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BOOKS REVIEWED

Justice Without Trial: Law Enforcement in Democratic Society. By Jerome H. Skolnick. New York: John Wiley & Sons, Inc. 1966. Pp. xi, 279. \$7.95.

In *Miranda v. Arizona*,¹ Chief Justice Warren, writing for the majority, acknowledged a serious "gap in our knowledge as to what in fact goes on in the interrogation rooms."² He nonetheless construed a dismal picture of current interrogation practices, based largely upon manuals written for police consumption. The dissenters contended that the efforts of the police "are not fairly characterized by the Court's opinion,"³ and that "[j]udged by any of the standards for empirical investigation utilized in the social sciences the factual basis for the Court's premise is patently inadequate."⁴ The opinions in that case leave little doubt that the sharp division between the five and the four is in large measure attributable to quite different assumptions concerning present police practices.

Miranda is but one illustration of a dilemma which has taken on critical proportions during the criminal justice "revolution" of recent years: courts and legislatures, confronted with the need to fashion legal norms and legal sanctions directed to the police, have had to proceed with little concrete information about what the police are doing and what the police are thinking. It hardly needs stating that the development of sound norms and effective sanctions is unlikely under these circumstances. As a number of commentators have recently pointed out, there is an urgent need for empirical research which provides a sense of what is really happening and a feeling for the actual dimensions of existing problems.⁵

Professor Jerome Skolnick's *Justice Without Trial* represents the kind of research into police thought and behavior which is so greatly needed. Data for the book was drawn primarily from a study conducted by the author in a city he calls Westville. This community of four hundred thousand, he stresses, is a "real" city, in that it is neither a college town nor a megalopolis. Westville, while perhaps a representative community in some respects, cannot be said to be served by an "average" police department. Rather, as Skolnick points out, it is "an example of the top stratum of American criminal justice administration."⁶ The author's choice of Westville (which, on the basis of his detailed description, I believe I am safe in identifying as Oakland, California) was certainly a wise one, for it permitted him to focus upon the real problems of a police agency in which honest, good faith efforts are being made to confront the crime problem. Most fortunately, this book is not another study of police corruption.

1. 384 U.S. 436 (1966).

2. *Id.* at 448.

3. *Id.* at 500 (Clark, J., dissenting).

4. *Id.* at 533 (White, Harlan, and Stewart, JJ., dissenting).

5. E.g., Packer, *Who Can Police the Police?*, N.Y. Rev. of Books, Sept. 8, 1966, at 10; Remington, *Criminal Justice Research*, 51 J. Crim. L.C. & P.S. 7 (1960).

6. J. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* 25 (1966).

Skolnick's research was conducted as a participant-observer; that is, he travelled with the police and watched their day-to-day operations and often made inquiries of them concerning the reasons behind certain practices. After some preliminary observations of the public defender and prosecutor, the author began his firsthand observation of police operations. Over a period of fifteen months, Skolnick observed and interviewed members of the patrol division, the traffic warrant police, the burglary squad, the robbery and homicide sections, and the vice control squad. The latter group, responsible for enforcement of the laws concerning narcotics, gambling and prostitution, received the greatest attention.

Following an introductory chapter, Skolnick devotes a chapter to "The Setting, Method, and Development of the Research." He advises the reader "who finds this sort of report tiresome" to move on to the balance of the book, and certainly many readers will want to do so. However, for those who have an interest in the problems of empirical research, and particularly the problems which may be encountered in researching police operations, this chapter may be the most valuable part of the book. With rare exception, research by lawyers⁷ into the problems of the police has been of the sit-in-the-library variety rather than of the ride-with-the-police type. This is not attributable solely to the fact that an easy chair is more comfortable than the back seat of a police car; law researchers who perceive the need for the collection of empirical data are often reluctant to become involved in such an undertaking because they are totally unfamiliar with the techniques of field research. And thus it has been observed that what limited empirical research into law is occurring might contribute most through ultimate publication of the procedures used and the problems confronted in this kind of inquiry.⁸ Skolnick's description of the ethical issues and other problems raised during the course of his study is extremely valuable and, hopefully, will be used with profit by others contemplating similar research efforts. I must add that Professor Skolnick's account of his research methods justifies the conclusion that he has been objective in both his observation and evaluation.

The title of the book, *Justice Without Trial*, suggests something more than a study of the police.⁹ Indeed, fairly early in the book the author promises us more than that: "Although this book is specifically about police, it is also about other officials, the defense attorney, the prosecutor, the judge, the probation officer. . . ."¹⁰ Actually, these officials receive but scant attention. This is a book about police, and it is primarily a book about those police who have been given the responsibility for enforcing the vice laws. But this is only to say that the author has somewhat overstated the scope of his study; it is not a reflection on

7. Skolnick, it should be noted, is a sociologist.

8. See Llewellyn, *Social Significance in Legal Problems*, in *Conference on Aims and Methods of Legal Research* 8 (A. Conard ed. 1955).

