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Rethinking Fatherhood

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THE POIGNANT PARADOXES OF CRIMINAL
JUSTICE: A REVIEW

*Francis A. Allen**

ROMANTIC OUTLAWS, BELOVED PRISONS. *By Martha Grace Duncan.* New York: New York University Press, 1996. Pp. xi, 272.

It was Albert Einstein, I believe, who said that things should be as simple as possible, but that they should not be more simple than possible. The writer of this important and arresting book, Martha Grace Duncan, is not likely to be accused of oversimplification. One of the many messages her work communicates is that in the quest for penal justice things are often not what they seem, and, quite literally, we often do not know what we are doing.

Professor Duncan's engagement with paradox, contradiction, and nuance is in stark contrast to the brutally simplistic approaches that have dominated American penal policy since the late 1960s—policies that overwhelmingly emphasize suppression, incapacitation, and draconian penalties. The principle that criminal punishments, insofar as possible, should be proportioned to offenders' culpabilities often has been flouted even though this principle has been a fundamental objective of penal policy in liberal societies since the eighteenth century Enlightenment. In consequence, America increasingly displays the attributes of a prison society. Today, over one million and a half persons are confined in our prisons and jails.¹ The total number of persons in prison custody more than doubled in the decade between 1982-1992.² The rate of persons imprisoned per unit of population in the United States is over four times greater than in England and Wales, the latter rates being among the highest in Europe.³ The prison systems of California and New York each hold more inmates in confinement than does that of any nation of Western Europe.⁴ The number of persons under some form of penal restraint is greater than the total population of any one of twenty-nine

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1. FRANCIS A. ALLEN, *THE HABITS OF LEGALITY: CRIMINAL JUSTICE AND THE RULE OF LAW* 29-30 (1996).

2. *Id.* at 35.

3. *Id.* at 30.

4. *Id.*

of the American states.⁵ Despite the remarkable inflation of prison populations, rates of violent crime in the United States remain among the highest of the industrial nations of the world.⁶ Yet the prescription imposed by our political agencies, with apparent public approval, is more of the same. In American criminal justice, nothing succeeds like failure.⁷ In this context, a book that undertakes to identify important realities of criminal punishment and public attitudes toward crime and criminals is particularly welcome.

The intricacy of the writer's argument and the profusion of corroborating illustrations drawn primarily from psychoanalytic theory and from the world's literature make attempts to summarize the book hazardous and ultimately unsatisfactory. Briefly, Professor Duncan addresses three broad topics. First, she explores the attitudes toward imprisonment of those incarcerated and those threatened with imprisonment.⁸ The conclusion derived is that the "stereotyped expectation that penal confinement will prove an unequivocal evil" is seriously flawed.⁹ Some (the writer would presumably say many) persons view the prison as a refuge from the pressures of a harsh competitive society, a place uniquely favorable to contemplation and self-realization, and a haven lacking the punitive threat assumed by classical theories of retribution and deterrence.¹⁰ Second, Professor Duncan describes and analyzes the ambiguous attitudes of the general population toward crime and criminals.¹¹ She provides ample evidence of the interest and fascination that crime holds for law abiding people—an interest sometimes expressed in admiration for particular offenders and their deeds.¹² Of

5. *Id.*

6. *Id.*

7. Norval Morris makes the point as follows:

The irony is that the less effective the prisons are in reducing crime, the higher the demand for still more imprisonment. It is the "Humpty Dumpty" principle: if all the king's horses and all the king's men couldn't put Humpty together again, then, by heavens, we need more horses and more men. Generations of research have failed to disturb the commonsensical but false view that increased severity of punishment will produce less crime, that increased reliance on imprisonment is to be preferred to other nonincarcerative punishment.

Norval Morris, *The Contemporary Prison*, in *THE OXFORD HISTORY OF THE PRISON* 227, 257 (Norval Morris & David J. Rothman eds., 1995).

8. MARTHA GRACE DUNCAN, *ROMANTIC OUTLAWS, BELOVED PRISONS* 7-56 (1996).

9. *Id.* at 1.

10. *Id.* at 9-23.

11. *Id.* at 57-118.

