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Reviews

Book Review

Homicide and the Politics of Law Reform

by Jeremy Horder

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(hardback)

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Jeremy Horder's fascinating book about the process of reform of the law of homicide has two purposes. The first is to tell the story of the reform of the law of homicide in England and Wales. The second is to critique the process of reform, and in particular the degree to which the process may be hijacked by pressure and interest groups and the various contributions of the 'elite'.

Horder is a professor of criminal law at King's College London and was a Law Commissioner for England and Wales from 2005 to 2010. His story begins with the appointment of the 1819 Select Committee on Criminal Laws. The appointment itself is worthy of note, not least because the Bill creating the review represented a defeat for the government. In 1819 there were thought to be some 200 offences that would result in a capital sentence. The job of the 1819 committee was to consider the effectiveness of hanging so many non-violent felons — or not, since in many cases, juries were known to wrongly acquit in the face of a mandatory death sentence.

More important, to Horder, was the approach adopted by the Select Committee. Not only did the committee membership exclude any judges, but no evidence was taken from any. According to Horder, the approach included forgoing the easy option of

consulting the great and the good. Instead the Committee decided to proceed by an investigation of public opinion, the witnesses being 'carefully selected from different social classes and professions.'

Quoting legal historian Leon Radzinowicz, Horder says most of the 61 witnesses were 'Shopkeepers and tradesmen, merchants and manufacturers, insurance brokers and brokers to merchants, and bankers,' Witnesses also included 'magistrates, clerks to magistrates, a solicitor, two prison chaplains, and two gaol keepers.' Not only is this moment in English legal history the start of Horder's story, it is also provides the beginning of the argument that law reform seldom takes full account of public opinion. For the 1819 study was, says Horder, the last time public consultation was a part of any law reforms for 150 years. To Horder, this early attempt to establish an independent criminal law reform body committed to public engagement 'withered on the vine.'

Another development in law reform prevailing from 1819 being, as Horder suggests, the ongoing dynamic between codification of the law in the face of what he calls the traditional common law trend. 'Common law', of course, refers to that law which is, in effect, judge-made in that decisions of the higher courts in cases where there are no precedents or statutory rules to refer to, are legally binding on all other courts. The offence of Murder, for instance, is still defined by common law in England and Wales, even though a great deal of the law relating to homicide offences has over the past two centuries been codified in detailed Acts of Parliament.

In advocating greater public input into law reform, Horder is quick to contrast what he calls genuine contribution from what he sees as the rantings of the tabloid editorial masquerading as public opinion. He is also at pains to point out the limits of experts. 'I conclude then, that homicide law reform is not best left in the hands of scholarly experts, any more than it is best left to judges.'

Although 'Scholarly legal experts come closest to bridging the legitimacy gap between, on the one hand, an enfranchised but inadequately (or wrongly) informed populace, and on the other hand, themselves, government, and the ruling elite, when they subject law reform options to methodologically sound empirical testing in the public domain.'

By this he presumably means researchers going out among the public and testing new ideas for law reform in that public arena.

Leaping forward to the present day, when Horder himself was a Law Commissioner, Horder criticises the Ministry of Justice for wasting resources repeating the consultation exercise in 2009 with largely the same interest groups initially consulted by the Law Commissioners, and a relatively small group of people at that. This, to Horder, amounts to a betrayal of the ideal of public consultation in good faith.

So, on the one hand, there is not enough public consultation and, on the other hand, there is often too much of the wrong kind of public consultation. Unfortunately there is little in the text to suggest what the right kind of public consultation is or should be. Speaking as a non-lawyer (and for that matter a non-scholar) I have

to say that I found Horder's arguments hard to follow. There seems to be little organisation to the narrative which has a tendency to switch from one thing to another with little care for the reader.

The book, however, does cover some important ground such as consideration of the boundaries between various homicide offences, joint criminal ventures, the importance of the offence of corporate manslaughter and development of defences and partial defences to murder.

In a chapter on the Law Commission's proposed three-tier structure for homicide, Horder provides detailed discussion and argument as to how and why the current two-tier structure of murder and manslaughter should be amended. This is, in itself, a complex matter to unravel and, unfortunately, Horder's narrative does not always help. His arguments are often contradictory. For instance, on the question of the codification of homicide law, Horder states 'Clearly wholesale codification of the law of homicide would not, as such be a bad thing. However, it is an open question whether codified law necessarily equals better or even simpler law.' How can wholesale codification of homicide law clearly not be a bad thing if the question of codification is still open?

