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The Sex Paradox (An Analytical Survey of Sex and the Law in the United States Today). by Isabel Drummond.

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THE SEX PARADOX (AN ANALYTICAL SURVEY OF SEX AND THE LAW IN THE UNITED STATES TODAY). By Isabel Drummond. New York: G. P. Putnam's Sons. 1953 Pp. 369. \$5.00.

The Sex Paradox is the product of a lawyer whose previously published volumes have been *Getting a Divorce, Corporate Resolutions* and *Corporate Resolutions, Revised Edition*. We are told by the publishers that the author "spent several years gathering material for *The Sex Paradox*, and [that] while her manuscript was in preparation . . . interviewed and consulted with over 150 experts on the subject of sex and sex offenses . . . throughout the United States." The magnitude of such an effort appears out of all proportion to the end result—though it must be said that the book has a definite although limited usefulness, and that it significantly complements recent literature on the subject.

The Sex Paradox begins with a "Historical and Anthropological Survey" of sex attitudes which fails to provide significant new insights. An occasional challenge to traditional thinking enlivens the presentation. It notes, for example, that "[as] Christianity progressed so did the trend toward sexual perversion,"¹ but the observation is not sufficiently developed to be meaningful.

A chapter on "Sex Motivated Murder and Psychopathic Laws" faces the revenge motive inherent in most "psychopathic laws" and in the general legal attitude toward the sex offender with greater clarity and directness than many a comparable work by a psychiatrist.² The line of analysis is, of course, familiar:

Members of the social group fear their own criminal impulses which they suppress and which the criminal openly expresses. Thus they both fear and envy him and therefore cannot refrain from being vindictive.³

An apparent lack of knowledge concerning up-to-date psychiatric development results in the adoption of spurious sources of medical enlightenment productive of such useless tags as "pathological personality" and "psychopath"⁴ as the center of much misleading medical discussion.⁵

The chapter is at least partially redeemed by the best short summary of the special legislation enacted against the sexual

1. DRUMMOND, *THE SEX PARADOX* 10 (1953).

2. See, e. g., OVERHOLSER, *THE PSYCHIATRIST AND THE LAW* (1953).

3. As quoted, DRUMMOND, *supra* note 1, at 38.

4. *Id.* at 40.

5. *Id.* at 40-41, 48, 64-65, 69, 76-77. The author does, however, show awareness of the rejection of these tags by some psychiatric schools. See, e. g., *id.* at 64-65.

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offender in more than a fourth of the states as well as in the District of Columbia which has been encountered by this reviewer. It shows occasionally greater realism in its evaluation of psychiatric administrative practice than many a psychiatrist's report and is distinctly gratifying in its appreciation of the emerging problems of civil liberties. Thus it notes that under the "truly indeterminate" commitment law of New York, psychiatric administrative responsibility "is grave indeed in view of the present limited psychiatric knowledge and the unreliability of psychiatric prognosis, if not diagnosis, together with the existing uncertainty in regard to treatment methods. Whether in the cases within the law's purview there is justification under such circumstances, for more prolonged detention than is meted out to other convicts is questionable and will doubtless furnish ground for legal attack."⁶

It notes, too, the potential for a wide range of abuses inherent in much sex legislation and projected legislation:

. . . no one can count on any emotional privacy or freedom from suspicion and attack when anybody can cite anybody into court . . . as a psychopathic suspect. And what a convenient and easy means it offers to those . . . who bear a grudge or . . . want to get control of money or property of another or during a housing shortage, even the apartment of another, to dispose of the 'undesirable' individual who is in the way.⁷

The absence of legislation in certain areas of psychiatric practice, just as much as the wrong kind of legislation, is realistically viewed as an occasional or potential source of the infringement of individual rights. Thus the author points to the promiscuous psychiatric use of electric shock treatment⁸ and the prefrontal lobotomy⁹ as not only a matter of medical concern, but as significantly one of civil liberties. Lobotomy operations require particularly urgent restraint by effective legislation.

The need for adoption of legislation against promiscuous use of the operation by public institutions to which court commitments are sent is fortified by the glaring fact that lobotomy

6. *Id.* at 51-52, Cf. Bensing, *A Comparative Study of American Sex Statutes*, 42 J. CRIM. L. & CRIMINOLOGY 57 (1951).

7. DRUMMOND, *THE SEX PARADOX* 58 (1953).

8. *Id.* at 81. Courts have provided scant, if any, relief against the existing abuse of electric shock "therapy". Psychiatrists, administering such "treatment" without consent have not infrequently been shielded by the assertion of an emergency as justification. See, e. g., *Farber v. Olkon*, 146 P. 2d 710 (Cal. Civ. App. 1952). Unduly high standards of proof have kept too many patients from recovering for physical injuries sustained in the course of electric shock "therapy". See, e. g. *O'Rourke v. Halcyon Rest*, 281 App. Div. 838, 118 N. Y. S. 2d 693 (2d Dep't 1953).