12. *Id.* at 70-101.

course, expressions of repudiation and loathing for offenders are frequently heard (particularly in these times), but, she asserts that the articulated disapproval may be the product of mechanisms of repression that protect the individual from conscious awareness of his or her attraction to criminal behavior.¹³

The final sections of the book address what the writer identifies as the metaphor of filth.¹⁴ Her evidence discloses that criminals are frequently described by members of the law-abiding public as filth or sewage.¹⁵ She argues that these locutions may be explained as products of repressive mechanisms that disguise unconscious attraction to crime and infantile fascination with excrement.¹⁶ According to Professor Duncan, this metaphor may produce profound social consequences because of the difficulty displayed by many members of the community in distinguishing metaphor from reality.¹⁷ The author illustrates this confusion by giving an extended account of Great Britain's establishment and maintenance of the Botany Bay penal colony in Australia during the eighteenth and nineteenth centuries—a project singularly lacking in rational utilitarian justification.¹⁸

Before considering the argument in greater detail, some effort should be made to locate the work in contemporary academic thought concerned with criminal deviance and community responses to crime. The concepts and methodologies of Freudian psychology on which Professor Duncan's argument chiefly rests have been, of course, the subject of intense and continuing attention throughout most of the century just ending. These concepts are probably more familiar to members of American law school faculties than the writer appears to suggest. Nonetheless, however familiar its conceptual framework, there is no other work of which I am aware, certainly none that has emerged from the law schools, that offers such a sustained and productive effort to reap the insights of psychoanalytic theory applied to an extraordinary range of critical issues in the arena of crime and punishment.

Perhaps the most striking feature of the book is the writer's demonstration of the wealth of understanding of human motivations and behavior pertinent to the issues under consideration that can be gained from consulting the classics of world literature. Humanists have long maintained that there are levels of meaning and reality that can be

13. *Id.* at 102-15.

14. *Id.* at 119-87.

15. *Id.* at 121.

16. *Id.* at 123-46.

17. *See id.* at 179-84 (discussing how various parts of the criminal justice system in American often view criminals though a "lens of filth").

18. *Id.* at 147-70.

reached only through the devices of empathetic understanding employed in serious literature. The importance of literary sources to Freud's thought is well known. Perhaps less frequently noted is the movement in sociological criminology to devise methodologies of empathetic understanding similar in many ways to those employed in fiction and poetry.¹⁹ There is a substantial "phenomenological" tradition in sociological writing asserting that the "meaning" of deviant behavior must be sought not entirely in generalized "social forces" but also in the understandings and definitions drawn by the participants in criminal behavior. Writings in this tradition play no large part in Professor Duncan's argument or bibliography. This is not said in criticism: there are limits to what can be done at one time; in conscience, it must be conceded that the writer's task, as she has defined it, is sufficiently formidable. Yet the sociological literature referred to appears to overlap many of the book's interests and concerns. One may hope that in the future Professor Duncan will confront a system of explanation relying more largely on the operation of social processes than on the operations of unconscious mechanisms and motivations of individuals.

Thinking within the confines of tightly structured theoretical systems often may be affected in two quite different ways. First, the system may lead to valuable insights, some of which might not be reached by other means. Second, the system by its very strength and persuasiveness may exert such influence on the range of thought that other explanations, including those that in some contexts may have greater explanatory power, are overlooked or given insufficient weight. Psychoanalytical analysis of criminal justice phenomena may display both these attributes, as illustrated by Professor Duncan's discussion in the second part of the book. Two important contributions of psychoanalytic thought are its focus on the fascination that crime and criminals hold for both those who do and do not offend against the penal law, and its identification of mechanisms that may disguise from persons who are prone to denounce criminal activity most vehemently, their own strong propensities to crime.²⁰ These perceptions have significance beyond the dynamics of individual behavior and extend to many political and social phenomena as well. Perhaps the acceptance of totalitarian rule by populations of some political societies in the recent past signals the

19. The writings of David Matza, Howard Becker, perhaps Erving Goffman, and especially, Jack Katz are illustrative. JACK KATZ, *SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS IN DOING EVIL* (1988); Francis A. Allen, *Of Literature, Politics, and Crime*, 88 MICH. L. REV. 1440 (1990) (reviewing Katz, *supra*).

