

REVIEWS

THE SANCTITY OF LIFE AND THE CRIMINAL LAW. By Glanville Williams.
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THIS book is an expanded and revised version of five lectures delivered at the Columbia University School of Law in the James S. Carpentier Series in April 1956. Dr. Glanville Williams, a noted and gifted English jurist, discusses the legal, medical, social, religious and moral issues raised by seven richly controversial subjects: contraception, sterilization, abortion, artificial insemination, infanticide, suicide and euthanasia. The first three are, of course, means for preventing the emergence of new life; artificial insemination is a conscious effort to introduce new life in a "nonnatural" way; the last three concern the termination of life. "The connecting thread is the extent to which human life, actual or potential, is or ought to be protected under the criminal law of the English-speaking peoples."¹

Dr. Williams's approach to the role of the criminal law in permitting or restricting individual choice is utilitarian rather than eschatological. This viewpoint is not stated in a systematic fashion but may be gleaned from the following passages:

"[A] legal inquisition into conduct is not justified on moral or religious grounds if no sufficient social purpose is to be served."²

"In utilitarian philosophy, the welfare of every member of society must be considered, even when he is breaking the law. Punishment is an evil that can be justified, but only when the evil of punishment including its indirect consequences is less than the evil to be apprehended from the want of penal restraint."³

"[T]heological speculations and controversies should have no place in the formation of rules of law, least of all rules of the criminal law which are imposed upon believers and non-believers alike."⁴

"[I]f moral rules are to be externalized and enforced by law, they should so far as possible be those that human beings in the mass are able to comply with, without excessive repression and frustration and without overmuch need for the actual working of the legal machine."⁵

"[T]he introduction of criminal sanctions brings in moral problems distinct from the evaluation of the conduct in question. The true issue is not whether abortion is immoral but whether women who procure their own abortion and qualified surgeons who perform it for them should be punished through the instrumentality of the law of the land. This question

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1. P. ix.
 2. P. 33.
 3. P. 225.
 4. P. 229.
 5. P. 232.

cannot be answered in abstraction from the consequences of punishment. When these consequences are found to involve social evils greater than the alleged evil of abortion itself, without in fact preventing abortions, the case for continuing the threat of punishment is evidently not made out."⁶

"If it is true that euthanasia can be condemned only according to a religious opinion, this should be sufficient at the present day to remove the prohibition from the criminal law. The prohibition imposed by a religious belief should not be applied by law to those who do not share the belief, where this is not required for the worldly welfare of society generally."⁷

The force of these observations, however, is eclipsed by the author's earlier admission that utilitarianism as an ethical theory "depends upon an intuited premise, namely that the greatest happiness of the greatest number of human beings is the supreme good. This intuited premise or categorical imperative may be given any one of a number of interpretations, according to the opinion of the particular moralist who puts it forward."⁸

In any event, Williams is positive in his views and has not hesitated to express his convictions on what the law ought to be. His more important conclusions are: (1) The law should not interfere with the dissemination of contraceptive information through birth control clinics or by physicians. Nor should the law prohibit the sale of contraceptives. (2) Voluntary sterilization should not be prohibited by law whether for eugenic, social, therapeutic or personal reasons. (3) The legal hazards surrounding artificial insemination should be removed. (4) Women who procure their own abortion and qualified surgeons who perform it for them should not be subject to the criminal law. (5) Infanticide should be dealt with as a psychiatric and social problem and not as a problem for the criminal law. (6) Suicide and attempted suicide should cease to be criminal offenses. Secondary parties who unselfishly aid another to commit suicide or who take the life of another upon his request should be exempt from criminal sanctions. (7) "[E]uthanasia, the merciful extinction of life, is morally permissible and indeed mandatory where it is performed upon a dying patient with his consent and is the only way of relieving his suffering. According to this view . . . a man is entitled to demand the release of death from hopeless and helpless pain, and a physician who gives this release is entitled to moral and legal absolution for his act."⁹