Frustratingly, neither this nor many other important questions are answered in the book which lacks a concluding chapter to summarise the arguments. Perhaps this is a good thing, as the debate about the reform of homicide law continues. Overall, the book is a worthwhile read to anyone with an interest in this fast-developing area of criminal law. Not only does it provide a historical perspective on the development of the law of homicide in England and Wales, it also touches on a wide range of viewpoints as to the current and future need to reform homicide

law. In doing so, the book also advocates a greater involvement of the public at large in the law reform process. In order to achieve this requires, as Horder suggests, not just a genuine will to involve the public, but also an effective methodology for doing so.

Ray Taylor is a prison officer at HMP Pentonville in London.

Book Review

Psychopathy and Law: a Practitioner's Guide

by Helinä Häkkänen-Nyholm and Jan-Olof Nyholm

Publisher: Wiley-Blackwell (2012)

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(paperback)

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'Despite psychopathy being one of the most powerful predictors of violent and non-violent criminal recidivism .. psychopathic offenders are 2.5 times more likely than non-psychopathic offenders to be successful in their applications for conditional release.'

This stark reminder of just how dangerous and manipulative psychopaths can be should perhaps be read aloud before considering any kind of custodial or pre-release risk assessment. The quote is taken from the tenth chapter of *Psychopathy and Law: a Practitioner's Guide*. But don't be put off by the title, which is somewhat misleading, particularly to a UK audience, used to lawyers being experts in law and avoiding expertise in other disciplines. In the USA, this work will no doubt be welcomed by any legal practitioner faced with the prospect of working on a case where a diagnosis of psychopathic personality disorder

is a factor. This valuable and insightful work might better have been titled *Psychopathy in a Forensic Setting*, or some such. Regardless of the title, this book provides some remarkable insight into the shady world of the psychopath. A collection of chapters from eminent specialists in the field, *Psychopathy and Law* reviews a wide range of new research and thinking on the subject as well as building on some of the established work in the field.

Edited by Finnish wife and husband team Helinä Häkkänen-Nyholm and Jan-Olof Nyholm, *Psychopathy and Law* brings together 12 essays from some of the top specialists around the world. Much of the content builds on the work of R.D.Hare, who is quoted in the editors' introduction as stating that more than half of all violent crime is committed by psychopathic individuals. A good deal of reference is also made, by several contributors, to Hare's Revised Psychopathic Check List (PCL-R) and its use as a diagnostic instrument. The editors state their intention of introducing practitioners (legal and clinical, one presumes) to the core areas of psychopathy and, for researchers, to provide the latest empirical information and case studies. The book also includes some ground breaking work on the interpersonal behaviour of the psychopathic individual in organised crime, war crimes and within the family environment. The editors, however, are understating the value of this work, which goes way beyond offering an introduction to the subject. Indeed, to a layperson, the reading is hard going, but worth the effort. This work introduces considerable new thinking and new research while building on existing scientific knowledge of the subject.

The opening contribution, by American academics Vitacco,

Lishner and Neumann, covers the all important issue of assessment and use of psychopathic tests in the US Courts, particularly in relation to the plea of insanity (the English version of which, incidentally, is currently under review by the UK Law Commission). The contributors make a clear declaration at the outset, that prevailing research does not support the use of psychopathy to mitigate *mens rea*. Indeed, they go on to express the view that, in some circumstances, evidence of psychopathy could warrant more stringent sanctions, given the higher risk of violence and recidivism. The chapter offers cautionary advice about the misuse of PCL measures and misunderstanding of the limitations of such instruments. For instance, according to the contributors, high scores on PCL measures do not always indicate a high risk of violent offending and that, conversely, low PCL scores do not mean low risk of violence and, furthermore, that presence of psychopathy cannot always be taken as a predictor of violent behaviour at all. A greater depth of knowledge is required to make the link between PCL measures and the likelihood of violent behaviour in specific circumstances.