9. DRUMMOND, *THE SEX PARADOX* 81-82 (1953).

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could readily be used as a satisfactory means of controlling obstreperous inmates who are a nuisance to prison wardens and guards, which the emotionally and mentally deranged admittedly are.¹⁰

The "voice of caution" suggests indeed that the law interpose a "prior restraint" against the discretionary psychiatric transformation of a man into a "human vegetable."

If for no other reason, *The Sex Paradox* must be commended for its successful use of the perspective of political and civil rights in its survey of law and psychiatry in this area. It is altogether too rare a phenomenon in this field to escape notice.

A chapter devoted to the subjects of "Rape and Incest" affords a good description of the evolving legal doctrine upon this subject and provides a convincing showing of the disparity between existing punishments for those crimes throughout the forty-eight states. It further provides effective documentation of Lord Hale's observation that accusations of sex crimes can be easily made, are hard to be proved and "harder to be defended by the party accused though ever so innocent."¹¹

The chapter on "Sodomy, Exhibitionism and Acts 'Contrary to Nature'" offers a standard background of general clinical knowledge to the lawyer which, although generally reliable, appears occasionally oversimplified. Here the author accurately attributes many of the antiquated legal attitudes in this field to the canon law, inherited by the common law from ecclesiastical courts. This is followed in turn by a convincing showing of the disparity between existing standards of punishment for such crimes (including many which Jeremy Bentham had labelled "imaginary offences," i. e., acts which produce no real evil but which prejudice, mistake, or the ascetic principle have caused to be regarded as offences)¹² throughout the forty-eight states. It does well to point out that contemporary punitive attitudes in this field are countertherapeutic in that they tend to the advancement, rather than the diminution of existing deviations:

For the sexual deviant, . . . confinement and idleness in themselves hinder recuperation . . . Further, neurotic disturbances are bred as well as enhanced, by the emotional strains and stresses inherent in prison life . . .¹³

10. *Id.* at 82.

11. HALE, PLEAS OF THE CROWN 634 (1736).

12. DRUMMOND, THE SEX PARADOX 29 (1953).

13. *Id.* at 144. Cf. Karpman, *Psychosis as a Defense Against Yielding to Perverse (Paraphiliac) Sexual Crimes*, 44 J. CRIM. LAW & CRIMINOLOGY 22 (1953); *Sex Life in Prison*, 38 J. CRIM. LAW & CRIMINOLOGY 475 (1948).

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This, of course, is the medical counsel of a lawyer. The medical counsel of the lawyer, however, may well be justified at a time when the medical counsel of many a psychiatrist has become discredited by its inherent contradiction. It has been pointed out in this context by a leader of contemporary forensic psychiatry that today:

(we) have the preposterous situation where psychiatrists approve that homosexuals are incarcerated where they cannot have any contact with the other sex and are treated by psychotherapy and kept until they have made a good heterosexual adjustment! All that is unrealistic psychiatry.¹⁴

The final chapters on Juvenile Sexual Delinquency, Prostitution, Abduction and Seduction and the general subject of Marriage Relationship present a ready source of standard but simplified general information of interest largely to the beginning reader in this field.

The author validly observes in conclusion that the available therapeutic facilities in this field are pitifully meagre. She urges the adoption of "more standardized laws and practices"¹⁵ as a rule of both reason and fairness and recommends the establishment of a "national research institute" on a "strictly non-political basis" and therefore "preferably privately endowed" which would be devoted to the pooling of "all factual knowledge gathered state by state through direct field investigations" and to the assessing of findings "after threshing out 'across the table' all the interrelated factors."¹⁶ The recommendation appears motivated by a distrust of officially sponsored research although such a distrust is never directly articulated. In any event it appears thoroughly justified.¹⁷

Despite obvious defects, *The Sex Paradox* sheds significantly more light than heat upon a vital subject. This alone should commend it to the attention of our legislators regardless of their initial predispositions. In the same vein it deserves the welcome of the thinking members of both the legal and psychiatric professions in our commonwealth.

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14. Wertham, *A Psychiatrist Looks at Psychiatry and the Law*, 3 BFLQ. L. REV. 41, 50 (1953).

15. DRUMMOND 338 (1953).

16. *Id.* at 341.

17. The New York statute, for example, is marked by the "scrapping" of most of the therapeutic and the retention of most of the punitive recommendations made by a psychiatric board for the state. See ABRAHAMSEN, WHO ARE THE GUILTY? 253-254 (1953).