CONTRACEPTION, STERILIZATION AND ABORTION

The Catholic Church is strongly opposed to all of Dr. Williams's conclusions, and he traces the views of the Church with care. It regards any method of interference by mechanical or chemical means with the natural processes of conception as immoral and sinful. Conception may legitimately be controlled, according to the Catholic view, only by abstention or through reliance upon the

6. Pp. 232-33.

7. P. 312.

8. P. 19.

9. P. 311.

infertile period of the feminine cycle. For many others, however, the sexual aspect of marriage is in itself a major human value. Furthermore, as a matter of human dignity and happiness, the conception of children should be the fully voluntary choice of the parents. To the criminologist, who has good reasons to regard the unwanted child as a likely candidate for future delinquency, Dr. Williams's conclusion on contraception has a strong appeal. And, in areas of sharp conflict in religious and moral convictions, the employment of criminal sanctions to enforce one view or another is ineffectual and unjust. Certainly, such sanctions should not be used against practices which many respectable people regard as moral or with moral indifference.

Except in Connecticut and Massachusetts, the law on contraception more nearly approaches the views of Dr. Williams than those of the Catholic Church. In those two states, however, the courts have upheld the total prohibition of the use of contraceptives, even when prescribed by physicians for reasons of health.¹⁰ Nevertheless, the constitutionality of this legislation is still not free from doubt.¹¹ Freedom of sex relations within marriage, freedom to have children when wanted and freedom of the physician to practice his profession properly surely rank high among individual liberties. Their curtailment presents a serious issue.¹²

But not all devices serving contraceptive purposes are banned in Massachusetts and Connecticut. Two years after upholding the prohibition on contraceptives, the Massachusetts supreme court held that the distribution of prophylactics did not violate the statute absent a showing that they were intended to prevent conception rather than venereal disease.¹³ The weird result is to permit a considerable area for use of contraceptives but with the surprising consequence that "only the best type of contraceptives . . . are effectively barred from use in Massachusetts"¹⁴ and, apparently, in Connecticut.

A final illustration of the complete confusion in policy and the illogic of the law in Connecticut is the state's attitude on abortion and sterilization. A physician may perform an abortion for a woman when "necessary to preserve her life."¹⁵ He may sterilize when it is "a medical necessity."¹⁶ Yet he may not prescribe contraceptives for a married woman when her general health would be impaired by a pregnancy, nor even when a pregnancy might result in death.

10. *Commonwealth v. Gardner*, 300 Mass. 372, 15 N.E.2d 222 (1938); *State v. Nelson*, 126 Conn. 412, 11 A.2d 856 (1940); *Tileston v. Ullman*, 129 Conn. 84, 26 A.2d 582 (1942).

11. An appeal of the *Gardner* case, *supra* note 10, was dismissed by the United States Supreme Court per curiam "for want of a substantial federal question." *Gardner v. Massachusetts*, 305 U.S. 559 (1938). The appeal of the *Tileston* case, *supra* note 10, was also dismissed per curiam on the ground that the physician lacked standing to raise the constitutional question. *Tileston v. Ullman*, 318 U.S. 44 (1943). For a discussion of the constitutional issues, see Note, 7 Wyo. L.J. 138 (1953).

12. Kalven, *A Special Corner of Civil Liberties*, 31 N.Y.U.L. REV. 1223, 1228 (1956).

13. *Commonwealth v. Corbett*, 307 Mass. 7, 29 N.E.2d 151 (1940).

14. Stone & Pilpel, *The Social and Legal Status of Contraception*, 22 N.C.L. REV. 212, 223 (1944).

15. CONN. GEN. STAT. § 8363 (1949).

16. CONN. GEN. STAT. § 4183 (1949).

Sterilization

Sterilization is an operation that deprives the patient of procreative capacity. Physiologically, it does not interfere with sexual activity. Therapeutic sterilizations should pose no legal problem. Many states provide statutory authorization, and, even without it, sterilization for medical reasons and with consent of the patient and spouse is probably neither a crime nor a tort.

