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BOOK REVIEWS

VIGILANTE JUSTICE?

A CRIME OF SELF DEFENSE: BERNHARD GOETZ AND THE LAW ON TRIAL. By *George P. Fletcher*. New York: The Free Press, 1988. Pp. xi, 253. $19.95.

SUBWAY GUNMAN: A JUROR'S ACCOUNT OF THE BERNHARD GOETZ TRIAL. By *Mark Lesly* (with Charles Shuttleworth). Latham, New York: British American Publishing, 1988. Pp. xix, 322. $18.95.

QUIET RAGE: BERNIE GOETZ IN A TIME OF MADNESS. By *Lillian B. Rubin*. New York: Farrar, Straus, and Giroux, 1986. Pp. 247. $16.95.

On December 22, 1984, a young white man shot four black teenagers on a New York City subway train. The incident, the subsequent search for the subway gunman, and the eventual criminal prosecution of that man stirred the passions and the emotions of the nation. A floodgate of pent-up fears, prejudices, anger, and rage was loosened, with just about all of us having strong opinions on whether the gunman was justified in shooting the youth, whether the black teenagers were rogues about to pounce on one more innocent victim, and whether the eventual outcome of the court proceedings turned more on the color of the participants in the incident than on the facts of the case. The notorious Bernhard Goetz case, of course, has been the subject of an outpouring of popular literature and mass media documentary and debate. We are probably all familiar with at least some of it. The case has also provided fodder for some very interesting scholarly analysis of the legal, social, and personal issues that emerge so powerfully from it. The intent of this review essay is to ascertain how the Goetz case has been used by a number of authors to address concerns of interest to criminologists and criminal law scholars.

George Fletcher, a professor of law at Columbia University

School of Law and a widely acclaimed authority on the criminal law, uses the Goetz case to probe the theory and practice of the plea of self defense. Using an observer-as-participant methodology, Fletcher was present at every aspect of the court proceedings as an academic observer, welcomed by all major legal actors in the proceedings. Thus, Fletcher was in the unique and desirable position of having access to the most private thoughts and activities of the persons who most clearly shaped the nature of the state response to the shootings. Combining this first hand knowledge of this case's intricacies with relevant statutory and case law on self defense, Fletcher addresses the moral and legal dilemmas associated with the self defense doctrine.

Mark Lesly, a young white New Yorker working as a word processor, was personally thrust into the social and legal conflicts presented by the Goetz incident when he was selected as a juror in the resulting trial. As a direct participant in the proceedings, Lesly describes in fine detail the evidence presented in the case, his perception of defense and prosecutorial strategies, the dynamics involved in jury decision making, and his overall assessment of whether justice was achieved in the process. Being a person untrained in the law and not privy to discussions among the major legal actors at the sidebar or within chambers and restrooms, Lesly is not able to present the legal sophistication or insider's perspective evident in Fletcher's work, yet his writing is useful in illuminating how the legal and moral issues presented by the Goetz case were perceived and resolved by himself and his fellow jurors. In this respect, although not an academic undertaking, the book is useful for those of us with more academic interests—especially those interested in the social psychology of jury decision making. Lesly and Fletcher deal with similar legal and moral issues and their differing perspectives and vantage points yield complementary insights into the Goetz case.

For instance, Fletcher is primarily interested in illustrating why the Goetz case makes it difficult to say whether justice was done. He does so by presenting the various theories and principles of self-defense, which to a large degree have not been interwoven into a coherent whole despite its centrality to the just administration of criminal punishment. Lesly is either not aware or not concerned with articulating theories of self defense. His focus is describing the *experience* of the Goetz trial, not its relationship to the broader rules of law and the reasoning they reflect. Thus, it is easier for Lesly to come to a conclusion as to whether the jury's decision in the Goetz trial resulted in a just outcome. For him, the law is the law, rela-

tively clear and unyielding as he understands it; he is concerned with its application, not its moral or philosophical anchors. The strength of his book is thus consistent with the well-known aphorism of Oliver Wendell Holmes: "The life of the law has not been logic; it has been experience."[1] He thoroughly describes, although at times in an unstimulating manner, the details of his experience that gives life to the Goetz trial.

