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RECENT BOOKS

CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

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COMMUNITY POLICING—UNITED STATES

COMMUNITY JUSTICE: AN EMERGING FIELD (David R. Karp, ed.) (Lanham: Rowman & Littlefield, 1998) 388 pp.

Various innovative community oriented criminal justice programs have developed in many places in recent years. This development has not been systematic or centrally directed. As a result, the programs vary in many details. Types of community justice programs include community policing and community adjudication (e.g. victim impact statements, victim-offender mediation, neighborhood defense, community prosecution and community courts). With a view towards a more comprehensive and encompassing understanding of community justice programs, and the development of a "community justice ideal" (defined here as the view that the main purpose of criminal justice is to enhance community living, and agents of the system should tailor their work accordingly) the editors present the work of various authors describing and examining some of these programs. From these contributions, four significant attributes emerge which distinguish community justice from the traditional models: organization at the neighborhood level; anticipatory short- and long-term problem solving; decentralization of authority; and citizen participation.

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CONFESSION [LAW]—UNITED STATES

THE *MIRANDA* DEBATE: LAW, JUSTICE AND POLICING (Richard A. Leo & George C. Thomas III, eds.) (Boston, Northeastern University Press, 1998) 339 pp.

An anthology of previously published articles considering the ongoing debate over the *Miranda* decision. The first section narrates the history of the individual and his crime which led to the case, analyzes the prior law of confession, and discusses the extent to which police have developed interrogatory practices which make *Miranda*'s warnings requirement irrelevant. The second section reprints articles arguing that: Miranda was not a correct interpretation of the Fifth Amendment; the required warnings should not be applied against the states; *Miranda* is inadequate protection against false confessions; and, all custodial confessions should be excluded. A third section presents recent studies of the cost of the decision (viz. how many confessions have been lost because of *Miranda* warnings, and how many convictions have been lost because of excluded confessions) and arguments whether the studies are reliable and over what conclusions should be drawn from the data. A final section discusses ongoing problems, including the problem interpreting a suspect's ambiguous statements ("maybe I need a lawyer") against *Miranda*'s requirements, and examines proposed alternatives to the warnings requirement.

CRIMINAL ANTHROPOLOGY—RESEARCH

ETHNOGRAPHY AT THE EDGE: CRIME, DEVIANCE, AND FIELD RESEARCH (Jeff Ferrell & Mark S. Hamm, eds.) (Boston: Northeastern University Press, 1998) 309 pp.

Although quantitative surveys have become the preferred method in sociological research, the editors believe that field research remains a valuable tool. This collection includes recent field research by various criminologists reporting their experiences with, among others, nighttime graffiti crews, marijuana growers, persons in the sex industry, and the training of paramilitary police units. Through field criminological research is criticized for lacking methodology, the editors argue that underlying this field research is a method closely akin to Max Weber's concept of Verstehen, (denoted by the editors as "sympathetic understanding between the researchers and subjects . . . whereby the researcher comes to share, in part, the situated meanings and experiences" of the subjects). Criminological Verstehen is a "situated strategy" which finds the etiology of crime in the criminal act, and which seeks a subjective understanding of the meaning of crime as it is experienced by the criminal, the victim and agents of criminal enforcement. Although criminological research demands skills not imparted by academic training, and entails significant physical, emotional, professional and ethical

risk, the editors urge the profession to consider the potential of criminological Verstehen to contribute to a more unified understanding of crime and deviance.

CRIMINAL LAW

GEORGE P. FLETCHER, BASIC CONCEPTS OF CRIMINAL LAW (NY: Oxford University Press, 1998) 223 pp.

The author seeks to find a "deep structure" common to the various criminal law systems of the world. The author asserts that each code develops from the answers that its legal culture gives to twelve fundamental questions. The logical conflict between twelve pairs of complementary concepts (e.g. substance and procedure; offenses and defenses; relevant and irrelevant mistakes; completed offenses and attempts; legality and justice) gives rise to these questions. The dialectical tension between these pair concepts is what is universal to the world's criminal law codes, and a deep understanding of any single code requires an understanding of how that legal culture has worked out this dialectical conflict in the particulars of its code. This study also helps us to distinguish systems which are truly a rule of law from those where the criminal code is merely a device for political control.

CRIMINAL LAW—PHILOSOPHY

PHILOSOPHY AND CRIMINAL LAW: PRINCIPLE AND CRITIQUE (Antony Duff, ed.) (Cambridge: Cambridge University Press, 1998) 261 pp.