9. For example, one might well think that it includes a study of the process by which pleas of guilty are negotiated, which is the subject of another recent book with a somewhat similar title. D. Newman, *Conviction: The Determination of Guilt or Innocence Without Trial* (1966).

10. Skolnick, *supra* note 6, at 82.

the value of the research. On the contrary, empirical research with a fairly narrow focus is generally more fruitful, for seldom is there available sufficient time and money to gather enough data to permit accurate description or analysis of a broader field. Viewed as a revealing peek at a particularly important part of current police operations, *Justice Without Trial* is a most valuable book.

Professor Skolnick states the following as his chief conclusion:

The police in democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy. The ideology of democratic bureaucracy emphasizes initiative rather than disciplined adherence to rules and regulations. By contrast, the rule of law emphasizes the rights of individual citizens and constraints upon the initiative of legal officials. This tension between the operational consequences of ideas of order, efficiency, and initiative, on the one hand, and legality, on the other, constitutes the principle problem of police as a democratic legal organization.¹¹

Setting forth this proposition in its abstract form does not indicate its significance and, I must confess, does not do justice to *Justice*. Perhaps I can better convey the flavor of the book by describing briefly some of the findings which were most interesting to me.

1. *Police Efficiency and the Clearance Rate.* Skolnick points out that as a consequence of the fact that the goals of the police and the standards for evaluation of their work are both ambiguous, there is a strong tendency to measure police effectiveness in terms of "clearances." A case is cleared when the police believe that they know who committed the offense, without regard to whether conviction is possible. Because clearances are valued by the police, criminality becomes a commodity for exchange, and thus the police regularly grant or seek concessions for those offenders who admit to several crimes. This sometimes results in a reversal of the hierarchy of penalties associated with the substantive criminal law, in that the criminal who admits responsibility for several theretofore uncleared offenses is rewarded with charging and sentencing concessions which reduce his punishment below that of the offender known to be responsible for only a single crime.

2. *The Exclusionary Rules.* The vice crimes present unique problems for the police, for these are "victimless" crimes; there is not an indignant third party who can furnish information to the police and who in turn is served and satisfied by enforcement action. Conviction for most vice crimes requires critical physical evidence, and thus—as everyone who follows the advance sheets knows—difficult problems of search and seizure are most often presented in connection with narcotics crimes and similar offenses. An officer who limited his activities so as to make only those searches which would pass muster in court would be criticized by his superiors and by the public. One result is that often the officer will act on the basis of facts which he believes call for a search, and then will after the event try to reconstruct a description of the preceding events which conforms to the legal requirements. Another result is that, except for major crimes, the tendency is to abandon conviction as an objective, which means that the exclusionary rule no longer serves as a deterrent.

11. Skolnick, supra note 6, at 6.

3. *The Use of Informants.* Informants are essential in the enforcement of the narcotics laws. Informers are rewarded by some sort of break, which is achieved by either withholding arrest, reducing charges, or recommending a lesser sentence. As to the first, the informant's "immunity" to engage in crime is ordinarily limited to lesser offenses which are not the enforcement responsibility of the detective for which he is working. The latter two concessions take on considerable value as a consequence of the high penalties permitted for relatively minor narcotics offenses, which may be the real reason behind police pressures for increased statutory penalties.

One basic characteristic of the informer system is that the police make every effort to protect the identity of their informants. Where the defense has a right to discovery of police reports, one consequence is limited reporting of the informant's participation in an investigation. To ensure that informers need not be called to testify, narcotics sellers are often charged with a lesser offense or are permitted to enter a negotiated plea.

These three situations and many others are skillfully developed by Professor Skolnick in support of his fundamental conclusion, quoted above. The material is clearly presented in a style which, in my judgment, many of Skolnick's fellow sociologists might well emulate. Criticisms of the book are minor in nature, and arise primarily from the puzzling organization of some of the material and limited analyses of certain matters. *Justice Without Trial* is nonetheless a significant contribution to the literature on the police, and hopefully it will stimulate further research into the actual problems of law enforcement in a democratic society.

WAYNE R. LA FAVE*

The River Basin in History and Law. By Ludwik A. Teclaff. The Hague: Martinus Nijhoff. 1966. Pp. xxiv, 228, \$7.50.

