



1-1-1976

Book Review [Rough Justice: Perspectives on Lower Criminal Courts]

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, Book Review, *Book Review [Rough Justice: Perspectives on Lower Criminal Courts]*, 16 SANTA CLARA L. REV. 699 (1976).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol16/iss3/8>

This Book Review 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.

BOOK REVIEWS

ROUGH JUSTICE: PERSPECTIVES ON LOWER CRIMINAL COURTS. By John A. Robertson. Boston: Little, Brown & Co. 1974. Pp. xxix + 533. Softbound. \$6.95.

*Reviewed by Keith C. Monroe**

For every Ernesto Miranda whose name becomes a nationally-known legal symbol,¹ countless hundreds of thousands of accused persons come in contact with the court system every year in quiet anonymity through the medium of the lower criminal courts. These courts, designated in various jurisdictions as municipal courts, police courts, recorder's courts or some other distinctive title, mark the place of the initial, and for most defendants the only, contact with the judicial system. Where the accusation is no more serious than a traffic infraction, the defendants' impression of justice in the American judicial system will be largely dependant on the fairness and dignity with which they are treated in that one exposure to the courtroom. Similarly, the first contact of many other minor offenders—the petty thief, the drunk, the non-supporting father—will also be with an inferior criminal court. Surely, then, those courts are the places where respect or disrespect for the court system has its genesis. As Professor Robertson aptly observes, while these “inferior” courts are inferior in name and in the judicial pecking order, they are far from inferior in the function they perform.²

Although Robertson does not go so far as to say that the current “crime explosion” may have its roots in the existing inadequacies and shortcomings of the lower criminal courts, that proposition is implicit in a large proportion of the materials he has selected for this collection of essays. The book is obviously intended to be an overview of lower criminal courts, with sections devoted to their origin, social organization, politics, performance, and alternative models; finally, several con-

* A.B., 1960, J.D., 1962, Stanford University; member of the California Bar and the United States Supreme Court Bar.

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. See J. ROBERTSON, *ROUGH JUSTICE: PERSPECTIVES ON LOWER CRIMINAL COURTS* xvii-xxx (1974) [hereinafter cited as ROBERTSON].

crete and experimental proposals for the reformation of these courts are presented. As a starting point for investigation or further research into the problems of these courts, *Rough Justice* will more than reward the reader by providing a fleeting glimpse, a taste, of the diverse aspects of these sometimes forgotten courts of first resort.

It is the extremely broad coverage this book attempts to provide that is at once both a questionable virtue and its most objectionable aspect. *Rough Justice* takes on the herculean task of commenting on the beginnings, organization and operation of lower courts throughout the nation, without limitation even as to a particular jurisdiction. For example, the author included in Part IV, The Performance of Lower Criminal Courts, an essay by Donald L. Warren entitled "Justice in Recorder's Courts: An Analysis of Misdemeanor Cases in Detroit."³ The essay is devoted almost exclusively to a statistical comparison of bail and sentencing orders made by the Recorder's Court of Detroit as between white and black defendants. While such a survey was undoubtedly useful as an aid to improvement of the operation of Detroit's courts, inclusion of such material in an anthology that claims to be of nationwide scope is quite another matter. In his essay, Mr. Warren concluded that, with one or two minor exceptions, blacks generally fared worse than similarly situated whites, both on bail orders and on sentencing *in Detroit*.⁴ But when Robertson presents a local survey in a collection of material that purports to be a general, nationwide, representative survey, the inference is necessarily that "if blacks are subject to unequal treatment in Detroit, they must be subject to unequal treatment in lower courts throughout the nation."⁵

This is, of course, merely an example of one point on which Professor Robertson might well have provided further enlightenment. The Warren essay required an explanation by the author of the reason for its inclusion. Was it intended to suggest that *most* lower courts probably practice racial discrimination? Or was it included as a basis for the much more comfortable suggestion that racial discrimination *has* been documented in Detroit and *could* exist in numerous other courts? The reader

3. *Id.* at 326 (previously unpublished report prepared for the Equal Justice Council of Detroit, 1971).

4. *Id.* at 341-44.

5. *Id.* at 245-46.

is left to speculate as to what point Robertson did indeed wish to make.