Eugenic sterilizations raise more difficult and delicate issues. About twenty-eight states have statutes providing for the sterilization of certain mentally ill, mentally defective or criminal individuals. These laws rest on the belief that persons so afflicted are likely to transmit their traits to subsequent generations and, also, that such persons are usually incapable of taking care of their offspring or of giving them a proper upbringing. Most of these laws are confined to persons in institutions. A few are voluntary in that they require the consent of the patient or his relative or guardian; most are compulsory. The task of issuing an order for sterilization is placed upon an administrative board or court, with provisions for appeals, surgical procedure and so on, which vary from state to state. It is perhaps not superfluous to point out that legislation on this subject did not begin in Nazi Germany but in the United States in 1907, when the first sterilization law was enacted. A total of roughly 60,000 sterilizations had been performed under these statutes by 1955. Most states, however, have never applied them vigorously, and, according to Williams, the compulsory power is rarely exercised. In fact, he says, "no one with experience of sterilization laws now advocates a compulsory system."¹⁷ The usual procedure is to explain carefully "to the patient and his or her spouse, guardian, or relatives" the nature of the proposed operation, "and since selection is limited to the urgent and obvious cases, consent is generally forthcoming."¹⁸

Apparently, Williams would be opposed to compulsory sterilization. Whether he would be or not, the scientific basis for compulsory sterilization, either on eugenic or environmental grounds, is too much in controversy to warrant permitting the state so formidable a power. Furthermore, the constitutionality of this legislation is not as well settled as a 1927 decision of the Supreme Court, upholding such a law, might indicate.¹⁹ Fifteen years later, in the *Skinner* case,²⁰ the same Court unanimously invalidated an Oklahoma statute authorizing the sterilization of habitual criminals. The decision is narrow; but permeating the majority opinion of Justice Douglas and the concurring opinions of Chief Justice Stone and Justice Jackson is a distaste for the statute, an awareness of the scientific perplexities and a deep concern for the civil liberties aspect of the question.²¹

17. P. 90.

18. P. 89.

19. *Buck v. Bell*, 274 U.S. 200 (1927).

20. *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

21. Thus, Justice Douglas said: "We are dealing here with legislation which involves one of the basic civil rights of man. . . . The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races

Even though these statutes are administered in a noncompulsory manner, are sterilizations so performed lawful? How valid is the consent of a mentally ill or mentally defective patient? Some may be quite incapable of appreciating the nature of the operation; others may understand but be so suggestible that consent is readily obtained. And suppose sterilization is made a condition of release. How "voluntary" is consent under these circumstances? Williams does not give very satisfactory answers to these questions. As for the person who is totally incapable of understanding what the operation means, Williams denies any need for the operation because the patient needs permanent care in an institution.²² This is certainly not always the case. When the patient is highly suggestible, Williams feels that protection is adequate if the consent of relatives is also obtained. "With this safeguard, the law is as voluntary as a law dealing with persons of limited mental capacity can ever be."²³ Nor is he concerned about sterilization as a condition of release. "Surely," he concludes, "it is better to offer the opportunity of freedom upon a condition than not to offer it at all."²⁴ This response of course begs the question. In the end, he falls back upon the famous English report in 1934 of the Brock Committee which recommended a voluntary sterilization statute. "'The essence of a voluntary system,' said the committee, 'is that those who object should be free to do so. What matters is that there should be no compulsion. So long as there is no unfair pressure and no patient is forced or bribed to consent, it seems to us mere casuistry to discuss how far the patient fully appreciates all the implications of consent.'"²⁵

