



1958

Crime and Instinct edited by Richard W. Nice

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Recommended Citation

Kaplan, Sidney J. (1958) "Crime and Instinct edited by Richard W. Nice," *Kentucky Law Journal*: Vol. 47 : Iss. 2 , Article 14.
Available at: <https://uknowledge.uky.edu/klj/vol47/iss2/14>

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Book Reviews

CRIME AND INSANITY, edited by Richard W. Nice. The Philosophical Library, New York, 1958, 280 pages.

Few issues which confront our judicial system are more problematic than the issue of crime and insanity. In this symposium there are a variety of essays which purporting to illumine the problems involved serve rather to reaffirm the confusion attaching to the disposition and treatment of the criminally insane. Even the editor in presenting a survey of the different positions held in the several states confounds the problem by presenting results without due recognition of conventional criteria of survey research.

Perhaps these initial observations are unduly harsh. The issues involved are avowedly knotty. Divergence in professional viewpoint is unavoidable. Gaps in our knowledge of human motivation admittedly exist. And given Society's stake in the maintenance of social control as the context in which these varied issues must be resolved confusion is perhaps inevitable. Moreover there are several articles included in this symposium which do unquestionably illumine the relationship between society's necessity to protect itself and the disposition of the insane criminal. This symposium, in short, is well worth reading although it does lack the perspective that balanced editorial comment and a careful selection of articles might have given it.

In addition to the aforementioned survey and a synthesis of "Criteria of Responsibility Under Existing Law" the volume includes the following articles: "Principles of Punishment", by Ralph B. Winn, "Irresistible Impulse and Criminal Responsibility" by Henry A. Davidson, "The Differential Association Theory and Compulsive Crimes" by Donald R. Cressey, "Psychiatric and Sociological Variations in the Criminal Act" by Herbert A. Bloch, "Not Guilty by Reason of Insanity" by William H. Haines and John Zeilder, "New Light On The Eternal Conflict Between Law and Medicine In Judicial Practice" by William F. Burke, Jr., "From McNaughten to Durham and Beyond" by Simon E. Sobeloff, "In Favor of the Durham Rule" by Henry Weihofen, "Functions of the Psychiatrists in the Court and Prison" by Merill T. Eaton, Jr., "Reflections On the Psychologist as Expert Witness" by Michael H. P. Finn, and "The American Law Institute: Some Observations on Its Model Penal Code" by Herbert Wechsler.

Although these articles deal with similar issues they may be categorized, albeit roughly, in the following fashion:

1. General Survey (Winn, Burke, Bloch)
2. Compulsive Crimes (Davidson, Cressey)
3. Criteria of Criminal Responsibility (Sobeloff, Wechsler, Weihofen)
4. Legal Role of Psychologists and Psychiatrists (Eaton, Finn)
5. Legal Survey (Haines & Zeidler, Editor's Appendices I and II)

Of the category "General Survey" little need be said. The observations made by these authors run the gamut from commonplace platitude and naive assertion to jargonistic nonsense. Yet it should be added that these articles do provide a substratum of reasonable exposition although they fail, it seems to this reviewer, to clarify issues or cast much illumination on the problems at hand.

In his commentary on irresistible impulse and criminal responsibility Davidson offers a neat classification of impulsive crimes, namely, (a) explosive reactions in psychotics (insane persons) (b) obsessional compulsions in neurotics (e.g. pyromaniacs) and (c) rage reactions in persons with no psychosis or psychoneurosis. As Davidson sees it the psychotic comes under the purview of the McNaughten Rules and would not need a special doctrine to safeguard his rights. As for the "normal" who commits a crime because of a rage reaction there is no justification for exculpation. "If such acts were not considered crimes then no one would ever be responsible for anything". "All anti-social acts are the result of emotional drives . . .". The bulk of Davidson's discussion is reserved for the neurotic whose impulsive crimes are examined in terms of their psychological, practical, moral, and social implications. His major argument is that the neurotic by virtue of his crime should be held responsible since in the presence of a third party he "can, and usually does" control his impulse. "An impulse which can be resisted in the presence of a third party is not irresistible".