Clearly, there is a still broader problem which plagues *Rough Justice* and which arose when Robertson first began to formulate the general approach the book would take. The problem is whether it is feasible even to attempt to assemble a collection of materials which can shed any real light on, for example, the performance of lower criminal courts in Los Angeles, California and Denver, Colorado.⁶

The lower criminal courts are not often the subject of earth-shattering pronouncements from appellate courts, and as a consequence their operations do not receive the same scrutiny that the courts of general criminal jurisdiction do.⁷ For this reason, there is found in the lower courts a flexibility and informality which might meet with constitutional objections if duplicated in a court of general criminal jurisdiction. For example, in the recent case of *Gerstein v. Pugh*,⁸ it was seriously argued on behalf of the State of Florida that a prosecutor's *ex parte* decision that probable cause existed was sufficient basis to hold a defendant in custody pending formal initiation of proceedings in a general trial court. The contention, of course, went too far and the United States Supreme Court rejected it. However, the case serves to illustrate the differences which exist, not necessarily in the lower courts themselves but in the differing state statutory schemes under which they operate. For example, lower courts in California which hear preliminary felony proceedings are subject to review, if the defendant is held to answer, by a motion made to the superior court to set aside the accusatory pleading.⁹ If the evidence as to any essential element of the offense was improperly admitted by the lower court over objection, the accusatory pleading will be set aside.¹⁰ Thus, in California, generally the same rules apply at a preliminary proceeding in a lower court as apply at trial. This is an

6. Los Angeles and Denver were arbitrarily selected by the reviewer because he has recently appeared as counsel for a criminal defendant in both cities and thus is aware of significant differences in those courts on the practical level.

7. Of course, some appeals from lower criminal courts do reach the highest levels. See, e.g., *Miller v. California*, 413 U.S. 15 (1973); *Schmerber v. California*, 384 U.S. 757 (1966). Both cases were appeals from California municipal courts; but such cases are the exception.

8. 420 U.S. 103 (1975).

9. See CAL. PEN. CODE §§.995, 999(a) (West 1970), providing for review of right by the superior court and further discretionary review by extraordinary appellate writ.

10. *Rogers v. Superior Court*, 46 Cal. 2d 3, 7, 291 P.2d 929, 939 (1955).

effective method of enforcing compliance by the lower court.

When California's system is contrasted with Florida's approach, which permitted as a valid alternative a prosecutor's *ex parte* conclusion that probable cause existed, it is clear that statutory provisions relating to procedures in lower courts cover an immense and varied spectrum.

In light of the differing functions assigned lower criminal courts by the various state legislatures, it seems a fruitless task to attempt to suggest generalized conclusions on the basis of a number of essays, each of which, with an occasional exception, deals with a particular jurisdiction. In a word, *Rough Justice* suffers from overbreadth. An author would be hard-put to deal adequately in a single volume with the problems in any single jurisdiction's lower courts, much less to suggest realistic solutions. Yet Professor Robertson has attempted both tasks, and not for just one jurisdiction but—with grand indifference to reality—for any and all.

The fifth part of *Rough Justice* is perhaps the least useful to anyone but the classic ivory-tower theorist.¹¹ Five essays are presented in Part V; three of the five are concerned with a type of "family" or "community council" forum for resolving minor criminal violations. An essay by Professor Griffiths is presented that apparently proposes some sort of "family" forum in which the "transgressor" would first be reassured of the love of society and would then be spanked.¹² This description, of course, takes some advantage of the reviewer's literary license, but Griffiths' essay is of little practical worth, particularly since it purports to reveal deficiencies in Packer's classic *The Limits of the Criminal Sanction*.¹³

Packer described two models of the criminal process, intended to exemplify the polar ends of the two general competing schools of criminal procedure philosophy. Each model was used by Packer simply to represent a school of current thought in the criminal law and to provide a communications referent. These two paradigms, the Crime Control Model and the Due Process Model (the "law and order" model and "defendants' rights" model, in the reviewer's terms), are attacked by Griffiths, who apparently did not read enough of *The Limits of the*

11. ROBERTSON, at 345-431.

12. Griffiths, *Ideology in Criminal Procedure, or a Third "Model" of the Criminal Process* in ROBERTSON, at 347, reprinted from 79 YALE L.J. 359 (1971).

13. H. PACKER, *Two Models of the Criminal Process* in THE LIMITS OF THE CRIMINAL SANCTION 149 (1968), reprinted in ROBERTSON, at 136.

