

## | Book Reviews |

### ***American Constitutionalism Heard Round the World, 1776–1989: A Global Perspective***

By George Athan Billias

*New York University Press, New York, NY, 2009. 544 pages, \$60.00.*

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REVIEWED BY JOHN C. HOLMES

*American Constitutionalism Heard Round the World, 1776–1989* thoroughly analyzes the influence of the constitutional system of the United States on systems of government of other nations throughout the world. George Athan Billias looks at the influence on other nations not only of the U.S. Constitution, but of the Declaration of Independence, the Articles of Confederation, the Federalist Papers, and state constitutions. Other nations seeking to create or revise their own governmental systems, Billias states, have seen the most important aspects of our Constitution as being its separation of powers among the three branches of government, with checks and balances on each; judicial review; presidential, as opposed to parliamentary, primacy; and the protection of the rights of citizens, including their right to self-government.

Billias points out that, at the time of the founding of the United States, the very concept of a written document being paramount in a governmental system was unique. The framers of the Declaration of Independence and the Constitution were aware of the potential influence that these documents might have throughout the world, and they made frequent references to the universality of the principles they hoped to establish. The pronouncement in the Declaration of Independence that “all men are created equal” was profound and unique; European nations at the time were all under some form of monarchy or autocracy, some of whose leaders claimed to rule by divine right, although, in some nations, power was shared with legislative bodies in which at least the nobility was represented.

Billias discusses seven “echoes” or

time periods during which American constitutionalism exerted positive global influence: Europe from 1776–1800, Latin America from 1811–1900, the European revolutions of 1848, the period of the American empire beginning in 1898, the period between World War I and World War II, the American crescendo from 1945–1974, and the spread of American constitutionalism and democratization from 1974–1989. During each of these periods, Billias demonstrates—country by country, or through prominent political or philosophical writers—how, why, and to what extent the American governmental system was adopted. He notes that some recent constitutions, although accepting the main tenets of the U.S. Constitution, have also incorporated provisions that address modern developments, such as in telecommunications and transportation.

Attempts at constitutional government have not always been successful. From 1811 to 1989, for example, no less than 253 constitutions were produced in Latin America. As in the case of the Soviet satellite countries, some of these constitutions were a sham, intended solely to gain international approval rather than to be followed.

Billias notes that foreign leaders and commentators were aware that not all the ideals stated in the Declaration of Independence and the U.S. Constitution were given effect in the United States when these documents were adopted; the obvious examples are slavery and less than universal suffrage, with black men gaining the right to vote only in 1870 and women only in 1920. In addition, the supremacy of the judiciary in determining the constitutionality of the acts of the other two branches was tenuous during America’s early history. Nevertheless, the conciseness and the generality of the U.S. Constitution assisted in its being flexible enough to serve as a living document capable of adjusting to the times.

Billias is critical of the United States for too often having sided with and assisted dictators—such as those in Central and South America, the Middle

East, and the Soviet Union in the aftermath of World War II—in order to further perceived national interests, but at the expense of long-standing or emerging democracies. He also discusses conditions, such as a poor economy, that may be inhospitable to democracy. He notes that the greatest expansion of democracy occurred after the demise of the Soviet Union, when, for the first time in history, the world had more democracies than autocracies.

*American Constitutionalism Heard Round the World, 1776–1989* is a comprehensive, thoughtful, and well-researched study, with 116 pages of endnotes. Its style is heavy-going at times, and Billias’ attempt to cover such a voluminous amount of material occasionally causes him, in the interest of brevity, to express opinions that are not adequately supported by the facts he provides. His discussion of former Chilean dictator Augusto Pinochet is an example.

Billias concludes:

Within the framework of Western constitutionalism, American constitutionalism was, as this book has demonstrated, heard round the world for more than two centuries. For Europeans, chafing under monarchies and aristocracies, it provided a catalyst for change, a model to follow, and a source of inspiration. For Latin Americans and, later, Asians and Africans throwing off colonial rule, it offered paradigms for new structures of government and a more persuasive definition of the just relationship between governments and the governed. From the American Revolution to the European Revolution of 1989, the American model powerfully, if sometimes unevenly, supported constitutional government, greater democracy, and expanded human rights. For those two hundred years, no matter what the future might hold, the United States merited Abraham Lincoln’s praise as “the last best hope on earth.” **TFL**

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## **Ordinary Injustice: How America Holds Court**

By Amy Bach

Metropolitan Books, New York, NY, 2009.  
308 pages, \$27.00.

