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RECENT BOOKS

CRIMINAL LAW AND CRIMINOLOGY: A SURVEY OF RECENT BOOKS

RICHARD LINDSTROM & PETER NEUMER*

MIKE MCCONVILLE AND CHESTER L. MIRSKY, *JURY TRIALS AND PLEA BARGAINING: A TRUE HISTORY* (Oxford and Portland, Oregon: Hart Publishing 2005) 364 pp.

During the first half of the nineteenth century, guilty pleas replaced jury trials as the primary means of disposing of criminal cases in many American jurisdictions. By the end of that century, several jurisdictions reported that ninety percent of felony cases ended in guilty pleas. As Mike McConville and Chester Mirsky point out in their study of the transformation of the criminal process in New York between 1800 and 1865, scholars' explanations for the cause of these changes have varied. Some experts have traced the turn to plea bargaining to the professionalization of the law and the police that occurred over the course of the nineteenth century. A combination of police officers who "were capable of producing reliable evidence of guilt" and experienced lawyers who could "distinguish between cases where conviction was certain and those where triable issues remained" led to the disappearance of factual disputes that would have made trials necessary. Others, according to McConville and Mirsky, have traced the development of plea bargaining to broader changes in American society and politics during the nineteenth century. To these scholars, plea bargaining has been viewed as a means of "legitim[izing] institutions of local government through ameliorative acts directed to the emerging underclass during a period of social conflict" that was created by the development of an industrialized society as well as a product of a wider search for social order that manifested itself in new roles for lawyers and the courts. McConville and Mirsky find both these arguments inadequate. They argue that such changes in the legal system can only be explained by a theory that grows out of an empirical evaluation of data that is then fitted into the political and social context of the place that produced it.

McConville and Mirsky challenge these earlier arguments by examining a variety of data from courts in New York City during the first half of the nineteenth century, including prosecution case files produced by the District Attorney's office, case reports prepared for official publication, data produced for the Court Minute Book,

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and statistics produced by the Secretary of State. This information allows the authors to begin their account with a brief explanation of how the criminal courts worked in New York at the beginning of the century. They outline the process by which cases came into the courts, how defendants were charged and found representation, and how cases proceeded at trial. Throughout this process, the authors emphasize, the courts focused on the actions and interests of the individual defendant. This focus encouraged defendants and prosecutors to choose to go to trial, since the outcomes in these settings represented a validation of this focus. By the middle of the century, however, politics and society in New York had begun to change, and the legal system changed as well. By 1850, New York City had become a teeming metropolis, filled with recent immigrants and beset by the social problems that often come with a population filled with impoverished, desperate people. The political system changed too; power shifted to Tammany Hall, a political organization that built support by claiming to meet the interests of working people and immigrants and that cemented its position by passing out patronage to its constituents. Disgust at the excesses that this patronage system produced, as well as concern about the poor living and working conditions that the changing city produced, led to the creation of a number of reform organizations aimed at assisting the poor. The legal system experienced the politicization of offices such as the district attorney and judges, and a dramatic change in the outcome of cases. After 1845, the number of guilty pleas increased markedly; by 1865, such pleas had become the dominant method of disposing of criminal cases.

The authors show that earlier explanations for this growing dominance of guilty pleas, such as the pressures on the courts of increased caseloads, changes in the practice and performance of the law, and the professionalization of police practice, cannot account for this growth in pleas. Instead, they argue that guilty pleas began to predominate when the interests of a new, democratized, ruling class seeking to appear successful at fighting crime merged with those of reformers who wanted to change the meaning and methods of punishment. Politically minded district attorneys equated guilty pleas with convictions, and often preferred them because they did not have to invest in the uncertainties of appeals. At the same time, reformers began to argue that criminals could be defined according to type and class, and that society needed to control the dangerous classes and provide opportunities for those who could be changed. An alliance between politicians and reformers transformed the legal system from one focused on individual culpability and "evidence and proof" to one that approached crime in a generalized manner, assumed guilt, and "gave prominence to a criminology that tended to define dangerousness through class, race and ethnicity and other factors" unrelated to the facts of the case.

Jury Trials and Plea Bargaining offers an important critique of earlier explanations for the transformation of the legal system in the nineteenth century United States. McConville and Mirsky demonstrate that the growing use of guilty pleas to end criminal cases in New York City between 1800 and 1865 cannot simply be a result of legal professionalization or social change, but resulted instead from the collision of a variety of factors within and without the practice of law. Their insistence that legal change cannot be understood by a narrow, functionalist focus on legal process or by a sweeping theory of social change ungrounded in empirical facts offers an important corrective for both legal scholars and historians. The book succeeds in tying together a variety of social, cultural, and legal changes to provide a coherent explanation of the growth of plea bargaining. The authors also hint at the costs for democracy of a legal

system that shifted from a focus on individual behavior to an emphasis on placing people within classes defined by race, class, and gender. That this dehumanizing of the justice system occurred during a time that historians have marked as a moment of democratization in the United States points to a central irony of that period. Though this book offers an insightful critique of earlier explanations for the rise of pleas, the authors organize their book in a way that obscures the power of their argument. Too much of their text is filled with case summaries and anecdotes derived from case files. This space would have better been filled with more historical context and a more thorough explanation of how their thesis offers insight for both legal scholars and historians. Despite these frustrations, however, McConville and Mirsky's book offers an important history of the costs of the rise of pleas in nineteenth century America.

