

## BOOK REVIEWS

*Because of the importance of the reports of the President's Crime Commission, the Law & Society Review proposes to carry reviews of all of the Task Force reports, as well as the general report. The current issue contains a review of the general report and two of the Task Force reports. These will be followed in subsequent issues by three or four Task Force reports in each issue.*

—The Editor

### Random Reflections on "The Challenge of Crime in a Free Society"

***The Challenge of Crime in a Free Society.* Report of the President's Commission on Law Enforcement and Administration of Justice. U. S. Government Printing Office, 1967. Price \$2.25. xi + 340 pp.**

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The Commission concluded: "Controlling crime in America is an endeavor that will be slow and hard and costly. But America can control crime if it will." Let me not quibble with the grammar of the final sentence,<sup>1</sup> but rather offer the bleak comment that in the months since this sentence was published, very little has been attempted toward the end of crime control. I frankly doubt the will. Indeed, I have been surprised and depressed by the reception of *The Challenge of Crime in a Free Society*. A remarkably fine document has been irresponsibly treated by academics and politicians alike. Consider two of the leading commentators, not atypical of the rest, Herbert L. Packer of Stanford and James Q. Wilson of Harvard.

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1. If it is not tautologous it is, I submit, ungrammatical—"if it/she so wills."

Professor Packer takes the Commission to task for failing adequately to confront the basic policy question: "What is the criminal sanction good for?" I agree with him that this is an important question, perhaps the most important question. He cedes that on the topics of drunkenness and juvenile delinquency this fundamental issue was responsibly addressed by the Commission. He objects to their failure to reject, or seriously to consider the rejection of, the criminal sanction in the areas of narcotics, certain sexual crimes, vagrancy, gambling—the whole area of victimless crime. And he is so condescending about the report generally: "I should not leave the impression that the report is valueless."<sup>2</sup>

James Q. Wilson's criticisms are perhaps even wider of the mark.<sup>3</sup> He takes it upon himself to reorganize the entire document around what he calls the "commonsense questions of laymen rather than . . . the occupational concerns of the staff and consultants of the Commission." He finds, not surprisingly, no precise answers to these questions. Why the Commission should seek to answer the superficial questions that he poses is not made clear. Professor Wilson knows that the answers to the layman's questions will not provide the key to the better protection of that same layman. As his review progresses he proceeds, happily, toward a more balanced judgment but concludes with condescension equal to Professor Packer's that the Commission had value because it "led the way toward putting federal money into local law enforcement." To this point I will return. Let me now, however, roundly and further bewail the narrowness and bitterness of my excellent colleagues.

*The Challenge of Crime in a Free Society*, the Task Force reports, and many of the Research Documents are of remarkably high quality. Together, they make up the most significant collection of information on the problems of crime and juvenile delinquency, their prevention and treatment, that is to be found in any document or report of a study anywhere. In an astonishingly short period of time, with a dedication and a competence that is unrivaled in the field, James Vorenberg and his staff produced a report that, were it acted upon responsibly and steadily, would reduce fear, reduce suffering, and increase human happiness in this country.

If, of course, the quick, dramatic, politically exciting, "new" cure for crime is sought, this report will not provide it; nor will any other document. Quick solutions to problems of this complexity exist only in the pre-election perfervid brains of politicians.

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2. NEW YORK REVIEW OF BOOKS, Oct. 12, 1967, at 17.

3. THE PUBLIC INTEREST, No. 9, Fall 1967, at 64.

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Many of the operational problems of crime are both complex and deeply interrelated in the subsystems of police, courts, and corrections that make up the criminal justice system. One of the important values of this report is its recognition that disturbing the parameters of one subsystem influences the others, and that reform requires planning perceptive of these interrelationships. Further, planning for social development had better recognize the limits of the immediately feasible. The report does this too. Vorenberg and his staff must have been constantly aware that it was a plan for social change they were drafting, not an academic thesis. The report was also clearly responsive to the need to carry a lay commission along with it—and it was a lay commission, lacking amongst its members, for example, anyone with training in sociology or experience in correctional work or community prevention work.

