

Book Review

CRIME IN AMERICA. By Ramsey Clark. Simon & Schuster, New York, N.Y., 1970. Pp. 346. \$6.95.

For a book that is said to "confront head-on the most intensely emotional and fear-charged issue of our domestic life,"¹ Ramsey Clark's *Crime in America* is a failure since it does no such thing. The jacket blurb promises a vitally important work spelling out the facts and diagnosing the roots of antisocial behavior and proposing specific measures that must be taken to eliminate crime. Yet, it does none of these things.

Too often Mr. Clark attempts to expose the facts by quoting statistics and to analyze the antisocial roots by asking rhetorical questions and putting everything on the shoulders of the poor. But one thing is certain: it has all been said somewhere before. There is nothing new, just old polemics dressed up in a campaign of attractive packaging accompanied by a host of effete arguments for familiar causes—the abolition of the death penalty, the legalization of marijuana, the outlawing of wiretapping and a hard look at the FBI. These questions sound so familiar, that it seems as though Mr. Clark were tossing his hat into the ring.²

Crime, as Ramsey Clark sees it, is a reflection of the character of our society. The mugger, the thief, the embezzler, the rapist are what they are because society drove them to commit that crime. "If we are to deal meaningfully with crime," Mr. Clark summarizes, then

what must be seen is the dehumanizing effect on the individual of slums, racism, ignorance and violence, of conception and impatience to fulfill rights, of poverty and unemployment and idleness, of generations of malnutrition, of congenital brain damage and parental neglect, of sickness and disease, of pollution, of decrepit, dirty, ugly, unsafe, overcrowded housing, of alcoholism and narcotics addiction, of avarice, anxiety, fear, hatred, helplessness and injustice.³

"Neglect, not permissiveness,"⁴ is to blame, he says, because we have failed to care for ourselves and our character. To illustrate this, the author cites the example of the kid across the street—the kid who did not start to run with the gang because he had too much liberty. He did it because we didn't love him enough. We all simply sat back and watched "and no one was truly surprised when, just back from the reformatory

¹ R. CLARK, *CRIME IN AMERICA*, jacket cover (1970) [hereinafter cited as CLARK].

² Recently, appearing on the Dick Cavett television program, Mr. Clark was asked by the host if he was considering running for the Presidency in 1972. Although his answer was at best non-committal, his intention can clearly be inferred.

³ CLARK, *supra* note 1, at 17.

⁴ *Id.* at 18.

again, he was arrested for murdering a store clerk while committing armed robbery.”⁵

This is illogical. When the boy across the street from me “merely” committed a robbery without killing anyone, everyone who knew him was outraged. Most who thought about it probably felt some degree of collective guilt simply because he was a fellow human being but no one came up with Mr. Clark’s answer.

The author likewise attempts to place a large part of the blame on poverty:

The basic solution for most crime is economic—homes, health, education, employment, beauty. If the law is to be enforced—and rights fulfilled for the poor—we must end poverty. Until we do, there will be no equal protection of the laws. To permit conditions that breed antisocial conduct to continue is our greatest crime. We pay dearly for it.⁶

This begs the question. Too much crime is committed by those who are not poverty stricken and too much by those whose crimes appear to have no connection with their poverty. With regard to these people, Mr. Clark should have inquired as to why they commit crimes, why they go out and knowingly violate the rights of others. Moreover, most poor people never commit a crime, possibly because many of the poverty stricken have higher moral standards than their wealthy counterparts.

Since, contrary to Mr. Clark’s idea, the main root of this nation’s crime problem apparently lies other than with the “poor,” there must be some yet untapped notion to be diagnosed. Crime does not begin with poverty, rather only *some* crime does. There is little doubt that even if the lot of the criminal poor were to be improved, their crimes, albeit in a vastly different form, would nevertheless continue and that some of the poor, no matter how abused, would never lower themselves to commit a crime. Perhaps poverty is a catalyst to some people and does in a proper setting “cause” them to commit crimes, but it is certainly not the only catalyst. There are, in all probability, other environments that just as directly “cause” crime. Mr. Clark would have done a greater service had he attempted to filter out these “causes,” instead of merely pinning everything on poverty.

Be that as it may, the author tries to prove his premise that poverty is at the root of all crime by the use of statistics. Although statistics are interesting in this regard, they are of little help. Throughout the book, Mr. Clark makes a mockery of the FBI crime statistics⁷ but he nevertheless

⁵ *Id.*

⁶ *Id.* at 43.

