

1991

Book Review: Criminal Justice and the Supreme Court. Edited by Leonard W. Levy, Kenneth L. Karst, and Dennis J. Mahoney.

Gerald Caplan

Follow this and additional works at: <https://scholarship.law.umn.edu/concomm>



Part of the [Law Commons](#)

Recommended Citation

Caplan, Gerald, "Book Review: Criminal Justice and the Supreme Court. Edited by Leonard W. Levy, Kenneth L. Karst, and Dennis J. Mahoney." (1991). *Constitutional Commentary*. 374.
<https://scholarship.law.umn.edu/concomm/374>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Constitutional Commentary collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

first amendment topics, presented with greater clarity than one expects in an academic work.

CRIMINAL JUSTICE AND THE SUPREME COURT. Edited by Leonard W. Levy,¹ Kenneth L. Karst,² and Dennis J. Mahoney.³ New York, N.Y.: MacMillan Publishing Company. 1990. Pp. xix, 375. Paper, \$12.95.

*Gerald Caplan*⁴

This paperback book is a collection of essays (96 in all) on constitutional criminal procedure, culled from the *Encyclopedia of the American Constitution* (1986). It is intended, the publishers say, as an "overview of the development of criminal justice in the United States, from the framing of the Bill of Rights up to and including the Burger Court."⁵ Although written and edited by leading constitutional scholars, and containing some first rate contributions, the collection, surprisingly, disappoints. Many of the contributions are out of date; others are too short to be useful, even as an introduction.

In general, the essays avoid polemics, seeking to inform rather than persuade. Although occasionally an author argues for or against a decision or theory, such evaluations are ordinarily brief. For the most part, the authors proceed descriptively, seeking to compress decades of precedent into a few sentences or paragraphs. At their best, the essays are creative syntheses, showing the stretch, the zigs and zags of constitutional development; but they are rarely at their best.

Many are just too short. At a page or two, some read like a long *Black's Law Dictionary* entry or an excerpt from a nutshell. Professor Leonard Levy's explanation of entrapment in two pages, for example, is of limited value. It may provide some assistance to a lay reader struggling to understand recent highly-publicized trials where the defense was raised, but the subject is too complex for such an abbreviated treatment. Similarly, the page and a half treat-

1. Andrew W. Mellon Professor of Humanities and History, Claremont Graduate School.

2. Professor of Law, University of California, Los Angeles.

3. Professor of Political Science, California State University, San Bernardino.

4. Professor, National Law Center, George Washington University.

5. Publisher's Note, p. xix. I have drawn upon the publisher to characterize the volume and its intended audience because the otherwise excellent introduction by Professor Wayne LaFave oddly makes no reference to the essays themselves.

ment of harmless error is bare bones, what one might expect from a law review student, drawing on a good outline or hornbook.

Excessive brevity is not the only problem. Since criminal procedure, perhaps more than any other constitutional law field, is annually revised by the Supreme Court, reissuing a 1986 edition without updating cannot be justified. A student who missed the last four terms of Court couldn't pass the course.

Third, the organization is confusing. Essays are titled either by a leading case or by the usual hornbook categories. For example, there are essays both on "Consent Searches," and on *Schneckloth v. Bustamonte*, the seminal consent case. If the editors had relied exclusively on conceptual headings, it would have been easier for the reader to run a subject down; essays identified by case name do not provide a clue as to their substance. Adding a description after the case name as, for example, *Chambers v. Maroney: The Automobile Exception to the Search Warrant Requirement*, would have helped. So would ordering cases on the same topic sequentially. As it is, they are presented chronologically within each section. For example, two of the leading automobile search cases, *Chambers* and *Carroll v. United States* are separated by *Terry v. Ohio*, the leading stop and frisk case, and a third, *United States v. Ross*, was placed in a later section, "Other Warrantless Searches and Seizures." The editors should have rolled some or all of the leading automobile case essays into a single piece, or, better yet, incorporated them into the "automobile search" essay which is a skimpy single page. In any event, the essays dealing with automobile searches should cross-cite one another.

Stop and frisk is similarly discursive. Again, it is unclear why there is a need for both an essay on *Terry v. Ohio*, the decision first according the police authority to detain and search without probable cause, and on stop and frisk generally, or why the overview discussion of stop and frisk (which necessarily describes *Terry*) precedes, rather than follows, the *Terry* essay, or why there is no cross-citation. Since *Terry's* holding has been enlarged well beyond its original boundaries in a host of federal and state court decisions, it is unclear what class of readers would find the original decision useful. The editors should not have organized the collection around leading cases, but, more conventionally, examined them historically, as part of the continuing national debate over the proper scope of state investigative authority.⁶ As such, they would have

6. Likewise, the treatment of informants is discursive. "Informant's Tip" traces the development of probable cause from *Draper v. United States* (1959) to *Illinois v. Gates* (1983) in a page and a half. A separate piece examines *Gates* and endorses it as superior to the case

proved of more value to their designated audience, according to the publisher's release, of "aspiring law students . . . [and] journalists and members of broadcast media."

Given the brevity, limited currency, and awkward organizational format of *Criminal Justice and the Supreme Court*, it seems doubtful that it will offer much competition to the existing literature.

ZONING AND THE AMERICAN DREAM. Edited by Charles M. Haar¹ and Jerold S. Kayden.² Chicago: Planners Press. 1989. Pp. v, 386. Cloth \$39.95.

*Douglas W. Kmiec*³

This celebratory volume contains the contributions of thirteen planners, economists and lawyers on the occasion of the sixtieth anniversary of the *Euclid* decision upholding the constitutionality of zoning. Since I neglected to send an anniversary card, perhaps this review can serve as something of a substitute. Not that I have been a great fan of the zoning process. From the writing in this volume, it would seem that few land-use specialists are—at least, wholeheartedly. Yet the editors are probably right when they proclaim at the outset that "zoning is here to stay, as firmly entrenched a part of the landscape as the buildings it regulates."

Now that is something of a startling proclamation, especially as the editors note a number of zoning's major deficiencies: its failure to deliver high-quality working and living environments, its exclusion of low-income and minority families, and a standardlessness which invites corruption, or at least uneven application. Beyond this list is the now well-documented fact that zoning and other land use controls can add unnecessarily to the cost of construction. It is often inefficient. Of course, the constituencies supporting zoning like matters the way they are. Affluent suburbanites usually like low-density zoning, thank you, and some lawyers, planners and mu-

it overruled, *Spinelli v. United States*. A third selection on probable cause relies entirely on *Spinelli* to illustrate the law without any reference to *Gates*.

Each essay is followed by a short bibliography. As the book has not been updated since 1986, when it was published in hardcover, these bibliographies are incomplete. For example, "Informant's Tip," like some of the other essays, cites only the first edition of Professor LaFave's masterful four volume treatise, *Search and Seizure*, published in 1978.

1. Brandeis Professor of Law, Harvard University.
2. Lawyer and occasional visiting faculty member at the Lincoln Institute of Land Policy, Cambridge, Massachusetts.
3. Professor of Law, University of Notre Dame.