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RÉSUMÉ DU CONTENU/ENGLISH SUMMARY

Traduction : Dorothy Crelinsten*

Criminological science is a combination of disciplines, a field which includes « criminologists » whose background combines the humanities (medicine and psychology), the social and political sciences and law. The theoretical and practical importance of law in the administration of justice has always been paramount and its dominant role was never accepted by criminologists lightheartedly. But what really distinguishes the « pure » social sciences in criminology is the existential link that binds it to the law. It is as though, in medicine, there were a branch that dealt only with problems (diagnosis, treatment, prevention, etc.) arising out of the system of health insurance. (This is more or less the case in the field we call « public health »). In criminology, we essentially deal with problems so defined by the law, on the one hand, and « deal with » the administration of justice for minors or adults, on the other. These boundaries can be crossed, however, as evidenced by the numerous etiological, bio-psychological or socio-genetic theories on criminality, studies on the various forms of deviance, etc. Through these studies, certain criminologists have tried to alter the criminological issues inherited from the criminal law. The political intention of these studies was largely in the nature of criticism. Nevertheless, the strong main current of criminological thinking and research was influence by phenomena sanctioned by the criminal law and the mechanisms of the administration of justice, as well as by the enforcement of the law practiced by the agents of justice administration : the police, courts and correctional and preventive services.

It was important to remind our readers of these considerations when reading the present issue on law and justice. Each of the articles clearly documents this dependence of criminology on law and justice, giving numerous examples. For instance, what is the decisive factor in understanding the import of a certain crime or a certain public reaction to it ? Social class ? Genetic heritage ? Character ? Personality ? Dwelling place ? Family milieu ? No, it is the judgment of the Court of Appeal!

Although this dependency exists, there is, by all evidence, an important reciprocal influence between the criminological sciences

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and the law. It is exercised above all in the way the problems are defined. L. Laplante's article illustrates this very well. For example, the institutionalization of legal aid was demanded in the name of social justice by progressive elements of the Bar and the court; but without the marked change in the public's thinking encouraged by criminological agitation, the reform would perhaps never have been made. Today, thanks to this institution, it can no longer be said that there are two kinds of justice, one for the rich and one for the poor. Despite certain inauspicious signs of bureaucratization, legal aid is functioning to public satisfaction without engendering a consistently negative attitude on the part of lawyers in private practice. « Doctor » Laplante gives legal aid in Quebec a clean bill of health, but does not play down the challenge of the juxtaposition of a « liberal » law and a « bureaucratized » law. The fact that the one has not driven out the other is already, in itself, a remarkable result !

P. Robert points out to the reader who is not in the legal field the almost immutable setting in which the criminal is « made ». This epithet « criminal », this stigma will be used consistently before the court by both the lawyer for the defence and the public prosecutor, under the watchful eye of the magistrate, who interprets the law passed by Parliament. What later appears as a number in the judicial statistics, is another case to the clinical criminologist, or to the forensic psychiatrist, it is akin to a « patient » in the hands of specialists whose case, already intented for the penitentiary administration, is built up and defined by the judgment of the court. The spirit of the law, which is embodied in jurisprudence, the uncontested master of the common law, can be a major obstacle in the path of certain reforms. Thus, notes Robert, some judges hesitate to ask direct questions about the previous records of accused persons for fear of violating the principle of non-incrimination of witnesses heard in their own defence. Before such an attitude, how can one think of individualization of treatment based on the personality of the convicted person ? Notwithstanding, the most lasting influence the criminological sciences have exercised over the court's « process of making » criminals is the introduction of the pre-sentence report. Examination of the personality, a reform demanded ever since the positivists of the XIXth century, was the criterion for all reform inspired by criminology. This reform accentuated the importance of the person of the accused rather than that of the criminal nature of the act. The use that magistrates make of pre-sentence reports is the

best indication of a judicial practice either in the service of man or in the service of a purely objective law, denying the human factor. The neo-classic reaction, embodied in the « Safety and Liberty » legislation of the old French government and in most of the legislative reforms of the past few years in the western countries, seeks to restore a judicial practice based on the act to the detriment of the subjective element based on the person. The studies of G. Gallant and A. Parizeau give an account that should be of considerable concern. In use now for about ten years, pre-sentence reports are far from having played the role hoped for by the authors of the reform. The recourse of judges to these reports varies considerably from one jurisdiction to another. Here again, it is the principle of equality before the law that suffers most cruelly by these omissions, and these two studies should promote some self-criticism on the part of all parties involved.