The chapters on narcotics and organized crime suffer particularly from the constraints of political reality and are therefore unattractive to the theoretician. This community seems determinedly unprepared to act sensibly in these fields. But even here, in the powerful dissent to the narcotic chapter by Dr. Brewster, Judge Breitel, Mrs. Stuart and Mr. Young, and in some of the research underpinnings on the chapter on organized crime, for example Professor Schelling's "Economic Analysis of Organized Crime," the fundamental issues are posed and responsibly handled.

It is a virtue in the report, rather than a defect, that where possible it avoids large general issues and contains no panacean programs, but concentrates on providing factual information and making politically feasible suggestions. The report manifestly deserves a better press than it has so far received. That is not, however, my present task; others writing in this *Review* have the duty to consider the detailed values and shortcomings of the report. My task is to reflect on its immediate impact on the criminal justice system; but I could not properly do so without first and formally submitting my own view that it is the most important document relevant to the criminal justice system since Beccaria.

If the academics have been curmudgeonly, the politicians have been wicked. The reviewers may have muttered and quibbled, treating a plan of action as a doctoral thesis, but the politicians have sinned against the light, and that is a more serious matter indeed.

Crime begins to influence seriously the quality of life in this country. Chapter 2, "Crime in America," is perhaps the outstanding chapter in the report, revealing the unexpected range and force of the impact of crime in the cities of America. When present circumstances are related

to the changing ecology and to the changing age-structure of the population, it becomes clear that inexorably we face a substantial increase in those types of behavior now classed as criminal. And this at a time when the moral and economic crisis of the ghetto becomes a tinder to social violence.

The problems the National Crime Commission faced are not insubstantial, they are not epiphenomenal to the quality of life in this country. They rank, indeed, in terms of fear, higher than disease and second only to the pervading issues of the survival of the species from nuclear extinction. The fabric of American society has little to fear from disease; it has a lot to fear from burgeoning violence and crime. Yet, there is no criminological equivalent of the National Institute of Health and none seems seriously envisaged.

A major reshaping of our criminal justice system is essential if these fears are to be reduced. We face a refashioning of the criminal law itself, so that it will cast off its futile moralistic superstructure and concentrate on the protection of the citizen from violence, the threat of violence, and the protection of his property from certain serious deprivations. We must do less and do it better. We must be cautious about using the criminal law as an instrument to achieve the good life *for others*. The consequences of our present exaggerated role for the criminal law, of its moralistic overreach, can be seen in a visit to any local jail, to any nearby court of first instance, or they can be found set out in *The Challenge of Crime in a Free Society*. The system is bedeviled—police time, court time, correctional time, and the energies of all wasted—by a criminal law that sweeps up alike the inadequate nuisance and the dangerous thug.

The police are an underpaid, insufficiently-trained, strangely-recruited priesthood of this moralistic law. The community is wildly ambivalent about them. Their social status is low; the expectations of them are Olympian. Again, *The Challenge of Crime in a Free Society* lays out a sensible, politically acceptable plan of action to change all this. The need for different levels of recruitment is recognized; attainable training minima are defined; steps to reduce the balkanization of policing amongst our 40,000 official police forces are suggested; the community service function of the police is analyzed and its relationship to other police functions assessed; and problems of police-community relationships are thoughtfully addressed. Here, as elsewhere, the immediate action proposed is less than the academic critics of the police would want but it is more, overall, than even enlightened police spokesmen have recommended.

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An apparently sound mechanism was designed to stimulate these and other developments. Through the Juvenile Delinquency Prevention Act and the Safe Streets and Crime Control Act, the federal government would begin to provide leadership and, in particular, funds for those of the 200 recommendations in *The Challenge of Crime in a Free Society* that local communities, states or cities, might care to adopt on an experimental basis. Thus, funds and the limited expertise in this whole system could be channeled to what was creative and developmental in the system. We could all learn from the critically evaluated, federally supported, local testing of the Commission's recommendations. Yes, Dr. Pangloss.

