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BOOK REVIEWS

CRIME IN AMERICA

BY RAMSEY CLARK

New York: Simon and Schuster, 1970. Pp. 346

\$6.95

WHAT Ramsey Clark has to say about the empirical dimensions of crime seldom extends beyond the factfinding accomplished by President Johnson's crime commission in 1967. Indeed, it is not unfair to characterize *Crime in America* as a popularized and personalized critique of *The Challenge of Crime in a Free Society*, the basic report of that commission.¹

Mr. Clark reiterates the conventional (liberal) tenets: "crime" is a complex and varied phenomenon; we do not know how much crime really occurs, as opposed to how much is reported to and by police departments; crime rates seem to be linked to social change; "organized crime" may be largely a product of our own paternalistic proscriptions (and would you prefer that narcotics distribution be unorganized?); marijuana use should be legalized; the number of guns in society should be reduced; police departments are the dumping ground for every social problem that political "leaders" cannot face up to; police performance during riots can be improved by prior training; the Chicago convention police riot was caused by intemperate remarks of the city administration; police spokesmen greatly overstate the need to rely on confessions to obtain convictions; wiretapping does not produce an adequate return to offset its social and economic costs; the bail-or-jail system needs drastic overhaul; the office of the prosecutor should be taken out of the political spoils system; courts would benefit from updated administrative techniques; judicial insistence on due process for criminal suspects does not handcuff the police; prisons do not rehabilitate; the death penalty should be abolished—and so on. The popularization of facts and traditional analyses is well done, and that is probably the chief value of the book.

Mr. Clark can, at times, be poignantly persuasive, as he is, for example, in making his point that the bail system actually needs reform:

¹ THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967).

Ronnie Brown was five years old when his mother brought him north to Brooklyn from rural South Carolina. Before he was arrested on July 25, 1969, for robbery at the age of seventeen, police had taken him into custody twice—once for assault, later for car theft. He had never been convicted of a crime. On August 14, 1969, at 5:20 A.M., he was discovered dead, hanging from a light fixture in his Rikers Island prison cell—a belt looped around his neck. He had been in jail nineteen days, though no grand jury had indicted him and no lawyer had advised him of his rights, when his aunt heard of his death on the radio. She told his mother, a nurse in a VA Hospital, twelve hours before the police found time to advise her.

Ronnie had written his mother, "Dear Mom, This is not the life I want. I am not really bad. . . . I want to get out and work and do something good." He didn't explain why he was "afraid to go to the bathroom." To persons familiar with American jails, it was not necessary. He did not want to be raped by homosexuals.²

Soporific Colorado is not without its own Ronnie Browns. Several years ago in a Denver District Court, a young defendant who had been convicted for possession of marijuana awaited sentencing. He evidently hoped for probation but feared imprisonment. When the prison sentence was announced, he shot himself to death in the court room. The official response was to institute procedures to make sure that those facing sentencing are not armed. Today, that sentence would probably have been probation. Tomorrow, one would hope, we will turn our efforts from criminalization of our youth for their petty vices and turn to important problems. But a decade of irrational use of power must have lasting effects on parents, their children, and anyone else concerned with the ability of the state to administer justice.

The basic flaw in Mr. Clark's view of the crime problem is not his acceptance of the thesis that crime is an evitable concomitant of our cultural components. It is, instead, that crime eradication should be the objective. By hypothesis, then, our culture must change.

On the causes of crime:

If we are to deal meaningfully with crime, what must be seen is the dehumanizing effect on the individual of slums, racism, ignorance and violence, of corruption and impotence to fulfill rights, of poverty and unemployment and idleness, of generations of malnutrition, of congenital brain damage and prenatal neglect, of sickness and disease, of pollution, of decrepit, dirty, ugly, unsafe, overcrowded housing, of alcoholism and narcotics addiction, of avarice, anxiety, fear, hatred, hopelessness and injustice. These are the fountainheads of crime. They can be controlled.³ (original in italics)

² R. CLARK, *CRIME IN AMERICA* 298 (1970) [hereinafter cited as CLARK].

³ *Id.* at 17-18.

Having identified the causes of crime, his solutions follow:

To insist on the dignity of the individual, to assure him health and education, meaningful employment, decent living conditions, to protect his privacy and the integrity of his personality, to enforce his rights though he may be the least among us, to give him power to affect his own destiny—only thus can we hope to instill in him a concern for others, for their well-being, their safety and the security of their property. Only thus can we bring to him a regard for our society, our institutions and our purposes as a people that will render him incapable of committing crime.⁴ (original in italics)

Public ignorance of the problems of crime and crime control may not be as critical or detrimental as the recrudescence of utopianism in an influential political liberal. Nor is it as unexpected. The view that crime will cease to be a major problem only when America undergoes a metamorphosis of national character results from identifying the task as the elimination of crime. Eradication of crime is a pretentious political goal. It is depressing, as well, to believe that improvement is conditioned on a national denial of avarice.