20. See DUNCAN, *supra* note 8, at 59-60 (discussing the reasons, from a psychoanalytic perspective, why attraction to criminals is not surprising).

presence of large numbers of persons who are impatient with the traditional restraints of law and morals, and who seek a kind of freedom by identifying themselves with exercises of power by a leader whose volition knows no external restraints. In less extreme situations many members of the community, largely unaware of their own criminal tendencies, detect propensities of crime and violence in others. These perceptions give rise to a fear of a kind of Hobbsean anarchy to be avoided only by the provision of harsh and repressive sanctions embedded in a penal system that reduces human rights of accused persons to levels of low priority. That there is a strong current of violence throughout American society even among the ostensibly law-abiding community seems clear enough.²¹ The obscene celebrations held by persons outside prison gates while executions proceed inside seem a fair indication that the attractions of crime and violence are not confined to those within the prison walls. One somber aspect of this analysis, well noted in Professor Duncan's book, is the presence of individuals among law-enforcement personnel who apparently express their own compulsions to criminal behavior by employing violence and deceit on suspected offenders.²² The problem is especially difficult in times like the present when epidemic crime breeds attitudes in the community that may appear to validate and even demand such police activity.

The fascinations of crime and the admiration of criminals suggest still other observations. One of these, perhaps less sinister than those that have preceded, is that human beings in a dynamic society are rarely wholly at ease with the liberty-limiting efficacy of rules, traditions, social mores, and religious precepts. Despite the dissonance that this unease causes in the functioning of social institutions, it often exerts constructive influences. Encompassed in the unease, which often seems associated with creativity and initiative in individuals, is the potential for resistance to or rebellion against political oppression. The opposing tensions between freedom and order must be maintained because undue dominance of either proves intolerable in the long run.

In those instances in which admiration for criminal offenders and sympathy for law violations pose substantial threats to public order, explanations going beyond the mechanisms of individual psychology seem required. This is not to deny the existence and functioning of the

21. A literary expression of the point can be found in JOSEPH CONRAD, *THE SECRET AGENT* 70 (1960), in which a half-mad revolutionary says: "[T]heir character is essentially anarchistic. Fertile ground for us, the States—very good ground. The great Republic has the root of the destructive matter in her. The collective temperament is lawless. Excellent."

22. DUNCAN, *supra* note 8, at 113-15.

mechanisms, but it is to suggest that full and useful explanations of these episodes rest primarily on social and political analysis. Some of the examples of admiration and support of criminal offenders marshalled in Professor Duncan's book are in fact instances of what in more recent times might be called "civil disobedience." Fidelity to the law may be quickly eroded or destroyed when statutes defining criminal offenses are seen by large segments of the community as instruments designed to confer unwarranted authority on the governmental regime, or to advance the interests of a favored group.²³ The popular admiration of the robber highwayman in eighteenth-century England can be explained at least partially in this fashion. These attitudes emerged from a society suffering the pangs of the early industrial revolution, which had radically altered traditional social and economic relationships and which had left the cities diseased and dangerous and the countryside bereft of the old securities. In some measure, the elevation of the armed highway robber to the status of hero may be seen as an expression of political and social protest. It must be a prime objective of those who create and administer penal policy to guard against the transformation of offenses of ordinary criminality into what large numbers of the citizenry define as political crime. When this occurs, the criminal law is stripped of much of its efficacy. As a result, governments are tempted to launch levels of repressive force dangerous to the political values of the community.²⁴ The too-soon-forgotten political literature of the Vietnam era is useful to the understanding of this process and its dangers.²⁵ Professor Duncan, of course, is aware of these social and political dimensions, and she might rightly respond that they are not the subject of her book. Many readers, however, may wish to place her illustrations at this point in a somewhat broader social context.

One pervasive question inevitably arises for readers of Professor Duncan's work who are of primarily legal orientation: what contributions can the author's insights and propositions make to the actual administration and reform of American criminal justice? The book is not a treatise on law reform, and expansion of knowledge is its own excuse for being, even when its practical applications are uncertain and dubious at the time of discovery. Yet it seems clear that Professor Duncan believes that her argument has something to offer the operating criminal justice system, especially that portion of her discussion devoted to the

23. See *id.* at 82-90 (discussing the view that criminality is often linked with freedom of movement).

24. FRANCIS A. ALLEN, *THE CRIMES OF POLITICS* 74-77 (1974).

25. See, e.g., *IS LAW DEAD?* (Eugene V. Rostow ed., 1971) (containing examples of this kind of literature and citations to others).

concept of the “beloved prison.”²⁶ This segment of the book provides opportunities for brief speculation on the difficulties and dangers that may be encountered in the movement of ideas from the realms of literature and psychoanalytical theory to the stark and uncomfortable realities of criminal justice administration.