JAMES A. PALUCH, JR., *A LIFE FOR A LIFE: LIFE IMPRISONMENT: AMERICA'S OTHER DEATH PENALTY* (Los Angeles, CA: Roxbury Publishing Company 2004) 239 pp.

James A. Paluch, Jr. is one of a growing number of Americans who will probably die in prison. Sentenced to life in prison without parole, Paluch has written a book that describes the conditions prisoners face and argues for reform in the system that sentenced him to life. Paluch's book is the result of correspondence he initiated with Thomas L. Bernard, Professor of Crime, Law, Justice and Sociology at Pennsylvania State University. For several years, Paluch sent pages of handwritten and typewritten manuscript to Bernard, who supervised editing of the 1000 pages he received into a coherent volume that describes the various aspects of prisoners' lives and makes a strong argument for ending the process of sentencing prisoners to serve the rest of their lives in prison. Paluch is successful in describing the daily degradations of prison life. While that depiction enhances the argument for prison reform, the book's surprising lack of personal, confessional insights makes Paluch's arguments for compassion and reprieve for those sentenced to life less compelling than they should be.

A Life for a Life shows how prisoners live. Brief chapters discuss the various aspects of a prisoner's life, which become hours of boredom punctuated by ringing bells, shouted orders, and systematic humiliations. Prisoners like Paluch work constantly to keep their cells clean and their possessions in good repair. Paluch describes the prosaic details of hygiene, diet, disciplinary rituals, and work that make up daily life in prison. He provides readers with a detailed account of the arduous process of washing clothes in a cell, of the recipes prisoners use to supplement the meager and unappealing diet provided in prison dining halls, and of attempts to keep clean and ordered a cell that can be torn apart at any moment by ill-tempered guards. Paluch also recounts the more harrowing elements of violence and sexual abuse that challenge every prisoner attempting to negotiate life behind bars. Much of this abuse comes from fellow prisoners, who harm fellow inmates either through their own pent-up aggression or by seeking the comfort by becoming an informant for the guards. The dangers prisoners face from each other, however, represents only a portion of the distress inmates endure. One source of distress for inmates like Paluch comes from outside the prison: they pine constantly for a family they see very rarely and hear from only under the most humiliating and restrictive conditions. Prisoners also face

unclean and unhealthy living conditions, fitful access to medical services that are often inadequate and sometimes incompetent, and discipline that is frequently arbitrary and unfair. Paluch himself served time in a restrictive housing unit after a guard planted drugs in his cell. All of these conditions mean that inmates endure a degraded, dehumanized condition that undermines any hope of rehabilitation.

Despite these daily humiliations, Paluch also demonstrates that prisoners, particularly those who, like him, are sentenced to life terms, find ways to endure and create community behind bars. Such prisoners might turn to a renewed religious faith, find a companion among the fellow prisoners for protection and solace, or become an expert in a legal issue, all in an effort to deepen the meaning of their lives in prison. Of course, some prisoners also turn to chemical abuse or sexually deviant behavior to deal with the trauma of their present lives. Paluch's cell, lined with religious and legal books, furnished with a writing desk and typewriter, and adorned with mementos of his family, sports, heroes, and religious faith, testify to his successful effort to give meaning to a life that could easily spiral into stultifying routine. In a similar way, writing this book gives voice and purpose to the thoughts that Paluch's imprisonment has forced him daily to confront. Paluch's involvement in the Pennsylvania Lifer's Association, an organization of prisoners agitating for reform in the sentencing process and the possibility of parole, also demonstrates this adaptation process.

Paluch argues that life sentences without the possibility of parole are inhumane, cruel, and counterproductive. Prisoners sentenced to life in prison without parole can be released only by an act of executive clemency. Before 1994, governors had allowed the release of 350 such inmates. In 1994, however, Reginald McFadden, a prisoner released through this process, committed rape and murder in New York. Since that time, only one inmate sentenced to life has been released. In practice, then, a prisoner sentenced to life has no hope of ever seeing the outside of the prison. Paluch finds this stark fact a distressing one. "Punishment by imprisonment," he writes, "only works when justice is meted out in a fashion that restores moral rightness." The current method of dealing with prisoners sentenced to life undermines such efforts at justice. No matter how reformed a prisoner becomes, Paluch points out, there is no hope for release: "the only difference between capital punishment and life imprisonment is the amount of time it takes for the prisoner to die."

