

ECONOMIC CRIMINAL OFFENCES (1990). By Imre A. Wiener. Akademiai Kiado, Budapest. Pp. 94, Appendix and References.

EVER SINCE Sutherland drew the attention of those interested in criminal law to white collar crimes, economic offences have been receiving attention in the West. In East European countries, these offences received still greater prominence, partly because of the nature of the political philosophy which then formed the backbone of the ethos of those countries and partly because of certain other factors. From time to time, learned contributions and symposia on this subject appear in the literature on criminology, some of which are not very familiar to those lawyers whose studies do not go beyond the frontiers of the purely legal disciplines. As a result, the subject of economic crimes has not received the academic attention that it deserves, both in point of quantity and in point of quality. In point of quality, it is to be pointed out that the approach to the subject sometimes tends to be inspired by the political philosophy of the writer or the speaker. In point of quantity, again, while certain economic crimes such as tax evasion, receive due attention, a few others are neglected. A book of the nature under review will therefore prove to be useful, not only as re-focussing attention on the subject, but also as removing certain misconceptions prevailing amongst those concerned.

The structure of the book, which concentrates largely on Eastern European countries, (but with some parallels drawn from common law countries), is simple. The first three chapters deal with the concept of economic offences, including economic crimes in Hungary. Chapter 4 devotes itself to the legal object of economic offences, devoting some space to victims and violated interests, economic management and state economic activity as an object of protection in legislation relating to economic crimes. The book then proceeds in chapter 5 to deal with the economic activities of enterprises and the duty of property management. Chapter 6 concerns itself with the codification of economic criminal law. Somewhat curiously, chapter 7, which is the last chapter, is titled "Basic Concept". It deals with economic criminal offences and economic crimes. There is a useful appendix containing relevant sections of the Act of 1978 on the Hungarian Criminal Code.

In any serious study of economic offences theory and practice mingle together or should mingle together. This book bears the sub title of "Theory of economic law" and its scope is therefore limited. It is only substantive criminal law that is analysed, by examining its relationship to certain theoretical aspects. A fairly valuable part of the book (chapters 1 and 3) attempts to present different facets of economic crimes and to offer a characterisation of such crimes. It is not possible in this review to quote the various definitions of economic crime collected by the author. A simple description of economic offences would be, "offences against the economic order of the nation". These offences are not to be confused with offences injuring the business interests of enterprises. The real problem arises because the range of economic offences in the East European countries is some-

what different from their range in western countries. Nevertheless, as the author points out<sup>1</sup> the connection between economic policy and criminal policy is studied by criminal sciences in both the capitalist and the socialist countries. There may, of course, be a difference in approach. For example, the bribery of employees of public enterprises was regarded as a serious offence in Soviet Russia. In the United States, some economic mal-practices are initially dealt with by civil law sanctions and criminal sanctions are applied only subsequently. Within the Eastern European countries themselves<sup>2</sup> there are differences. For example, in the (erstwhile) German Democratic Republic, economic crime accounted for only 0.5 per cent of the total crime. Again, in Romania, economic crime constitutes only 5 per cent of the total crime. It is therefore proper to bear in mind that what appears in the Criminal Code of a country, may not necessarily be quantitatively reflected in the scenario of crime in that country.

The author has noted<sup>3</sup> the role of criminal and administrative sanctions in economic offences. He has mentioned that in the U.S.A. criminal sanctions are hardly used in the case of a number of fiscal offences. The criminal sanction in that country is preceded by that of civil law suits initiated by the injured parties and by that of the administrative proceedings conducted by the federal agency which is to exercise supervision, or civil suit initiated by that agency. "There are provisions of criminal law which have not been in use for years, but scientific studies meet difficulties in this field because the Federal agency empowered to proceed in such cases does not make the criteria public on the basis of which it is decided which one of the various sanctions would be selected."<sup>4</sup>

There is good and useful material in the book under review about corporate criminal responsibility<sup>5</sup> and in this context it is worth noting what the author has to say about the socialist countries:<sup>6</sup>

In the socialist countries, the application of sanctions against legal entities, beyond the sanctions of civil law and administrative law, is not deemed necessary. For this reason, criminal liability of legal entities is generally not admitted in socialist legal theory. Fines imposed by various administrative organs serve effectively the prevention of the violations of law and the dissolution of the big enterprises is usually not a sanction imposed by the public but an act of exercising proprietary rights.

It is towards the end of the book (particularly, chapters 5, 6 and 7) that the book starts losing its appeal. In the opinion of the reviewer, this is mainly due to two reasons. In the first place, though the book offers good titbits of comparative learning, there is no attempt at a systematic and comprehensive classification of

1. Imre A. Wiener, *Economic Criminal Offences* 33 (1990).

2. See *id.* at 18, 19.

3. *Id.* at 38-42.

4. Ginsberg, R.E., "Fiscal Offences: The Federal Approach in the United States", (1-2) *Revue Internationale de Droit Penal*, 233 (1982).

5. See *supra* note 1 at 42-46.

6. *Id.* at 44-45.

topics. Secondly, there is absolutely no discussion of case law from Commonwealth countries, relating to economic crimes. It is commonplace that the working of any criminal statute is best illustrated by the facts and conclusions in a concrete case. Material of breath-taking variety, and of rich theoretical as well as practical interest, exists not merely in western countries, but also in countries like India, on the subject of economic offences, in the law reports of the last four decades or so. Indian courts, for example, have long struggled with the concept of *mens rea* in statutory crimes. English case law on corporate criminal liability - a subject which L.H. Leigh has made his own - is not wanting. There are Australian and Canadian rulings also. Unfortunately, the author has not utilised these sources at law. It is case law that brings into focus and concretises a point of theory. Doctrine and case law walk hand in hand. The most brilliant exposition of principles remains incomplete without some striking illustrations of it in practice.

This point is being made here because the subject of economic crimes is one of great practical importance in the Indian setting. In fact, there are at least two major reports of the Law Commission of India, whose main concern was the subject of economic crimes and other statutory offences. These reports not only classify these offences, but also examine various substantive, procedural and evidentiary aspects of economic offences. This is apart from the extensive discussion of some of the basic concepts which will be found in the Law Commission's *Report on the Indian Penal Code* which is the general criminal law of the country. There is also some treatment of economic crimes in the commission's *Report on Capital Punishment*. Indian statute law on economic crimes figures almost daily in the practice of the lawyer. Besides this, law makers in India are every year faced with the formulation of legislative policy in this field and legislative draftsmen in India have also come to realise, that they must brush up their learning about concepts on this subject, if they are to approach it satisfactorily.

However, one cannot expect any book to satisfy each and every need of those who are to use or read it. The author's effort is commendable. It was Homes who once said that the trouble in law is that we have too little theory in law. This book fills the gap by offering some theoretical insights in the field which it has selected as its theme.

P.M. Bakshi\*

---

\* Director, Indian Law Institute. Member, Law Commission of India, New Delhi.