I was involved in some of the above planning. With twenty or so other academic types as discussion leaders, well-read in *The Challenge of Crime in a Free Society* and acquainted with the Administration versions of the Juvenile Delinquency Prevention Bill and the Safe Streets and Crime Control Bill, a meeting was arranged in Washington with some 700 people from the states, cities, local communities, and rotten boroughs of this vast country. We academics were briefed the night before in the Department of Justice. The plan was, in essence, that outlined in the previous paragraph. Speaking for myself, the next day I was a child; the “politicians” were gentle and kind, but they brushed me aside with a firm politeness. I learned the truth over my second drink in the bar after the first day's debacle. I had been ingenuous to believe that the backwoodsmen would accept such a role for the federal government. Federal funds, if they came, would be used, my local political advisers assured me, to reduce pressure on state, city, and local budgets. They would be divided not at all unequally—as testing developments clearly requires—but equally, in accordance with a complex relationship between populousness and political influence. Any developments would not come from a bunch of federally recruited intellectuals, but from such local initiative as might emerge. Now, be quiet, drink up, and let us talk about something amusing like women or crime.

At the time of writing, the shape of the Safe Streets and Crime Control Act is not clear. Certainly, the original Administration bill, in effect implementing the report of the National Crime Commission is moribund. Some of the legislative accretions to it—the FBI stranglehold on police training, the gross reduction of the research and development stimulating role of the Office of Criminal Justice in the Department of Justice, and other lamentable legislative aggressions—led me to hope that no such Act at all would emerge from the congressional leaps and jerks. However, I am told that compromise is the spirit of legislative virtue and that we

are likely soon to see a National Research and Training Institute of the type suggested by Congressman Scheuer and Senator Edward Kennedy; some funds for research and development along lines recommended in *The Challenge of Crime in a Free Society* (not as much, of course, as for riot control training, but some); a Federal Judicial Center under parallel legislation; some federal funds for police training free of the grim clutch of J. Edgar Hoover—and so on. A few of the high hopes of yesteryear—modified, reduced, made more acceptable to the politicians in an election year. And I should be content. My content, of course, does not matter; the issue is—have we time? Can we get away with such an irresponsible approach to such a serious problem? Probably we can; man's capacity to sustain life under political myopia has surely been demonstrated to be limitless.

One significant fact stressed in the report is "that research commands only a small fraction of one per cent of the total expenditure for crime control," as opposed to a 15 per cent allocation by the Department of Defense (p. 273). In a situation where, as the report says, "the greatest need is the need to know" this suggests that the eagle on the cover should have been an ostrich.

For three years, as a visitor from Mars via Australia and Japan, I have observed problems of crime in the United States. It has been a period of great activity. The courts, the legislatures, the police, the academics have all been speaking insistently to the problem. During this period the President commissioned and there was pursued the largest and most effective inquiry into the problems of the criminal justice system that this country has seen. Massive federal legislation has been proposed and a multiplicity of state bills offered, some of which have reached legislation. Battle lines have been drawn, the most notable one being that of the police against the federal Supreme Court—though that court seems, wisely, not to be troubled by the declaration of belligerency. Problems of the criminal justice system have become issues of high political import, on which elections may turn, and their significance will increase in the light of the certainly increasing rates of crime and delinquency, absolutely and per thousand of population. What can one conclude from all this to-ing and fro-ing, from the fervent speeches and thoughtful reports on this topic? I have come to a simple conclusion which I shall report to my Martian superiors: political authorities in America do not wish to reduce crime in this country.

That conclusion is inescapable. It emerges not from what is said but from what is done. The legislatures, federal and state, of the United

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States seem to have decided that since they cannot solve the problems of crime in their variety by a simple and dramatic gesture, they shall not solve them at all. If the battle to be won must be fought on more than one front, let it not be fought at all. So, do not give money to reducing the criminogenic forces that foster crime; do not assess their force and plan an attack upon them; do not rationalize and coordinate your prevention and treatment services; rather give the money to excited repression of the symptoms. Hence, monies for riot control, tranquilizer sprays for use by the police, and the care and feeding of the night-stick. It is sad; I hope I am wrong; a sensible path has been cut for us; it seems unlikely that it will now be followed. In the longer run, of course, if we run that long, it will be of value, just like the Wickersham Report—have you ever read it?