⁷ “If the crimes measured [by the FBI crime clock] occurred in the Virgin Islands the whole population would be dead of murder in three years, having been previously raped twice and robbed eighteen times.” *Id.* at 44-45.

employs them when they will serve his purpose. In his discussion of "The Mother of Crime" in chapter 4, he asks the reader to take a map of the city, "your city, any city" and mark the spot where the health is poorest, where life expectancy is lowest, where education is poorest, where the schools and buildings are oldest, where 16 percent are illiterate, where unemployment is highest, where the police are concentrated the most and finally where the incomes are the lowest. Voila! Without realizing it you have done it—you have circled the "answer." "Behold your city—you have marked the same places every time. Poverty, illness, injustice, idleness, ignorance, human misery and crime go together. That is the truth. We have known it all along."⁸ What the author does not "answer," however, is why a poor person robs, steals, cheats, rapes and takes dope. The reason, as has been stated above, is obvious: poverty by itself is not the answer.

In chapter 6, "Drugs: When Chemistry and Anxiety Meet," the author asks us "to explain the sense or the justice of the law's approach to marijuana to a group of teenagers."⁹ Such an attempt would no doubt be fruitless, because most teenagers could not come to any rational conclusions since they do not know all the facts. Likewise, few adults could either and for the same reason. Moreover, the author is no doubt in the same boat. He concludes that "[a]fter years of argument, evidence that marijuana is more harmful than cigarettes or whisky or that it naturally leads to the use of dangerous drugs is inconsequential" and that "[i]n the continued absence of such evidence, marijuana should be legalized."¹⁰

Such a conclusion is unwarranted. There is no question that marijuana is harmful, the only question is how harmful. Comparisons to alcohol or anything else are useless. For one thing, there are various strains and strengths of marijuana. Most of what is used in the United States is the weakest in the world. Other countries produce a strain that is much more powerful and capable of much more harm. One wonders with which strain the author feels our teenagers should be allowed to experiment. It is probably true that the scientists do not as yet know how one strain of marijuana will cause a group of ten people to react. Many say this will never be known, that the reaction of an individual depends upon his psychological makeup. This ignorance, however, hardly seems to be a rational basis upon which to permit people, especially America's youth, to experiment with a known harmful substance. Mr. Clark's efforts might be better spent in dealing with the problem of sentencing, correcting, and "rehabilitating" such offenders.

The book does have some worthwhile things to say about our correctional system. A few years ago most efforts seemed to focus upon reform

⁸ *Id.* at 66.

⁹ *Id.* at 96.

¹⁰ *Id.*

of police and courts. Reforms were unquestionably needed there, but too few took the time to look at what was happening to those convicted after they left the courtroom. Due largely to Chief Justice Burger, thankfully, more people are beginning to realize that sentencing, corrections and rehabilitation are not simply administrative matters that follow the trial.¹¹ Our corrections system does not function as adequately as it should. Experimentation and implementation are needed, and Mr. Clark points out a number of areas which appear promising.

He cites those jurisdictions that have gone to an indeterminate sentence in an effort to relieve a judge of the almost impossible duty of imposing a meaningful sentence. While the indeterminate sentence may not be the answer, it is likely a step in the right direction—putting the determination of rehabilitation in the hands of people trained to recognize it.

Work release programs and greater centralization of correctional facilities and activities are also discussed as much needed innovative steps. Although because of public apathy toward prison reform these ideas appear new, they are not. Nevertheless, they are efforts worth considering. Mr. Clark's book and the publicity that has attended its publication should at least spur more jurisdictions to experiment with them.

The chapter entitled "Courts and Prosecutors: Breakdown and Reform" failed to live up to expectations. What goes on in the courtroom attracts a great deal of the public's attention. For years, however, only a few laymen realized that the courtroom procedure was choking itself to death. Few realized this because few knew or cared to know. Although our trials are public, citizen visitation to the courtroom is rare; the general public participates only vicariously. Until recently, the whole system functioned in a shadow. Now, however, that is changing. Because of the number of recent notorious, tumultuous and protracted trials, the public is beginning to see why a simple burglary trial takes two or three days and why a case is not finalized for years. The system is archaic and it is asphyxiating itself. Action is clearly needed now.

Mr. Clark starts off on an interesting note in his discussion of judicial reform by advocating the removal of prosecutors from politics. He nonetheless gets sidetracked into name-calling against Attorney General John Mitchell, Jim Garrison, Clement Haynsworth, and G. Harold Carswell, to name a few. Along the way, however, he does mention areas of needed reform but adds little to what has already been said and written elsewhere. Unfortunately, the chapter never gets back to the really relevant subject, as the last few pages are used to defend the Warren Court, attack the "Rap Brown Statute" and ask innumerable questions concerning the Chicago Seven trial and its defendants.

¹¹ See *Interview with Chief Justice Warren E. Burger*, U.S. NEWS & WORLD RPT. 32 (Dec. 7, 1970).

Chapter 15, "Technology: The Promise and The Peril," is a good introduction to one of the largest areas of ignorance in the entire system.