This work is a collection of five essays on the general foundations of criminal law. One contributor traces the history of theorizing about criminal law, and looks forward to the need for an interdisciplinary approach. A second argues that criminal law will be better grounded if the "act requirement" were changed to a "control requirement" (i.e. the defendant is held liability of for situations over which he had control). A third finds that criminal law treats the person as an individual abstracted from any social context, and argues that a more adequate view would place the individual within, and partly constituted by, the social context. A fourth argues that critical theorists have overstated the problem of contradiction in the criminal law, yet goes on to say that these contradictions reveal problems, not with the internal coherence of criminal law, but with the preconditions of its legitimacy.

CRIMINAL PSYCHOLOGY

DREW ROSS, LOOKING INTO THE EYES OF A KILLER: A PSYCHIATRIST'S JOURNEY THROUGH THE MURDER'S WORLD (NY: Plenum Trade, 1998) 270 pp.

The author, who served as a forensic psychiatrist from 1991-1997, discusses the problems of determining whether murders should be found insane, and whether they should be held for treatment or punishment. While the crime often seems senseless to the observer, the author comes to see it in light of the individual's "core dramas" (love and loss, striving, failure, etc.) which connect us all. As the author finds his conceptions challenged, he struggles with the problem of determining whether, and how, events in the murderer's past, (such as head injury, brain chemistry disorders, or family violence) should affect the law's reaction. However, the author does not argue that such factors constitute an excuse for crime. Rather, he comes to sense an unresolvable conflict between law and psychiatry. While psychiatry has its deepest roots in a time before the mind/body dualism, the law seems always to have been rooted in dichotomy. The author finally concludes that punishment is not the correct response to crime and the criminal, and he left the legal system because he did not want to serve as an instrument of its punitive measures. He offers an alternative response to crime, based on the criminal's restitution to the victim and the community.

CRIMINOLOGY

THINKING ABOUT CRIMINOLOGY (Simon Holdaway & Paul Rock, eds.) (Toronto: University of Toronto Press, 1998) 207 pp.

The theory/research dichotomy in criminology engenders the notion that "theorizing" occurs only in explicitly theoretical writing. Furthermore, research increasingly seems to proceed independent of any theoretical concerns. Suspecting that research criminologists, despite their necessary preoccupation with empirical study, were theorizing at some "subterranean" level, the editors asked a diverse group of noted researchers to examine and describe the ideas which underlie their work, and to reflect upon their larger theoretical concerns. Contributors were also encouraged to discuss how their life experiences led them to, and continue to influence their work. The editors find that the essays in this book reveal that theory is necessary and integral to any meaningful research in criminology, and that criminology is a "rendezvous subject," wherein one confronts and must understand the insights of other academic disciplines.

DISCRIMINATION IN CRIMINAL JUSTICE ADMINISTRATION—ONTARIO—HISTORY

CLAYTON JAMES MOSHER, DISCRIMINATION AND DENIAL: SYSTEMIC RACISM IN ONTARIO'S LEGAL AND CRIMINAL JUSTICE SYSTEMS, 1892-1961 (Toronto: University of Toronto Press) 258 pp.

Certain racial incidents in Canada over the last decade undermined the notion of racial harmony in that country. Through an examination of court records and other documents, the author finds that discrimination against Blacks and Asians in the years 1892-1961. Drug and other vice laws were enforced discriminatorily, minorities received little credibility as court witnesses, and criminal punishment was more severe when the victim was white. The author concludes that the situation is getting worse.

GUN CONTROL—UNITED STATES

GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL (NY: Aldine De Gruyer, 1997) 450 pp.

In this work, the author shows how debate over gun control suffers because both sides use fallacious arguments, assume unestablished facts to be self-evident, and misuse empirical studies. The author reviews the studies on the issues in the debate, then shows where the findings support or contradict positions held by both sides of the debate, and then examines current legislation to see if it is likely to achieve its stated purpose. The author then examines what the available data indicates about some of the important issues in gun control. The author concludes the findings tend to indicate that gun ownership, and concealed carrying by normally law abiding people deters crime; that criminal gun use is associated primarily with identifiable groups; that the guns used in crimes constitute a very small portion of the guns owned in this country and have been acquired in private transactions rather than from commercial dealers; and that firearm accidents are rare and are usually caused by individuals who act recklessly in other areas of their life. Rational gun control, the author argues, should aim to keep guns from violence prone individuals, rather than prohibiting general ownership. The author presents eight standards for successful gun legislation, and offers a series of proposals, including discussions of who should be disqualified from gun ownership, and how the police can conduct street searchers for concealed weapons in such a way as to minimize harm to police-community relations.

HATE CRIMES—POLITICAL ASPECTS

HATE CRIME: THE GLOBAL POLITICS OF POLARIZATION (Robert J. Kelly & Jess Maghan, eds.) (Carbondale, IL: Southern Illinois Univ. Press, 1998) 253 pp.

