

July 1963

Justice and Injustice

Gardner Cromwell

Associate Professor of Law, Montana State University

Follow this and additional works at: <https://scholarworks.umt.edu/mlr>



Part of the Law Commons

Let us know how access to this document benefits you.

Recommended Citation

Gardner Cromwell, *Justice and Injustice*, 25 Mont. L. Rev. (1963).

Available at: <https://scholarworks.umt.edu/mlr/vol25/iss1/12>

This Book Review is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Montana Law Review by an authorized editor of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

BOOK REVIEW

Justice and Injustice

EDMUND BERGLER, M. D., AND JOOST A. M. MEERLOO, M. D.
New York and London: Grune & Stratton, 1963. Pp. 170. \$5.75.

Every homicide case tried or reported¹ in Montana during recent months has involved psychiatric testimony. Each decision involved the question of whether the accused or the victim was "normal."² Each required the exercise of judgment about the human mind by persons unlearned in psychiatry.

This review is a plea for such learning. At least it is a plea that lawyers and judges, those charged with formulation and application of rules concerning criminal responsibility, expose themselves to such learning. The book reviewed here is not a primer, but it is the only work of its kind. The authors, two European psychiatrists, came to the United States as adults. "Both have been deeply impressed by the pronounced sensitivity to injustice, even in minor matters, that prevails in the United States."³ They suggest that something which they choose to call a "sense of justice"⁴ exists, and that it affects all of life.

Writing first about "functional mechanisms of the sense of justice," the authors demonstrate the operation of certain Freudian⁵ principles by a simple experiment. They suggest that the reader consider his own reactions when a person he *dislikes* puts forward an *irrefutable* claim. Then: "Observe your reaction when a person you happen to *like* puts forward an *unsupported* statement."⁶ The insights developed from the experiment are strengthened by a rather extensive examination of part of the movie, "Twelve Angry Men." The movie was a study of the personality of each member of a jury, the mental and emotional pressures on each, and the consequent reaction each had to their task of arriving at a verdict. From all this is drawn the conclusion that one's sense of justice does not function automatically. One is dominated by his inner conflicts.⁷

¹In one, *State v. Noble*, 384 P.2d 504, 526 (Mont. 1963), Justice Doyle urged (about the defendant whose psychiatric history was spread upon the record) that he "would not sit and vegetate in the Deer Lodge prison but on the contrary would be confined and given medical help in some institution for the mentally confused." That case is the subject of comment elsewhere in this law review.

²"Meaning not-too-neurotic." Page 17.

³*Preface.*

⁴They recognize (at page 2) that the use of the word "sense" is debatable. The phrase "sense of justice" recalls at once *THE SENSE OF INJUSTICE*, Edmond Cahn's anthropocentric view of law published in 1949 by New York University Press. Cahn rejected the "sense of justice" because he found it colored by ideas of "preceptual standards." He was concerned with "what is active, vital, and experiential" in human reactions. (Cahn, page 13) Both books speak to the same subject.

⁵The authors write from such a background. What they write and what is written in this review must be so understood. If that background provokes disagreement and productive discussion, so much the better.

⁶Page 4.

⁷*Ibid.*

What those conflicts are, and how they are consciously manifested, is provocatively set forth in Chapter 3, "The Injustice Collector." The authors write of the psychic masochist, defined as "a person who habitually *transforms conscious displeasure into unconscious pleasure*."⁸ And there, not saved by any grace, go, in some measure, all of us.⁹ To lawyers, the discussion of normal aggression and neurotic aggression (pseudo-aggression) contained in this chapter must be most significant. From that discussion, the authors move to a consideration of the interrelationships among the sense of justice, crime, and delinquency.¹⁰ The picture of the so-called juvenile delinquent as pseudo-aggressor and as raw material for becoming an adult criminal is startling. Not always novel, but always succinct, are the authors' criticisms of the usual causes of delinquency: Neither slums nor parents nor a "general breakdown of morality" nor the gang¹¹ nor "looking for excitement" nor any other sociological reason is the cause.

So far, juvenile delinquency has been fought with palliatives: . . .

The decisive point has been totally neglected: informing the potential victims that something in them—their unconscious—has stacked the cards to ensure their own disaster, and that their actions are executed in a manner unconsciously designed to bring exposure and punishment.

