

Book Review: The Sociology of Criminal Law, by Robert M. Rich

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Book Review

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THE SOCIOLOGY OF CRIMINAL LAW. ROBERT M. RICH. Toronto: Butterworths. 1979. Pp. 282.

The sociological study of the criminal law has been a sadly neglected discipline in England and North America for much of this century. Criminology has been confronted with behaviour defined as illegal, but has focused largely upon the causation of that behaviour rather than on why it has been proscribed. Among criminologists there has been some concern that the legal categories divide behaviour in ways inimical to adequate etiological theory. As a response, some criminologists have suggested alternative definitions of "anti-social" behaviour but, because of the lack of agreement about the value judgments involved, such definitions have not gained widespread acceptance.¹ The result has been an expressed dissatisfaction with legal divisions but *de facto* use of them. The criminologists were not assisted by the sociologists of deviance who, for the most part, have considered the criminal law to be outside their purview, nor were they assisted by the criminal lawyers with their positivist emphasis upon text.

The situation has been changing over the past decade, with the criminal law being subjected to the same scrutiny that has been directed at many societal institutions.² It has resulted, at the practical level, in increased legal aid and a concern for due process. At the theoretical level, attention was focused on the power and coercive aspects of criminal law that developed into the conflict theory of criminal law. Such theorists have ridiculed the consensus theory—that the criminal law represents a moral consensus amongst all in society—and have suggested instead that it represents the wishes of the ruling elite, who use the criminal law to maintain the *status quo* and to repress dissension, especially that which threatens the economic structures within society.

However, the sociology of criminal law remains problematic. Criminal law involves power, domination, and control, but it also has some autonomy from other power structures in a society. It involves ideology—an ideology that mystifies and legitimates the exercise of power. It has great importance as a symbol, which is apparent in the emotive connotation of the "rule of law," to which the editorial pages of Canadian newspapers appeal daily. The question, "why criminal law?" awaits an adequate answer. Because of the diverse range of behaviour encompassed by the criminal law, it may have to be broken down and analyzed in relation to each of property offences, assaults against the person, sexual offences, economic offences, and the like.

Robert Rich's *The Sociology of Criminal Law* does not advance the development of theory. He provides an adequate but uncritical exegesis of some American criminological theory as to causation, and of conflict theory.

¹ Richard Quinney, in *Criminology* (2d ed. Boston: Little, Brown, 1979), reviews various definitions of crime and "anti-social" behaviour and the criticisms to which they are subject.

² Such scrutiny has been exercised in Canada by the Law Reform Commission; by academics Greenaway and Brickey, *Law and Social Control in Canada* (Scarborough: Prentice-Hall, 1978); and by such groups as the Law Union.

He looks briefly at paradigmatic approaches to criminal law, mainly as an exercise in paradigm construction rather than as criminal law theory development. The bulk of this book is a description of some particular social issues, presented under the headings of sexual deviance, domestic deviance, gambling, and drug abuse and addiction. A gesture is made toward the legal history of each issue and the current legal status of each in the United States is presented. His response is to advocate the decriminalization for adults of many behaviours. Where youth are involved he is more cautious and he seeks the strengthening of the law in the area of child abuse. He maintains that American legal policy on social issues responds to English precedents—an hypothesis upon which his own material casts doubt, and one that requires much more discussion than he provides.

Rich's theoretical stance is derived, in large part, from the school of sociological jurisprudence associated with Roscoe Pound. Pound's theory of interests has much to offer the sociology of criminal law, but Rich adopts, without acknowledgement, Pound's concern for law in action and social engineering. However, reform proposals with insufficient appreciation of the complex interests with which the criminal law is involved are unlikely to achieve much success. The occasional contradictory or banal statement, and proofreading error, are irritating.

The Sociology of Law is a misnomer. The Hart/Devlin debate³ and the Law Reform Commission of Canada report, *Our Criminal Law*,⁴ are of much greater value to the development of the sociology of the criminal law. Those discussions at least raise some of the myriad issues that must be examined when studying the phenomenon of criminal law. They examine the relationship between law and morality; Rich implicitly divorces them and, by doing so, begs many of the questions involved in the subject which the title suggests this book will discuss.

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³ Hart, *Law, Liberty, and Morality* (London: Oxford University Press, 1963); and Devlin, *The Enforcement of Morals* (London: Oxford University Press, 1965).

⁴ Law Reform Commission of Canada, *Our Criminal Law* (Ottawa: Supply and Services, 1977).

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