Lillian Rubin, a practicing psychotherapist in the San Francisco Bay area who was reared in the Bronx, explores the human and social dimensions of the Goetz incident. Quite different than the previous two books in that the fundamental legal issues presented by the Goetz case and the criminal process are not its focus (it was published before the case went to trial), this book is important for criminologists because of the traditional liberal positivistic perspective that is so clearly adopted and articulated in her attempt to explain the shootings and their aftermath. Beyond providing a psychohistory of Goetz in an attempt to explain why he acted so violently on that subway train, Rubin makes an exploratory foray tinged with causal inferences into the family histories of the youths shot on the subway that day, particularly that of Darrell Cabey—the young man who was permanently paralyzed and who eventually suffered brain damage as a result of the shooting. Rubin also tries to suggest why the public response to the shooting was so intense and emotional, with Goetz being simultaneously vilified and beatified. Because her perspective in addressing all of these issues is so firmly rooted in a liberal positivistic tradition, her book can be used to highlight such a perspective's implications for the resolution of the social, moral and legal quandaries posed by the subway shootings.

Rubin takes a uniformly deterministic approach in understanding why the events in that subway car unfolded as they did, and the subsequent public response. She examines how the major figures involved in the incident had adapted to personal circumstances and crises in a manner which almost inexorably resulted in the shooting. Further, she suggests the public response—and the fear, hatred, racism, rage, and ambivalence reflected in it—was thoroughly predictable, as though it had been programmed by a jaundiced deity capitalizing on the frailties and fallibilities of human kind. Thus, in a way, everyone has been hopelessly victimized by this incident and the context in which it arose—the assailant, the shot youth, and all of us who fear in a fearful age. We are all victims of a "quiet rage" in this "time of madness."

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[1] O.W. HOLMES, THE COMMON LAW 1 (1881).

Rubin's psychohistory of Goetz, which reflects a good deal of armchair psychologizing (she had never treated, interviewed or even met Goetz), vividly demonstrates the theme of quiet rage in a time of madness. Although the persuasiveness of her thesis is undermined by some instances of rather silly speculation, Rubin does present a rather convincing argument that Bernhard Goetz' actions in the subway that fateful day derived from multiple childhood sources of frustration and angst.

"Bernie" is portrayed as a deeply troubled man; victimized by his childhood peers who taunted and humiliated him throughout his early years; never the object of positive displays of love by an authoritarian and aloof father; banished at the tender age of twelve by his family to a boarding school in Switzerland during a family crisis involving legal accusations that his father sexually molested two neighborhood youths; and ostracized by community members in what could have been an idyllic village setting when the charges against his father became public. Thus, as a child Bernie was always an outsider; a loner who was never able to develop positive social and emotional bonds with those around him. These themes continue into adult life, with the resulting frustrations generating an intense anger and rage within Goetz. The subjective feelings of being threatened, of "being played with" on the subway train that Christmas season day, which occurred a few short months after his father's death, provided the opportunity for these deep-seated hostilities to erupt. For Rubin, the bullets that felled the four young black men on that subway train were "aimed at targets that existed as much in his (Bernie's) past as in his present" (p.143).

Although Rubin feels she understands Goetz, and the reasons he turned out to be a sick and dangerous individual (her book could be sub-titled "revenge of a nerd"), little sympathy is displayed. He is clearly a non-likable person, as is documented through numerous interviews with acquaintances (he never seemed to have friends). Rubin's work does not serve as an apology for Goetz or his actions, although to a certain extent, it does serve as an apology for many of the "hoodlums" and "punks" in the world (she does assume that Barry Allen, Darrell Cabey, Troy Canty and James Ramseur were planning to mug Goetz). She sympathizes with these young adults, and their families, who have the difficult task of achieving their middle class goals in an impossible context. They are the victims of a faulty social structure; which spawns the racism, inequities, victimization, fear, and sense of powerlessness so evident in contemporary America. Her presentation is eloquent, and reminiscent of the way criminologists used to describe sources of crime in days gone by. In

a manner this is quite refreshing, especially in contrast to the punitive and non-humanistic criminological writings which dominate the current literature. However, there is a lack of balance in Rubin's book which is disturbing—even to a person who shares her basic sensibilities and intellectual perspective.