The rise and fall of civilizations, the poverty and prosperity of nations, the life and death of peoples are determined now as always by the availability and distribution of fresh water resources. The increase of populations and the development of new technologies have combined to heighten the significance of this essential commodity and to motivate the development of new methods and widened areas of water distribution and control. Lawyers since time immemorial, from Hammurabi to Earl Warren, have been concerned directly or indirectly with the complications that arise when a village, a state, or a nation on the upper reaches of a river takes action to change or divert the natural flow of water in a way that affects those who dwell below them. As mankind's need for and use of fresh water have increased, the total river basin, rather than the course of a single stream, has become the major unit around which have clustered international treaties, interstate compacts, regional administrative regulations and, in general, a complex body of international, municipal, and

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administrative law. An interesting question arises here. Is the river basin the ultimate unit of control, or is it simply the most recent unit area of concern, destined to be replaced in the future by some larger legal entity through which mankind will regulate the world's water resources? In 1958 the International Law Association suggested in effect the utility of some investigation of this question.

Ludwik Teclaff has produced in this book a remarkably concise yet comprehensive answer to that question, concluding, at p. 203, that: "since most major river basins are large enough to absorb the benefits of optimal water resources development, it is felt that the basin will remain a legal entity in the foreseeable future." This is preceded by a well-integrated, though necessarily selective, review of the various ways in which political entities from ancient times to the present have dealt legally with both navigational and non-navigational uses of fresh-water streams.

As might be expected, earlier regulation of river usage dealt in large part with rules, international and otherwise, governing navigation and the related questions of boundaries and riparian rights. Industrial and other non-navigational utilization of rivers assumed major proportions with the coming of the Industrial Revolution. After the mid-eighteenth century, the law of rivers developed rapidly. In the twentieth century, technological advances have made possible a far wider range of water-resources development than was ever conceived of earlier. The legal accompaniment of these developments has been the creation of agencies such as the Tennessee Valley Authority in the United States and similar agencies in other countries. These agencies supervise and control, by means of international agreements, interstate compacts, and administrative directives of great variety, a multiplicity of activities depending upon the use and distribution of the water and other resources of entire river basins. These uses sometimes transcend the area of a particular river basin and result in a linkage of some of the resources of neighboring basins. As such inter-linkage develops, the complexity of treaties, laws, and ordinances governing the new physical arrangements likewise develops.

Dr. Teclaff's book provides, on the one hand, a description of the new uses of the river basins, and on the other, a summarized but excellent description of the concomitant legal developments. This is obviously an area of law which will not remain static, but it is one for which this book supplies a splendid introduction. The historical background, the legal bases of present controls, the kinds and formats of present regulations, and the probabilities of future developments are all here in handy and readable form. Lists of cases, of applicable treaties, of geographical areas involved, and of principal publications in the field supplement a satisfactory index and make the work happily usable.

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The Labor Revolution. By Gus Tyler. New York: Viking Press, 1966. Pp. 279. \$6.50.

In the 1930's, a liberal in the United States could be identified by his sometimes passionate, sometimes logical attachment to certain ideals. Probably four key principles formed the foundation of the liberal's credo: his alarm at the rise of fascism and militarism in Germany, Italy, Spain and Japan; his support of civil rights for Negroes and others; his approval of the New Deal concept of redistribution of income through progressive taxation, social security and other governmental programs, as a means of eliminating poverty and injustice; and his belief in the right of labor to organize.

Today, more than thirty years later, some of the issues have changed; others have remained basically the same. But questions about the rights of labor remain in the mind of the contemporary liberal. The same person, who in the thirties was convinced of the importance of ensuring self-organization and collective bargaining, was, by the forties, concerned that an imbalance has developed.

By the end of the Second World War, many a citizen felt that labor, the "underdog" in the days of the Wagner Act, was no longer a weak and emaciated pup. It had grown to a powerful strength. Vitality in the economic field was flanked on one side by financial security, large treasuries and assured income—on the other by political and social influence reaching from the grassroots to the White House and buttressed by political action committees.¹

Passage of the Taft-Hartley Act in 1947 and the subsequent enactment of Landrum-Griffin in 1959 curtailed some of labor's rights and powers. Today, paradoxically, distrust and dislike of organized labor exists both on the right and on the left. The conservatives still feel that the economic power of organized labor is too great and that, unfettered, it has too strong an influence on the economy. The new left views labor as part of the uninspired establishment—unimaginative, unprincipled, power hungry and dangerous.

Some liberals, of course, have not abandoned their support of labor's rights. Others, while indifferent, have not become anti-labor. Informed observers of socio-economic developments, whatever their politics or views, are very concerned with the future of organized labor.