The contribution of M. Brissette clearly illustrates one of the difficulties often mentioned (in particular in our issue No. 1, Volume XIV, 1981) in the incrimination of white collar crime. The denunciation of this kind of criminality, an infraction practiced chiefly by big business and which is akin to abuse of economic power, has been made many times in criminological research. We denounced it not only to satisfy our conception of social justice, but also in answer to our profound conviction that non-incrimination and the absence of sanctions for a whole series of acts damaging to the public is a denial of justice that is unacceptable. Judicial practice actually exonerates white collar crime by authorizing, on the grounds of professional activity, a deduction of the tax imposed on corporate bodies from their tax declaration. This is another example of the decisive role of the court in defining what is more or less « criminal » ! This same resistance to change by the juridic and legal milieus is illustrated by the outline given by J. Fortin on the activities of the Canadian Law Reform Commission. Greeted at its inception as the institutionalization of a permanent reform of the law, ten years later, the Commission finds itself with astonishingly little achieved, if not a negative accounting. In effect, although its studies and reform projects justify the hope held out by its creation, practically none of its proposals have been made into legislation. Fortin's quantitative account does not afford any answer as to what led to this lamentable state of things. The literature on crime policy will be considerably enriched the day research can throw some light on the reasons for this failure. In the meantime, anyone can propose his

own explanation of this additional proof of the difficulty of making any real changes in the law and in criminal judicial practice.

Finally, the verdict of Judge Bernard Grenier reflects the multitude of questions which obsess those who have the difficult mission of sentencing.

The cumulative index of our fifteen volumes, prepared by J. de Plaen, shows most eloquently the intellectual life and the organization of criminological research in our milieu. The intellectual life, first of all, because the fact that we concentrated of the analysis of the diverse indicators of the administration of justice reflected the dominant ideas of the time. It is the mechanisms of detection, of the adjudication and handling of cases that daily throw new light on criminality and challenge crime policy. On examining the index by subject, it can be seen that little escaped us in this regard. Perhaps the study of the police is incomplete. However, considering the numerous studies and publications we devoted to the police, this is not really an omission. Nonetheless, there is some question whether, after then years or so, we should not reintroduce studies on crime and the criminal by attaching more importance to works relating to them.

The stern realities of crime, over and above judicial screening, still remain. The recent study by the Quebec Government on armed robbery unquestionably proves this. Violence against persons, like the mass murders in Vancouver and Atlanta, creates a general feeling of insecurity among the public, a feeling whose importance with regard to the quality of life as well as crime policy is of the essence. The profiles of criminal activity in Quebec should warrant our attention even more in the future, without losing sight of the importance of the criminal justice system whose cardinal role is so well illustrated for us criminologists by the content of the present issue.

The index of authors includes almost eighty names; of these, two thirds revolve around the University of Montreal either as professors, researchers or graduates. We have been reproached from several sides, in a friendly way, of course, but nonetheless earnestly, for the « Montreal-centred » character of our publication. We have been highly aware of this accusation of ethnocentrism, a situation the English denounce as « inbreeding ». However, through the ICCC, we are an institution open to the world. Montreal crimonologists are known for activities that largely transcend political and linguistic barriers. How, then, explain this concentration ? The reason

is simple : on comparing the two indices, that of the names and that of the subjects, it will be seen that the latter reflects all the trends and orientations of research and almost all the philosophical schools of crime policy current in our discipline today. Far from specializing in disciplinary of ideological sectarianism, our Montreal crimonology reflects, imperfectly perhaps but effectively all the same, the many diverse approaches proper to this social science. Although the obvious insufficiencies in dealing with one or another particular subject are to be deplored, no dominant trend will be noted.

It would be wrong to see this observation as an expression of complacent self-satisfaction. The Editorial Committee realizes better than anyone the deficiencies in its editorial policy due to a large number of factors. We intend to enlarge our Committee by the addition of several persons whose experience and approach complement our own, but who are highly interested in the progress of crimonological research and in the reform of the administration of justice in our milieu.