Several contributors go deeper into the use of PCL and other instruments. Chapter Three, by Patrick, Venables and Skeem of California and Florida Universities, considers research into the relationship between PCL and other measures of psychopathy and evidence of neuroanatomic abnormalities, as well as dealing with others aspects of structural and functional neuroimaging studies. The contributors go on to assess the extent to which current knowledge about brain function in psychopathy can add value to (or replace) instruments such as the PCL-R. The answer it seems, is not much and, it is suggested, attempts to apply current neuroscientific

knowledge about psychopathy to legal decisions about criminal responsibility and sentencing are premature.

One of the problems of dealing with psychopathy is that it tends to be recognised only in its extreme manifestations. Thus many, if not most, psychopaths in custody and in society at large, go unnoticed and undiagnosed. The not surprising conclusion is that more work needs to be done to develop the science in this area and that this could be of considerable value in developing effective treatments and in combating 'entrenched and exaggerated therapeutic pessimism about psychopathy.'

Baskin-Summers and Newman, of the University of Wisconsin-Madison, are also concerned with theories of culpability and post-release risk. They touch on the question of treatments, with a special focus on work to address skills deficits specific to psychopaths, arguing that behavioural and cognitive treatments are ineffective at best, counter-productive at worst. They cite evidence to suggest that such treatment sometimes make psychopaths worse, for instance by presenting greater opportunities to manipulate and deceive others in group therapy. The contributors also remind us how common psychopathy is, affecting some 1 per cent of the general population and 25 per cent of male prisoners.

A revealing chapter — co-authored by Caroline Logan of Greater Manchester West Mental Health Trust and Ghitta Weizmann-Henelius of Turku, Finland Abo Akademi University — tackles the vexed question of psychopathy in women. As they note, although there is some literature on women and psychopathy, there is a tendency to examine the construct as defined in men, which begs the question: is psychopathy as prevalent among women as among

men and does psychopathy manifest itself in the same way with women as with men? Not only does this bias lead to misdiagnosis of psychopathy among women, it is also possible, argue the authors, that important aspects of the core construct of psychopathy may be missed. 'A pre-occupation with descriptive features typical of the expression of the disorder in men but less so in women, has been a distraction from understanding the form of the core pathology.' Part of the problem is that currently available instruments such as PCL-R do not help in diagnosis of women psychopaths. The diagnostic threshold, above which the PCL-R is taken to indicate psychopathic personality disorder has not been established for women. A related problem exists in dealing with psychopathic features in adolescents and this is the theme of Nina Lindberg's contribution. Lindberg, from the Helsinki University Central Hospital Finland, deals with the relationship between psychopathic traits in childhood and adolescence with conduct disorder and antisocial personality disorder.

Further chapters deal with the more familiar territory of psychopathy and violence and psychopathy and predatory violence. More specific work on violence is provided by the joint editors, looking at psychopathy in economic crime, organised crime and war crimes. They include several case studies to illustrate how psychopaths are able to maintain control of violent criminal organisations and one particular study of Serbian war-criminal Ratko Mladic.

Julia Shaw and Stephen Porter of the University of British Columbia-Okanagan, take up the question of psychopathy and the criminal career trajectory, asking whether psychopathy is stable over time. They deal with some pertinent issues such as the

recidivism risk for violent psychopathic offenders, noting that, in one study of offenders in a forensic psychiatric unit, 78 per cent of individuals scoring high on the PCL Screening Version were reconvicted, 53 per cent for a violent crime. In a chapter on psychopathy in prisons, Hannu Lauerma, of the University of Turku in Finland, discusses the many challenges that psychopathic prisoners create and cause for prison authorities, including attempting to form relationships with prison staff, bargaining with prison managers and making threats to achieve their goals. Coverage includes measures that can be taken to protect against the many harms that can be caused by psychopaths in prisons.

Psychopathy is not often thought of in the context of family relationships and family proceedings, which is why the chapter on the subject by Helinä Häkkänen-Nyholm is particularly fascinating. She deals with issues such as psychopathy in intimate relationships, the effect of psychopathy on parenthood, and lists a number of case studies. In one, an unsuspecting husband is shocked to be confronted by his wife's unfaithfulness. The wife has been seeing one of his work colleagues and has boasted to friends about her antics, which include having sex with two different men within an hour without either of them knowing. She fails to understand her husband's objections but, by way of apology, buys him two pairs of underpants from a market stall.