The unevenness in Rubin's work is manifest in the psychological determinism used to understand Goetz' behavior and the sociological determinism employed to understand the behavior of the Cantys, Allens, Ramseurs, and Cabeys of the world. Goetz is the victim of conflicts primarily internal to his own psyche, of his own inadequate personality. His family is surely responsible for some of his frustration which is eventually released in the form of furious aggression, but an inequitable social structure or a deviant cultural milieu is visibly absent as an etiological factor in Rubin's discussion. In contrast, the frustration which causes young black men in our city ghettos to strike outwardly in an often violent manner is not suggested to be found in individual or familial sources (she makes a point of documenting the caring, responsible, and loving family environment in which Ramseur and Cabey were reared). Rather, Rubin seems to adhere to a variant of strain theory (despite the book jacket describing her as a *social scientist* and a psychotherapist, she doesn't clearly articulate any recognizable social theory of crime) in explaining these forms of crime and violence.

Crossing levels of explanation while explaining individual cases of deviance or crime, alone, is not problematic. A problem arises when people imbue causal analysis with moral consequences. Although not explicitly stated, Rubin suggests that on a moral level the Goetzs of this world are much more blameworthy for their actions than the Cantys and Ramseurs. The former, more than the latter, are driven by things over which they have greater control. The crime and victimization that a Goetz imposes on others is relatively random and unstructured, whereas the crimes of urban black youth emanate from sources which all of us actively or passively tolerate. So Goetz is to blame for Goetz (and perhaps his father); we are all to blame for Canty, Ramseur, Allen, Cabey, and the thousands of alienated and angry young men in the world. Rubin's writing (as well as much of the "liberal" documentary on the Goetz case) clearly suffers from the malady of attaching moral connotations to differing levels of causal explanation because she herself determines how to explain what. Why is Goetz so less sympathetic a figure than Allen or Ramseur? It seems to have more to do with the amount of information Rubin has at her disposal and her ideological orientations than any inherent moral value which can be attached to

differing etiological sources of behavior. This makes an otherwise easily digestible book quite unpalatable.

Rubin's inferences regarding degrees of moral blameworthiness that can be attached to Goetz cannot extend very far in her discussion of the state's assessment of Goetz's criminal responsibility because she completed her book before the case was adjudicated. She does follow the case through the indictment process, however, and clearly feels that the failure of the first grand jury to indict Goetz on attempted murder and assault charges was strongly influenced by prevailing public opinion (which was shaped by mass media coverage capitalizing on the fears, rage, and racism in American society) and the Manhattan District Attorney's responsiveness to it. When public opinion began to sway as a result of Goetz's own incriminating statements being made public,[2] a more reasonable indictment reflecting Rubin's view of Goetz's culpability followed. Rubin clearly believes Goetz acted unreasonably and excessively in response to any perceived threat that may have been posed by Canty, Ramseur, Allen, and Cabey; and that Goetz was deserving of being punished with the full brunt of the law. I would speculate that she felt her own rage when Goetz was found guilty of only one weapons charge in the subsequent trial.

This perception of gross injustice, of the principle of equality under the law being compromised, of the court placing greater value on the lives of whites than on the lives of blacks, etc., as a result of the jury's decision in the Goetz trial is surely understandable. Many felt this, including myself. This is a primary reason why the books by Fletcher and Lesly are so valuable—from differing perspectives, they inform us why such conclusions should not necessarily be drawn about the justice that did or did not result from the Goetz verdicts.

Despite differing vantage points and orientations to self-defense, both Fletcher and Lesly come to remarkably similar conclusions as to whether Goetz's reaction was a legitimate act of self defense. This is perhaps because Fletcher's account of jury deliberations in the trial derive largely from an in-depth interview with Lesly (one of two jurors so interviewed), and because Lesly's inter-

[2] Goetz stated in his audiotaped and videotaped "confession" when he turned himself in to a New Hampshire police department that he didn't regard it as a "threat" for Canty to approach him and ask him for five dollars, that he had the "intention . . . to murder them, to hurt them, to make them suffer as much as possible," that after four shots and viewing black youth paralyzed by fear but without blood oozing from his body, Goetz said, "You seem to be (doing) all right; here's another," and then fired a fifth shot that would eventually paralyze that young man for life.