What Davidson says makes considerable sense particularly within a framework of moral responsibility. But could not society be protected as well, which seems to be Davidson's major concern, if the compulsive criminal were committed to an institution other than a conventional prison. Perhaps what is indicated is a need for a formula which provides for a broader definition of irresponsibility than is provided by the McNaughten Rules.

Cressey's article on compulsive crime is concerned with two matters. One is a definition of the insane person and secondly there is an attempt to fit compulsive crimes within the explanatory framework of Sutherland's theory of differential association. Rejecting what he terms the mentalistic concepts of psychiatry and the law Cressey recommends what in essence is the old wild beast test of insanity.

This reviewer fails to see how Cressey's formula, offered within a framework of a special definition of motivations, would be any use to a court of law. Indeed it seems much more problematic than the McNaughten Rules. As for his arguments on the inclusion of compulsive crimes within the framework of differential association nothing could be more persuasive of the essential emptiness of the theory of differential association. This reviewer is willing to concede that the pyromaniac or the kleptomaniac learns some of his motivations, techniques, or identifications in his social world. But so what? To be alive is to come within the purview of the theory of differential association—except, of course, if you are a "wild beast".

The articles which are included in the category "Criteria of Criminal Responsibility" are unquestionably the best in the symposium. Sobeloff offers a well written history of the development of the criteria of responsibility and concludes by affirming the wisdom of the Durham decision. The Wechsler article deals with the Model Penal Code of the American Law Institute particularly with those excerpts of the code which have to do with responsibility. Wechsler rejects the Durham formula as being too vague and for that reason not protective of society and offers the formula of the Model Penal Code which labels a person irresponsible if "he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law". Weihofen on the other hand in his article questions the appropriateness of this formula suggesting that it is less desirable than the Durham rule which is "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." Perhaps the major merit of the Weihofen essay is in its systematic analysis of the major arguments for and against the formula of the Model Penal Code and the formulation arising out of the Durham case. These three articles, this reviewer feels, are the most rewarding in the volume. Clear and systematic, they provide a comprehensive appraisal of the issues of crime and insanity.

Of the articles dealing with the legal role of the psychiatrist and the psychologist, not much need be said. They are in the main, straightforward considerations of a practical nature which are well worth the reading. An intriguing note is offered by Winn, however, who in his characterization of the hospital community, discusses the irony in the reaction of hospital administrators who, in dealing with patients who have engaged in criminal conduct in the hospital, view them through a punitive framework of moral responsibility. To quote Winn,

As one patient said concerning punishment for one of her less heinous crimes, a patient whose contact with reality fluctuated from time to time, "What kind of a hospital is this? You can't even be sick in here." A terse, telling comment from a grossly psychotic patient—more rich and more pithy than a multitude of intellectualized, high-sounding interpretations and platitudes.

The Haines and Zeidler article deals with disposition and release of the insane defendant. As the authors acknowledge "Most of the material for this paper was obtained from *Mental Disorder As A Criminal Defense* by Henry Weihofen." The article systematically cites the principles which obtain in the several states and concludes with a well organized summary. Little commentary is offered by the authors.

The final contribution of the editor consists of materials gathered in a "national survey" (Appendix I) and a summary of "Existing Criteria of Responsibility Under Existing Law" (Appendix II). The survey is both factual and attitudinal and was elicited from respondents in the several states. Unfortunately Nice does not define his population of respondents except in the most general of terms so that one cannot draw any conclusion about the meaning of the attitudinal content of his survey. Assuredly, several men from each state unspecified as to frequency, occupation, or official role do not reflect the viewpoint of their states. And since the respondents are not specified, one cannot assume, even on the most presumptive basis, any kind of typicality. Had he merely provided occupational identity for each respondent the survey results would have been greatly improved. As it stands, however, the attitudinal part of the survey is well nigh meaningless.

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