Since sterilization is a safe operation—and a simple one for the male, vasectomy—and since it does not result physiologically in sexual impotence, should it not be considered a reasonable though extreme form of birth control? The case for contraception rests in part on child planning. It is quite another matter to foreclose altogether one's choice in these matters. On the other hand, no contraceptive is infallible, and special difficulties may arise in advising a satisfactory method. The husband may refuse to co-operate, or the woman may be too lacking in intelligence, foresight or dexterity to be relied upon to follow instructions. Whatever the moral view, it is doubtful whether the criminal law should prohibit sterilizations for convenience. Existing law is uncertain. The statement is sometimes made that a person cannot effectively consent to the commission of a maim, or mayhem, upon himself. Is sterilization a maim? Dr. Williams's answer is persuasive:

or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is his irreparable injury. He is deprived forever of a basic liberty." *Id.* at 541. And Justice Jackson added: "There are limits to the extent to which a legislatively represented majority may conduct biological experiments at the expense of the dignity and personality and natural powers of a minority—even those who have been guilty of what the majority define as crimes." *Id.* at 546.

22. P. 90.

23. *Ibid.*

24. P. 88.

25. P. 111.

"In principle, a maim was some injury that lessened a person's ability to fight and defend himself, such as cutting off a hand or even knocking out a tooth (which would impair his power to bite an adversary); and castration was also held to be a maim because it was thought to diminish bodily vigour or courage. Sterilization has no effect upon mental or muscular vigour and so should not be held to be a maim. Also, vasectomy is not a maim because the legal meaning of a maim (as contrasted with a wound) is that it is permanent; the possibility of a reversal operation means that the prosecution cannot prove that vasectomy is permanent. Again, the law of maim seems historically to have no application to women. Even if all these difficulties are surmounted, it may be questioned whether the antiquated law of maim affords a satisfactory basis for a conclusion as to the defence of consent. It seems unlikely that a person would today commit a criminal offence by having his teeth extracted without adequate reason."²⁶

Abortion

The laws of England and of the great majority of American states regard any interference with pregnancy, however early it may take place, as criminal unless necessary to preserve the life or, in a few jurisdictions, the health, of the mother. Many consider this exception unrealistically narrow. Scientific advances have reduced to insignificance the number of cases in which the operation is needed to save the mother from impending death.

Although the law has restricted hospital abortions, it has been unable to curtail those performed outside. As a consequence, illegal means of accommodating abortion seekers have been developed by ruthless and incompetent people who every year exploit hundreds of thousands of women financially and kill thousands who might be saved by legitimate medical procedures.

The main proposal advanced by Dr. Williams is derived from the experience of some European countries. Abortion should be available under good medical conditions to those who desire it or at least can offer good eugenic, therapeutic, sociological or economic reasons for having it done. Presumably, the decision would be made by an administrative body, such as a hospital board of review, that would be expected to grant a request if consistent with the patient's own welfare and the welfare of the family. In addition to medical and psychiatric indications, such relevant factors as the prospects of physical and mental health for the child, sociological considerations and the woman's apparent determination to go through with the operation would be taken into account. Under this plan, the criminal law would be confined to abortions performed in disregard of the system of control.

Williams realizes that this rational approach to the problem is unlikely to be accepted in England or here in the near future. For the present, abortion must be controlled by the criminal law, and he suggests that a partial solution is to widen the class of cases in which it is justified. He would permit it when medically advisable to maintain physical or mental health as well as to preserve the mother's life; when the child is likely to suffer from a serious defect, as

26. Pp. 104-05.

where the mother contracts German measles in the first three months of pregnancy; where the pregnancy is a consequence of rape or incest; or where the woman previously has borne at least four children. It is hard to disagree with these recommendations regarding abortion unless one devoutly believes the Sixth Commandment was intended to protect embryos.

ARTIFICIAL INSEMINATION

“‘And this,’ said the Director opening the door, ‘is the Fertilizing Room.’”

—HUXLEY, BRAVE NEW WORLD 2 (1932).