pretation of the legal issues surrounding the trial appear colored by his subsequent discussions with Fletcher. Both feel that the not guilty verdicts on the attempted murder and assault charges derive primarily from the prosecution's inability to successfully prove beyond a reasonable doubt that Goetz's behavior went beyond what was reasonable, necessary, and proportional to an attack perceived to be imminent. Fletcher and Lesly are at their best in explaining how the jurors were persuaded that Goetz acted justifiably within the limits of the law. Though legally innocent under the self-defense doctrine as it has been applied in this particular case within the New York State courts, both authors feel that Goetz is morally culpable for his behavior on that subway train. As Lesly states: "I believe that a truly reasonable person with a proper respect for the sanctity of human life should do more than Goetz did to try to avoid shooting preemptively. Nothing more, however, is required by the law" (p.315). The disjuncture between moral and legal responsibility is an obvious problem. A strength of Fletcher's book, in particular, is his attempt to offer a theory of self defense which would close this gap.

Fletcher presents four theories of the plea of self defense, and illustrates that current practice is not firmly based on any single theory despite the superficial appearance that the doctrine of self defense represents a unified whole. The consequences include the blending of theoretical justifications, an ongoing debate about the boundaries between the authority of the state and the right of individuals to protect themselves and, at least in this case, apparent injustice.

The first theory views self defense as a form of just desserts, with the individual "victim" taking the place of the state as an inflicter of pain on wrongdoers. This parallels the common phrase associated with the Goetz shootings—"vigilante justice"—and although clearly inconsistent with common notions of due process, Fletcher illustrates how persuasive an argument it was in the Goetz case, particularly as articulated by the Goetz defense team. Their approach in this regard was reflected in defense attorney, Barry Slotnick, inverting his defense role for Goetz into one of prosecutor of Canty, Ramseur, Allen, and Cabey. Lesly, for one, was very aware of this tactic, and describes a trial process in which Slotnick's repeated statements that "they got what they deserved" possibly having the subtle influence of altering the jurors' perceptions of what actually occurred on the subway train. During jury deliberations, the jurors seemed to almost go out of their way to discount Goetz's own incriminating version of the "facts." One must wonder if the

unsavory character of the purported muggers, and the hostile and combative testimony of two of them, may have prompted at least some of the jurors to unconsciously adopt a self-defense as punishment rationale for their decision.

Another model of self defense, not viable in most legal systems today but one which was played up by the Goetz defense team, views self defense as a defender's "involuntary response to an overwhelming threat" (Fletcher, p. 30-31). The defensive action is based on fear and a lack of meaningful alternatives; the defense reflects compassion "for someone with his back against the wall." The logic of this defense suggests threats must be imminent and the response must be necessary, but that the response does not have to be directly proportional to the threat. Lesly's book, in particular, documents how Goetz's defense attorneys successfully portrayed the fear Goetz must have felt on the train (partially by having a courtroom enactment in which four young black Guardian Angels represented the muggers, and by having the jury go on a "class trip" to an actual subway car). They were also successful in suggesting that simply displaying the gun may not have allowed Goetz to be in complete personal safety (at least the first shot was necessary). Though not requisite from the logic of this model, the defense team further made the convincing argument (at least in the minds of the jurors) that while shooting, Goetz was on "automatic pilot" and fired in "rapid succession" (indicating an involuntary response for the remaining shots).

Goetz's defense, and the eventual trial outcome, is also consistent with a third theory of self defense—what Fletcher calls the "individualist" model. Within this model, one that Fletcher is most worried about as a model which is garnering increasing support in contemporary America, any "encroachment on an individual's rights represents an intolerable violation of personal autonomy" (p. 33). The defender in this case can do anything in his/her power to end the encroachment, and has the absolute moral authority to do so. The encroacher forfeits all rights, and can be repelled with any level of force, even if it is not proportionate to the threat (e.g., shooting a burglar whose only threat is against property). Fletcher contrasts this absolutist, individualistic brand of self defense with what he terms a social theory of self defense. Within this model, which Fletcher strongly supports as reflecting the triumph of reason over passion, aggressors have rights that warrant protection. Their rights must be brought into the self defense equation because the law aims to encourage people to act in socially desirable ways (i.e., to promote the public good). Shooting four kids to prevent even a

strong armed robbery denies the humanity of the aggressors. Respecting the humanity of all people sometimes requires a victim to absorb an unlawful encroachment.

