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BOOKS RECEIVED

A Rage To Punish: The Unintended Consequences of Mandatory Sentencing. By Lois G. Forer. New York, NY: W.W. Norton & Company, Inc. 1994. Pp. 171. Hardcover.

Criminologists and lay people alike propound various theories to explain the causes of crime and violence in America. Conversely, mainstream society speaks in relative unison about how to solve the crime problem; lock up all the criminals and throw away the key! One of the dissenting voices is Lois Forer. A former Pennsylvania trial judge, Forer denounces mandatory sentencing, sentencing guidelines, and the death penalty in her most recent book, *A Rage to Punish*. The author so vehemently opposes mandatory sentencing, that she left the bench after the Pennsylvania Supreme Court forced her to sentence a young, first time, nonviolent offender to five years in prison for robbery.

Theoretically, long sentences deter crime and sentencing guidelines prevent disparate sentencing of people convicted of the same crime. Forer asserts that mandatory sentencing laws that prohibit judicial discretion have caused more injustice than they have prevented and have had a negligible impact on crime rates. The author believes that mandatory sentencing laws are both unconstitutional and bad public policy for the following reasons: (1) they vest sentencing power in the prosecutor rather than the judge; (2) the system prevents consideration of mitigating circumstances by abolishing individualized sentencing; (3) the sentences often are disproportionate to the gravity of the offense; and (4) the sentences often do not bear a rational relationship to the offender's culpability, threat to society, and public safety and law enforcement goals, particularly the deterrence of crime.

Forer begins her book by describing her frustrating experiences with sentencing as a defense attorney, prosecutor and judge. The author then proceeds not only to critically examine the entire criminal justice system, but delves into the underlying social ills that she believes breed crime. Forer

condemns the western world's thousand year history of brutal and barbaric treatment of criminals. She next focuses on the development of the American criminal justice system that despite its constitutional protections is rife with injustice.

In the chapters titled "The Reformation" and the "Counter Reformation," the author likens the reforms of the criminal justice system in the 1950's and 1960's to the second coming of Martin Luther. A champion of the Warren Court and its due process revolution, Forer decries the subsequent backlash against "soft judges" by politicians and legislators catering to an angry public fed up with crime. Part of the book is devoted to condemning capital punishment as immoral, too expensive, discriminatory, error prone, and inviting of dubious insanity pleas to escape responsibility.

A Rage To Punish exposes the prison system's failure to achieve its four primary goals: deterrence, incapacitation, rehabilitation, and punishment. Disturbing Department of Justice statistics demonstrate that America's present incarceration and crime rates are both at historic highs.

Regardless of one's views on how to best deal with crime and punishment, it is impossible to ignore the reality that imprisoning nearly 1.5 million persons in the United States has not significantly reduced crime. The author believes that the system's failure stems from good intentions gone astray. Sentencing guidelines seek equal justice under the law by treating similarly situated persons the same. According to Forer, these laws ignore the fact that no two crimes and criminal defendants are the same. Rigid sentencing laws cannot possibly account for all the variables inherently present in each criminal case, many of which merit consideration when punishment is meted out. She believes that these sentencing policies have only intensified the "us vs. them" mentality in society and increased racial tensions.

Clearly, punitive sentencing costs taxpayers billions and does not reform criminals. What else can be done? Forer believes there are viable options if sentencing discretion is returned to the trial judge. The author proposes the following: (1) repeal mandatory sentencing laws; (2) repeal capital punishment laws; (3) enact strict gun control laws; (4) drastically revise penal codes; (5) repeal sentencing guideline laws; (6) establish sentencing policy goals; and (7) require due process hearings before the early release of prisoners.

Although at times it appears that Forer loses sight of the true victims of crime and is more concerned with criminals' rights, she harshly criticizes the lack of victim's rights when dangerous felons are paroled. Rarely are there opportunities for victims, prosecutors, and judges to participate in release hearings. Forer believes that concern for public safety is often neglected by the system. Another problem with many mandatory sentencing laws is that once an inmate has "maxed" out his sentence, supervised release is not allowed. Equally distressing is the problem of violent offenders escaping responsibility, or worse, denying culpability. Forer also recognizes that rehabilitation for some criminals, especially sex offenders, is impossible and thus they should not be placed on probation or paroled.

