

REVIEWS

The Honest Politician's Guide to Crime Control. NORVAL MORRIS & GORDON HAWKINS. The University of Chicago Press, Chicago, 1969. Pp. xi, 271. \$5.95.

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"Crime is not a natural phenomenon nor does it consist of inevitable episodes which can in no way be foreseen and guarded against" say our authors in their prefatory note.¹ But a little later they say: "Crime is human behavior which is in violation of the criminal law, but a large part of it is perfectly 'normal' behavior both in the statistical sense and in the sense that it occurs naturally."² A paradox this may be; but then crime is a paradox. Absent a greater understanding of the patterns of anti-social conduct falling into the categories of the criminal law there will continue to be such paradoxes in the criminal law, in its practical applications, and also self-contradictions by all of us who would theorize about it.

At the same time, I am all but non-plussed by the authors' unrelenting condemnation of the expenditure of time, money, and energy in research on the causes—the etiology—of crime. At the very least, and their book proves as much, research into the causes of crime proves, dramatically, what are not causes of crime. Not so very least, and their book proves this too, such research proves that crime is multi-caused and multi-factored. These are very important things to know. Thus, the simplistic slogan that poverty is a cause of crime is blasted by every statistic, in every western country, which shows crime increasing ratably as greater affluence comes to pass and also with the raising of the standard of living (or standard of consumption is better) of the poorer classes.³

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¹ P. ix.

² Pp. 47-48.

³ See generally L. RADZINOWICZ, *IDEOLOGY AND CRIME* 60-100 (1966); but especially the book reviewed, at P. 49: "One of the authors of this book was at one time director of the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders in Tokyo. In that position he was occasionally questioned by trainees from rather backward Asian countries with low delinquency rates, who, seeing signs of increasing delinquency rates in their countries, wished his advice on how this trend might be inhibited. He found the answer not difficult. He urged them to ensure that their people remained ignorant, bigoted, and ill-educated; that on no account should they develop

Actually, our authors do perhaps their best in demonstrating that much crime is a by-product of stimulation engendered by misdirected criminal sanctions, as, for instance, the direct and indirect exploitive criminality arising from the intervention by the criminal law in irregular sexual conduct between consenting adults, or from the "law enforcement approach" to the heroin addict. Less analytical, and perhaps stemming from their antipathy to the study of the etiology of crime, is their failure to recognize philosophical implications from some of their own acute observations.

Thus, take their significant and perceptive observation: "Man is a violent animal, given as is no other mammal to killing within his species. His intraspecies violence grows proportionally as the territory in which he moves alone or with his family engenders more intraspecific conflicts than his precipitate temper can tolerate."⁴ And again, "His [man's] skill in postponing death via public health and disease prevention and treatment methods has produced an excess of population, thus generating more intraspecies tension, which seriously imperils his continued existence."⁵ How is that for a trenchant excursion into a (not *the*) cause of crime, and the suggestion of an obvious and inescapable corrective, whether or not mankind is wise enough and capable enough of adopting the corrective.

I would like to suggest, and there is no originality in the suggestion, that crime is a function of a free society. A crimeless society would be structured like that of the ant or the bee. Indeed, as crime is progressively better controlled there must be a corresponding loss of freedom in the sense of self-determination and self-realization in one's conduct in small and large matters. This is the price, and it is inescapable. The reason crime remains, and will remain an eternal problem, is because in an always changing society there must be constantly a weighing of

substantial industries; that communications systems should be primitive; and that their transportation systems should be such as to ensure that most of the citizens lived within their own small, isolated villages for their entire lives. He stressed the importance of making sure their educational systems did not promise a potential level of achievement for a child beyond that which his father had already achieved. If it was once suggested that a child should be able to grow to the limit of his capacity rather than to the ceiling of his father's achievement, he pointed out, the seeds of the gravest disorder would be laid. He stressed the universal human experience that village societies are entirely capable of maintaining any discordance or human nonconformity within their own social frameworks and never need to call on centralized authority to solve their problems. He would take time to sketch, with a wealth of detail, the horrors of increased delinquency and crime that would flow from any serious attempt to industrialize, urbanize, or educate their communities. He would conclude with a peroration against the establishment of an international airline."

⁴ P. 77.

⁵ *Id.*

the price to be paid in loss of freedom for domestic peace and order. This is why the President's Crime Commission entitled its general report: *The Challenge of Crime in a Free Society*. In a truly restrictive society most of our problems in crime would vanish, as would our most intransigent trouble-makers and most of our freedom. Big Brother, closed circuit television, and ubiquitous policemen could reduce crime to the acts of the insane, and the hopelessly desperate. The residue of the population would be no better than robots.

This is some explanation why crime increases in an affluent society: in a society with proportionately as well as absolutely more young people than ever before; in a society with more automobiles, machines, amusements, and intoxicants; and in a society with greater mobility than ever before. Hence, crime is both natural and inevitable, and yet may be controlled (not eliminated) but at a price.