As the volume demonstrates, the prison has proved an absorbing theme in much of the world’s great literature. The metaphor of society-as-prison often has been employed, as in Charles Dickens’ *Little Dorrit* and in many more modern works cited in the author’s discussion. But it is the concept of prison as a refuge, a safe haven from a hostile society and a place where some inmates may even experience moral growth and self-realization that is central to the writer’s argument.²⁷

One approaching the problem of delineating reactions of prisoners to penal incarceration must be impressed by the difficulties of formulating accurate and supportable generalizations. The number and varieties of factors bearing on the issue are formidable. Prisoners, of course, are not fungible; they display a daunting array of differing psychological types, educational backgrounds, and cultural influences. One suspects that what an inmate gains or loses from the prison experience, as in other life experiences, depends in large part on what he or she brings to it. The political prisoner, mentioned by Professor Duncan, is likely to possess some education and command of language and to hold strongly felt grievances against the society outside the institution’s walls.²⁸ The political prisoner may sometimes gain opportunities in custody for study, contemplation, and writing that for him are of great value. Many more typical inmates, however, testify to no such benefits in prison life. Norval Morris’ correspondent in the Illinois Stateville Prison writes:

For me, and many like me in prison, . . . the major problem is monotony. It is the dull sameness of prison life, its idleness and boredom, that grinds me down. Nothing matters, everything is inconsequential other than when you will be free and how to make time pass until then. But boredom, time-slowness boredom, interrupted by occasional bursts of fear and anger, is the governing reality of prison life.²⁹

26. DUNCAN, *supra* note 8, at 44-55.

27. *See id.* at 9-23 (discussing the reasons why prison may be a refuge for some prisoners).

28. *See id.* at 46 (arguing that the thoughts of the more articulate and educated “political prisoners” are similar to the thoughts of “common criminals”).

29. *See Morris, supra* note 7, at 228.

Again, some of Professor Duncan's sources mention the friendships and fellowships with other inmates enjoyed during their years in prison.³⁰ That this is far from a uniform experience is suggested by other reports of exploitation of the weak and helpless by fellow inmates, the persistence of gang warfare within prison walls, and the exacerbation of racial and ethnic animosities to sometimes homicidal levels.

If it is granted, however, that some persons are deeply attracted to the prison existence, other questions arise. First, are these persons sufficiently numerous to demand substantial modifications in the uses of imprisonment as a penal sanction? Second, are such persons sufficiently identifiable for application of alternative sanctions should this be thought desirable? Professor Duncan is aware, of course, that there is a wide range of responses among those subjected to or threatened by the prison and that in many particular cases, even persons contemplating crime and susceptible to the lure of prison nevertheless may be influenced by other quite different motivations. She asserts, however, on grounds I find generally persuasive, that the statements of many persons testifying to the satisfactions of prison life are valid and not simply products of nostalgia or fictitious imagination.³¹ Moreover, she believes that there is at least one class of offenders, the thieves, who typically seek an existence of dependency and find prison life a welcome relief from personal responsibility. Professor Duncan writes:

What is most fascinating for our purposes is the finding that chronic thieves exhibit a regressive longing to be in a dependent, passive state, a longing that is inadmissible to their conscious minds. . . . I therefore conclude that chronic thieves, at least those who steal because of internal conflicts and not external forces, are particularly likely to find imprisonment gratifying.³²

This observation is interesting and may prove useful for certain purposes in the treatment of individual cases. It is unlikely that the proposition as presently supported, however, will be understood to signal the necessity for major changes in our penal policy. To achieve that end will require assertions resting on a predicate more sturdy than can be supplied by clinical observations and the thrust of psychoanalytical theory. What is demanded to achieve official attention, not to mention public support, is systematic empirical demonstration. Perhaps such demonstrations are possible, but they have not as yet been made.

30. *See, e.g.*, DUNCAN, *supra* note 8, at 15-16.

31. *Id.* at 44-46.

32. *Id.* at 47.

