

1-1-1999

Books Received

Santa Clara Law Review

Follow this and additional works at: <http://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

Recommended Citation

Santa Clara Law Review, Other, *Books Received*, 39 SANTA CLARA L. REV. 651 (1999).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol39/iss2/9>

This Other is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

BOOKS RECEIVED

Crime and Punishment in America. By Elliott Currie. New York, Metropolitan Books, Henry Holt and Company, 1998. Pp. 208. Paperback. \$12.95.

American political leaders' approach to crime is much like the snake oil seller's approach to disease. The focus is on what sells, not what works. And when it comes to what sells, nothing sells like a good dose of something simple. Like so many vials of mineral water, the prescription is always the same no matter what the ailment. Drugs in your community? What you need is longer sentences! A general feeling of uneasiness? Try longer sentences! Youth violence? Use new extra longer sentences!

Elliott Currie's new book, *Crime and Punishment in America*, demonstrates the huge social cost that America bears as a result of this political love affair with easy solutions. "It is not by chance that the State of California has opened only one college since 1984—and twenty-one prisons," writes Currie. "There is no free lunch. We really do need to make choices." The choice, Currie persuasively argues with a bevy of statistics, is between continuing to pursue an expensive and futile "prison experiment" and finding a more effective and inexpensive means of controlling and preventing crime.

Currie begins by apologizing for the statistical onslaught the reader is subjected to in the first two chapters of this book. No apology is necessary. There is much fuzziness on both sides of the debate over crime in America and statistics bring us closer to the hard facts needed to make intelligent decisions.

Throughout the first two chapters Currie wields these statistics in a surprisingly readable manner to chip away at persistent myths about criminal justice: 1) that a lenient American justice system "coddles" its criminals; 2) that longer prison sentences deter criminal behavior; 3) that in-

vestment in prisons is an effective (and cost-effective) means of reducing crime; and 4) that prevention does not work.

This does not mean that Currie has any illusions that prisons are unnecessary. "If the question is whether there are people in our society who must be put in prison to protect the public," writes Currie, "it would be hard to find anyone who disagrees." Nor does he dispute that wrongdoers do indeed slip through the system. "No one denies that serious offenders are sometimes let off lightly." And he concedes that proactive approaches are sometimes flawed: "Much that goes under the rubric of rehabilitation really doesn't work." But the author's work shows that all of these are exceptions and structuring our justice system around a reaction to these exceptions has failed to achieve meaningful, lasting reductions in crime. In fact, they make America far and away the international leader in incarceration among industrialized nations.

Currie's analysis takes us first to the "prison boom" of the past twenty-five years, during which time the prison population in the United States increased six-fold. Although increased crime rates during the 1990s account for some of this increase, Currie primarily attributes this explosion to America's favorite quick fix—longer prison sentences, which nearly tripled on average between 1975 and 1989.

Currie puts this increase in context by comparing America to its international cousins, a very effective technique Currie uses throughout the book. This comparison demonstrates that, even accounting for its higher rates of crime, America has exceptionally high rates of incarceration. One explanation is that America is much more likely to put people in prison for property crimes and drug related offenses and to keep them there longer. Doing so is enormously expensive—upwards of \$30,000 a year or more. Yet, what has America achieved with its vast expenditures for prisons to accommodate the resulting boom in population? It has achieved little, according to Currie.

Proponents of get-tough strategies, like California's Three Strikes Law, claim vindication in recent statistics showing a drop in crime. However, Currie points out that these statistics are fatally misleading. Violent crime is indeed lower today than at the beginning of the decade, but that is only because there was a sharp increase in violent

crime between 1984 and 1991. When viewed over this longer period, it turns out that crime rates today are actually higher today than in 1984, the previous low point. It is only because of a dramatic increase during the 1990s, Currie tells us, that it appears we are reducing crime.

Currie makes one of his most startling points about this data by looking again at the international picture. Even with the world's highest rates of imprisonment, a young male in the United States is thirty-seven times more likely to be murdered than his British peer. Similarly disproportionate numbers are found between America and Sweden, France, Japan, and Canada. The point: as a crime reduction strategy, focusing attention and resources on locking up more people for longer periods is a failure. It does not make us safer. In fact, if imprisonment had worked the way prison proponents claimed, our increased prison population should have cut the per capita robbery rate in half over the past twenty years. Instead, Currie says, it has more than doubled.

Currie faults the persistence of several myths, often repeated by legislators and pundits, as helping to contribute to the absence of clear thinking on this issue. One such myth—attributed to Senator Phil Gramm—is the notion that the criminal justice system is so “soft” on those that filter through it, that the cost of committing a crime is shockingly low. For instance, according to Gramm, a rapist can expect to serve two months, and a robber only twenty-three days. Truly an outrage! And who would not be in favor of the solution that Gramm peddles: tougher sentencing and less discretion for criminal-coddling judges. If only the data were accurate, says Currie. Indeed, it is pure trickery. Gramm’s “figures” on robbery for instance, which the Senator derived from a study by a Texas A & M economist, were arrived at by dividing the average time served by convicted robbers by the total number of robberies, many of which are unsolved! In reality, those tried and convicted for robbery receive closer to four years, on average.