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### REVIEWED BY JON M. SANDS

We pride ourselves on being a nation of laws. Ostensibly, we value our system of justice. Our system of criminal justice, however, according to Amy Bach, is a system of injustice. The thousands of people who are ensnared daily in the administration of criminal justice—defendants, victims, and witnesses—find themselves, for the most part, in a failed process. *Ordinary Injustice* is not about high-profile crimes, trials of the century, or high-stakes litigation concerning homicides or the death penalty; it is about garden-variety, low-level offenses tried and disposed of swiftly in city and county courts. It is a book about the harried public defender who has too many files to even know—much less adequately represent—his clients, the prosecutor who cannot be bothered with cases involving any sort of investigation, and the judge who habitually ignores laws and procedures because they get in the way of moving matters off the calendar. Bach writes an exposé of the clubby atmosphere in so many jurisdictions, where legal professionals go along to get along. From Georgia to New York, from Illinois to Mississippi, Bach's case studies shine a light on problematic practices and, in doing so, call into question our confidence in the criminal justice system.

It has been nearly a half-century

since *Gideon v. Wainwright* established the right to counsel for indigent defendants facing incarceration. The promise of *Gideon* was to ensure that a defendant could mount a fair defense against the prosecutorial power of the state. The realities of *Gideon*'s trumpeting of rights, however, have been far more muted. There are public defenders who are well paid and well supported. Many defendants, however, are saddled with appointed counsel who are underpaid, overloaded with cases, and given little or no support. This is the situation in Greene County, Ga., where the county contracts with attorneys who submit the lowest bids. The results are predictable, with overburdened counsel trying to represent as many clients as possible without adequate time for investigations—let alone client meetings. Sadly, this situation is repeated across the nation.

To understand how this situation has come to be, Bach, a journalist and an attorney, spent time (in 2001, almost a decade ago) getting to know the court system and its players. She understands that most cases are given a rough justice: the pleas are reasonable and the defendants tend to be guilty. But what does it say of the system when clients are herded through, with no real understanding of the charges against them, the pleas to which they agree, or the consequences down the line? "What's a defense?" plaintively asks one defendant. "I didn't know I was going to jail," states another. "I know I'm pleading guilty. ... But I don't know why," proclaims a third. Of course, the judge stops the proceeding, a hushed conference takes place at the lectern, and then the proceedings continue. But what confidence can we have in this system? It works as a processing system and, as a defense lawyer explained, the attitude of the founding authorities of Greene County was that those before the court are guilty anyway, so why spend money on their defense?

To Bach's credit, she refuses to condemn only one of the legal players. Her approach—that all the stakeholders are complicit and compliant—makes sense, and her studies prove her theories. She travels to upstate

Troy, N.Y., where a city court judge ran a kangaroo court with the tacit approval of prosecutors and defense counsel. The accused were not provided with counsel when it was clear, to the judge, that it would be a waste of time. Bail amounts were set extraordinarily high (\$50,000 for stealing two dollars) in an effort to move the calendars. Bach does not let prosecutors off the hook in her examination either. In Quitman County, Miss., prosecutors seemingly neglect minority victims, apparently believing they are not deserving of prosecutors' time. Finally, Bach uses wrongful convictions of defendants to castigate law enforcement officials in Chicago. Such convictions result from sloppiness, at best, and from criminal intent, at worst. All in all, the book paints a bleak portrait of the realities of criminal justice.

All is not hopeless, however. Bach travels to places where the system works. For example, in Houston County, Ga., county supervisors have funded a well-run public defender's office, and the results are dramatically different from elsewhere. The pleas are better and the rates of acquittal are higher. More important, the defendants feel that they have been represented—win, lose, or draw, they are treated with respect. To see the effectiveness of this system, a lawyer who was the subject of Bach's scathing assessment in Greene County was subsequently hired by the public defender's office in Houston County. He has responded well and become a stalwart defender. The particular system can make a difference.

Bach writes with the passion of a crusader and with an air of wide-eyed surprise. *Ordinary Injustice* has the fervor of an exposé and reads like a series of investigative reports that might be published in a progressive magazine. However, the author reaches some conclusions that experienced counsel might question. In one case, for example, Bach takes a public defender to task for wanting a client to take a plea that would ensure her probation and an opportunity to have the charge reduced to a non-felony (a

**REVIEWS** *continued on page 66*

frequent offer to first-time offenders). The client was afraid that she would not meet the terms of probation and would face a relatively long sentence as a consequence; therefore, she would have preferred to take a plea for a short prison sentence but without the probationary tail. One could argue the merits of this choice, and it is true that defense counsel should have explained them to her before she appeared in court, but the choice was not as clear as Bach presents it.

Bach also describes injustices that occur in the exercise of prosecutorial discretion. Some prosecutors, for example, tend to decline to prosecute cases in which the victim of a crime was a member of a minority group. Bach offers an example of a particular case of alleged sexual assault, but the facts, as she presents them, suggest that it was a weak case (the victim might have consented) and that the prosecutor might have had a legitimate reason not to prosecute. But Bach, with the passion of a crusader, sides with the victim and assumes that the prosecutor could have proved guilt beyond a reasonable doubt. Bach fails to consider that excessive prosecutorial zeal can ruin an innocent defendant's life.