Assuming, however, that a significant number of identifiable offenders exist who respond to the lure of prison life and that there are "numerous . . . ex-prisoners committing crimes in order to return to prison," serious problems of appropriate response from the criminal justice system arise.³³ Under these assumptions, returning such offenders to penal institutions must be seen as self-defeating and inconsistent with the retributive and deterrent objectives of criminal justice. Obviously, crimes of theft cannot be wholly ignored, but what forms of alternative treatment are at hand or can be devised to deal with persons who commit them? Certainly, the answer does not lie in widespread applications of psychoanalytic therapy. Such a course is prohibitively costly of time and money and of dubious efficacy in the penal context. Moreover, extensive use of psychoanalytic therapy is wholly inconceivable in an era when confidence in programs of rehabilitative treatment of adult offenders is at or near an historical low. Nor, as Professor Duncan has effectively demonstrated, is transportation of offenders to foreign penal colonies a feasible or attractive alternative.³⁴ The devising of effective intermediate penalties as alternatives to the usual sanctions of imprisonment or probation is one of the pressing needs of American corrections. This need extends to many classes of offenders in addition to those discussed by Professor Duncan. Despite the obvious utility of a more versatile system of sanctions, progress in devising them continues to be slow and tentative. It will probably remain slow as long as public retributive demands remain at their present levels of intensity.

The journey of theoretical insights from the clinic or laboratory to their utilization by functioning social institutions is one often attended by obstacles and perils. One of the perils is that of unanticipated consequences. The concept of the beloved prison may well be especially vulnerable to distortions inconsistent with rational and humane penal policy. Ever since the eighteenth century there have been critics who complain that prison regimes are insufficiently punitive. Such assertions are expressed with particular vehemence in the United States today: prisons are "country clubs," inmates should be deprived of television viewing, educational opportunities, and even programs of exercise and physical fitness. While this review was being written a letter to the editor of a local newspaper contained the following language:

As a former correctional officer, I can attest that to a large number of people prison is home. It is where they have spent the largest portion of their life, and it is where they feel comfortable

33. *Id.* at 42.

34. *Id.* at 147-70 (discussing the penal colony at Botany Bay).

and protected. They have three meals a day, a warm dry place to sleep, television, movies, educational opportunities, recreational and athletic facilities and most of all free medical care.³⁵

What conclusion does the writer of the letter draw from his conception of prison life? That capital punishment should be retained and presumably expanded.

We cannot permit the possibilities of distortion and misunderstanding to inhibit thought and scholarship. The possibilities of unintended and undesired social consequences resulting from thought can never be wholly escaped. There are situations, however, when distortion can be anticipated and attempts can be made to minimize the peril. If the concept of the beloved prison has social applications other than those resulting in increased brutalization of prison regimes, it would be well in these times to say so with considerable emphasis. Better still, suggestions for alternative treatment might be sketched. Experience counsels that no such efforts will eliminate the dangers of distortion, but they may in some small measure mitigate them.

The necessity of confining these remarks within reasonable limits requires that only brief consideration be given to the third principal segment of Professor Duncan's discussion—that concerned with what she labels "the metaphor of filth."³⁶ Most of what I shall say will relate to the portions of the argument that appear most immediately relevant to criminal justice policy. It should be noted, however, that the author's discussion of the widespread use of the epithets of filth to describe criminals and crime assumes the existence of deep-lying mechanisms in the human psyche, and, predictably, the locutions should be understood as a "symptom of noncriminals' unconscious ambivalence or simultaneous love and hate, toward criminals."³⁷ Professor Duncan states further:

I have sometimes treated the metaphor of filth as a cause, at other times a symptom of a deeper dynamic. Viewing it as a cause, I have argued that the metaphor of filth has functioned as a powerful determinant of criminal justice policies. In particular, it has led to a view of criminals as contaminated and contagious. This perspective, in turn, has promoted an emphasis on various pollution-avoidance measures, such as segregation and banishment of the criminal. In addition, when combined with the

35. GAINESVILLE SUN, Jan. 30, 1997, at 14A.

36. DUNCAN, *supra* note 8, at 119-22.

37. *Id.* at 185.

measure-for-measure theory of punishment, the metaphor has fostered a tendency to immerse criminals in dark, dirty, fetid places.³⁸

How the use of the locutions of filth to describe offenders may affect creation of deplorable public policies and their continuation over long periods of time is ably demonstrated by Professor Duncan's reference to the history of the Botany Bay penal colony in Australia.³⁹ The penal policies of other European nations at about the same time would probably yield similar analyses. The experience in France may be of special interest because French foreign penal colonies were stubbornly maintained well into the present century. In France, as in Britain, the language of filth, disease, and infection often was employed to describe offenders subject to transportation and to justify policies that resulted in their forcible banishment from society.⁴⁰

