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Book Note

THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE, by William J. Stuntz¹

JOSEPH MARCUS

WILLIAM STUNTZ DIED on 15 March 2011, bringing an untimely end to the prolific life of a Harvard law professor, evangelical Protestant, and “supremely decent man.”² Long recognized for his scholarly reflections on issues of crime and justice, Stuntz presents *The Collapse of American Criminal Justice*, a final sermon of sorts from a man whose legacy is set to grow alongside his ever-poignant message: “Both sides are us.”³

Stuntz sees an American criminal justice system that has lost its way. Rather than promoting justice, battling discrimination, and protecting those in need, it has taken a more punitive turn towards unprecedented prison populations. Not only is the system severe to the point of being counterproductive, it also has a grossly disproportionate impact on African-American communities. Fortunately, this book’s aim is not merely to explain how harsh and unfair the system is, but to offer a hopeful and helpful look forward. Indeed, for all of Stuntz’s compelling criticism, his vision for the future is fundamentally optimistic. Before outlining his vision, however, Stuntz surveys, with a wise and critical eye, American criminal justice through the ages.

Following a brief “big picture” overview in Part One, Part Two explores in considerable depth the moments and movements in American history that have, whether by design or mistake, molded the criminal justice system into “the punitive beast it is.”⁴ He begins with the Fourteenth Amendment’s failed “equal protection of the laws” guarantee. In particular, he points to the 1876 *United States v Cruikshank* decision in which the United States Supreme Court, stressing

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1. (Cambridge, Mass: Harvard University Press, 2011) 312 pages.
 2. *Ibid* at back cover (Professor James Q Whitman, Yale Law School).
 3. *Ibid* at 312.
 4. *Ibid* at 8.

the guarantee's inapplicability to acts of private citizens, put an effective "end [to] Klan prosecutions."⁵ The Bill of Rights as a whole, Stuntz argues with regret, has since become a procedural yardstick for due process, as opposed to a substantive one for equality and the protection thereof.⁶

Stuntz then leads readers into the Gilded Age—a general reference to the late nineteenth century—explaining how cities in the northeast, with large urban police forces and small prison populations, enjoyed relatively low crime rates. Southern cities, by contrast, with fewer officers and more inmates, suffered from higher levels of criminal behaviour. Stuntz suggests several reasons for the apparently superior effectiveness of the low-punishment system, yet he focuses on one: control over policing and prosecution by local groups with a genuine interest in fair outcomes. Unlike in the south, where the "formal justice system was governed by those who least needed its services and least depended on its fairness," otherwise vulnerable immigrant communities in the north were often able to influence local prosecutorial behaviour by way of "jury rooms and ballot boxes."⁷ As jurors and voters, they had a say. Stuntz tries not to romanticize the "Gilded Age North," acknowledging the definite presence of discrimination and corruption in law enforcement, yet he cannot help but see in its "locally democratic" character the foundation for a less harsh and more effective criminal justice system.⁸

Not surprisingly, then, Part Three advocates for a more democratic and decentralized approach. The past half-century, Stuntz writes, has been a failed experiment in centralized law and politics, with a pendulous justice system swinging from extreme leniency in the 1950s, 60s, and 70s to debilitating severity ever since. When crime rates dropped in the 1990s, many saw tougher punishment as the cause; however, Stuntz contends quite compellingly that the "trends do not match up so neatly," pointing to their out-of-sync timing and magnitude.⁹ Instead, he credits the preventative power of more community-based "police boots on violent city ground."¹⁰

He concedes that the threat of imprisonment can deter but sees it as marginal in its utility, noting that "we seem to be getting much less deterrent bang for the imprisonment buck than we once did."¹¹ The goal, as such, becomes balance,

5. *Ibid* at 117.

6. *Ibid* at 128.

7. *Ibid* at 147, 130.

8. *Ibid* at 142.

9. *Ibid* at 245.

10. *Ibid* at 279.

11. *Ibid* at 245.

which Stuntz believes is best pursued by localizing control over criminal punishment. As disconnected decision makers see and treat criminals as alien enemies, mass-incarcerated minority communities perceive and experience a similarly foreign and prejudicial system. In reality, Stuntz reminds his readers, “[n]either side of this divide is ‘them.’ Both sides are us.”¹²

12. *Ibid* at 312.

