Journal of Legislation

Volume 9 | Issue 1 Article 10

1-1-1982

Book Reviews

Abner J. Mikva

Patrick J. McGann Jr.

BOOK REVIEWS

DISCRETION AND LAWLESSNESS: COMPLIANCE IN THE JUVENILE COURT

By James T. Sprowls

Lexington Books, Lexington, Mass., 1980. 121 pages.
ISBN 0-669-03540-8

Reviewed by Abner J. Mikva*

Judges are always very disconcerted to discover that their decrees are not being obeyed. The enforcement arm of the judiciary is most modest; judges would much prefer to say, "It is so ordered," and go on to the next case, rather than supervise the implementation of the last case. With that mind set, I expected to squirm when I read Dr. Sprowls' contribution to the field of juvenile justice and its reform. I was not disappointed. In a little over one hundred pages, Dr. Sprowls conclusively demonstrates that the juvenile courts of this country have virtually ignored the landmark decisions of the Warren Court that held that even children are entitled to due process of law. (This would suggest that children are "persons," which remains a point in controversy.)

In a very succinct manner, Dr. Sprowls reminds readers that in a series of three cases, *Kent v. United States*, 383 U.S. 541 (1966), *In re Gault*, 387 U.S. 1 (1967), *In re Winship*, 397 U.S. 358 (1970), the Supreme Court sought to establish minimum standards for the treatment of juveniles in the various courts that had been specially designed for them. Justice Fortas said it plainly: "Under our Constitution the condition of being a boy does not justify a kangaroo court." 387 U.S. at 28. It is, however, a source of great dismay to see how the juvenile courts have proceeded to ignore, nay flout, the specific edicts of those cases. Dr. Sprowls employs statistical data as well as case studies to show that the courts specially designed for juveniles have consistently refused to observe the fundamental rights to counsel, to standards of proof, and to notice of charges.

Not only did most state legislatures also ignore the indictment of their procedures issued by the Supreme Court, those few states, such as Pennsylvania, that did seek to raise their standards found it easier to pass laws than to ensure that they would be observed. The most egregious examples of lawlessness on the part of the juvenile courts are found in Pennsylvania, where the specific provisions governing detention of juveniles are ignored in virtually every county in the state. One

* Judge of the United States Court of Appeals for the District of Columbia Circuit. J.D. *cum laude*, University of Chicago, 1951.

of the rules provides that juvenile offenders are not to be kept in adult detention facilities when other facilities are available, and that, in any event, juveniles are not to be detained in adult facilities for more than five days. Dr. Sprowls shows that the only county in which this rule is observed is the one in which the jailer of the adult facility refused to take juveniles as a result of a dispute with the juvenile authorities having nothing to do with reform or better treatment for the youngsters.

And so courts may opine, and legislatures may proclaim, and juvenile injustice thrives unabated. Why?

Perhaps one-hundred pages is too short a space in which even to touch on the real roots of this conundrum. Dr. Sprowls does talk about the causes of the problem, but his analysis only skims the surface. Clearly Dr. Sprowls is fascinated with the relationship between discretion and noncompliance. Indeed, the major thesis of his book is that the greater the discretion afforded the juvenile courts, the easier it is to sweep what rules there are under the rug. Yet administrative agencies with broad discretion frequently follow the rules of the courts and the policymakers. Certainly the regulatory agencies of the federal government have manifested nothing like the massive resistance to reform that we encounter with juvenile court judges. Dr. Sprowls acknowledges that public support or hostility to the decisions does play a major role. He points to *Brown v. Board of Education*, 347 U.S. 483 (1954), as having spoken "to such politically and socially sensitive issues" that resistance was inevitable. But he suggests that such issues are the exception rather than the rule and that reform of the juvenile courts has not engendered the same kind of intense hostility.

It is at this point that the analysis is less than complete. The dilemma of juvenile justice cannot be explained by reference to the breadth or intensity of popular acceptance of, or opposition to, reform efforts. Rather, we must look to the profound ambivalence, shared by virtually everyone, about how to treat children.