This excursion has been taken to demonstrate what I believe is a short fall by our authors, and yet it is the worst I can find to say about their excellent book. It is, to be sure, an excellent book, and it uniquely bridges the scholarly and investigative source materials to present a comprehensive view of crime and its control as it should or could be applied by practical men in government. Moreover, the book is written in readable and, indeed, in very lively style.

The book, with repeated generous credit, relies heavily on the work of the President's Crime Commission and the Model Penal Code developed by the American Law Institute. But these extended and heavy materials, to the extent relevant, are brought into a quite portable compendium. Moreover, they are presented in a useful, highly practical format. The authors, being realists assuming limited financial resources in our society for that purpose, propose practical steps in each of the areas of crime control, from the legislation of what should be criminally sanctioned to the redirection of the criminally anti-social miscreant.

Best of all, the authors are quite courageous. They take on revered white elephants and myths, whether sexual misconduct or the dubious romance about the Mafia in organized crime. They would even abolish the defense of insanity. Indeed, for the development and stimulation of a sound skeptical approach in all of us, their chapter on "Organized Crime and God" is an essential prescription. And this chapter with respect to the Mafia component in organized crime is exquisitely documented, as it should have been. One may not call attention to the Emperor's absence of clothing without being ready to prove it even if all have equally good eyes.

Given the present state of our basic knowledge in the field of criminology (an etymologically proper name debased to mean everything

from a narrow sociological research field to the teaching of police techniques and methods) the book covers the best of recent work and thinking in this country. Very pleasantly indeed one is brought up to date. Yet, as already observed, it is not merely a popularized rehash of what has been done by others; the writers endeavor to bring analysis of their own to the problems and solutions. But there is the short fall on analysis in the etiology of crime, accepting that we are dealing with a group of diseases or conditions and not one disease or condition. Most discouraging I find the conscious and deliberate rejection of research and study into etiology, and by logical extension into the philosophy of the criminal sanction. The way of philosophy and the abstracting of the universal from the data is an essential tool to the discovery and application of knowledge, whatever would-be hardheaded social scientists may think. Interestingly, the hard scientists rediscovered this too in the modern era, or we would not have had our Russells and our Whiteheads.

The short fall, among other things, leads into the cheap purchase of what are now easy formulations of the proper goal of the criminal law. Thus they quote, adopt, and accept uncomplainingly John Stuart Mill's famous statement:

The principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their members is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant, he cannot rightfully be compelled to do or forbear because it would be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise or even right.⁶

In its time this was a magnificent statement. It reflected a liberal rationalism opposed to a puritan, moralistic, other-world orientated view of man's temporary place in this world. It was revolutionary and good for the nineteenth century. Its condition was that of a *laissez-faire* society insofar as the practical economic and social relations of men were concerned, and with man not his brother's keeper so far as the brother's fate in the after-world was concerned. Today, in a welfare society men, for the most part, recognize their obligations to maintain their fellows who suffer poverty, destitution, and sickness. The fact is

⁶ P. 4.

there is little an individual can do, if he harms himself, that will not eventually harm others. This is true, if only because the self-harming individual will eventually become a burden on the public fisc, or because he will remotely and indirectly bring harm to the family he fathers. On this view, the victimless crimes of drunkenness, gambling, prostitution, and drugs may not be disposed of by any unqualified nineteenth century utilitarianism.

This does not mean that one may not agree with the authors that in some areas of victimless crimes there should be a decriminalization for the reasons they offer. These other reasons are practical, arising from dynamic analysis of the side-effects of law enforcement. If, to have law enforcement across-the-board for drug use is a sowing of dragon's teeth, that is, the stimulation of more of the same crime and immensely greater quantities of collateral crime, the program is self-defeating, nay, positively evil. And our experience in the drug area suggests precisely that judgment. In the case of drunkenness and prostitution the utilitarian answers are also too simple. The writers would simply shift the drunk from the legal to the medical field. This may be worthwhile on the merits, and I suppose it is, but it is undoubtedly not cheaper as they suggest by merely an *ipse dixit*. The life of the prostitute is short and unhealthy, and because it is of the demi-world (and would be even without criminalization) is subject to exploitation and unthinkable forms of degradation. With the prostitute, after she has been thus processed, society has a public health and public welfare interest, not only because, but certainly because, of the burdens on the public fisc. In the matter of gambling there are moral contradictions in the legal discrimination among various forms of gambling, but a significant, and at least arguable, distinction may be made between the classes that can "afford" to gamble and those that cannot. There are few stock-market gamblers on welfare assistance (albeit more in bankruptcy) but I venture to say there are many small-time bettors, policy-players, and the like on welfare assistance (and not in bankruptcy).