Artificial insemination is used when the woman is fertile but for some reason cannot have children by her husband in the usual way. There are two forms: insemination from the husband—A.I.H.—and insemination from an anonymous third-party donor—A.I.D. In some cases of impotence, insemination from the husband is possible. When he is sterile, sperm may be purchased. This simple transaction has provoked strong objections with demands for its suppression through the agency of the criminal law. It has been strongly opposed for theological reasons, mainly by the Catholic Church and the Church of England, on the ground that masturbation—the usual but not the only way of obtaining semen—is a sin and that A.I.D. is adultery under the Seventh Commandment.

When one out of every ten married couples is involuntarily sterile, the great human and social potentialities of artificial insemination are apparent. Although exact figures are difficult to obtain, many thousands of barren marriages have already been rendered fertile by this procedure. A few regular bureaus or clinics supply semen, and, with the technique of canning by refrigeration, they are likely to increase. Elaborate procedures have been devised to protect the physician, the husband, the wife and the donor.

Adoption has sometimes been suggested as the solution to a barren marriage. But the adopted child is the natural child of neither parent. A child who is the result of donor insemination at least belongs naturally to the wife, and, if the husband loves her, he will value the child on that account. In any event, the experience of bearing her own child should not needlessly be denied the wife. Some couples fear that an adopted child may show a bad heredity. An A.I.D. child is less likely to do so, since the donor is chosen with care. Usually, he is a hospital intern. Moreover, the great shortage of suitable and available children often precludes the solution of adoption.

Again, reason suggests that the criminal law should remain aloof. People who want children should not be deprived of choice as to means of obtaining them. If the only way open is artificial insemination, they should not be punished for choosing that way. A.I.D. is a far more responsible and deliberate decision than ordinary adultery. If people want to make it a part of their marriages, the law should protect them in their choice as well as protecting the donor, the physician and the child.

Once the basic decision that artificial insemination should be permitted is reached, the proper solution of the doubtful legal issues follows simply and inexorably. But since questions of adultery, divorce, alienation, support, adoption and inheritance are involved, and since a court is not the ideal forum for the presentation of the full case in favor of artificial insemination, the problems may be handled most suitably by comprehensive legislation. It should go without saying that the state's permission to conceive children by artificial insemination does not imply approval of state-sponsored fertilizing rooms à la Huxley for the purpose of breeding a better race.

If lawyers think that artificial insemination bristles with legal problems, they should anticipate yet another technique, related to artificial insemination, which has been successful in some experiments with cattle and dogs. It is the transplantation of fertilized ova from one female to another, or even complete ovaries. If successful in humans, it will raise the profound and, in terms of traditional concepts, almost insoluble problem whether a child born from the ovum of *A* in the womb of *B* is legally *A*'s or *B*'s. The time may come when females as well as males will be relatively redundant for purposes of procreation.

INFANTICIDE, SUICIDE AND EUTHANASIA

As a broad proposition, the only forms of intentional homicide recognized in the United States are murder and such intentional killings as may result in a verdict of manslaughter. In strict theory, a legally sane mother who kills her newborn child, a father who kills his idiotic, malformed son, a physician who mercifully extinguishes the life of an incurably ill, suffering cancer patient and the survivor of a suicide pact have all committed murder—and murder in the first degree if premeditation and deliberation are present. Everyone knows that they are not so condemned because of the wide discretion of the prosecutor, the jury and the judge—a discretion that is frequently generously exercised. This form of mitigation, however, is at the price of unequal application of law. Many countries, on the other hand, provide in their criminal codes gradations of homicide keyed more to motive than intent, with reduced penalties for offenses such as infanticide, aiding and abetting suicide and homicide upon request.²⁷

27. The SWISS CRIMINAL CODE provides:

"Art. 114. Whoever kills a human being upon the latter's earnest and urgent request, shall be confined in the prison [a maximum of three years].

"Art. 115. Whoever, from selfish motives, induces another person to commit suicide or aids him in it, shall be confined in the penitentiary for not over five years, or in the prison, provided that the suicide has either been completed or attempted.

"Art. 116. If a mother intentionally kills her child during delivery or while under the influence of child-birth, she shall be confined in the penitentiary for not over three years, or in the prison for a minimum term of six months."