Nevertheless, *A Rage To Punish* does present some simple, yet worthwhile, solutions to the "lock them up" mentality. As a judge, Forer made extensive use of strict but creative probation, restitution, and reparation for offenders she deemed nonviolent. The author, citing the staggering illiteracy rate of criminals, often mandated school along with work as a condition of probation. She expressed that judges desperately need more alternatives to prison, especially when the offenders are juveniles.

While Forer's convictions are heartfelt, some of her arguments lack coherence and some of her proposed solutions are overstated or oversimplified. For example, she believes that prisons fail in their mission to incapacitate criminals because prisoners often commit crimes on one another in prison. Although Forer's idea to utilize monetary sanctions more frequently is a good one, she does not recognize its limitations. Habitual offenders may end up selling drugs or stealing to pay court imposed fines. Distinguishing the nonviolent from the violent criminal is the most difficult component of Forer's reforms. If this cannot be done accurately by the finest psychiatric professionals, it is doubtful that most judges can succeed in identifying the dangerous criminals. Although routine drug possession cases may, on the surface, appear to be victimless crimes, this view ignores the fact that drug use and trafficking breed more crime and violence. Whether it is a killing over a drug gang's turf or robbery by an addict to support a habit, hard drugs cost society dearly.

Forer believes that the American criminal justice system is blindfolded by the concept of sin and punishment, and the effect of this is a system that discriminates heavily against the poor, the ignorant, and the disadvantaged. Some of this argument falls short because Forer fails to acknowledge the fact that most crime, especially violent crime, is often committed by, and perpetrated against, this same class of citizens. The author should ask the thousands of hardworking, law abiding parents trying to raise a family in the inner city if sentences for drug dealers are too harsh, or if too much money is being spent on enforcement.

While *A Rage To Punish* is not an academic work, the author's anecdotes and assertions are well supported by startling statistics. Nevertheless, the author's principal goal is to put a human face on the statistics of crime and punishment. This she does with modest success. Unfortunately, many of Forer's worthy reform ideas will likely be labeled as "failed liberal social policy" and fall on the deaf ears of a public interested only in retribution.

Lost Rights: The Destruction of American Liberty. By James Bovard. New York, NY: St. Martin's Press, Inc. 1994. Pp. 335. Hardcover.

Is government regulation burdening American business and stifling individual freedom and opportunity? An ever increasing number of Americans from all backgrounds and ideologies feel this way. Anti-big-government fervor has entered mainstream politics and is now a powerful force in the debate on the role of government in America. James Bovard, author of *Lost Rights: The Destruction of American Liberty*, is one who believes that our government, in a paternalistic quest for social progress, is increasingly trampling the rights of its citizens.

Bovard is one of many voicing the opinion that government best contributes to social progress by preserving law and order, protecting individual rights and the freedom to contract, and preserving national security. The book chronicles how, over the past decades, the exponential growth of federal, state and local statutes, taxes, rules and regulations threatens to turn our constitutional system of limited govern-

ment into a leviathan that imperils the liberty of all Americans.

Chapter two, "Seizure Fever: The War on Property Rights," details Bovard's contention that law enforcement has subverted the protections of the Fifth and Fourteenth Amendments. The author gives disturbing accounts of overzealous officers abusing their power. The book describes oppressive seizures made by government officials with little regard for due process and heavy handed local officials punishing citizens not in compliance with seemingly unlimited building, design, zoning, and historic landmark ordinances. Those who do not have the ability to sue the government have little protection from these and scores of other oppressive regulations. The author points out that even citizens who can afford to sue the government have little chance for success because recent court decisions make it extremely difficult to demonstrate that a regulatory taking has occurred. Bovard believes that if individual Americans fail to preserve their private property rights, further political subjugation inevitably follows.

In chapter three, "The Proliferation of Petty Dictatorships," the author decries the arbitrary and often irrational abuse of discretionary powers by federal bureaucrats and administrative law judges. The author laments how due process has been ignored by federal regulators, inspectors, and tax collectors, while welfare recipients and criminal defendants continue to be granted more rights by the courts. The book provides shocking examples of overregulation by federal agencies. Some of the most egregious examples involve USDA market controls dictating the percentage and size of the crops that American farmers can legally sell, arbitrary trade policies of the Customs Service and Commerce Department, capricious delays by the FDA in approving drug and medical devices, the Postal Service as an inefficient monopoly, and EPA Superfund abuses. The biggest problem citizens have in overcoming bureaucratic hurdles is exhausting all of their administrative remedies before getting to court. In sum, Bovard believes that administrative justice is all too often an oxymoron.