Many of the problems confronting labor today are presented in Gus Tyler's book, *The Labor Revolution*. This survey of the labor scene poses many thought-provoking questions and provides some interesting answers. Mr. Tyler discusses automation, the demographic and economic trends which will affect labor, jurisdictional disputes, labor's political, social and economic role in America and many other interesting matters. Mr. Tyler's book contains a concise and readable history of the American labor movement. He analyzes some of the problems facing the House of Labor today, such as the union's difficulties in policing their own back yard. He considers their attempts to preserve job security for the membership in areas where there is increasing technological change, geographic relocation, or "run away shops." There are chapters of the

1. N. Levin, *Successful Labor Relations . . . An Employer's Guide* 4 (2d ed. 1967).

book which relate to the probable future efforts of labor to organize the unorganized—the Negro, the Southern workers of all colors, women (an increasing element in the labor force) and professional, white-collar and service employees. Mr. Tyler discusses the increasing tensions between the labor movement's founding fathers and the impatient young activists. He considers many of the problems of attracting and changing leadership in the labor movement. Labor's own concern has been indicated by several recent meetings at which a self-examination of union leadership has occurred. As the *New York Times* recently reported, some young labor men are tired of the leaders who are "only concerned with platitudes, plaques, testimonial dinners and handshakes."²

This book, in its consideration of economics, politics and history is quite readable: the organization of the book is good in that one chapter flows into the next, yet each is able to stand alone as an independent essay. It is written primarily for the general reader, not for the professional economist, labor relations technician, or labor law practitioner. Yet these latter groups may enjoy going through its pages for the book gives certain insights, reports little-known facts and expounds certain viewpoints effectively.

If a single practice has damaged the image of a responsible labor movement, it has been "featherbedding". Before featherbedding can be considered a crime, it must fit into rather narrowly defined limits. That is to say, a labor organization cannot make or try to make an employer pay for services which are not performed, if such payment is in the nature of an exaction. If *some* work is performed, no matter how unnecessary or inefficient, then technically there is no violation. However, the public calls it featherbedding when an employer must pay for services he does not need or when he is forced to have work done in an uneconomical manner. This is exemplified when the number of bricks that can be laid in a day are limited, when an extra man rides in a railroad cab to be a fireman for a furnace long since extinguished, or when a painter must use a brush instead of a more efficient roller. Mr. Tyler does not defend featherbedding by labor but points out that it is not confined to unions and, in fact, exists in other segments of the American economy. He considers the well-established policy of farm subsidies, where "Uncle Sam pays the farmer *not* to produce."³ While this is called support or price stabilization, it is, Mr. Tyler contends, essentially the same as featherbedding. Moreover, he shows how industry also withholds or limits output and forces the balance of society to pay.

The book very staunchly defends the role of the AFL-CIO and its president, George Meany, in their fight for civil rights. However, many people are less than entirely impressed by labor's devotion to this cause. Mr. Tyler, while admitting that there are some hold-outs within labor's ranks, nevertheless argues that the AFL-CIO generally has worked hard for America's Negroes. The author relates that in 1957, when Congress was developing the Landrum-Griffin Act, a deal was offered to organized labor. "If the unions would stop putting on pressure for civil rights legislation, a contingent of Southerners, in

2. *N.Y. Times*, August 12, 1967, at 1.

3. G. Tyler, *The Labor Revolution* 119.

return, would withdraw support from pending Landrum-Griffin. The nose count was close enough that such a deal might have made the difference. But labor turned it down. The AFL-CIO stayed with civil rights and, incidentally, paid the price for its convictions."⁴

Mr. Tyler discusses the "failure of American unions, with their massive membership and wealth, to form a national party of labor"⁵ And he indicates some of the reasons for this where there is a working class that does not think of itself as such.

The author indicates that the future of the American labor movement is bright and challenging. He suggests that organized labor is not defunct as a power on the American scene or socially, intellectually or morally bankrupt, as some contend. He sees it as a vital force, affecting the entire nation. Mr. Tyler, Assistant President of the International Ladies Garment Workers' Union, Director of its Department of Politics, Education and Training, and Administrator of its National Scholarship Fund, is frankly and outspokenly pro-labor in his evaluation. He is representative of the intellectual in the labor movement and, as such, an articulate spokesman for his cause.

The book is worth reading both as an exposition of a labor spokesman's viewpoint and as a thoughtful analysis of the dynamics of the American labor movement. The considerations in *The Labor Revolution* of future developments are interesting, and the book should receive the attention not only of those in the labor movement but also of students of current events.

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4. Id. at 183-84.

5. Id. at 220.

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