Metaphors constitute one of the most characteristic attributes of human communication. It may be true that certain kinds of thought require their use; lawyers have found that employment of metaphors in the form of legal fictions is not only convenient but very likely essential to the functioning of legal systems.⁴¹ Yet, as in the examples Professor Duncan provides, when the metaphor becomes confused with reality, the results may be pathological. The persons transported to a penal facility located on the other side of the world and largely unequipped to accommodate them were not filth, excrement, sewage, but members of the human species. Measures that most persons would be reluctant to inflict on a man, even an evil man, may become acceptable if his humanity is so obscured as to seem mere refuse. The process is one of de-humanization, and its systematic pursuit in some societies of twentieth-century Europe provided the prologue for what may be the most unspeakable outrages in all human history. Unhappily, the tactics of dehumanization are too frequently seen today in the politics of American criminal justice. The unrestrained denunciation of crime and criminals with negligible concern for the causes of crime and the easy assumption that the problem of public order may be solved through unlimited uses of repressive force obstruct achievement of rational policy and threaten human values.

38. *Id.*

39. *Id.* at 147-70.

40. See generally GORDON WRIGHT, *BETWEEN THE GUILLOTINE AND LIBERTY: TWO CENTURIES OF THE CRIME PROBLEM IN FRANCE* (1983) (analyzing French attitudes toward crime and solutions during the past two centuries).

41. See L.L. Fuller, *Legal Fictions*, 25 *ILL. L. REV.* 363, 513, 877 (1930-31) (pts. 1-3).

The attainment of something approaching rationality in penal policy is a rare achievement, even in the best of times. Especially in a period of pandemic crime like the present, appeals to reason and compassion are submerged in the clamor for immediate, direct, and increasingly repressive solutions. Systematic knowledge is rarely consulted in framing modern law-enforcement measures, and, indeed, criminal policies are regularly applied today in ignorance or defiance of documented experience.⁴² Nor is this wholly surprising. The specter of crime, especially violent crime, attacks many of the most basic and primitive human concerns. Professor Duncan's consideration of the often unconscious mechanisms of human behavior adds an important understanding of why the goal of rationality remains so elusive.

Yet the disregard of rationality in the administration of criminal justice, as in other areas of public life, exacts enormous costs. Among them is the imposition of measures that are futile, self-defeating, and sometimes outrageous. It is therefore of great importance that rationality and the search for verified knowledge continue in the hope they may one day be permitted at least a peripheral role in criminal policymaking. The greatest contributions to rationality in these areas, it seems to me, will be made through application of the traditional techniques of social inquiry: collection of data, statistical analysis, the careful identification of social objectives, and the thoughtful allocation of priorities among competing social interests. Does this mean that the book under review, employing quite different techniques, has no contributions to make to a more sensible and effective criminal justice? Not at all. As suggested above, the book warns us that attempts to achieve coherent policy present dimensions of difficulty often unsuspected by reformers. To me the most important insight of the book is perhaps its insistence that the black and white distinctions between criminals and noncriminals, when closely viewed, often dissolve into gray.⁴³ The we-and-they distinctions so forcefully insisted on today result in failures to perceive the roots of crime as accurately as we might, and sometimes inflict measures both ineffective and damaging. Professor Duncan reminds us that criminals are persons, not refuse. This understanding, when widely held, may save us from perpetrating many wrongs and absurdities. If the time returns when we are disposed again to attempt salvaging some of the human resources in our prisons, the focus of the book will gain additional relevance. These seem to me important contributions.

42. Franklin E. Zimring, *Populism, Democratic Government, and the Decline of Expert Authority: Some Reflections on "Three Strikes" in California*, 28 PAC. L.J. 241, 243 (1996) (striking verification of this statement).