The English Infanticide Acts, 1922 and 1938, provide that where a woman by any willful act or omission causes the death of her child being under twelve months, but the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent

Suicide is something of a test case for the criminal law. In its treatment of suicide, more than in that of many other offenses of much greater practical significance, the criminal law reflects the community's regard of life as an absolute value, its grasp of the difference between law and morality and its notions of the limitations and purposes of the criminal law and of the penal system. Under the law of England, suicide and attempted suicide are crimes. Furthermore, if two persons enter into an agreement to die together but one of them survives—the double-suicide pact—or if one of the participants is selected to kill the other and himself and survives—the murder-suicide pact—the survivor is guilty of murder. The common practice, however, is to commute the death sentence.²⁸ In the United States, the English common law of suicide has never been fully accepted; attempted suicide is a crime in only a few jurisdictions by virtue of express statutory provision or by virtue of a general incorporation of the common law. On the other hand, the survivor of a murder-suicide pact unquestionably commits murder, and a few states would hold the survivor of the double-suicide pact.

In his chapter on suicide, Dr. Williams concludes that the law might well exempt from punishment "the unselfish abetment of suicide and the unselfish homicide upon request."²⁹ In developing his argument, Dr. Williams demonstrates considerable skill as a dialectician. He announces a series of propositions:

(1) Attempted suicide should not be punishable, "if only because the punishment of a genuine attempt can have no other effect than to make the individual particularly careful to succeed."³⁰

(2) If an attempted individual suicide is not punishable, then the survivor of a double-suicide pact should not be punishable.

(3) If the survivor of a double-suicide pact is not punishable, then the survivor of a murder-suicide pact should not be punishable.

(4) If the survivor of a suicide pact, whether double or murder, is not punishable, then the abettor to suicide who does not agree to kill himself should not be punishable. For if *A*, under proposition (1), commits no crime in swallowing poison, *B* should commit no crime in furnishing the poison to *A* at his request. This result should follow even though *B* originally suggested

upon the birth, she shall be guilty of the felony of infanticide, punishable like manslaughter. For a report on the operation of these acts, which have been liberally applied, see Royal Commission on Capital Punishment, *Report*, CMD. No. 8932, at 58, 450-51 (1953).

California, New York, Missouri and Wisconsin recognize the specific offense of assisting suicide, which is treated as manslaughter. CAL. PEN. CODE § 401; MO. ANN. STAT. § 559.080 (Supp. 1957); NEW YORK PEN. LAW § 2304; WIS. STAT. § 940.12 (1955).

28. See Royal Commission on Capital Punishment, *Report*, CMD. No. 8932, at 59 (1953).

The English Homicide Act, 1957, 5 & 6 ELIZ. 2, c. 11, § 4(1), provides: "It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person."

29. P. 310.

30. P. 305.

the suicide to *A*. *B* is not furnishing the tools of crime, because *A*'s act is not a crime. It is precisely as though *B* supplied *A* with peroxide to bleach his hair. Again, if *B*, by agreement, kills *A* and then attempts suicide himself he is immune from punishment under proposition (3). But why should it be essential to *B*'s immunity that he has agreed to commit suicide himself? The essential factor, according to Williams, is that *A* consented to be killed.

Thus, the result is a situation similar to "homicide upon request" in continental law. But the most these codes do is to provide a reduced punishment for such a homicide, while Williams would impose none at all. He feels able to reach this position by assimilating abetment of suicide to homicide upon request. Under the Swiss Code, for example, a person who from unselfish motives induces another to commit suicide or aids him in it is exempt from punishment.³¹ By adding the element of unselfish motives to homicide upon request, the goal desired logically follows.

But even justification of an unselfish homicide upon request does not reach the case of the hopelessly defective infant who is incapable of making a request. One wonders why the author failed to carry his logic one step further and recommend the exemption from punishment of one who takes the life of another from unselfish motives alone.