What is missing is a long-range program on a psychiatric basis.¹²

Chapter 5 is about "The Trial, the Witness, and His Testimony." It begins with the suggestion that witnesses and jurors, obliged to identify with the several protagonists in the courtroom, are engaged in a "specious—perhaps even farcical" situation.¹³ It considers¹⁴ the need for application of psychiatric findings on the nature of the human mind with

⁸Page 20.

⁹Page 34: "It is not facetious to say that injustice collecting ranks as the most popular and widespread of all occupations. Nobody—no matter how glaringly 'normal'—is entirely free from the conviction that he has been, or is being, unjustly treated."

¹⁰Chapter 4.

¹¹With relation to the influence of the gang, the authors argue that sociologists confuse reasons with results when they state that the adolescent finds in the gang a new ego ideal. The real reason, according to Drs. Bergler and Meerloo, is "masochistic passivity"—a readiness (inward knowing) to engage in activity because it will be discovered and punished. They conclude that the same phenomenon has appeared in some extremist political parties. This insight is amplified by another psychoanalyst, Professor Horst-Eberhard Richter, director of the psychosomatic clinic at Justus Liebig University in Giessen, Germany. The October, 1963, issue of *ATLAS*, The Magazine of the World Press, (Vol. 6, No. 4, Worley Publishing Co., New York) contains a translation of Professor Richter's article from *DIE ZEIT*, Hamburg, entitled *Psycho-Analysis of a Nazi*. He suggests that, in certain circumstances, "a large part of the general public will follow whatever personalities or groups are dominant at the moment, because of a simple need to fulfill its drive for dependency" (*ATLAS*, page 203)

¹²Page 64.

¹³Page 67.

¹⁴The discussion, beginning at page 72, of what happens during cross-examination, ought to be worth the price of the volume to every lawyer and judge.

relation to protection of the innocent. And it concludes that all persons "concoct excuses to account for their actions"¹⁵—good or bad.

Succeeding chapters—composing the remaining half of the slender volume—bear these titles:

Hopeless Attempts to Circumvent the Sense of Justice

Democracy, Justice and Freedom

The Crime of Menticide ("Brainwashing") and Mental Seduction

Psychiatric Problems and the Administration of Justice¹⁶

Temporary Aberrations of Justice¹⁷

The eleventh, and final, chapter bears a remarkable title—"On Human Dignity." The first sentence of the chapter is the more remarkable because of what begins the book. In their Preface, the authors are careful to point out that psychiatry is not a regimented science and that much of what follows represents compromise. That is apparent throughout the book. Yet, the final chapter begins with this ringing sentence:

Human dignity, one of the foundation stones of the sense of justice, remains indestructible despite the onslaughts of cynics on the one hand and political dictators on the other.¹⁸

Not since Jerome Frank's *Law and the Modern Mind* was published in 1930 has there been a work concerning psychiatry and law of such import to the legal profession. In his dissent in *State v. Noble*,¹⁹ Justice Doyle wrote that justice demands that the law take cognizance of advanced medical knowledge.

There is no better reason for reading *Justice and Injustice*.

GARDNER CROMWELL*

¹⁵Page 85.

¹⁶Especially relevant to the problem raised in *State v. Noble*, note 1 *supra*, and in many other states today is the discussion in this chapter of the *M'Naghten v. Durham* controversy.

¹⁷The reactions of persons to fear and danger are discussed on page 152 and following.

¹⁸The reason for the certainty is that both authors have clinical evidence "on the uniqueness of human dignity." Page 159.

¹⁹See note 1 *supra*.

*Associate Professor of Law, Montana State University.

Montana Law Review, Vol. 25 [1950] S. Art.

MONTANA'S OLDEST BANK



Home folks since 1873, Montana's oldest bank is now Montana's most modern!

FOR YOUR CONVENIENCE —

- Two beautiful lobbies and a convenient concourse
- Elevator service between lobbies
- Easy-to-use Motor Bank with 4 drive-up windows
- COMPLETE BANKING SERVICES

Think...
FIRST
NATIONAL BANK



FRONT & HIGGINS / MEMBER F.D.I.C.

STATE REPORTER

KATHERINE ORCHARD

Box 749 — Helena, Montana

**Complete, Indexed Texts of all Opinions of the
Montana Supreme Court**

A subscription to the STATE REPORTER will bring you a copy of each Montana Supreme Court decision immediately upon its pronouncement. Opinions are in loose-leaf form, consecutively numbered, and indexed at the end of each six months. You not only have the opinion when you want it BUT YOU CAN FIND IT.

Price \$50.00 per year.

For subscription write to

STATE REPORTER

Box 749

HELENA, MONTANA