The social theory of self defense is obviously the most narrow one presented above,[3] and was reflected in the prosecution's closing argument:

> The worst man has the same right to live as the best and no one may attack another because his general reputation is bad. The law protects everyone from unlawful violence, regardless of his character. This case, I submit, presents a monumental challenge to this most precious tenet of a free and democratic society.

This statement, in addition to suggesting the unspoken racial dimension of the case, illustrates the state's apparently unsuccessful attempt to get the jury to balance Goetz's rights with those of Canty, Allen, Ramseur, and Cabey.

This apparent imbalance troubles most of us. The value of reading Fletcher's and Lesly's books in tandem is that the final conclusion most readers would draw is that the imbalance most strongly derives not from a particular set of values driving the Goetz decision, values at odds with the protection of all citizens, but by the inability of the prosecution to prove *by the evidence presented* that Goetz acted unjustifiably. While Fletcher neatly articulates the conflict in values which have not been reconciled in the practice of self defense, together both accounts of the Goetz trial indicate that the jury's decision turned more on the mundane aspects of the trial than factors which can be attributed with great legal or social significance.

For example, it was a shock to most of us that Goetz was not convicted on weapons charges derived from his possession of two unlicensed handguns and their subsequent delivery to a prosecution witness, Myra Friedman. It seems that the acquittal on these charges was not due to jury nullification (Fletcher presents a brief but insightful discussion on jury nullification), but due to the jury not understanding how to apply the law with regard to these charges, and because the jury had doubts about Ms. Friedman's truthfulness (Lesly describes her "bizarre" voice as promoting this view). The acquittal on the attempted murder charges had more to do with the jurors confusing "motive" with "intent"—they wrongly thought that there could be no conviction if Goetz didn't have a clear motive to kill, than with the adoption of a particular theory of

[3] One author, in a strongly worded critique of Fletcher's work, especially his endorsement of the social theory of self defense, terms it a "minimalist" conception of self defense. *See* DiIulio, *Vigilante Victim*, 94 PUB. INTEREST 120, 120-25.

self defense (the jury never got to the self defense issue on these charges).

The acquittal on the assault charges seemed heavily influenced by changes in the language of juror instructions on the numerous occasions the jury asked for clarifications of the law. The changes, inadvertently favorable to the defense, appeared to strongly influence a number of jurors. The ability of one juror, a graphic artist, to simulate the shooting incident with cut-out figures apparently swayed a number of jurors to think of the shooter as someone other than the obviously disturbed and angry Goetz—the elusive "reasonable man" came alive for a moment. For all the jurors, even one who had an anti-Goetz bias and articulated a social theory of self defense, the simulation indicated the shootings of all the victims except Cabey could have been reasonably justified. The assault charge relating to the shooting of Cabey, the last youth shot at, perhaps twice when Goetz supposedly said "You seem to be all right, here's another," was the centerpiece of the prosecution's case. Nevertheless, the forensic evidence mustered, the testimony of the eyewitnesses, and even Goetz's highly incriminating statements were not enough to convince the jury beyond a reasonable doubt that Goetz went beyond the limits of self defense. While neither Fletcher nor Lesly pin the blame squarely on the shoulders of the prosecution (they both admire the job done by Slotnick, although Fletcher is critical of some defense tactics), it was clear that the prosecution's case had significant weaknesses. It was these weaknesses, and the idiosyncratic things mentioned above as well as many others, not factors which can be considered insidious or threatening to the general social or legal fabric (e.g., racism, denying the humanity of persons who violate the law, the formal endorsement of vigilante justice, etc.) that determined the outcome of the Goetz trial.