Williams realizes that his sweeping proposal is unlikely to be accepted and urges a more limited proposal for euthanasia. At the outset, a form of euthanasia that is probably permitted under existing law should be pointed out: a dying person may be given drugs to ease pain even if the treatment shortens life. Under such treatment, the tolerance resulting from habituation requires the drug to be given in constantly increasing doses in order to relieve pain and, with a progression of this kind, eventually the dose administered will be fatal. Apparently, the Catholic Church is prepared to accept this situation under the principle of double effect: the will of the doctor is directed primarily to the relief of pain; shortening of life and eventual death is a secondary effect. It is doubtful, however, whether existing law would permit a physician to anticipate matters by administering a fatal dose and ending life immediately.

Dr. Williams proposes legislation to the effect that no physician "should be guilty of an offence in respect of an act done intentionally to accelerate the death of a patient who is seriously ill, unless it is proved that the act was not done in good faith with the consent of the patient and for the purpose of saving him from severe pain in an illness believed to be of an incurable and fatal character." This of course is but a more limited formulation of his justification of an unselfish homicide upon request. Its desirability is doubtful until more is known about the incidence of incurable illness accompanied by unrelievable suffering. So careful a student of the problem as Helen Silving favors only mitigation of the penalty rather than complete exemption.³²

31. SWISS CRIMINAL CODE art. 115, note 27 *supra*.

32. Silving, *Euthanasia: A Study in Comparative Criminal Law*, 103 U. PA. L. REV. 350, 388 (1954). See also SILVING, SUICIDE AND LAW IN CLUES TO SUICIDE 79 (1957).

The problems considered by Dr. Williams have been widely discussed in the journals. Dr. Fletcher's recent *Morals and Medicine*³³ and Herman Mannheim's earlier *Criminal Justice and Social Reconstruction* cover much of the same ground. Though at times Dr. Williams is less than rigorous in his analysis and argument, his book is always stimulating and disquieting.

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SELECTED HISTORICAL ESSAYS. By F. W. Maitland, edited by Helen M. Cam. New York: Cambridge University Press, 1957. Pp. xxix, 278. \$5.00.

ONE does not review Maitland; one only wonders at his artistry. Architect in the grand design of his greater writings, poet in his skill to pick and place the *mot juste*, and designer of epigram and paradox, he "put the common law back into the centre of the picture"¹ of English history. Just as Blackstone's *Commentaries*, with its balanced reason and balanced sentences, provided English law with a bulwark against Bentham's logic and utility, so perhaps the sum total of Maitland's writings may help to save Anglo-American law from those who deny its humanism. After all, the law is historically humanistic, for it has provided values as well as rules of human conduct which moral philosophy and social experience, more than logic, have determined.

To the lawyer, whose task it is to define social values and to apply the rules, Maitland's writings offer much of use. Of Stubbs's *Constitutional History*, Maitland wrote, "to read his great book is a training in justice";² and to read his own even greater ones will train men not only in justice but in human nature, in the use of evidence and in the law itself. For Maitland's technique, as Miss Cam puts it in her informative "Introduction," was that of the lawyer: "every generalization is seen in terms of the individual, every principle in its application to a particular case."³ By a "descent to the concrete,"⁴ he made "the common thoughts of our forefathers about common things"⁵ and even their rules of law intelligible to modern men. And these thirteen historical essays also exhibit in variegated displays the art of precise expression, a boon to any man whose livelihood depends upon his skill in using words.

Maitland's chapter on "The Anglican Settlement and the Scottish Reformation" from the *Cambridge Modern History*, where this gem has been

33. There is an excellent symposium on Dr. Fletcher's book in 31 N.Y.U.L. REV. 1157-1245 (1956).

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1. P. x (Introduction by Helen M. Cam).
2. P. 275.
3. P. xi.
4. P. xii.
5. P. xi, Cam quoting MAITLAND, DOMESDAY BOOK AND BEYOND 520 (1897): ". . . the thoughts of our forefathers, their common thoughts about common things . . ."