



## Santa Clara Law Review

---

Volume 41 | Number 1

Article 8

---

1-1-2000

### Books Received

Santa Clara Law Review

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



Part of the [Law Commons](#)

---

#### Recommended Citation

Santa Clara Law Review, Other, *Books Received*, 41 SANTA CLARA L. REV. 287 (2000).

Available at: <http://digitalcommons.law.scu.edu/lawreview/vol41/iss1/8>

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

## BOOKS RECEIVED

**The Tyranny of Good Intentions. How Prosecutors and Bureaucrats Are Trampling the Constitution in the Name of Justice.** By Paul Craig Roberts & Lawrence M. Stratton. Roseville, California, Prima Communications, Inc., May 2000. Pp. 256. Hardcover. \$24.95.

*Reviewed by Rob Cronan\**

### I. INTRODUCTION

Frightening tales of coerced plea bargains, police confiscation of private property, and rogue prosecutors jailing innocent citizens make for best-selling fiction novels, but such scenarios are not representative of the American judicial system. Contrary to popular allegations, we still live in a democratic society that is governed by the people and for the people. Time-tested concepts of liberty and constitutional order dictate our judicial system, not corrupt bureaucrats and their Gestapo-esque<sup>1</sup> police force.

In their latest book, *The Tyranny of Good Intentions*, authors Paul Craig Roberts and Lawrence M. Stratton sound a passionate call to arms as they describe how the American justice system has rapidly degenerated into a tyrannical system governed not by the people, but by oppressive bureaucrats. They describe how well-intended efforts to wage war on contemporary social-ills, such as drug trafficking, white collar securities violations, and environmental polluters, are eroding accountability under the law, which ensures that government is the servant rather than the

---

\* Book Review Editor, Santa Clara Law Review, Volume 41. J.D. candidate, Santa Clara University School of Law; B.S., Florida State University.

1. "Gestapo" refers to the secret police force of the National Socialist German Workers' Party ("Nazi"). The name is a short form of Geheime Staatspolizei or Secret State Police. The Gestapo was known for its brutal tactics in smashing opposition to the Nazi Party.

master.<sup>2</sup> The authors cite few examples in their attempt to scare readers into believing that fundamental liberties are in dire jeopardy and that a Stalinist<sup>3</sup> police state is on the horizon.<sup>4</sup>

The book is unquestionably engaging and thought provoking. The pages initially turn quickly as it captivates readers with examples of oppression. However, after twelve chapters of doom and gloom, many readers may find the rhetoric tedious. The book's organization is generally effective as the authors initially set the stage by describing the origins of our justice system, contrasting the good with the bad.<sup>5</sup> The authors then embark on their crusade to show how Americans have become increasingly vulnerable to acts of tyranny.<sup>6</sup> Finally, the authors attempt to propose remedies for these oppressive acts. Unfortunately for the anxious reader, the authors apparently remain so caught up in their preaching that they neglect to provide any useful analysis of the issue.<sup>7</sup>

## II. THE RIGHTS OF ENGLISHMEN

The authors begin their discussion by examining a set of principles known as the Rights of Englishmen ("the Rights").<sup>8</sup> They describe these Rights as "the armor against capricious arrest, confiscation of property, and deprivation of life, limb and liberty and they protect every 'Englishman' against the predatory actions of government."<sup>9</sup> Pursuant to this legal

---

2. See PAUL CRAIG ROBERTS & LAWRENCE M. STRATTON, *THE TYRANNY OF GOOD INTENTIONS. HOW PROSECUTORS AND BUREAUCRATS ARE TRAMPLING THE CONSTITUTION IN THE NAME OF JUSTICE* (2000).

3. "Stalinist" describes the oppressive leadership style that was characteristic of Joseph Stalin's dictatorship of the Union of Soviet Socialist Republics.

4. See ROBERTS & STRATTON, *supra* note 2, at 21.

5. See *id.* at xii.

6. See *id.* at xiii.

7. In the final chapter of the book entitled, "What Is To Be Done," the irony is that there is little advice as to what needs to be done. The authors continue with their tales of woe but offer no proposals for reform except to say that without an intellectual rebirth there is no hope for American democracy. See *id.* at 176.