Taken as a package, the three books reviewed illustrate why the Goetz case has taken on tremendous symbolic value, why it has captured the nation's imagination. Rubin and Fletcher, to varying degrees, capture the essence of the symbols and the conflicts associated with the subway shootings and the subsequent social responses. They embed the Goetz case within our social and legal fabric, raising cautionary flags as to the potential destructive ability of the beliefs and attitudes that it has come to represent. Despite their central focus on the implications of the Goetz case for the larger society, they have given the major participants in the events recognizable human form. This is the particular strength of Lesly's book. He illustrates, probably unknowingly, that despite the symbolic value represented by Goetz and his court proceedings, the

trial's outcome turned less on ideology or abstract conflicts of law than on the reasoning and passions of a relatively small number of people who simply tried to "do justice." The lessons of not ignoring the individual while attempting to understand social and legal issues of consequence are many, and are of considerable value to gaining a fuller appreciation of any social or legal phenomenon. Accordingly, I encourage all persons interested in the issues the Goetz phenomenon has come to represent to read any of these books. A much fuller and meaningful appreciation, however, demands more. A reading of all three works moves one in that direction.

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PRIVATE POLICING. By *Clifford D. Shearing* and *Philip C. Stenning*. Beverly Hills, California: Sage Publications, Inc., 1987, 327 pp.

After reading *Private Policing*, edited by Clifford D. Shearing and Philip C. Stenning, it is readily apparent that private policing is much more than security alarm companies and security guards who prevent retail theft/robbery and/or provide protection for institutions and their employees. This collection of thirteen articles, predominantly written by sociologists, demonstrates the extensive role that private policing plays in corporate and business crime, as well as the part the private citizen has in private policing. Editors Shearing and Stenning are successful in persuading the reader to reconsider fundamental notions of public and private policing and "into which of these categories the function of policing is most appropriately placed (p. 10)." Furthermore, the case studies and research presented support the editors' claim that the analytical tools used to examine public police are inadequate for private policing because these techniques are nationally based and private policing is internationally based (pp. 9-10).

Most of the chapters address varieties of private policing and their functions in contemporary society. However, one of the tantamount issues of private policing, privacy, is the emphasis of the lead article by Albert J. Reiss, Jr. He defines privacy legally; discusses under what circumstances intrusion is legitimate; and indicates

"how the law and public and private police legitimate and protect against intrusion (p. 20)."

Although the editors' introductory essay does discuss public and private policing, there is not an article per se that either distinguishes public and private policing or traces the historical relationship between the two. However, a reading of the introduction in conjunction with several of the articles does provide some background for the reader. The article by Gary Marx, well known for his previous research on undercover police work, relates that the basic public-private distinction is in the areas of "sponsorship, function, interest served, organizational form and location (p. 172)." His contribution to this volume is his account of undercover investigations to illustrate five ways in which private and public policing can be interdependent.

But it is in West's case study that a definition of public and private policing appears. He cites Freedman and Stenning's definition (1977), of public and private policing to distinguish whether or not the "vigilancia revolucionaria" in Nicaragua are private or public policing. According to Freedman and Stenning (1977) public policing includes peace officers (law enforcement officers, special constables and auxillary police appointed by Police Acts) who have authorization to maintain the peace in all "public" places and whose primary purpose is assisting persons in all public places. Private security includes "all other persons involved in law enforcement whether they are peace officers or private citizens, whether publicly or privately employed, whether they work on public or private property (p. 149)." Moreover, private individuals who organize neighborhood patrols to provide for their collective security are also included under private policing (Ibid.).

The role of the private individual is also addressed in Austin Turk's case study of the popular justice movement in Toronto, Canada (1984). He describes informalism and discusses whether or not it can be successful, especially in large-scale technologically advanced societies.

A reading of Marx's chapter followed by Nigel South's on the history of public and private policing in England provide the rudiments for understanding both the definition and role of public and private policing. South's discussion is important because it reminds the reader that private policing was the forerunner of public policing. His review of earlier forms of private policing including the thief-takers and the Bow Street Runners builds a historical foundation for the rest of the text.

In a criminal justice game of "Jeopardy," the response to "What private detective agency played a major role in industrial clashes in nineteenth century America?," would be the "Pinkertons." While there is not a chapter on this private detective agency founded in 1850 in Chicago, there are two extremely interesting case studies discussing the role of private police in the industrial realm. Stuart Henry applies a version of the legal pluralism framework to workplace discipline, and Weiss provides a compelling case study of labor discipline at Ford during the 1930-47 period. These two pieces, as well as South's discussion of Wedgewood's system of "clocking in" his potters as a form of employee regulation, are not only informative from the industrial perspective, but also present a managerial viewpoint on how employees were regulated to perform their jobs. An interesting parallel to these articles is the final chapter written by the editors themselves to illustrate how Disney World regulates the behavior of the public who visit this amusement park.