There is no greater evidence of the total neglect of the criminal justice system than our failure to apply science to the solution of crime. America is devoted to science. We have sought and found solutions to many of humanity's greatest problems through science, yet we have scarcely begun to explore the potentials it holds for crime prevention.¹²

So true. The author points out that in most regards the criminal justice system operates as it did in the 19th century. As he correctly states, the methods of collecting criminal statistics used in this country are archaic, crime classifications are too diverse to be useful, too little is known about the criminal mind, and too much time is spent on developing police weapons which kill rather than stop their victim. The interesting aspect is, however, that in chapter 17, the author makes a case for turning away from one of the most effective technological innovations—wiretapping and eavesdropping.

Aside from the fact that Mr. Clark has probably once again stumbled over his own prejudices, this position evidences an internal inconsistency which is intellectually unsound. He paints a distorted picture of the wiretapping evil: "A petty game, far from the arena of criminal action and wasting valuable time, electronic surveillance demeans law enforcement by involving it in an activity no one respects."¹³

One fact which the author fails to recognize, however, is that crime is a dirty business. No one applauds the fact that most procedures for ferreting out crime do and must, to some degree, invade areas of privacy. Indeed, it would be ideal if the present system could detect crime and bring it to the bar without stepping on anyone's toes. Unfortunately, without a drastic change in human nature, it cannot. Wiretapping, with proper safeguards, is legal, constitutional and necessary, and has thus received the blessing of the Supreme Court.¹⁴ Until that Court rules otherwise, it is difficult to conceive of any good reason why wiretapping should not be used.

Mr. Clark's next topic of major significance is that regarding confessions and *Miranda v. Arizona*.¹⁵ Even before the book is opened, it is possible to predict the author's position on this important subject. Nevertheless, it is difficult to understand his reasoning. His segment on confessions is an apparent attempt to articulate that reasoning. Much of it, however, seems to be lost in hyperbole. Perhaps it would have been better if the au-

¹² CLARK, *supra* note 1, at 261.

¹³ *Id.* at 289.

¹⁴ See, e.g., *Katz v. United States*, 389 U.S. 347 (1967); *Osborn v. United States*, 385 U.S. 323 (1966). See also *United States v. White*, 91 S. Ct. 1122 (1971).

¹⁵ 384 U.S. 436 (1966).

thor had started with a more relevant premise. From a gripping discussion of "torture, treachery and lies" through the ages, police third degree, law enforcement trickery, and people crushed by the state's insistence that they testify against themselves, the author's logic takes him directly into a discussion of *Miranda*—a case which outlaws a purely voluntary confession if, by chance, the suspect was not first warned, or, more properly, informed, of his constitutional rights.¹⁶ Mr. Clark attempts to justify *Miranda* by stating that "[a]ll *Miranda* means is that we must not take advantage of the poor, the ignorant and the distracted—that government will be fair and has self-confidence."¹⁷

If that was all *Miranda* meant there would be no problem. The problem, however, is that it is not all it has been construed to mean. Moreover, if Mr. Clark believes that the main basis of the opposition to *Miranda* is that of permitting a suspect the advice of counsel, he is wrong. The opposition's argument is not that a suspect should not be permitted the advice an attorney, but that a confession should not be thrown out simply because an officer did not *inform* the suspect that he could have the advice of an attorney when the suspect *already knew* that he had such a right. That is what *Miranda* does in the real, everyday world, and it does it every day. Contrary to Ramsey Clark's apparent view that the only issue is whether a suspect can have a lawyer, the real issue is whether society must be penalized for not telling a suspect something he already knows. Mr. Clark has obviously never attempted to have a confession admitted into evidence. He should, for it might surprise him to know that many confessions are lost not because the suspect did not *know* his rights, but simply because the officer neglected to *inform* him.

The author's discussion on this point again illustrates his fetish for labels; the rich versus the poor. The following passage demonstrates this very well. "Experienced criminals, gang members and Mafiosi" know their rights; the poor do not—*Miranda* fills the gap. "Can it be that law enforcement is unable to control crime if it must advise the poor and the ignorant of rights the rich, the educated and the professional criminal automatically enjoy."¹⁸ Notwithstanding Mr. Clark's prejudices, this argument is unpersuasive for two reasons. It might surprise him to know that first of all most of the "poor" do know their rights and, secondly, that even the confession of the rich man and the professional criminal is lost if the officer does not inform them of the rights which they already knew.

He tops everything off by citing studies which conclude either that *Miranda* makes no difference in law enforcement¹⁹ or that *Miranda* ac-

¹⁶ In this regard, the Supreme Court's recent edict, *Harris v. New York*, 90 S. Ct. 643 (1971), that a confession obtained in violation of *Miranda* is nevertheless admissible for impeachment purposes is very encouraging.

¹⁷ CLARK, *supra* note 1, at 320.