The final chapter in this book is a joint contribution from co-authors Nyholm, who tackle the tricky problem of interpersonal aspects and interviewing psychopaths. As anyone who has dealt with psychopaths will realise, interviewing can be problematic. Given the manipulative, threatening and deceiving traits

indicative of psychopathy, a great deal of care is needed, not least because of the risk of a violent outburst, particularly if the purpose of the interview is to discover an aspect of deception. A psychopath will typically lose his cool and drop the superficial charm the moment that it has been made clear that the veil of deceit has been lifted. The chapter has several case studies of interviews with psychopaths and concludes with a list of 11 practical tips for interviewing psychopathic individuals. It would be worth buying the book, just for this essential guide to interaction with anyone who might show any signs of psychopathic personality disorder. Greater appreciation of the risks posed by psychopaths could prevent many harms and even save lives. To conclude, I would say that *Psychopathy and Law: a Practitioner's Guide* makes fascinating, but not easy, reading. It considers some of the less obvious aspects of the disorder as well as tackling some of the more familiar themes in far-reaching narrative. It reviews much of the current thinking on the subject and must surely add to the pool of knowledge in this difficult area. Although ostensibly aimed at lawyers and clinicians, the scope of the work extends well beyond this limited audience and would be of immense value to anyone who deals with psychopaths in forensic clinical settings, in custody, or in the community at large, or who has an interest in knowing more about psychopathy. Although described as an introduction to the subject, it is as much of use to those with considerable knowledge of the area already as it is to the novice. A valuable collection and essential reading for those with a need to know.

Ray Taylor is a prison officer at HMP Pentonville.

Book Review

Electronically monitored punishment: International and critical perspectives

Edited by Mike Nellis, Kristel

Beyens and Dan Kaminski

Publisher: Routledge (2013)

ISBN: 978-1-84392-273-5

(hardback)

Price: £80.00 (hardback)

Electronic monitoring is a form of punishment that has captured popular imagination. It is both modern and post-modern in the way that it encapsulates both the expanding web of information technology in everyday lives and the spreading of surveillance and penalty beyond prisons. It feels, to some degree, like science fiction come to life. This in-depth book goes beyond the imaginary and captures the real experience of electronic monitoring around the world.

The book is an international collaboration drawn together by Mike Nellis, Professor at University of Strathclyde, Kristel Beyens Professor at Vrije Universiteit Brussel, Belgium, and Dan Kaminski, Professor at University of Louvain-la-Neuve, Belgium. The contributors are drawn from four continents including Europe, Asia, North America and Australasia.

The largest part of the book is dedicated to nine chapters that offer detailed analysis of the introduction, development and future prospects of electronic monitoring in eleven jurisdictions. This is a detailed and deeply rewarding exercise. It might be assumed that electronic monitoring is a globalised form of punishment, and indeed it has been adopted in over 30 different countries. However, the chapters in this book illustrate that its precise form, contours and practices vary from locality to locality. Rather than being a unitary entity, electronic monitoring has been adopted in

various technical forms, such as static monitoring from a fixed point monitor, voice recognition, GPS tracking and combined technologies that also incorporate additional features such as alcohol testing. The uses to which monitoring is put also vary, including: pre-trial bail; stand along community punishment; temporary release and home leave; early release from prison; and, surveillance of high risk individuals. The extent to which this has been adopted and its integration with existing criminal justice practices is also variable. Together these chapters confirm that electronic monitoring is a globalised practice but also illustrate that there is an inter-relationship with local institutions, cultures and contexts that shape the ways in which this is incorporated in particular states.

The second section of the book offers four chapters that address critical themes. These include: the ethical challenges of electronic monitoring; the involvement of commercial organisations; the experience of staff and offenders; and evaluative research. These are all high quality pieces that offer challenging and illuminating perspectives.

This book is an outstanding contribution to the growing body of work on electronic monitoring. In terms of both the themes addressed and the geographic reach, it is an ambitious undertaking, which is impressively realised. *Electronically monitored punishment* is an essential resource to anyone with a scholarly or professional interest in practices and development of electronic monitoring.

Dr Jamie Bennett is Governor of HMP Grendon and Springhill.

Book Review

Alcohol-related violence: Prevention and treatment

Edited by Mary McMurrin

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(2012)

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(paperback)

Mary McMurrin is currently Professor at the Institute of Mental Health, University of Nottingham. During her career she has spent considerable time working with clients in both prison and secure forensic facilities, including 10 years working as a psychologist at HM YOI Glen Parva. Her specialism's lie in the treatment of individuals with personality disorder and the assessment and treatment of individuals who suffer from alcohol related aggression and violence. This book is a collection of essays from some of the world's most established practitioners in this field.