Addressing the more contemporary aspects of corporate and business crime are Reichman's description of the role of private police in unraveling fraudulent auto theft insurance claims, and Shapiro's "Policing Trust" about the failure of savings and loan companies in Ohio. The self-regulation and control of corporate crime by U.S. Steel, Exxon and IBM is discussed in another chapter by Braithwaite and Fisse. The failure to regulate nuclear facilities is one of the most frightening concerns of the public today. Peter Manning addresses this in his "Ironies of Compliance." One of the final chapters is by Michael Clarke who discusses how best to control business crime whether by prosecution or administrative strategies.

With the changing nature of crime in society today, there is a definite need for the study of private policing not only academically but professionally as well. The increasing demands of the corporate world as well as the regulation of not only banking but nuclear facilities has contributed to the increased growth of security courses in criminal justice curricula. This volume also shows the value of the case study and the comparative analysis of private policing.

Private Policing is of interest to both academicians and students of public policing in general, but specifically individuals concerned with private policing or private security. This book is a must for graduate courses in security as well as special seminars on public policing as it provides an understanding of this crucial area of policing.

D. Freedman and P. Stenning (1977). *Private Security Police and the Law in Canada*. Centre of Criminology, University of Toronto.

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SEMIOTICS AND LEGAL THEORY, By *Bernard S. Jackson*. New York: Routledge and Kegan Paul, 1985. Pp. 373. $17.95.

Bernard Jackson's book is perhaps one of the most important treatises to be written so far on the relationship of semiotics to law. He carefully critiques existing legal theory, mostly of the positivist variety, compares the theories critiqued, and then extrapolates in the process of construction. This is quite a scholarly exercise given the complexity of the issues involved. But Jackson pulls it off. It is canonical reading for those interested in getting into the semiotic perspective in legal theory.

Semiotics, or the study of signs and signifying systems, has had a recent development; in fact its application to law can really be seen as a 1980s phenomena. Since Jackson's book several major works have appeared: Kevelson's *The Law as a System of Signs* (1988), Goodrich's *Reading the Law* (1986), and more recently Jackson's *Law, Fact and Narrative Coherence* (1988). Two journals on the subject have also just appeared: the *International Journal for the Semiotics of Law* and *Law and Critique*. The 1990s will no doubt be heavily influenced by this new orientation in theorizing in law.

The book is organized in three parts. Part One maps the issues. It points out, clarifies and compares competing perspectives in the semiotic tradition. Jackson presents the American School of semiotics owing allegiance primarily to Peirce and Morris, and the European tradition heavily influenced by Saussure and Jakobson. He tells us that for the former the nature of the sign is triadic: composed of the sign ("sign-vehicle"), the object, and its interpretant. A word (the sign) refers to a concept (the interpretant, the meaning) which in turn refers to, or stands for an object. This, Jackson tells us, leads to an "extensional" conception of meaning (p. 14). Meaning, in other words must be situated with reference to an external world. The European tradition, however, makes use of a binary structure of the sign: the signifier (the "acoustic-image," the psychic imprint) and that to which it refers, the signified (the concept). The object is included within the thought-system of language

itself; hence, this view is "intensional" in respect to meaning. Meaning is internal to language itself. Here the referent hasn't an existence. This difference is pivotal for those doing a semiotic analysis of law. Jackson's view is an intensional one. He is heavily indebted to the structuralist semiotician, Greimas.

In Part Two, Jackson does a superbly scholarly critique of the positivist tradition. The works of Hart, MacCormick, Dworkin and Kelsen are all subject to critique. The framework for Jackson, again is Greimas, particularly his notion of the "semiotic square." Greimasian semioticians rely heavily on this concept. In brief, Greimasian semiotics studies the interrelationship among three levels: the "deep structure" is the paradigmatic axis, organized around binary oppositions (i.e., words have meaning along this vertical axis in so much as each is opposed to another, a play of differences); the "superficial structure" is the syntagmatic axis, the horizontal axis, which is the grammatical element in any narrative construction; the "structure of manifestation" is the particularistic method of appearance in language, i.e., stylistics of morphemes, shapes, colors, etc. (pp. 54-55). The interrelationships among these three levels are constitutive of meaning. The "semiotic square" is a conceptual tool, a discovery principle for binary oppositions. Draw a square. In the upper left hand corner place a concept, say "white." Diagonally down to the lower right place its "contradiction," its negation, here "not-white." In the upper right hand corner, place the "contrariety" (opposition) of the upper left hand concept, here it would be "black." Now diagonally down to the left place the contradiction to "black," here it would be "not-black." Having done this exercise we can always construct three other values given any one other of them. This model can be used to investigate complex legal issues.

