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A Review of Basic Concepts of Criminal Law by George P. Fletcher

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BOOK ANNOUNCEMENT

BASIC CONCEPTS OF CRIMINAL LAW

By George P. Fletcher*

New York: Oxford University Press, 1998

Pp. 240. \$45.00

*Reviewed by Stephen M. Zaloom***

Basic Concepts of Criminal Law presents its readers with an extensive analysis of criminal law theory, by exploring twelve dichotomies that the author believes invariably emerge from every criminal law system. The book's thesis is straightforward: there is more unity among diverse systems of criminal justice than we commonly realize. The author's goal is to demonstrate why this premise is true, and argues that the unity between criminal codes of various countries is not found on the surface of statutes or of case law decisions, but in debates which recur in every legal culture. Fletcher seeks to borrow concepts from other legal systems and use a comparative analysis to better understand our own legal system.

The original purpose of *Basic Concepts of Criminal Law* was to provide an introduction to Russian law students to Western ways of thinking about criminal law. However, the author realizes that by organizing his work around the twelve dichotomies that are ubiquitous in the foundation of criminal justice, that the analysis of these dichotomies serves as a worthwhile tool for American and Western European law students and legal scholars. Furthermore, foreign editions of the book utilize the expertise of a local commentator to translate the text and infuse the theories in local contexts.

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Fletcher employs several mechanisms to enhance the reader's understanding of his work. Of particular note is his frequent use of examples to illustrate his analysis. Unfortunately, some of these examples suffer from being too unrealistic and conjectural at times, such as the hypothetical situation of an aggressor trying to inject an unpleasant gas into the veins of another. However, Fletcher's other examples, some of which are rooted in real life scenarios like the OJ Simpson and Bernhard Goetz cases, are generally well thought out and are almost essential to understand his analysis and the premises he puts forward.

Fletcher also succeeds in reinforcing his points through bullets or succinct numbered summaries. In this fashion, he enables the reader to elicit the most salient points from his thorough analysis. Also useful is his numerous use of question asking and answering. This works especially well in his introduction as he introduces allegorical figures (Ms. Patriot, Mr. Sport, etc.) to challenge his thesis. By responding to these self-generated critical questions, Fletcher presents worthwhile reasons to study his work.

The scope of potential readers for *Basic Concepts of Criminal Law* is extensive. The level of critical thinking and theory involved should appeal to law professors and scholars. It may also serve as a teaching aid for a course in comparative criminal law, though law students may feel inundated in the amount of theory presented. The legal practitioner may find the work utile, but should understand that the work is mostly analytical and theoretical rather than a commentary on black letter law. *Basic Concepts of Criminal Law*, despite its name, is most likely too abstruse for the casual reader with a curious interest in criminal law. The dense subject matter and method of analysis may disenfranchise such a reader early on.

One of the author's premises is that the dichotomies he identifies exist within most legal systems. He attempts to broaden the scope and relevance of his analysis by showing that these exist across many systems. However, he relies almost solely on the German code for his comparative analysis. The German Model Code and German criminal legal theory have influenced several civil law countries in

both Europe and Latin America, and the author is obviously well-studied in German law. However, his reference to German law seems to eclipse his premise by showing a strong comparison between two systems, which is not his objective. He has a few minor references to French and Spanish law, which could be drawn out more throughout the book, as well as other European countries' law. The analysis would also benefit from examining non-Western countries, to see if these basic dichotomies pervade these legal systems as well. Instead, Fletcher primarily succeeds in showing the similarities and differences between German and Anglo-American law, which seems to miss the mark of his ultimate goal.

Nonetheless, Fletcher's analysis is comprehensive, and well-organized. His style allows the reader to follow closely what proposition he puts forth, and the distinctions he makes are noteworthy and examined properly. A reader seeking to learn more about substantive black-letter law should look elsewhere, however, since the work is above all an in-depth theoretical analysis.