8. The Rights of Englishmen are a set of legal principles that ensure that the law protects people from arbitrary government power. These Rights of Englishmen originated with the Magna Carta in England and had the effect of empowering the people. See *id.* at 8.

9. *Id.*

theory, that all citizens are empowered, the Englishmen are secure because control of the law is with the people and not with the state.<sup>10</sup> These Rights resulted from a long struggle to establish individual liberties. They originated with King Alfred the Great, who codified the common law, were further developed with the signing of the Magna Carta<sup>11</sup> in 1215, and eventually served as the guiding principles for the Founding Fathers of the United States.<sup>12</sup>

These Rights continue to serve as the foundation of our democratic government, and therefore, they must be safeguarded against possible destruction. The authors warn that without these Rights which act as a shield against oppression, our system of democracy is in peril.<sup>13</sup>

To illustrate what it means to be without the protections afforded by the Rights, they describe the fate of Nikolai Bukharin ("Bukharin"), a high-ranking communist official who fell victim to the unchecked powers of an oppressive state.<sup>14</sup> Bukharin, a powerful official under Lenin, was accused by the Stalinist regime of conspiring to overthrow the Soviet Regime and restore capitalism.<sup>15</sup> The authors describe these charges as false and unfounded and describe how the once powerful Bukharin was defenseless against the tyrannical power of Stalin. They describe how he was tortured, as was customary, into admitting to a wrong that he did not commit and how his trial was nothing more than a forum for him to publicly admit to the charge against him.<sup>16</sup> This unfortunate drama ends with a conviction and a death sentence that is swiftly carried out because in this tyrannical system, there are no appeals.<sup>17</sup> The authors use Bukharin as an example of what can happen when the will of the state, and not the people, govern the land. Without the Rights as a protection against tyranny, neither power nor position can save an individual from the strong arm of a corrupt

---

10. See ROBERTS & STRATTON, *supra* note 2, at 8.

11. The Magna Carta was a legal idea that was born in 13th century England. The charter limited the royal power and eventually became a model for democracy and individual rights.

12. See ROBERTS & STRATTON, *supra* note 2, at 8.

13. See *id.* at 21.

14. See *id.*

15. See *id.* at 23.

16. See *id.* at 30.

17. See *id.*

government.<sup>18</sup>

### III. AMERICA'S GROWING VULNERABILITY

For most of the remaining chapters, the authors demonstrate just how vulnerable the American people are to oppressive bureaucrats by citing various examples of what can occur when laws fail to work as they were intended.<sup>19</sup> The authors argue that tyrannical acts of government can strike home, and if bureaucratic powers are not checked, we may find ourselves suffering the fate of Bukharin.

### IV. CRIMES WITHOUT INTENT

The authors claim that according to the Rights, there should be no prosecution unless there is proof that a crime has actually occurred and there is evidence linking a person to that crime.<sup>20</sup> Furthermore, there can be no crime unless there is criminal intent. This legal theory, no crime without intent, shields citizens from being criminally prosecuted for accidental or innocent acts.<sup>21</sup> The authors comment that in the United States, the Rights have eroded to the point that innocent Americans now find themselves in positions that resemble Bukharin's. They suggest that in contemporary America prosecutors will target individuals (generally as a result of an accidental occurrence) and invent new felonies to fit the circumstances.<sup>22</sup> The Exxon Valdez<sup>23</sup> oil spill is cited as an example of how intent has become irrelevant and how an inadvertent act can be met with criminal prosecution.<sup>24</sup> In this particular case, the government's legal theory essentially criminalized an accident.<sup>25</sup> In addition to the cleanup costs and the massive civil tort damage, Exxon faced a five-count

---

18. See ROBERTS & STRATTON, *supra* note 2, at 30.

19. See *id.* at xiii.

20. See *id.* at 45.

21. See *id.*

22. See *id.* at 47.

23. The Exxon Valdez oil spill occurred in 1989. The Exxon sponsored oil tanker struck a reef in Prince William Sound in southeastern Alaska causing the largest oil spill in United States history.