This work is a collection of essays on the extent, intensity and consequences of the ethnic and religious conflicts which have re-emerged in many places after the end of the Cold War, and the connection of hate crimes to historical and current political, social and ethnic realities. Specific topics include the contemporary Ku Klux Klan in America, neo-Nazis and Skinheads in Germany, Black Rage in America, conflicts between Muslims and Hindus in India, and attacks against street children in Columbia. These essays present instances where identification with one group can lead to the dehumanization of nearby but somewhat different groups. In such instances, violence against the "enemy" group is seen as a protection of one's own group. Also discussed is recent hate crime jurisprudence in America.

JUSTIFICATION [LAW]—UNITED STATES

ROBERT F. SCHOPP, JUSTIFICATION DEFENSES AND JUST CONVICTIONS (New York: Cambridge University Press, 1998) 212 pp.

If the criminal law is taken to be an expression of society's morality and a communication to individuals of what is acceptable action, then questions about justification defenses are not merely technical problems. The legal recognition of a defense of justification in a particular instance means that, in society's judgment, a person has acted acceptably even though he has violated some section of the criminal code. This defense is contrasted with excuse, where society does not approve the action, but reduces punishment because of some reduced responsibility of the defendant. A number of issues remain unresolved concerning justification defenses: does legal justification mean society approves or merely tolerates the action? What if the defendant is unaware, or on the other hand, reasonably mistaken about the circumstances giving rise to the justification? What is the criminal liability of persons who interfere with justified (but otherwise criminal) conduct? Can only one person in a violent confrontation be justified? The author discusses how scholars have answered these questions, and proposes a system of justification defense which is rooted in the value liberal democracy places on the sovereignty of the individual. Also considered is the question of whether assertions about battered woman syndrome support of defense of justification. The author finishes with the problems of the defense of necessity and jury nullification, which test the limits of justification defenses.

JUVENILE DELINQUENCY—GOVERNMENT POLICY—UNITED STATES

FRANKLIN. E. ZIMRING, AMERICAN YOUTH VIOLENCE (NY: Oxford University Press, 1998) 209 pp.

The author examines the perceptions and realities of violent juvenile crime in the 90's, and finds many parallels to the situation in the 70's. Recent trends, however, have been linearly projected ahead a decade, leading to predictions of a "coming storm" of youth violence perpetrated by "superpredators;" consequentially, criminal correction occupies a disproportionate place in society's juvenile policy. The author analyzes the data, finds these predictions unwarranted, and criticizes legislation enacted in response to the predictions. The better view, the author argues, is that violence is cyclical, (as evidenced by the sharp drop in the crime rate in the late 90's,) and no reliable prediction can be made about the level of youth crime years from now. The legal trend to treat more juveniles as adults rests on overestimations of the proportion of juvenile offenders who are violent and who are likely to remain dangerous. While juvenile courts can not protect the interests of society in 5-10% of its cases (because of the seriousness of the crime and/or the offender's likelihood of continued dangerousness) adult criminal courts cannot adequately protect the rights of the rest of juvenile offenders, because substantive criminal law does not yet provide for consideration whether certain aspects of adolescent immaturity (e.g. undeveloped ability to control impulses and resist peer pressure) constitute diminished capacity and whether punishment should be apportioned accordingly. The author urges efforts to determine whether adolescent immaturity constitutes diminished capacity, and particularly urges examination of the legal implications of the fact that, in contrast to adult crime, most youth crime occurs in a "group context."

MURDER—ILLINOIS—CHICAGO—CASE STUDIES

DAVID PROTESS AND ROB WARDEN, A PROMISE OF JUSTICE (NY: Hyperion, 1998) 258 pp.

This work chronicles the efforts of David Protess, a Journalism professor, and others to exonerate the "Ford Heights Four," who were convicted of a 1978 robbery, rape and double murder. Arrested on the basis of an anonymous tip, they were convicted largely on the basis of testimony by a person who said she had participated in the crime, but who would frequently change and recant her story in the coming years. A new trial, granted on the basis of ineffective assistance of counsel, resulted again in conviction. The State's cases began to unravel in 1996, when DNA tests excluded each of the defendants as a source of a semen sample from the murdered rape victim, and when students in Protess' Investigative Journalism class discovered a 1978 police report of an inter-

view with a witness to the initial robbery, which named four other persons. One of them was serving life on another conviction, and the students persuaded him to confess to the 1978 crime. Faced with these new facts, the State of Illinois dismissed all charges against the original defendants, two of whom were scheduled for execution. The four new defendants either were convicted or pled guilty to the 1978 crime.