Criminal Sanction to understand Professor Packer's clear explanation of the models' use.¹⁴

One quotation from Griffiths seems uniquely apropos: "Basic faith in public officials would revolutionize American criminal procedure."¹⁵ In fairness to Griffiths, his essay was written in 1971. We have learned much in the last four years about "basic faith in public officials." But this reviewer shares the skepticism of the framers of the Bill of Rights: don't trouble me with "faith healers"; give me instead a competent lawyer acting on my behalf and my behalf alone in an adversary system. Spare me also a community council or a "family model." As an accused misdemeanant, I would feel much more secure with 1) a municipal court staffed by a competent, highly-paid judge who is not asked to do the work of five judges; and 2) a court which does not have to waste expensive talent on traffic offenses, on drunks, on minor narcotics offenders, on non-supporting husbands. In other words, give me a court run by an expert who is paid like an expert, treated like an expert, and expected to produce a result consonant with that expertise. For assistance in achieving that goal, give me a book which suggests realistic proposals for improvement of the system we have. If the lower courts are overworked, underpaid and provided with inadequate facilities, why not propose solutions to those obvious problems?

One essay in Part IV of *Rough Justice* does just that. "Traffic Court Reform"¹⁶ advances a worthwhile proposal for removal of minor traffic offenses from the criminal courts and transfer to an administrative agency. Such a proposal is well worth considering. Unfortunately, too many of the essays selected by Robertson are so theoretical that they offer little more than exercise for the mental gymnast.

Lest this review has seemed unduly critical of Professor Robertson, his work is marred perhaps more than anything by the dearth of useful materials from which he could have made his selection. However, this does not explain the simplistic *Reader's Digest* format of *Rough Justice*. Much, much more of the author's own views would have been welcome.

However, to Professor Robertson's credit is the fact that a careful reading of *Rough Justice* necessarily leads one to serious

14. ROBERTSON, at 137-38.

15. *Id.* at 356.

16. *Id.* at 435, reprinted from 4 COLUM. J. LAW & SOC. PROB. 255 (1966).

and recurring questions about the problems of the lower courts, the role they play in the criminal justice system, and what can be done to improve them. The book should be read, if for no reason other than to provide some background for a serious exploration of these questions.

AGGRESSION AND CRIMES OF VIOLENCE. By Jeffrey H. Goldstein. New York: Oxford University Press. 1975. Pp. xiv + 192. Cloth. \$8.95.

Reviewed by JAMES HIGH, M.D.*

"While it is tempting to want to fix blame for an aggressive episode on either the offender or the victim, it is likely in many cases to be due largely to fortuitous and impersonal characteristics of the environment."¹ This statement embodies both the primary thesis of this book, and the crux of the many controversies surrounding violence and society's response to it.

Violence is to the behavioral sciences what cancer is to medical sciences: a multifaceted, multidetermined "disease," the roots of which seem to lie in subtle alterations in the normal functioning of the organism. The implication of such complexity and close proximity to normal life processes is that violence, like cancer, simply will not yield to heavy-handed solutions. We must first gain a full understanding of normal developmental processes and the many environmental factors which subvert them, as well as the immediate factors which precipitate violent acts. Unsophisticated assaults on the problem of violence and aggression promise to be useless quackery at best, or at worst to threaten the life of the "patient"—and we are all "patients" where aggression and violence are concerned, by virtue of being humans in a human society. Consequently, proposed changes and prohibitions meant for us and our society must be examined with a most critical eye, no matter how desirable the goals may seem.

In light of this, I must applaud Professor Goldstein's effort to give sound, factual, scientific backing for his proposals, many of which seem sensible and long overdue. Unfortunately, however, I think his work meets with only partial success. To some degree this is due to an unevenness in the scientific validity of quoted studies, and to the rather dubious pertinence of

* A.B., 1965, M.D., 1968, Indiana University; intern and resident in psychiatry at Los Angeles County, University of Southern California Medical Center, 1968-72; former staff psychiatrist, California Adult Authority, Parole Outpatient Clinic, Los Angeles; Instructor in Psychiatry, University of Southern California; private practice, Long Beach and Beverly Hills.

1. J. GOLDSTEIN, AGGRESSION AND CRIMES OF VIOLENCE 84 (1975) [hereinafter cited as GOLDSTEIN].

the studies he cites to the proposals he is attempting to support.

There is a still more serious problem with this book. To date, virtually all attempts to implement societal reforms designed to reduce violence, or even to study it systematically, have been thwarted by partisan squabbles.² This has happened despite the fact that "law and order," presumably including the reduction of violence, has been identified as a major concern of the American public at least since the 1968 presidential election. We are divided on the issue of fault, or as a psychologist might put it, the "locus of control." The question that triggers partisanship is, does the cause of violence reside within the individual, or is it external to the individual, in his society?