24. See ROBERTS & STRATTON, *supra* note 2, at 47.

25. It is certain that Exxon did not intentionally run the Valdez aground with the criminal intention of polluting the Alaskan coast. Regardless of the lack of intent, the Justice Department criminalized the accident and used the Criminal Fines Improvement Act to levy substantial fines against Exxon. See *id.* at 48.

criminal indictment.<sup>26</sup> The authors were amazed at how the Justice Department was able to indict Exxon on previously nonexistent criminal charges that were apparently crafted to fit this very event.<sup>27</sup> The authors feel that this incident is the type of injustice that can occur when we abandon the precept that there can be no crime without intent.<sup>28</sup> They believe civil tort actions are the proper way to address these unintended acts and that this type of prosecutorial misconduct is characteristic of a police state and should not be tolerated in a democratic society.<sup>29</sup>

#### V. PLEA BARGAINING—REINVENTING TORTURE

“With the ubiquitous plea bargain, prosecutors have reinvented torture.”<sup>30</sup> In chapter six, the authors continue their critique of the American justice system with a specific attack on plea bargains. They liken the modern day plea bargaining process to the various acts of tortures that are characteristic of oppressive police states.<sup>31</sup> They explain that “the function of justice is to serve the truth,”<sup>32</sup> and the American judicial system is intentionally designed to make convictions difficult in an effort to protect the innocent.<sup>33</sup> The authors contend, however, that plea bargains bypass these safeguards.<sup>34</sup> In the United States it is statistically obvious that plea bargaining has displaced trial by jury as the popular method of resolving criminal disputes.<sup>35</sup> They are

---

26. The first two were for the violation of the Clean Water Act and the Refuse Act, two acts designed to prevent cities and businesses from intentionally using the waterways to dump their garbage. The third count was for violating the Migratory Bird Treaty Act, which prohibits the hunting and killing of migratory birds without a permit. The last two counts were for the violation of the Posts and Waterways Act and the Dangerous Cargo Act. The government claimed that Exxon willfully and knowingly employed persons incapable of performing their duties. *See id.*

27. The Justice Department's case was based on untested legal principles. Exxon was charged with a nonexistent conspiracy to pollute Prince William Sound. *See id.* at 49.

28. *See id.* at 66.

29. *See id.* at 47.

30. ROBERTS & STRATTON, *supra* note 2, at 104.

31. *See id.* at 82.

32. *Id.*

33. *See id.*

34. *See id.*

35. The Justice Department reports that 90-95% of all federal, state, and local criminal cases are settled by plea bargains. *See id.* at 85.

concerned that the system has become corrupt through this new method of prosecution. Like the practice of torture, plea bargaining encourages an individual to confess to an act that they likely did not commit<sup>36</sup> in an effort to avoid going to trial and the risk of an even greater punishment.<sup>37</sup> The authors believe that the growing popularity of plea bargaining is a leading cause of prosecutorial corruption.<sup>38</sup> They feel that prosecutors will play on people's fear of the uncertainty of a jury trial<sup>39</sup> and that this fear will enable prosecutors to obtain guilty pleas from an indictment that is based on little or no evidence.<sup>40</sup> The authors' view is that whenever a plea is entered, justice is jeopardized and the "door is opened to coercive prosecutors."<sup>41</sup>

## VI. CONCLUSION

When the rhetorical dust settles at the conclusion of this book, the prognosis for our judicial system is very dark. It seems that similar to Nazi Germany, our only hope is for a universal failure of government that would make way for a rebirth of government, a fresh start of sorts.<sup>42</sup> This passionate call to arms leaves its readers yearning for some proposal for reform. Unfortunately, there is no reform proposal. It seems apparent that the authors were so exhausted from their continuous barrage of our current system that they neglected to include any prospects of reform in their sections entitled "Prospects of Reform."

As mentioned earlier, this book is quite engaging and thought provoking. The tales of corruption and conspiracy consume each chapter and make for an exciting tale. The authors have effectively created a literary piece that makes readers stand up and take notice. Unfortunately, the arguments and commentary are so one-sided that they detract from their veracity and create the feel of a fiction thriller as opposed to a factual condemnation of our judicial system.

---

36. The theory is that with a plea bargain, an individual will plead guilty to a lesser crime and quite likely, a crime that he did not violate.

37. See ROBERTS & STRATTON, *supra* note 2, at 85.

38. See *id.* at 86.

39. See *id.* at 90.

40. See *id.*

41. *Id.* at 94.

42. See *id.* at 177.