1947

Criminal Justice and Social Reconstruction

Ernst W. Puttkammer

Monopolies, The Case of Penal Statutes, List of Grievances Presented By The House of Commons to James I, The Book of Bounty of James I, Proclamations of James I, The Statute of Monopolies, Proclamation of Charles I, Article of Impeachment Against Strafford, Oral Defence of Earl of Strafford, Reply for the Prosecution, The Great Case of Monopolies, an excellent bibliography and a good index.

CASPER W. OOMS*

Criminal Justice and Social Reconstruction. By Hermann Mannheim. New York: Oxford University Press, 1947. Pp. 290. $4.00.

In this book the author, a former Berlin magistrate and prolific writer on matters of criminology, undertakes to examine the "values" underlying criminal law and to consider whether the law adequately meets these values. More specifically he first asks, "Why are certain acts criminal?" To answer that they are anti-social is not enough. While all crimes are anti-social, there are great areas of anti-social conduct that are not criminal, either because the acts are not deemed serious enough or because, for one reason or another, the criminal law does not seem the best tool with which to attack them. Whether or not certain anti-social conduct shall be denominated "criminal" and, if so, how serious a crime the conduct shall constitute, are matters of "value" as the author uses that term.

These values have undergone far more change than superficially might be expected. While homicide has always been a crime, we no longer give any value to the method of killing, viz., whether secret or open and brutal. In Anlgo-Saxon days, when family vengeance was a sacred duty, a secret killing was a much more serious crime because of the uncertainty as to who the doer was. Surprisingly the author fails to mention another old-time value—the identity or race of the person killed. In the time of King Canute it was a far more serious crime to kill a Dane than it was to kill an Englishman. And, realistically, who today would say that the race or color of the victim was unimportant, in, for example, Greenville, South Carolina? A curious gap in this part of the discussion is the author's complete failure even to mention the importance, if any, of necessity or compulsion as the reason for killing (e.g., *The Queen v. Dudley and Stephens*,[1] where two sailors, adrift on a raft in mid-Atlantic, killed and ate a third). On the other hand suicide, mercy killing, and euthanasia receive searching and interesting treatment.

Certain values, the author forcefully argues, are rated far too highly, prevailingly, by most of the world's legal systems, while others are conversely rated too low. Simple larceny, he contends, is made too much of; it is the little man's crime and the law, administered by the more fortunate, always overvalues the magnitude of his transgressions. Embezzlement, obtaining property by false pretenses, usury, shady security dealings, tax evasion, monopolies, and other misconduct, not *against*, but *by means of*, property—"white collar crimes," as he calls them—are universally undervalued. Another underrated value is the wilful destruction of one's own property which has an anti-social value high enough so that it should always constitute a crime and not

* Member of the Illinois Bar, formerly United States Commissioner of Patents.

[1] 14 Queen's Bench Division 273 (1884).

merely in wartime. These are only a few illustrations, chosen at random. They will suffice, however, to show the thought-provoking nature of the book.

In the second part of the book the author considers a rather heterogeneous lot of problems that arise in the actual administering of the law, even when we have determined what our values are to be. Many of these problems (and their solutions) are so definitely local to Britain that whole sections have little meaning for us. But elsewhere in this part too there is plenty to provoke thought—and disagreement at times. For example, Mannheim strongly believes in greatly increasing our use of administrative boards to advise the court and even to pass on the legality of specified conduct *before* a citizen commits himself by so acting (whereas he must now irrevocably commit himself before he may have a decision). Thus he would permit abortions, if a designated board would first determine that the particular one fell within a specified "proper" category. He would have a board to consider proposed programs of tax evasion or avoidance, a board to consider what conduct would constitute a violation of labor law or antitrust law, another to set interest rates which would not be usurious, etc., etc. In his opinion the law would gain, not lose, certainty and predictability, since it would be possible to secure a definite pronouncement before, not merely after, the event. This, in turn, would make it possible to phrase criminal laws in much more general terms than we now dare use. (And, very effectively, he asks whether, even now, with all our vaunted horror of general terms, anything could be more vague than the meaning of "criminal conspiracy.") It would even become possible to employ the very useful device of extending our criminal statutes by analogy, to include situations not covered but which would have been, had they been thought of. (And here again the horror-stricken reader is asked whether we aren't really already extending by analogy under the guise of "liberal interpretation.") Numerous other suggestions are almost as striking.

Certain shortcomings and criticisms cannot be avoided. Sometimes the author is far from being as lucid in the development of his thoughts as the reader might fairly expect, or his transitions may be abrupt and hence the flow of thought unclear until the reader is on the scent again. He has a wide knowledge of many European law systems and even some Asiatic ones, but his treatment of American law is superficial, to use the most generous term possible.[2] Our Uniform Small Loans Act, the Sherman Act, and the proposed Youth Correction Authority Act, surprisingly enough, get rather extended discussion. Apart from them, however, our law gets less attention than the Danish, Egyptian, or (by a great deal) the Chinese law. He sometimes almost seems to be under the impression that federal statutes automatically override and supersede all state laws.

In part, then, the book presents some shortcomings of importance, but they do not affect its basic value. It is a thought-provoking appraisal of many ideas which we have been taking too much on faith alone. There is much to agree with and, for most readers, probably much to disagree with. In either case it will induce some real thinking about matters previously shaped only by habit and tradition.

E. W. PUTTKAMMER*

[2] In all, only four American cases are cited. But it should be added that only five British cases are cited.

* Professor of Law, University of Chicago Law School.