Witness the rhetoric over the issue of gun control: "Control Criminals not Guns,"³ or "The difference Between An Assault and a Homicide is a Gun."⁴ The arguments, of course, branch out into other questions such as individual versus societal rights; but I believe my basic diagnosis of the conflict is accurate. Professor Goldstein seems to agree when he acknowledges that "the formal and informal policies and controls which are used to reduce aggression are influenced by whether aggression is conceived of as innate or learned."⁵

Goldstein reveals his own partisanship as early as the introduction, where he states that he has "stressed social and environmental determinants of aggression" in order to "counterbalance" what he sees as a "recent overemphasis . . . on biological determinants of aggression."⁶ Compare this attitude with that of Konrad Lorenz, a Nobel prize winner whose orientation is toward the innate, instinctual, internal factors of human behavior, when he says, "The equipment of man . . . is just as dependent on cultural tradition and rational responsibility as, conversely, the function of both the latter is dependent on instinctual motivation."⁷ Lorenz, unlike Goldstein, apparently sees the problem of human behavior as an interplay of forces, the internal influencing the external and vice versa.

2. The premature demise of the projected UCLA Center for the Study and Control of Violence is a prime example. Plans were shelved after it was attacked from both right and left.

3. Bumper sticker seen on San Diego freeway.

4. GOLDSTEIN, at 119.

5. *Id.* at 4.

6. *Id.* at xii.

7. K. LORENZ, ON AGGRESSION 256 (1966).

In the opening chapter Professor Goldstein systematically rejects the contributions of such respected scientists and thinkers as ethologist Lorenz, neurophysiologist Jose Delgado, and of course Sigmund Freud⁸ (but ritualistic disparagement of Freud appears in the first chapter of virtually every book by a psychologist with anything to say). In so doing, he is discarding all fields of study and all evidence which might place the locus of control within the individual. His desire to provide a "counterbalance" is acknowledged, and is understandable given his orientation as a social psychologist.

Unfortunately such "cognitive devaluation," to quote the author out of context, detracts from the scientific value of his own work and reduces it to something approaching a propaganda pamphlet. Scientific method demands the expansion of theory to include all data, not the exclusion of data to make a point. The latter is the technique of a politician, not a scientist.

I suppose I had hoped this book would contribute to a long overdue comprehensive theory of aggression and perhaps offer a plan to tackle the problem. I was disappointed. The book is the first in a series called the "Reconstruction of Society Series." I am afraid the reconstruction will have to await better and more convincing theories and plans than those presented by Professor Goldstein.

8. GOLDSTEIN, at 4-11.

THE LAW OF MARITIME PERSONAL INJURIES. By Martin J. Norris. Rochester: The Lawyers Co-operative Publishing Co. 3d ed. Pp. xvi + Vol. I 561, Vol. II 673. \$70.00.

*Reviewed by Myron H. Nordquist**

The first edition of *The Law of Maritime Personal Injuries* was published in 1958. Since the release of the second edition in 1966, a number of developments have occurred in this field. Several of the more important events are the advent of the unified Federal Rules of Civil Procedure and of legislation amending the Longshoremen's and Harbor Workers' Compensation Act. Both subjects are treated in this third, two-volume edition, which also contains a new chapter on negligence and up-dated chapters on products liability and on practice and procedure.

Three-fourths of Volume 2 consists of appendices, tables and an index. The four appendices are the Longshoremen's and Harbor Workers' Compensation Act (as amended in 1972), the Safety and Health Standards for Maritime Employments (revised in October, 1972), the Federal Rules of Appellate Procedure, and Federal Rules of Civil Procedure Forms. There are 179 pages devoted to a table of personal injury cases concerning harbor workers, passengers, visitors and others. The author then provides an alphabetical listing of cases cited in the various sections of the book. Tables are also provided on the references he makes to the Federal Rules of Civil Procedure and the sections of the United States Code. The last 50 pages of Volume 2 are a comprehensive index of some 2000 entries.

The 13 substantive chapters in the third edition are patterned on Norris' prior editions, with 334 sections arranged topically. For the non-specialist, the main appeal of the volumes is as a digest of the principal issues one is likely to encounter in a maritime personal injury suit. Moreover, the text is written in an easily understood style with short, direct sentences.

For the specialist, the brevity of the narrative text probably makes it less useful than the appendices and case listings.

* Office Director, Office of Law of the Sea Negotiations, U.S. Department of State; B.S., Oregon State University; J.D., California Western University.

Overall, *The Law of Maritime Personal Injuries* is a handy, quick reference to introduce principal issues and to guide its user to primary sources. The volumes are superbly organized and can be of practical value to both attorneys and non-attorneys concerned with this subject.