on delinquency take account of the criticisms levied here. Relatively speaking her work is good. The problem is that the field is an admixture of professionalism and science. Most introductory texts have something in them for both and do not make clear those aspects which are a part of professionalism (standard setting, etc.) and those which are concerned with a scientific examination of men and organizations. The frame of reference from which one operates makes a great deal of difference.

LaMAR T. EMPEY
University of Southern California


This is a valuable collection of readings. It is a paperback which offers the student thirty-six original selections taken from books and journals and written by both scientists and professionals. It is designed to supplement existing textbooks and provides a key in the appendix suggesting which of the readings are appropriate to chapters in the various books.

According to the editor the articles were chosen to stimulate the reader's critical thinking without diverting him "into historical or technical bypaths" through the use of selections that are too technical. If there is a weakness in these readings it results from too diligent an effort to refrain from becoming technical. The most glaring evidence of this is the almost total disregard of the sociology of
BOOK REVIEWS

1965

Sex Offenders in Group Therapy. By "Manning R. Slater, Ph.D.", as told to George Bischop. Los Angeles, Calif.: Sherbourne Press, 1964, pp. 159, $4.95.


Gerichtliche Medizin und Kriminalistik. Edited by Frans Meinert. Luebeck, Germany: Verlag fuer polizeiliches Fachschrifttum, 1964, pp. 216, DM 68,--.


Judging from the increasing amount of literature on sexual deviations and sexual offenses, it appears that both public and the busy practitioner of the behavioral sciences (criminology included) have become more and more aware of the importance of what some call a "symptom" and others call an "Illness" of our society. The above-listed titles represent a cross-section of the "popular" treatises as well as exceedingly interesting anthologies by well-known authorities, in which a fresh look is taken at sexual deviation.

The first title, Sex Offenders in Group Therapy, can probably be dismissed briefly. The dust-jacket states that the book "lets you in on the most startling, the most revealing confessions of sexual perversions ever put in print." The author, George Bischop—the dust jacket states—"sat in on weekly group therapy sessions, using a concealed tape recorder to capture the authentic atmosphere and dialogue... He consulted with specialists in the field of sexual psychology and incorporated a number of points of view in the chapter summations in order to protect the anonymity of both Dr. Slater and the sex offenders." To my way of thinking, feeling and working, concealed tape recorders are taboo and, hence, would render such a book a priori worthless. But I am equally suspicious of any professional practitioner ("Dr. Slater" is said to be a clinical psychologist) whose anonymity has to be "protected." Protected from whom or from what? Apparently, if he exists at all, he must be deeply ashamed of such a work to the point where he does not wish to take credit for what "he has being doing." Since the book is directed to the public, the only protection needed is that which the patients received. I fail to see the value of the book, either in presenting "sensational" material or in suggesting that something was accomplished. (Whoever "Dr. Slater" could be, his claim that he "founded the group therapy technique for the treatment of sexual offenders" in the California State Prison System is false.)

Prostitution in Europe and the Americas is designed to present a history of prostitution, which at times makes boring, at other times fascinating, reading. Each chapter has its own bibliography. There are many drawings and plates of early paintings, etchings, and pictures. Perhaps, the last chapter, entitled "The Contemporary Situation in the U.S.A.," highlights the book, because in it the author summarized the legal, emotional, sociological, criminological, and economic aspects of prostitution in a comparative way, either by the states of the Union or by various countries. The aim of this chapter is to demonstrate the hypocrisy underlying most legislative attempts to "curb" prostitution.

Of the two German titles, the anthology published in honor of Prof. Emil Weinig's sixtieth birthday (Prof. Weinig is Professor of Forensic Medicine and Criminology at the University of Nuremberg) contains two contributions regarding sexual deviation: Fritz Schwarz attempts psychiatric evaluations of industrial insurance in the field of "auto-erotic accidents," a type of insurance little known in this country; and Wolfgang Schwerd...
inquires into the legal and psychiatric aspects of abortion as a necessity and as murder.

Hans von Hentig, on the other hand, is well-known to the readers of this Journal. His newest monograph, *Die Unbekannte Straftat*, contains one chapter on sexual deviations, in which he discusses, in his usual scholarly fashion, incest, statutory rape, the sexual molestation of small children, rape, homosexuality, and *Aergernisserregung* (public nuisance), by which v. Hentig means primarily exhibitionism. However, it would seem to me that v. Hentig could have quoted newer sources than Magnus Hirschfeld or v. Krafft-Ebing (even though the latter has just been translated into English as a "historical document of the last part of the nineteenth century").

Homosexuality is the sole theme of Dr. Cappon's book, *Toward an Understanding of Homosexuality*. The Preface starts with the sentence: "There are no homosexuals—only people with homosexual problems." The author (both a sociologist and a Public Health physician) modestly adds that his main reason in writing this book "was the receipt of an invitation to do so." Apparently, the people behind the invitation felt Dr. Cappon was a sure bet, and so he is. I found this book extremely fascinating, although not always "easy" reading. One feature which is often denied to readers of books about homosexuality is a consideration of therapeutic attitudes and goals, to which the author devoted a chapter, and psychotherapy, to which he devoted two chapters, with a third on the "Fate of the Successfully and Unsuccessfully Treated". In the last chapter the author makes one good point: namely, "the difference between the treated failure and the the diagnosed but untreated patient." The entire book abounds in common sense suggestions, while constantly cautioning the reader (as well as himself, the writer) against too hasty conclusions, false diagnostic impressions and the misinterpretation of "culture", such as Kinsey's survey of North America.

Of this international array of titles, the last mentioned title, *The Pathology and Treatment of Sexual Deviation*, originates in England, and, to my taste and inclination, is far superior not only to the other titles mentioned here, but, perhaps, to any literature that I have ever seen regarding sexual deviations. The book is divided into five unequal parts: namely, biology, general psychiatry, psychopathology, psychology, and sociology. The entire scale of human life and endeavor has been successfully covered, all schools and theories have been touched on, and all disciplines concerned with sexual deviation have participated in this "labor of love." Some of the authors are in the Who's Who of today's psychiatry, psychoanalysis, sociology and criminology, such as Edward Glover (psychoanalyst and editor of "The British Journal of Criminology"), M. Masud R. Khan (book review editor of "The International Journal of Psycho-Analysis"), who presented a paper on homosexuality at last year's meeting of the American Psychoanalytic Association in Los Angeles; Dr. Morris Ginsberg, Professor Emeritus of Sociology at the University of London, who discusses "Morality, Law and the Climate of Opinion;" and the animal-expert, N. Tinbergen, on "Aggression and Fear in the Normal Sexual Behaviour of Some Animals." The editor himself, Dr. Ismond Rosen, contributed a chapter on "Exhibitionism, Scopophilia and Voyeurism," one of the finest I have seen in print, with tables of results of treatment and of follow-up cases of exhibitionism treated in individual and group psychotherapy, which should be required reading for every therapist, whether working in private practice, hospitals, or prisons. Obviously, not every reader may agree with every author of this anthology. Obviously, too, many more questions are raised than are answered. However, the stimulation received in reading this book will more than reward the reader, who may look only for specific answers. Every chapter is furnished with ample bibliographies. The volume also contains an index of subjects and names. The book can be recommended unconditionally.

HANS A. ILLING