So if longer and tougher sentences do not work—Currie makes a strong case that they do not—what does? This is the hard part, because it does not lend itself well to sound bites. The answer according to Currie is long-term, consistent investment in education and employment, in combating child

abuse, and in rescuing those already on a path to a criminal career.

Though it may not be strikingly new, Currie's contribution to the debate is proof that it works. According to Currie, it works in Elmira, New York, where a program aimed at reducing child abuse matched young mothers with registered nurses, who conducted regular home visits to provide parenting support and education. Compared with a control group, the program cut the rate of child abuse and neglect by over seventy-five percent. It works in cities like Philadelphia, where an innovative program to provide job training and encourage community-service work and cultural development for very low-income youth resulted in participants who, two years after the program ended, were half as likely as their peers to be arrested. And Currie shows us that it works in Delaware, where drug treatment and job training for offenders during and after incarceration reduced recidivism by nearly two thirds.

Currie admits that he cannot explain exactly why all of these programs work, but the fact that they do is consistent with the links he establishes between inequality, poverty, and crime. When we address the harsh social conditions that poverty breeds, those who benefit are less likely to turn to violence and crime. But Currie does not advocate simply treating these symptoms of inequity. He talks about recasting the foundation. Currie reviewed international research on the connection between economic equality and found that:

[t]he research is complex and sophisticated, but the basic message is simple: countries that have made a long-standing commitment to provide at least a modest floor of income and social inclusion for all their citizens have less youth violence than those in which children and families are routinely left to fall through the holes of an already threadbare 'safety net.'

The book is not without flaws, however. Not every argument Currie makes about the effectiveness of alternatives to the "lock-em-up-and-throw-away-the-key" approach is supported by the statistical data that illuminates the first two chapters. This shortcoming is likely due to a dearth of reliable studies. The conclusions he draws in their absence are certainly plausible enough to convince the reader predisposed to accept Currie's conclusions. But his more skeptical

readers will have to wait for another book.

Currie also makes a curiously incongruent endorsement of community-oriented policing—an effort to decrease crime in particularly high-crime areas through sustained and increased police presence and enforcement. While certainly not everything that falls under this rubric is bad, there is plenty to be concerned about. One is the “pillow effect,” so named for the notion that you can make a dent in a pillow by punching it, but only by displacing its contents elsewhere within the pillow. Thus, targeted enforcement in one neighborhood may simply move crime to another area of the city. The other concern is the civil liberty implications of techniques often employed by community-oriented policing officers.

Both of these issues are pointed out by an example, which Currie favorably cites, of a Kansas City police crackdown on guns in the 1990s. On the first point, he cautiously reports that a follow up study found no displacement, but acknowledges that it may have been too soon to tell. But on the second point, Currie indicates that police rooted out illegal weapons by intensifying traffic stops of “suspicious cars.” What was it that was suspicious about the cars? Could it be that they were driven by young black men? Currie does not say, but police targeting of African American males for pretextual traffic stops is an alarmingly common practice that would be the likely legacy of any effort that relies on traffic stops in low-income neighborhoods to control crime.¹ Currie’s support for this approach, without comment as to its implications, is surprising indeed coming from an author who decries elsewhere in his book the disproportionately high incarceration rate of African Americans.

Despite these minor shortcomings, Currie has crafted an accessible, well-documented work that has something of value for anyone committed to re-examining our current direction on crime, regardless of ideology. Indeed, one compelling notion suggested by Currie’s analysis is that there is room to forge a new approach to criminal justice in America that defies the traditional left/right dichotomy. Advocacy of a preventive, rehabilitative approach to crime has long been on the menu of those left of center. But proactive crime preven-

1. See Sean Hecker, *Race and Pretextual Traffic Stops: An Expanded Role for Civilian Review*, 28 COLUM. HUM. RTS. L. REV. 551 (1997).

tion is really an issue of fiscal conservatism. Currie indicates that the Philadelphia program for low-income youth mentioned earlier costs only \$2,500 per person, per year. This is a far cry from the \$32,000 Currie says it would cost to incarcerate one of those teenagers in California.

Thus, given a choice between investing a little now on prevention or an awful lot later on imprisonment, the answer should be clear to any advocate of less government. Conservatives need not go "soft on crime;" personal responsibility can still be the conservative mantra. As Currie puts it in reference to increasing rehabilitation efforts: "We agree to provide the tools that can help offenders 'make it' in legitimate society; offenders agree to learn to use them. We should ask nothing less." What changes is the recognition that as a means of improving public safety, prisons are not the only answer. Like all government waste, conservatives should have no trouble recognizing the waste in our prison system.

Perhaps the fact that crime is currently waning as a "hot button" issue among voters will give legislators of all stripes the cover they need to fold up the tents of their medicine shows and begin the hard work of finding a real cure. Currie's *Crime and Punishment in America* would be an invaluable guide to such an endeavor.

Brian Augusta