NARCOTICS, CONTROL OF—ECONOMIC ASPECTS—UNITED STATES

JONATHAN P. CAULKINS, C. PETER RYDELL, WILLIAM L. SCHWABE & JAMES CHIESA, MANDATORY MINIMUM DRUG SENTENCES: THROWING AWAY THE KEY OR THE TAXPAYERS' MONEY? (Santa Monica, CA: RAND, 1997) 193 pp.

This work contains the results of a study prepared by the RAND Corporation to determine the cost effectiveness of mandatory minimum sentences, as compared to traditional sentences and to money spent on treatment. The question was: in which case would incremental increases in spending bring the greatest reduction of the costs associated with cocaine use? Among the authors' conclusions are that spending on the arrest and conviction of more dealers, and sentencing dealers to standard terms is more cost effective than (fewer) dealers to longer, mandatory terms. However, incremental spending increases on treatment is more cost effective than either type of sentencing. Mandatory minimum sentencing may be most cost effective if applied to the highest level of dealers. However, since such dealers, when arrested, are able to bargain down the charge by offering extensive information about their organization, mandatory minimum sentencing does not presently target the highest level of dealers.

PIRATES

ALFRED P. RUBIN, THE LAW OF PIRACY (2nd ed.) (NY: Transnational Publishers, 1998) 485 pp.

Beginning with the laws of Ancient Greece and Rome, proceeding to the evolution of piracy law in England and the United States through 19th Century, then concluding with national and international laws in the 20th Century, the author shows that "piracy" has not been a unitary concept in history. The author asserts that later commentators have often misinterpreted ancient piracy laws when they cited it to support their positions, and that the term of "piracy" lacks a fixed meaning in contemporary legal texts. Absence of agreement over the meaning of "piracy," as well as problems of jurisdiction and standing, give reason to doubt that there is an international law of piracy. Still, international

shipping today suffers from significant disruption which should be addressed within the international legal order. The author offers a proposed text draft on an international treaty defining and proscribing the crime of "privacy," and sets out procedures for a state's power to enforce the proscription on the high seas or otherwise outside its territorial jurisdiction.

POLICE ADMINISTRATION—GREAT BRITAIN

SATNAM CHOUNGH, POLICING AS SOCIAL DISCIPLINE (Oxford: Clarendon Press, 1997) 262 pp.

Through interviews with arrested and detained subjects at two police stations in England, and through examination previous arrest records, the author finds that police power can be used, not as a component of the larger judicial system, but as a method of control and discipline of certain population groups. The author found instances where police, unconcerned with judicial guilt, detain, search, arrest, interrogate and subsequently release persons, without the intention of sending them further along the judicial system. This type of policing is motivated not by criminal investigation; rather it is to inform the members of the targeted group of the police authority over them. Due process requirements provide at best inadequate protections for this sort of exercise of police authority. Reform of such practices is politically unlikely, in significant part because such policing methods can be cloaked in legal terminology, and be represented as necessary for crime control.

POLITICAL PRISONERS—LEGAL STATUS, LAWS, ETC.

NIGEL S. RODLEY, THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW (2nd. Ed.) (Oxford: Clarendon Press, 1999) 479 pp.

The author analyzes treaties, conventions, declarations, cases and other legal instruments to how international law defines and proscribes abusive practices such as torture, "disappearance" (unacknowledged detention), and extra-legal execution. Emphasis is on developments since the first edition in 1987. The author defines a prisoner as one so situated as to be unable to remove him- or herself from control of the state. The abusive treatment of prisoners is considered independent of the validity of the reasons for their confinement. The institutionalization of these abusive practices (which are considered psychopathic when performed by isolated individuals) require the dehumanization and objectification of the victim as an enemy. Thus, the overarching problem of international human rights law is "proscribing the destruction of the inherent dignity of the human person. . . ." The documents considered generally achieve, within their text, the legal prohibition of most abusive practices against prisoners. The problem is giving respect and effect to

the prohibitions. The author also presents some proposals which do not require the establishment of international tribunals, development of a super-national world order, or imposition of one cultural system over others.

SELF-DEFENSE [LAW]—GREAT BRITAIN

STANLEY MENG HEONG YEO, UNRESTRAINED KILLINGS AND THE LAW: A COMPARATIVE ANALYSIS OF THE LAWS OF PROVOCATION AND EXCESSIVE SELF-DEFENSE IN INDIA, ENGLAND AND AUSTRALIA (Delhi: Oxford University Press, 1998) 210p

Though English Courts have been disinclined to undertake a comparative study of legal systems which were derived from the English Common Law, the author states that they would profit from doing so in the case of the defenses of provocation and excessive self-defense. This book undertakes a critical comparative study of these defenses in English and Australian common law, and the Indian Penal Code. He presents proposals for a reformed law of provocation and excessive self-defense which incorporates the best features of the three systems.