It would be happier to believe that change in crime control methods is possible in the name of self-interest. Does our self-interest compel a national economic policy that depends upon a twenty percent unemployment rate among young black males? Is it really necessary to insist upon public monopolization of education which permits the educational bureaucracy to perform at substandard levels? Do we really need a change in national character to reduce killing by police? (The actual number of deaths is interestingly unascertainable.) Do we really need massive research projects to tell us that a kid's best chance for rehabilitation after committing a crime is when he is not caught?

The problem is not "national character." The problem is inadequate political leadership. Local examples, again, are not wanting. Suburban Thornton's police department managed to wreck their entire fleet of cars trying to run down a petty violator. The Denver City Council, during the tense summer of 1968, debated for weeks the merits of legislation requiring topless dancers to wear pasties. Colorado State Senator Hugh Chance in 1971 strongly urged that the state legislature not pass the proposed updating of the Colorado criminal code because penalties for fornication had been left out. These are

⁴ *Id.* at 20.

trivial concerns compared to the death of Ronnie Brown. But they are all symptoms of the same dearth of leadership. We are not facing a crime crisis; we are facing a crisis in government. Both crime and contemporary notions of criminal justice are symptoms.

A pervasive and lasting sense of outrage on the part of the public may not solve all of the problems of the criminal process, but it appears unlikely that significant change will occur in its absence. And it is difficult to escape a cynical sense of *deja vu* if that observation is true. Given the squalid conditions of our policy-making machinery—especially state legislatures—it will take loud and lasting pressure for any change to be made, especially any change requiring money. Perhaps *Crime in America* will help to inform the uninformed. One hopes, however, that even the uninformed will recognize excessive idealism when they see it.

Mr. Clark feels that spending much more money on crime control would be beneficial. There is reason to suppose the contrary to be true. Given the present ambitions of criminal justice systems, it may be well that most systems are relatively powerless compared to what they could be. The zeal of reformers to build better prisons without better “correctional” leadership may well result in larger—and architecturally more pleasing—but equally crowded, inept and brutal warehouses of social problems. Right now the most important restraining influence on governmental use of coercion to solve the crime problem is the lack of sufficient resources to become more efficient. It is an old argument: Sir Robert Peel made the same objection to modernization of the English system in the last century. His point went unheeded. It still is.⁵

Without either a massive infusion of funds or an unforeseeable change in “national character,” improvements can be made. We cannot solve the bail problem, but we certainly have the requisite knowledge to ameliorate greatly its deleterious impact.⁶ We cannot eliminate feuding between spouses, but we know how to reduce significantly its frequency and deadliness.⁷ We cannot get handguns out of society, but we do know how to reduce their number. We cannot eliminate bad-check writing, but it may be fair to assume that removal of counter

⁵ H. PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* 365-66 (1968).

⁶ See e.g., AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE App. Draft, 1968.

⁷ CLARK, *supra* note 2, at 140-43.

checks from bars has helped. We cannot eliminate theft and forgery of government checks, but again it may be fair to assume that access to them might be significantly reduced by staggering mailing dates.

There are obviously many other things that can be done—many with no costs at all. A close “cost-benefit” analysis of some present practices might even indicate areas of possible savings in money and lives. What benefits are perceived in the practice of engaging in high-speed chases of traffic violators in congested urban areas? What costs do we incur through that practice?

At times, Mr. Clark reveals a tendency to overlook off-setting costs that are implicit in his proposals for reform. Consider, for example, his suggestion for prevention of crime by anticipatory intervention: “Professionals could find 90 percent of the children likely to become delinquent. We may have to live with the rest; we do not have to live with most.”⁸ Proposals for pervasive testing programs of our youth to predict probable future criminality and proposals for initiating programs to defeat our predictions are no longer rare. Ultimately, one would suppose that force must be involved either against the child or parent who disagrees with a diagnosis of probable future criminality and refuses voluntary treatment or removal.⁹

Immoderate zeal for reform is no less dangerous today than it was 70 years ago when we launched our largely disastrous experiment with creation of juvenile control systems. Professor Norval Morris has put the matter well:

Whenever by state authority we limit a citizen's physical freedom, we are disposing of the greatest powers (capital punishment apart) that the collective exercises over its members. When this is done for the citizen's own good, or to protect others from predicted harm at his hands, a decent respect for our own ignorance should give us pause.¹⁰

Unsupportable faith in the ability of social scientists to predict future human behavior could cause more misery than all of our present practices combined.

What we need at this point is neither a hopeless and distracting campaign to change the American scene nor a heavy-handed, counterproductive insistence on higher levels of en-

⁸ *Id.* at 242.

⁹ And, of course, the broader the criteria of inclusion in the program, the higher will be the apparent rate of “cures.”

¹⁰ N. Morris, *Foreword* to R. ROCK WITH M. JACOBSON AND R. JANOPAUL, *HOSPITALIZATION AND DISCHARGE OF THE MENTALLY ILL* at xv (1968).

forcement power. If we use what we do know, significant improvements are currently possible, provided that we recognize the limits of our knowledge.

The introduction to *Crime in America* characterizes Mr. Clark as a dreamer, unafraid of the rebukes of "practical" men.¹¹ Publication of the book is some evidence of both points. So is his conclusion: "Guided by reason, America will soar on wings of humane concern."¹²

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¹¹ CLARK, *supra* note 2, at 9.

¹² *Id.* at 346.

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