This argument is intellectually appealing; prisoners have little incentive to change when they know nothing good can come of that change, and punishment that focuses only on the crime and not on the conditions of the person who committed that crime hardly represents an enlightened form of justice. Paluch's argument would have been more convincing, however, if the argument had been built through a more thorough description of Paluch's own transformation in prison from a troubled and violent young man to a thoughtful, responsible adult. The reader is only offered hints at this process; Paluch notes that he underwent a religious conversion in prison but does not describe the effects of that change on his life. His arguments for sentence reform thus seem merely intellectual, and lack the emotional resonance that they might when tied to a more compelling version of his personal story. In a political climate where many readers of this book will find the degradations Paluch describes as just punishment for his crime of murder, his failure to more directly connect the reform he seeks to the life he has lived in prison undermines his case.

KITTY CALAVITA, *IMMIGRANTS AT THE MARGINS: LAW, RACE, AND EXCLUSION IN SOUTHERN EUROPE* (Cambridge: Cambridge University Press 2005) 278 pp.

In *Immigrants at the Margins: Law, Race, and Exclusion in Southern Europe*, Kitty Calavita explores how the Italian and Spanish governments have responded to the increasing number of immigrants residing in their respective countries. Calavita details how in Italy and Spain, immigrants from developing countries are both desired as a source of cheap labor and reviled as an alleged force of cultural destabilization. These seemingly contradictory sentiments are, according to Calavita, inextricably linked. Immigrants are desired precisely because their status as "Other" compels them to work "under conditions and for wages that locals . . . largely shun." Absent a marginalized status, immigrants would be less likely to constitute a source of cheap labor. Thus, the immigrants' inability to be accepted into Italian or Spanish society is precisely what makes the immigrants valuable from the perspective of Italian and Spanish employers. Moreover, because immigrants work almost exclusively in less desirable sectors of the economy, immigrants are further stigmatized as people who are different and separate from those in regular society.

Calavita describes how the increasing criminalization of immigration law in both Italy and Spain currently contributes to this marginalization process. Recent legislation passed by Center-Right governments in both Spain and Italy can be fairly described as anti-immigrant. Spain's Law 8/2000 denies illegal immigrants the right of assembly, collective bargaining, striking, and joining labor unions. Italy's Bossi-Finni Law stipulates that only immigrants who have a work contract in hand can enter legally, and then only within annual quotas. Under Bossi-Finni, if immigrants lose their job, they lose their residence permit and automatically fall into illegality if they do not get another work contract within six months. In addition, the bill criminalizes re-entry after deportation. (It was initially proposed that illegal residence itself should be considered a felony and carry a prison sentence, but that proposal was determined to be impractical.) Sponsor Umberto Bossi described the purpose of the bill as follows: "The concept is that immigrants are to come to our country for one purpose only: work. Otherwise, they will be sent back."

Both of these laws repealed legislation, enacted by Center-Left governments, that was more protective of immigrants' rights. Italy's Turco-Napolitano law, passed in 1998, provided immigrants the right to equal treatment in the workplace, access to the universal health care system, and, for the undocumented, the right to urgent care, and the right to attend public school. Spain's Law 4/2000 also extended the right to public education to all immigrant children, regardless of legal status, as well as access to public housing services. The progressive concepts embodied in these repealed laws have largely vanished from political discourse in Spain and Italy.

The recent Italian and Spanish immigration legislation serves not just to marginalize illegal immigrants, but rather legal immigrants as well. In many cases undocumented workers are more desirable to employers because the undocumented workers are pushed by fear and poverty. Therefore, legal workers are often passed over by employers in favor of illegal workers. In addition, legal workers are often

blackmailed by their employers, who threaten to revoke an individual worker's legal status. Thus, an immigrant's legal status can sometimes make his or her employment experiences equal to or worse than those of illegal immigrants in the Italian and Spanish labor markets.

Calavita points out that—despite the prominent anti-immigrant rhetoric—both Italian and Spanish governments have undertaken immigrant integration programs. Integration programs are present even in the often explicitly xenophobic region of Northern Italy. These programs exist because both Italy and Spain rely heavily on immigrant labor. While anti-immigrant political platforms often produce electoral success, they are not truly sustainable from an economic standpoint because the Italian and Spanish economies would suffer great hardship if immigrants were eliminated from the labor force. Thus both the Italian and Spanish government have spent tens of millions of dollars on immigrant integration programs that have the goal of assimilating immigrants into Spanish and Italian culture. Calavita argues that these programs are undertaken in good faith but are ultimately unsuccessful in combating the countervailing anti-integration forces that include, most notably, Italy and Spain's immigration laws. Thus, even with a significant outlay of governmental resources, both legal and illegal immigrants remain on the outskirts of Spanish and Italian society, subject to cultural and legal persecution.