Chapter four, "Politics vs. Contracts," castigates big government for the limits it has placed on free competition and the freedom to contract. The author criticizes state licensing

boards for restricting competition by severely restricting access to all professions — from interior designer to lawyer. Bovard labels this “The Cartelizing of the American Workforce.” This chapter also denounces federal labor laws and NLRB decisions that he claims render individual employees powerless against the unions, who in turn are permitted to take companies hostage with strikes more akin to terrorism. Bovard asserts that “fair labor standards” are simply arbitrary policies designed by politicians to rig the labor market. Bovard firmly holds to the concept that any limitation on an individual’s freedom to contract wrests away his sovereignty over his own life.

Chapter five, “Subsidies and Subjugation,” condemns the over 1200 federally operated domestic assistance programs. Bovard explains that once government subsidies invade a particular activity or sector of the economy, extensive government control inevitably follows, with enormous costs to individual freedom and self-reliance. The author believes that government subsidies only allow politicians to exert more control and influence over a greater percentage of the economy and thus people’s freedom. No program escapes criticism including poor performing “free” public schools, the billions of dollars spent controlling the agricultural markets, and unfair housing subsidies.

In chapter six, “The Opportunity Police,” the author states emphatically that “seeking the best person for the job has gone from being part of the American heritage to being a federal crime.” Bovard blasts the EEOC for using the 1964 Civil Rights Act and other employment discrimination laws to coercively engineer a diverse work force by the use of quotas and threats of litigation rather than to promote equality and fairness in the workplace. The author assails federal policies that he believes are based on “the righteousness of the goal, not the fairness of the process.”

Chapter seven, “Guns, Drugs, Searches, and Snares,” details how the failed “war on drugs” has cost all America its security from unreasonable searches and seizures. Bovard notes that while the politicians have succeeded in achieving the highest incarceration rate in the world, the numbers of drug users has hardly been affected. The author acknowledges the high toll illegal drugs and guns extract from society but believes that the war against them has left all Americans

with fewer protections from abusive police and federal agents. Although Bovard agrees that violent offenders must be jailed, he generally feels that America needs fewer laws, not more prisons.

Chapter eight, "Taxing and Tyrannizing," chronicles outrageous accounts of overzealous IRS agents and tax collectors. The war on the self-employed and the small businesses that hire them, the lack of due process in tax evasion cases in which taxpayers are presumed guilty of under reporting income, and the complex tax forms that Americans spend over five billion hours a year preparing, all lead the author to ask "[a]t what point does taxation become a form of political slavery?" Bovard calls for the end of a tax and welfare policy that rewards dependency and punishes self-reliance.

Chapter nine, "Spiking Speech, Bankrupting Newspapers and Jamming Broadcasts," attacks the government's degradation of the First Amendment. The list of abuses includes: the federal government's overzealous war on obscenity; FCC censorship; SLAPP lawsuits by politicians; the FDA prohibiting doctors from promoting off-label or non approved cancer drugs; and litigation brought by the Department of Housing & Urban Development which forced a newspaper into bankruptcy for running an apartment advertisement asking for "adults only."

This brief overview of *Lost Rights* is simply a preview of some of the more extreme bureaucratic horror stories. *Lost Rights* offers much more than routine Libertarian anti-government rhetoric. Although largely anecdotal, the sheer number and scope of the inequities perpetrated by our government are difficult to ignore. One cannot read over 1,000 instances of government mismanagement and petty tyranny that have caused severe injustice without pausing to reevaluate the function of government in our society. In order to remedy the failures of government overregulation, the author believes that the legislatures should not pass another law without first holding a repeal session. Once that is accomplished, government should then refocus on protecting individual rights and the freedom to contract. This book is recommended to all lawyers and citizens who are concerned that

basic justice and fundamental fairness in this country is being undermined by legislative and administrative decree.

Jed S. Ritchey

