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Quinney: The Social Reality of Crime

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RECENT BOOKS

BOOK REVIEWS

THE SOCIAL REALITY OF CRIME. By *Richard Quinney*. Boston: Little, Brown and Company. 1970. Pp. vi, 339. \$6.95.

There is probably no more frightening word in our daily vocabulary than "crime," especially if it appears in the phrase "crime in the streets." The very mention of the word strikes terror into the hearts of all "good" citizens and evokes endless rhetoric and political bellingering from elected officials.

But just what is "crime"? Certainly everyone is aware that the concept of criminality varies with the mores of society. For example, by 1500 English law still recognized only eight major capital offenses;¹ by way of contrast, in 1819 it was estimated that the number of capital offenses was as high as 223.² Of course, not all change in our notion of crime is either gradual or logical. During prohibition, and before the passage of the gold laws, anyone in America who possessed illicit liquor could be jailed, while the upright citizen hoarded gold. Within the space of a few years, prohibition was repealed and the gold laws were enacted; now the man with a case of Johnny Walker Black Label was an envied citizen, but the person who owned an undeclared gold bar had become a lawbreaker.

Lawyers recognize this changing concept of criminality by distinguishing between crimes that are *malum in se* and *malum in prohibitum*. The former term describes that which is considered "bad" in an absolute sense, independent of any formal legal sanction; the latter term describes conduct that is "bad" only because the legislature declares it anathema.

In the realm of politics, however, such nice distinctions are not drawn. Politicians have simply sounded the call for "law and order" on a broad scale; they have lumped all crime into one category, to be dealt with by strict enforcement of the criminal law. In recent decades, a political device that has grown ever more popular with the party out of power has been to blame increasing crime on the incumbent administration. The "out" party describes itself as the "law and order" party, while the "in" party is accused of being "soft on crime." At a time when the public is becoming increasingly sensitive about crime, such a political approach has widespread appeal.

The most obvious example of this use of "law and order" as a political rallying cry is Mr. Nixon's campaign policy during the 1968 presidential campaign. Unfortunately, President Nixon fulfilled his

1. H. BEDAU, *THE DEATH PENALTY IN AMERICA* 1 (2d rev. ed. 1968).

2. *Id.* at 1-2.

campaign promises after his inauguration. He replaced the able, but "soft on crime," Attorney General Ramsey Clark with a specialist in municipal bonds, who was known to favor the "law and order" approach to law enforcement. The President's preference for a hard-line approach to the problem of crime was further evidenced by his choice of appointees to the Supreme Court.

Thus, the Nixon Administration seems to believe—along with a sizable portion of the public—that a get-tough policy will solve the problem of increasing crime in the United States. Unfortunately, this same philosophy appears to have been embraced by the organized bar as well; the new president of the American Bar Association has announced a cutback of that institution's social programs.

These developments in public and official attitudes may seem shocking to the concerned lawyer, but they are quite consistent with the basic theory propounded by Professor Quinney in *The Social Reality of Crime*. His theory is based upon the observation that "crime is a definition of human conduct that is created by authorized agents in a politically organized society" (p. 15). Crime is a judgment made by some persons about the behavior and characteristics of others. No behavior is inherently criminal; rather, criminality is a concept that is created through the formulation of "criminal definitions."

Professor Quinney explains the formulation of criminal definitions, or what we lawyers would refer to as the development of the criminal law, as a function of power in society. Those segments of society that have the power to translate their interests into public policy regulate the formulation of criminal law. The laws—substantive and procedural—that emerge from this process reflect the interest of those power segments in protecting themselves from segments that have competing interests and less power.

Quinney asserts that, because the law is a reflection of current interests, it changes with the "interest structure" (p. 18). This assertion appears to be sound sociological theory. Unfortunately, most of our courts of last resort would argue that the criminal law has recently evolved to give increased and unnecessary emphasis to the rights of the accused, even though the interest structure today is much the same as it was when the Constitution was enacted. Actually, the interest in personal rights is no more dominant today than at the inception of our legal system. It may just seem that we are more interested in the individual, but certainly the Founding Fathers must have been as much as, or even more, interested in the individual or they wouldn't have particularized his protection.³

3. Indeed, the Warren Court was persuaded that in its decisions on criminal pro-

Professor Quinney's theory can best be summarized in the following manner. Society's power segments will formulate criminal definitions that reflect their own set of values; consequently, members of those segments of society whose behavior patterns are not represented in the development, application, and construction of these criminal definitions are more likely to act in ways that will be defined as criminal. According to Quinney, this constructive process is the social reality of crime.

Professor Quinney offers a detailed discussion of the propositions that make up his theory. To the lawyer, his analysis is perhaps too superficial. To the student, his analysis may sound like a historical chronology of acts and statutes. However, in his section on sexual-psychopathy laws and the protection of morality and public order, he is at home as a social commentator. The words of a sound sociologist come through with clarity, meaning, and insight.

Quinney's comments on the enforcement of criminal law and the administration of justice furnish little practical help to the lawyer but should be of much interest to the student. His discussion is again sound sociology, well documented and thoroughly researched.

Throughout the book, Quinney's conclusions are simply stated and easily defensible. Who would argue with the conclusion that we live in a segmented society and that the effects of cultural themes vary from one segment to the other? Behavior patterns are neither criminal nor noncriminal. These patterns must be evaluated and defined by power segments before they take on any legal characteristics. Our conclusion must coincide with that of the professor—criminality is an artificial concept, created by a segmented society.

The author closes on a political note. He points out that the state has used its powers of legal administration to shape prohibitions and procedures that define as "criminal" what the state considers to be a threat to its own political and social order. Certain practitioners of the art of politics have indeed used the issue of "crime" to their advantage.

The Nixon Administration would like to see the Supreme Court abandon the concern for individual rights that it repeatedly voiced during the years of the Warren Court and apply the Bill of Rights in a manner that will protect the power segment's conception of a proper society and its own preferred position of power. Failing that, the Administration would have the Congress stampeded into passing repressive anticrime legislation, such as the multi-purpose "no-knock" law. The rhetoric of the Nixon Administration has reinforced the public's obsession with law and order to such an extent that, as Quinney observes, "[t]he war on crime has become a substi-

cedure it was simply reflecting the concern of the Founding Fathers for individual rights. See Pye, *The Warren Court and Criminal Procedure*, 67 MICH. L. REV. 249 (1968).

tute for the older war on internal communism" (p. 316). But let us hope, with Professor Quinney, that the price of waging a continuing war on crime will not be further denials of our individual freedoms. Quinney's book should help us avoid being led astray by political breast-beating from the formidable task of finding legitimate solutions to the crime problem.

The Social Reality of Crime is a useful book for all, but especially for the criminologist, student, and professional.⁴ I would certainly like to see this book, and well thumbed too, on the shelf of the White House library. I am afraid that Richard Quinney knows a great deal more about crime than does Richard Nixon. But it is just conceivable that Mr. Nixon could learn from Professor Quinney.

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4. I might add that the book is extremely well documented. It represents what is probably the most exhaustive collection of references on the subject of crime that this commentator has seen since he last read Blackstone's *Commentaries*. The book is therefore a very complete bibliography on the subject of crime, as well as an excellent presentation of a most feasible sociological theory.