The book is aimed at practitioners who deliver services to violent offenders, with implications for current treatment models and practices associated with harm minimisation in a wide range of settings from barrooms to families and individual therapy.

This is definitely a book about better 'prevention', and not just a social commentary on a centuries old problem. The subject is examined in relation to interagency working, policy, policing, and the creation of safer environments. Detailed articles are included on specific treatments for perpetrators of violence in the community and prisons, as well as the varying circumstances under which the harm manifests itself including intimate partner violence and sexual violence. There is coverage of specialist groups such as those with intellectual disability, dual diagnosis and perpetrators at the wheel of a vehicle, as well as developmental

issues in adolescence and gender differences.

There are a number of articles associated with personality and development of patterns of behaviour associated with alcohol abuse and subsequent violent behaviour. In particular there is examination of the profound impact of early alcohol abuse on later development, and the compounding effect of slowed maturation and loss of self-control and inhibition control as well as impulsivity. Of course for many, further exposure to alcohol simply compounds the deficits that already exist.

A major problem in our understanding of this area is the difficulty in accessing 'real information'. Clients are rarely if ever accessible when experiencing acute episodes, and our understanding of events is subject to variances that inevitably occur in a field which is subject to the judgements of victims and perpetrators and wildly varying degrees of interpretation. In one chapter, Dingwall gives the interesting illustration: 'a study of hospital admissions for alcohol-related violence in South Wales found that 30 per cent of those admitted suffered serious injuries..and a glass bottle had been used in 10 per cent of cases.. the(se) statistics throw doubt on the claim that no injuries were caused by glass bottles in the British Crime Survey analysis.' In any case there is underreporting of alcohol associated violence (only about 56 per cent cases are ever reported) and far fewer cases lead to prosecution. The book describes how there is little evidence that policies which rely on deterrence or punishment have impacted positively on the levels of alcohol related violence.

The darkest point in alcohol related violence is undoubtedly the impact on families and children. It is also the area which is most hidden.

Estimates from alcohol concerns suggest that between 900,000 and 1.4 million live with a parent with a serious alcohol problem. Other studies indicate that as many as 3.5 million UK children could be living with at least one parent with some sort of alcohol problem. Forrester and Glynn argue that this large number rather than energising society has the impact of providing barriers to engagement largely through ambivalence. There may be recognition of the need to change but little motivation or commitment to make this happen, often the focus diverting to the 'social' dependence and perceived benefits that alcohol brings. More importantly interventions that have been 'popular' such as confrontational or educational therapy actually tend to make drinking worse. Other interventions (particularly those that involve the victim being isolated) can also be risky — a key time for domestic violence occurs after she has left her partner.

Disappointingly most contributors conclude that there is little evidence supporting the

effectiveness of any intervention aimed at reducing violence from men, in the community at least, at the same time risks increase for the family of men in therapy. And where alcohol use is related to violence it is not appropriate for men to attend alcohol treatment without their perpetration of domestic abuse being addressed. Equally treatment programmes for violent men have generally poor outcomes. There is debate about why this may be the case: inconsistent or ineffective programme delivery, inappropriate treatment milieu or just high dropout rates. Conversely programmes that are client centred and take a more holistic approach to treatment are showing some promise. These programmes are empathetic rather than challenging and support more general research in family therapy. The conclusion: interventions need to focus on wider issues for both perpetrator and (potential) victims.

On a positive note some studies have shown more promising results for treatment of inter-

partner violence using therapeutic models based on couples therapy and 'sobriety contracts', where the family are involved in the treatment process rather than external to it. This seems to hold true even where partner violence was not specifically addressed as part of the treatment. Similarly motivational interviewing with probation clients seemed to show positive results in at least half of the studies reviewed by McMurrin, and some very new work with those in custody shows similar positive outcomes. The lessons seem to be that a more targeted approach using specific treatment methods whilst recognising the risks involved is the way forward in this developing area of work.

Overall a well written and researched piece of work, which brings together current best practice and knowledge of what does and doesn't work. Recommended reading for practitioners and providers of services.

Steve Hall, *Serco New Zealand*.