How many schools have written codes enumerating the rights and duties of their students? (I once tried to help some students in my former congressional district to obtain such a code and found it as hot a political potato as any I ever had handled.) How many civil libertarians feel as permissive about their own children as they do about other people's children? How can one reconcile the opposing positions in the debate about the minimum drinking age in the states? Who can synthesize the various state laws and local ordinances restricting the availability of books, magazines, and films to juveniles? In sum, the public attitude toward juvenile delinquency is very hard to describe or predict. We know that children are somewhat different from adults, but we are not even sure whether that is good news or bad, whether they should be better or worse, or even when they become persons in the legal sense.

In fairness to the author, it must be noted that he does acknowledge the existence of this American puzzlement. He quotes from the

Supreme Court's retrenchment in *McKeiver v. Pennsylvania*, 403 U.S. 528, 551 (1971), where the Court put a hold on its earlier moves to reform:

> If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.

In *McKeiver*, the Court refused to extend the right to jury trial to juveniles, and Dr. Sprowls concludes that, in doing so, the Court "entered perhaps the strangest defense of juvenile court practice on record." Unfortunately, there is little beyond this reference in the book to indicate the author's awareness of the overwhelming ambivalence that Americans have about their children.

That is a mild omission, compared with all that is crammed into this little book. If you have worried why there are so many juveniles who are delinquent, why their number grows steadily from year to year, why what we do seems so counterproductive, and why the reform schools neither reform nor teach, then you ought to read Dr. Sprowls' book. It confirms what most observers have suspected: the juvenile justice system is as delinquent as its wards.

POSTCONVICTION REMEDIES
By Larry W. Yackle

The Lawyers Cooperative Publishing Co., Rochester N.Y., Bancroft-Whitney Co., San Francisco, Calif., 1981. 776 pages.

Reviewed by Patrick J. McGann, Jr.*

Legal history teaches that a judiciary, bent on accomplishing a perceived good, will not hesitate to develop a procedural mechanism to attain its goal. In that sense Professor Yackle's *Postconviction Remedies* is a well documented legal history book.

His subject is that area of the law dealing with the various forms of collateral judicial review of criminal convictions. The purpose of that review is to insure that rights guaranteed by the United States Constitution have been protected in the original trial, whether before a state or federal court. The subject matter of the work is quite narrow, its treatment of the subject exhaustive.

To the present generation of trial judges, both state and federal, there is nothing arcane about postconviction relief. The obligations imposed and the procedures to be followed are clear. State legislatures, state court rules and congressional action have seen to that. What is clear now, however, was anything but that a generation ago.

Postconviction relief as we know it today is traceable to the Great Writ of *Habeas Corpus ad subjiciendum* and, to a lesser degree, the Writ of Error *Coram Nobis*. It is the result of an evolutionary process rooted in the *Magna Carta* and an Anglo-Norman desire to fix its promises into the reality of English life under the Crown. Neither writ sprang full-blown from the head of some medieval English jurist. Rather, each developed in response to the perceived needs of the times. Both arose as protective devices against the unchecked power of the sovereign exercised either directly or through the King's justices. The work of Coke and the English common-law judges in fashioning and expanding the writs foreshadowed the efforts of the United States Supreme Court in fashioning remedies to correct failures of trial courts in protecting fundamental rights.

Habeas corpus was originally used solely to test the legality of the pretrial detention of a prisoner. It proceeded as a separate action, civil in nature, and not as an added step in the original action which had led to custody. When reviewing courts allowed the prisoner to argue that the trial court had lacked jurisdiction over him, it became a postconviction remedy under the common law.

---

* Judge of the New Jersey Superior Court. A.B. *cum laude*, Fordham University, 1949; J.D., Fordham University, 1954.

The writ of error *coram nobis*, on the other hand, was brought in the court of conviction to review alleged factual errors in the trial. If it succeeded, a new trial was ordered. An applicant did not have to be in custody to avail himself of this writ. Limited as it was to an allegation of error in fact which did not appear on the trial record, *coram nobis* was not a particularly effective vehicle for postconviction relief and had largely fallen into disuse in England by the time of the American Revolution.