Now for some pin-pricks of criticism. The suggestions about juvenile offenses, borrowing largely from the report of the President's Crime Commission, are not profound. There is the old bedeviling problem of proving the child's guilt in contrast to the treatment indicated. This is a false dichotomy, the view of the United States Supreme Court notwithstanding. In the modern view, few children have sufficient responsibility, whatever that may be for anyone, to be involved with legal guilt for particular acts. It is the condition of the child in his environment and the condition of that environment that are matters of concern, and the particular acts of misconduct are only partial indicia of

those conditions. Even if the child did not in fact rob according to the evidence beyond a reasonable doubt, the circumstances of his involvement may or may not merit treatment. To be sure, such conditions raise "issues of fact," but lawyers have not been particularly astute in handling or using the system which really is designed for the protection of children who are deemed not fully responsible. Most important, traditional criminal law provides no applicable analysis, parallels, or appropriate procedures. The setting up of juvenile bureaus as a pre-stage to juvenile court treatment is a response to the over-legalization of the children's courts. In short order, the juvenile bureaus will be legalized and then what? Historically, the essential program of the children's courts was a nonlegalized, nonadversary, socialized institution, but that did not last more than a generation. It is like the endless and hopeless search for an acceptable euphemism to describe an ugly function. The problem is more profound and cannot be solved by multiplying agencies. The solution possibly lies in devising an agency that will not become bureaucratized without being given a litigation format.

The authors would provide automobiles, for a small or no fee, for youths who have no cars and have an irresistible impulse to drive. They opine that insurance could be obtained at moderate cost! This scheme, it is thought, would reduce joy-ride larcenies which are now enormous in incidence and are increasing in number as the youth of the population (and the number of automobiles!) grow disproportionately larger. This seems naive to me. Anyone watching children extract goodies from vending machines without coins knows that it is neither lack of coins nor hunger that impels them. The technique, of course, may be to move in the direction of making automobiles less takeable, and here the authors, following the President's Crime Commission, have valuable suggestions. But this treats the opportunity for crime and does not try to go to the causes. When crime in the New York City subways was reduced markedly by putting policemen in the trains, no one could tell us if the crimes had simply moved to the streets.

The naivety of the suggestion, it seems to me, stems again from looking at forms of conduct instead of searching into causes. Why do boys, as compared with girls, in vastly greater numbers and proportions commit delinquent acts? Why do men as compared with women? Perhaps the difficult, elusive, and unattainable answers to these questions would tell us. For certain, we will act foolishly so long as we treat peripheral symptoms on a priori assumption of effects to be expected from the conditions we alter because we think such a change in conditions would change our conduct. Even if the key answers to the real questions are unattainable we would at least know that much and realize that our

methods of experimentation must be based on different unknowns. That is vital to discovery.

The authors' suggestion that secret push buttons in telephones be used for increasing the protection of homes from burglary is weak indeed. Burglary leads among unsolved crimes. This is because it is a sneak-thief crime most often committed only when nobody is home. Who, then, is to push the button? And for how long will burglars and robbers not know that the push button is in the telephone and what to do about it?

Then, our experts nod and make a statistical and sociological blunder. The book infers that because most rape complaints are, according to the police, unfounded, that, perhaps, it is not true that the victims are too shy and embarrassed to report the crime. For shame; those who report, truly or falsely, the alleged crime are not shy or embarrassed. Rape, since the Year Books, has been a suspect crime because the bold ones who report it may be other-motivated; but no one experienced in law enforcement is unaware, on the basis of information received from culprits, of the many individual and gang rapes that occur without complaining victims, and with the difficulty of getting families as well as victims to press rape complaints. On the other hand, the authors are eminently correct in stating that the reported rise in rapes is distorted by ignoring the improvement in record-keeping, the change in mores that allows some greater freedom to report rapes, and most of all the change in views that no longer regards crime in the slums, as not quite real crimes affecting human beings.

I would have been especially happy, if the authors in debunking much of our crime statistics, which they do very well, would have called attention to the distortion of the larceny figures by the change in the value of the dollar. Most larceny statistics, including the federal Uniform Crime Reports, use a minimum dollar value in the inclusion of larcenies, and have used the same dollar value over the extended periods of years that the statistics are being compared. But they surely have rendered a great contribution in showing that, although crime has increased absolutely and proportionately, it has not increased anywhere near the alarmist level projected everywhere from the highest official sources to the lowest observer.

In summary, the book is not just good, it is a unique contribution at this time, and its special value is the bridging of the gap from the scholarly and ponderous sources to the informed but not necessarily professional reader. It is up-to-date, broad in view, and certainly objective, even in the areas where one might disagree with it. The bases for views expressed are largely documented despite the text not being foot-

noted or annotated (thank goodness), so that if one wished to question their conclusions or pursue the matter further, there are ample clues where to go. (A short bibliography, however, would have been nice.) For the most part the suggestions are practical and based upon a realistic understanding and experience which comes through the text. Some of us would miss the analysis of causation and philosophy without which the boundaries of our ignorance are not highlighted and proposals may therefore seem more certain of success. The style is quite lively and the book is a pleasure to read.

Who should read it? People in government, certainly. Journalists, emphatically. And every civilian who is concerned with crime, and who isn't?