43. DUNCAN, *supra* note 8, at 196.

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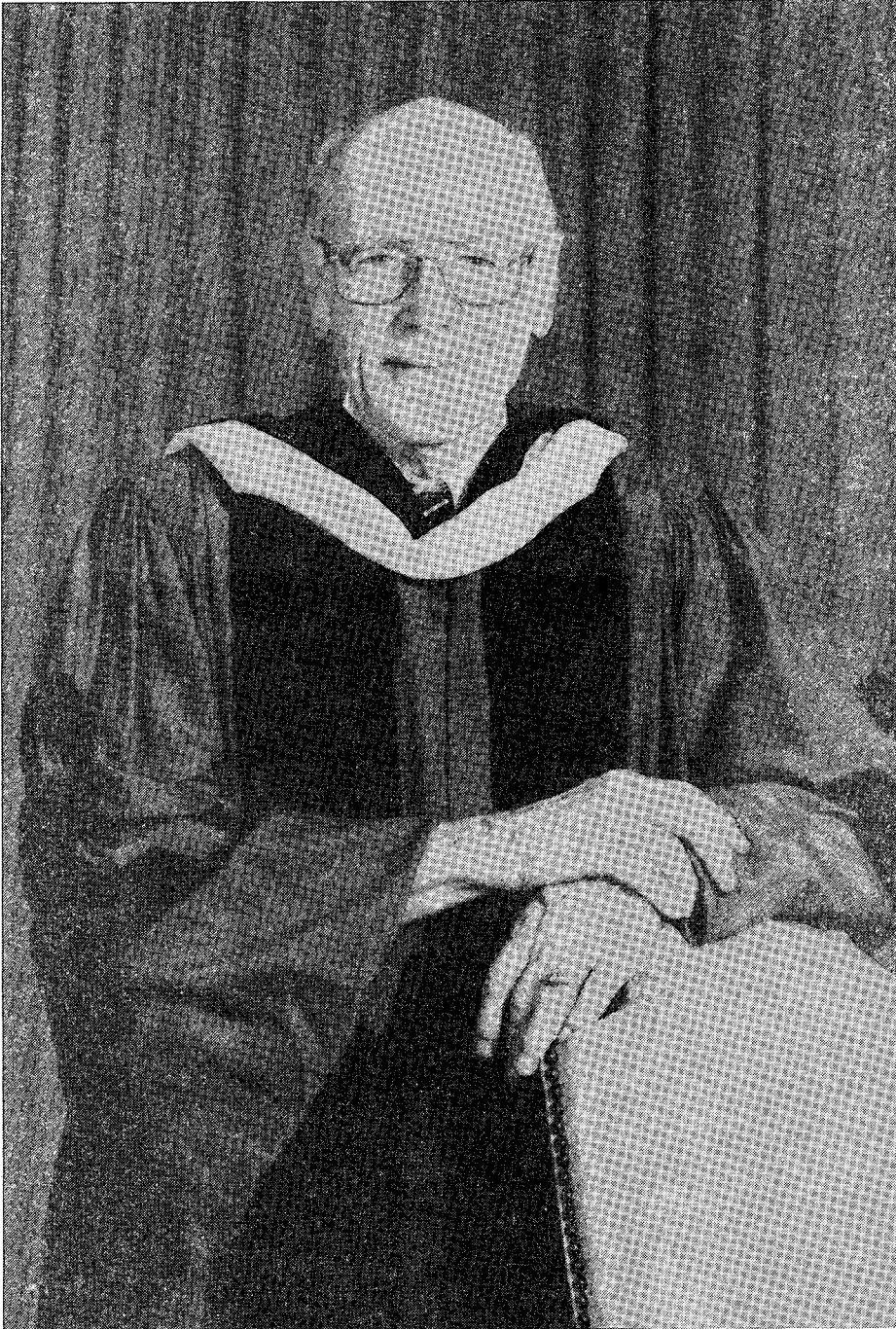
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DEDICATION TO ROBERT B. MAUTZ
Dave. ReThinking Fatherhood
(1915-1996)

Robert Barbeau Mautz was born in the small central Ohio town of Marion in 1915. "Bob," as he was known by his friends, brought a no-nonsense, mid-western work ethic to his work as a law professor, academic vice president, and chancellor. His life and career in the State of Florida did not begin until 1950. What happened before that date was formative. What happened after was of great benefit to the citizens of our State.

In his early years, Bob excelled academically and on the sports field. Offered college athletic scholarships in basketball and football, he opted for an academic scholarship at Miami University of Ohio. Bob attended Yale Law School after graduation from Miami. At Yale, this small town Ohio boy was introduced to a cosmopolitan world. His classmates included such friends as Gerald Ford, Potter Stewart, Byron White, Sargent Shriver, Marshall Skadden, and Les Arps. This was a group of high achievers; Bob graduated seventeenth in a class of 115.

Bob Mautz worked for a New York law firm after graduation from Yale, and then in 1941 he became house counsel for Pan American Airlines, a major client of the firm. His move to Pan Am changed his life. His administrative talents were soon noticed; Bob was dispatched to Africa where he worked as part of an administrative team that supplied air service to the United States military and the Allied forces during World War II. After Pearl Harbor Bob enlisted in the United States Air Force and became part of the Air Transport Command. At the close of the war he was transferred to Germany. He served as a prosecutorial assistant in the Nuremberg war crime trials. He also worked with others to restructure the German legal system during the period of occupation.