In America, postconviction relief developed from a hodgepodge of procedures varying among the several states and in the federal courts. In some states there was no direct appeal of a criminal conviction; in others there was. If allowable, the grounds for appeals and time limitations on taking appeals varied widely. State courts justified relief in specific cases by relying upon common law *habeas corpus*, or, to a lesser extent, *coram nobis* principles. The results were confusing and unpredictable. No "hornbook law" developed for the guidance of bench or bar.

Development of postconviction relief in the federal court system was more uniform because of the direct control the United States Supreme Court exercised over the appellate process and the Court's willingness to rely upon and expand *habeas corpus* as a means of collateral relief. The Supreme Court found, in *Johnson v. Zerbst*,[1] that a trial court which had not protected a defendant's basic constitutional rights thereby lost its jurisdiction and thus had no power to sentence. Hence the custody under such a sentence was illegal. In *Waley v. Johnson*,[2] the Court held that *habeas corpus* was available to raise constitutional questions whether they went to the trial court's jurisdiction or not.

The truly dramatic development in the field was the Supreme Court's decision to exercise the power of collateral review over state court convictions through the federal district courts. Professor Yackle's analysis of this development conveys a sense of the Court's reluctance to take that step. The concept of states' rights militated against it, as did the judicially treasured concept of finality in litigation. However, there came a point at which the Court concluded that state courts were giving inadequate protection to individual constitutional rights and that it was necessary to compel the state courts to do so. *Brown v. Allen*[3] became the watershed case. It permitted federal *habeas corpus* to state prisoners to raise Federal Constitutional questions and, in the nature of *coram nobis*, allowed the prisoner to raise questions of fact, as well as of law, in the proceeding. The all-encompassing sweep of federal *habeas corpus* and its availability to state, as well as federal, prisoners was hammered home in the trilogy of *Fay v. Noia*,[4] *Townsend*

1. 304 U.S. 458 (1938).
2. 316 U.S. 101 (1942).
3. 344 U.S. 443 (1953).
4. 372 U.S. 391 (1963).

v. Sain[5] and *Sanders v. United States*.[6] The message to the states was clear: furnish adequate state postconviction remedies or suffer the embarassment of federal review and rejection of state convictions.

The Court, accepting the flood of applications it surely knew must follow those decisions, accomplished its goal. Professor Yackle documents how well the states have complied. Meaningful postconviction remedies are now in place generally, either by virtue of state legislation or court rule.

The foregoing synopsizes the first third of the book. The remaining two-thirds is devoted to a minute analysis of the method by which the Supreme Court arrived at that high-water mark, and what Professor Yackle believes to be required of a state or federal convict in order to qualify for federal collateral review. This section makes hard reading. Relatively few will find it rewarding.

The work shows excellent scholarship. It is well footnoted; it is exhaustive in its treatment of the subject. Professor Yackle analyzes every basic concept from four or five different perspectives. However, it is much too detailed for a law school course, nor is it a "how-to" manual that would be useful in a prison library. A state or federal public defender surely ought to have it available; a newly appointed law clerk of a Supreme Court justice would find it helpful.

Yet, as noted at the outset, it is essentially a history book. Each state court system now knows its responsibility to provide postconviction remedies and has done so. The Supreme Court is now contracting its willingness to review state convictions and evidencing a sense of judicial trust in state courts. This area of the law seems to have matured to the point where the ground rules are clear, the procedures are in place, and little creative activity can be expected in the future. Professor Yackle seems to sense that trend and to be somewhat chagrined at it. He need not be, for the goal the court set for itself—reform in state procedures—has been accomplished: federalism is intact and the Court's energies can now be directed elsewhere. That trend marks a return to a desirable condition in which the finality of state court convictions is largely assured.

5. 372 U.S. 293 (1963).
6. 373 U.S. 1 (1963).