¹⁸ *Id.* at 319-20.

¹⁹ *Id.* at 323 citing Project, *Interrogation in New Haven: The Impact of Miranda*, 76 YALE L.J. 1519 (1967).

tually increased the number of confessions.²⁰ Needless to say, these studies are inconclusive. Of course *Miranda* made a difference in law enforcement and it is extremely difficult to believe that it did not decrease the number of confessions. The only real question is how much. The author also naively suggests that many attorneys will have their clients make statements. The author should descend into the arena. He would soon find out that any lawyer effectively representing his client is not going to let him say anything.

It is true, as Mr. Clark points out, that *Miranda* has indirectly helped law enforcement. It has forced some departments, which should have done so long ago, to concentrate more on scientific evidence and detection. Such evidence, however, will never take the place of a confession. Some cases cannot be solved except by confessions; others are immeasurably strengthened by the confession. Convictions are not, as the author would have you believe, sure things. Less than half of the people who go to trial are convicted. A confession is the best evidence the state can have—ask any juror. Moreover, as was pointed out above, he would prevent the most viable alternative to the confession—wiretapping—from being used. Again, Mr. Clark's inconsistency evidences unsound reasoning.

The last chapter in the book deals with the death penalty. As might be expected, Mr. Clark is very much against such punishment. He sees it as barbaric, unnecessary, unjust and unproductive. It does not deter, he says, rather it kills innocent people, it lengthens appeals, it kills more blacks than whites, it is inconsistent with the purposes of modern penology (whatever they are), and it demeans life.

H. L. Mencken once said that America does not know whether the death penalty works because it has never tried it. His point, of course, was that although many people are sentenced to death, only a tiny percentage are ever executed. The deterrent effect must come from the execution not the sentencing. If no one is executed and it is understood that a death sentence is not that at all, it is difficult to see how anyone can come to a conclusion about its deterrent affect. The only figure that seems important is one figure that will never be known—*i.e.*, how many would-be murderers have not killed because of the death penalty. The statistics that are available and which Mr. Clark cites, do not go far enough. Face-tiously, it could be argued that the death penalty has been a great deterrent in Arizona. Train robbery is punishable in Arizona by death²¹ and we have not had a train robbery since 1912. Mr. Clark's statistics are as inconclusive as this one.

The one argument against death which does merit some thought is that criminals convicted of murder should be studied rather than killed.

²⁰ CLARK, *supra* note 1, at 323.

²¹ ARIZ. REV. STAT. ANN. § 13-644 (1956).

At this point, our accumulated knowledge of how a criminal mind works could be placed in a Mason jar. If we had the opportunity and the manpower to study the Rosenbergs, Albert Fish and Bruno Hauptman to name a few, we might have been well on our way to filling up a case of Mason jars. But executions have deprived the authorities of those subjects. One of the problems, of course, has been the usual alternative to the death sentence—life imprisonment. "Life" does not mean life. It may only mean a few years, hardly enough time to conduct a worthwhile study. Until that changes, the death penalty should not be abolished.²²

The author ends his chapter on the death penalty with a plea to adhere to the biblical mandate, "Thou shalt not kill." Since it is taken out of context, it is very misleading. Although the Hebrews were told not to kill, in the same breath they were also told, "Whoever strikes a man so that he dies shall be put to death." "If a man wilfully attacks another to kill him treacherously, you shall take him from my altar that he may die."²³ Ramsey Clark concludes on a hopeful note:

Tolerance, patience, humaneness and a gentle untiring hand will be essential to avoid division. Too, we must create ways for the exchange of views among all of our people. Agencies of criminal justice must be fair and effective if they are to hold us together in the turbulence of the years ahead until we have removed the underlying causes of crime in America. Our laws must provide moral leadership and cannot therefore be themselves immoral. Our purpose as a people must have a clear and generous meaning of equality for all. We must strive to fulfill the obligations of a great nation, to achieve needed reforms, to offer fulfillment, human dignity and reverence for life.

Guided by reason, America will soar on wings of humane concern. Passion is the vital spring to human action. Fertilized by ideas, passion alone has the power to activate millions. America's passion must be justice.²⁴

While we can agree with Mr. Clark that solving the problem of crime in America "is only a question of will,"²⁵ Clark's unbridled optimism that this solution is attainable is unwarranted.

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²² In *McGautha v. California*, 39 U.S.L.W. 4529 (U.S. May 3, 1971), the Supreme Court held that the due process clause of the fourteenth amendment does not bar states from allowing juries absolute discretion to impose the death penalty and that the fifth amendment privilege against self-incrimination does not prohibit states from providing for a single trial for the resolution of guilt and punishment issues in capital cases.

²³ *Exodus* 21:12 & 14.

²⁴ CLARK, *supra* note 1, at 346.

²⁵ *Id.* at 341.

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