Take Jackson's analysis of Dworkin's work. To give an example, Jackson uses Dworkin's hypothetical: "Suppose the legislature has passed a statute stipulating that 'sacrilegious contracts shall henceforth be invalid. . . ' " (p. 193). Would a contract signed on a Sunday be for that reason alone "sacrilegious?" Is it enforceable? The question becomes one of interpretation of legislatures' intent. Jackson then places the possibilities on the Greimasian semiotic square. In the upper left hand he places the concept "liable," its contradiction at the opposite end of a diagonal going down to the right, "not liable"; at the upper right hand corner the contrary of "liable" here "exempt," and at the opposite end of the diagonal going from "exempt" down to the left, "not exempt." The legal exercise would entail articulating the different possibilities of interpretation. Ex-

tending on the semiotic square Jackson here shows that there is yet another possibility. If we draw lines from the upper left hand corner downward and diagonally to the right, while at the same time drawing a diagonal from the upper right hand corner, downward diagonally to the left and let them meet at a point outside of the square below it, we have yet another possibility. For instance, the judge trying to interpret the Sunday ordinance could very well say "not liable" *and* "not exempt" and apply restitution principles (pp. 197-98). Throughout Part Two, Jackson critiques the application of this semiotic square, spending much time also in responding to those who consider this method as too formalistic.

In Part Three, Jackson applies his theoretically developed critiques to Hart's, MacCormick's, Dworkin's, and Kelsen's philosophy of language. Superb! The reader will find an incredibly sophisticated yet clear analysis and critique of the respective theorists. This is a valuable addition to the semiotics and law literature. Jackson finds it critical to confront his predecessors in developing his own brand of a semiotics of law. I found his critique especially clear and insightful when dealing with Dworkin's "law and literature" focus. Dworkin's main point has been that interpreting law is analogous to interpreting literature. The reasoning modes are entirely similar. The key questions: how does one arrive at the right answer in interpreting? What conventions are involved? What frame of reference? How do the two traditions differ as to settling ambiguous cases (the "hard cases")?

Part Four is an extensive conclusion. Jackson teases out the implication of his analysis from previous sections. It is a masterful exercise of scholarship. To name a few points made: he specifies an important component of semiotics in a legal system, that of the audience of a particular discourse. He distinguishes for example a legislative discourse which focuses not on citizens, but on administrators. This is the primary "semiotic group" targeted. Judicial discourse's audience is the senior appellate court, the senior ranks of the legal profession. And with those doing "doctrinal writing" it is the legal academic audience that is targeted (pp.284-87). He states we could distinguish other semiotic groups as well. Each semiotic group, then, has a particular structure, theme and audience. Further analysis must take place in this direction. (I might note, in passing that in my own work I focus on different "linguistic coordinate systems" and their effects, see, for example, my "Jailhouse Lawyers and Jailhouse Lawyering," *International Journal of the Sociology of Law*, 1988, volume 16, pp. 468-73). Ultimately, I would argue, one needs to make a statement about the relationship of legal

language to subjectivity, desire, power structures, and "reality" (does it reflect or refract reality?), and how emancipatory practices may emerge from this new perspective.

Jackson's final point in this insightful conclusion lays out some issues for future analysis. First, the issue of the "referent" is central (recall Peirce v. Saussure; the triadic versus the binary notion of the sign), and second the issue of the "minimal units of signification" (can we specify the basic elements of a narrative grammar?) (p. 297). Any semiotically inspired theorizing in law must take a position on both. Pivotal is, then, whether the theory posits a referential or a non-referential conception of meaning. This is the Rubicon that has to be crossed.

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