In 1947, Bob Mautz returned to the United States and soon thereafter married Esther "Gussie" Guthery, with whom he had corresponded throughout his long posting overseas. When Bob had considered career options as a senior at Miami of Ohio, his first choice had been to pursue an academic career in political science. His mother had balked at that and persuaded him to go to Yale for a professional degree. On his return to the United States, his interest in an academic career resurfaced; but this time it was in law. He was offered a one-year assistant professorship at Yale Law School.

At the close of his year at Yale he was recruited to the University of Florida law faculty by a young dean named Henry Fenn. Dean Fenn had been an assistant dean at Yale. This was a logical development, although Bob Mautz accepted Henry Fenn's offer only after rejecting offers from the law faculties at Stanford and Colorado. In the summer of 1950 Bob and Gussie Mautz arrived in Gainesville, Florida.

All new law professors at Florida were required to sit through Dean Fenn's Contracts course; Professor Mautz learned from a master and

then began his own teaching duties. He taught 1996 contracts, and corporations. His many students went on to illustrious careers. One student eventually became president of the University of Florida: Marshall M. Criser.

Professor Mautz flourished in the academic world. He loved teaching, and he loved his students. He soon became Faculty Advisor to the University of Florida Law Review. In 1995, he made a substantial endowment gift to the College of Law to provide a generous scholarship to the Editor-in-Chief of the Law Review. This is a good indication of his belief in the importance of student-edited reviews.

Professor Mautz and Dean Fenn became good friends. In his third year on the faculty he was named Assistant Dean of the law school. The organizational skill that had taken him to Africa with Pan Am, to the Air Transport Command during the war, and to Germany after the war, carried him into the Dean's Office in Gainesville. In 1958, Dean Fenn recommended his assistant dean for service on a committee charged with working out some curriculum difficulties between the College of Liberal Arts and Sciences and the College of Education. President J. Wayne Reitz appointed Dean Mautz to the committee and was so impressed with his work that he soon thereafter offered him the position of Dean of Academic Affairs. The offer came at a time when Bob was thinking about returning to full-time teaching. He declined President Reitz's offer twice before finally accepting it. Dean Mautz took to his new administrative responsibilities with gusto. He soon achieved a new title, Vice President for Academic Affairs. He was the first person at the University to hold this position.

Vice President Mautz was concerned about the effectiveness of the Board of Control which had responsibility for the overall administration and budgeting of the state universities. The Board had become less effective in its ability to speak for higher education in the state. As Vice President at the University of Florida, Mautz often voiced his support for a new governing structure for the state universities. In the middle 1960s the Board of Control was replaced by the Board of Regents. The new board was to have a stronger voice in budgeting and system organization. Chester Ferguson, the chair of the newly created Board of Regents, was a graduate of the law school and an influential lawyer and businessman from Tampa. Although at this time Vice President Mautz was thinking of returning to the life of a full-time law teacher, Ferguson persuaded Bob Mautz to become the first Chancellor of the State University System of Florida. In 1968, the Mautzs left their Gainesville home and moved to Tallahassee.

Chancellor Mautz continued his administrative career. It was an exciting and challenging opportunity. The new chancellor increased the staff, recruited many able administrators, and, working with the Board of Regents, began to define the role of the Board and its Chancellor. During his tenure as chancellor, the University of North Florida was created and the campuses at Central Florida and West Florida were

constructed. The College of Medicine at South Florida was opened. During the tenure of Governor Reubin Askew (also a Florida law graduate), Chancellor Mautz implemented a budgeting system under which the Board of Regents received funds from the State and allocated them to each of the state universities. To assure high quality academic programs, the Board under Chancellor Mautz's leadership instituted a process for approval of academic programs. In 1975, with these accomplishments in place, Chancellor Mautz and his wife returned to Gainesville and the University of Florida.

Bob Mautz was named Regents Professor and taught until his retirement in 1980. During retirement he maintained an active and productive involvement in the Gainesville community and the university he loved so much. He left his mark on the University of Florida, its law school, and the system of higher education in the State of Florida. He had a generous spirit and a no-nonsense approach to his work. Many saw his generosity first hand. We enjoy the fruits of his work each day.¹

1. Jeffrey E. Lewis, Dean Emeritus and Professor of Law, University of Florida College of Law. I would like to thank Jonathan W. Newlon for his excellent assistance in preparing this dedication to Bob Mautz.