Unfortunately, Bach treats certain stalwarts in the field as if they are saints. She relates a case in which a defense lawyer was in the public seating area, observing a case. He asked the judge to speak up, and the judge apologized, explaining that she had a cold and had been muffling her words. Bach praises the lawyer as though he had won a death-penalty case. Bach unfortunately also tends to describe judicial decisions in black-and-white terms, although she is correct in discussing the role of relations between blacks and whites in criminal court proceedings. Race still matters, especially in the lower courts.

The numbers of arrests and prosecutions are daunting. Local jurisdictions, already fiscally stressed, are in an even deeper crisis. Some jurisdictions are sweeping up hundreds of defendants daily and presenting them to the court as a means to stem illegal

immigration. Such actions create challenges for defense attorneys and for the justice system, as such defendants must be afforded a real opportunity for a defense, even if they cannot afford a "real lawyer." In her conclusion, Bach ventures some solutions. She makes the case that one should not separate important cases (death penalty or Guantánamo habeas representation) from those that seem unimportant. A culture that allows slipshod criminal justice for petty offenses, misdemeanors, and minor felonies has a toxic effect on the whole system. She argues that such practices should be called out as a way to start the dialogue. She also advocates compiling and studying data regarding the number of cases represented by appointed counsel and the number of cases declined by a prosecutor. These data, she argues, as well as the number of trials that take place as opposed to pleas that are accepted—in addition to a breakdown of the costs per case—would all be relevant to an analysis of whether justice is being done. Bach is correct that statistics can shed light, but they can also be blinding. (She predicts that practitioners will vehemently oppose statistical analysis.) At the end of the court day, it is the lawyer-client relationship that must be paramount.

Bach does a service by focusing on courts that are underfunded and overwhelmed, and that, consequently, routinely impose punishments that, although considered light in the whole range of criminal sentences, can nevertheless have a devastating effect on defendants. Many prosecutors, defense counsel, and judges strive to do what is right but come up short because, all too often, the goal is simply to move cases off the calendar. **TFL**

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## ***The Art of Making Money: The Story of a Master Counterfeiter***

By Jason Kersten

Gotham Books, New York, NY, 2009.

292 pages, \$26.00 (cloth), \$16.00 (paper).

## ***A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States***

By Stephen Mihm

Harvard University Press, Cambridge, MA,

2007. 457 pages, \$29.95 (cloth), \$19.95

(paper).

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### REVIEWED BY JON M. SANDS

So you want to make money? I mean really *make* money? Jason Kersten's account of counterfeiter Art Williams is not a bad primer, although its ending serves as a warning: Making money is a tough business, especially if you have bad associates and bad luck, as Williams had.

*The Art of Making Money* tells both Williams' tale and the story of counterfeiting as a craft. Williams' muse was the \$100 note and, according to the U.S. Secret Service, his counterfeit C-notes were nearly perfect. On a scale of 1 to 10, the Secret Service ranked Williams' bills between 8 and 9, with a 10 being the "super note" supposedly being produced in North Korea on printing machines and worth tens of millions of dollars. Williams conquers even the newest, most sophisticated security features by using good ol' American know-how, trial and error, and off-the-shelf materials.

The book begins with Williams illustrating just how simple it is to create the right paper and to conjure up the all-important feel of a counterfeit bill. He starts with scissors, chemical sprays, and "the kind of cheap, gray-white construction paper a kindergarten teacher might hand out at craft time." He cuts the paper to the right size, sprays two sheets with adhesive, presses them together, and then sprays a hardening agent over them. Holding a bill in one hand and the paper rectangles in the other, he finds

that the pieces of paper not only feel right and are of the proper weight, but also have the same distinctive dull sheen as the bill. The paper even makes the same sound as the bill when snapped. With ease, Williams applies the watermark and security thread, and adds the reflective ink. The counterfeit Benjamin Franklin will even stay yellow if marked with a Dri-Mark® ink pen, which is used for detecting fake bills (if a bill turns brown, this indicates starch, which is a telltale sign of a phony bill). Williams used this paper, an Apple™ computer, and an affordable printing press to make hundreds of thousands—if not millions—of dollars.

*The Art of Making Money* is most interesting when it traces the history of counterfeiting abroad and the development of legal tender and the printing press:

Counterfeiting has sometimes been called the world's second oldest profession. Its conceptual birth, predicated on the simple notion that people will accept what you give them if it looks and feels "real," is as ancient as rocks in a rice sack, but when it comes to money, most numismatic historians agree that counterfeiting probably dates back to very shortly after the invention of money itself, sometime around the year 700 B.C. in the ancient kingdom of Lydia. Enterprising craftsmen quickly learned that few people bothered to weigh lead and copper coins coated with a thin veneer of gold or silver as long as they bore the king's stamp. The archaeological record tells us from that moment on in virtually every society making coins there were also people faking them.

Indeed, one of the first counterfeiters we know by name is also one of the leading Greek philosophers, Diogenes. A leading cynic, it is no surprise that, before he went to the academy, he was banished from the city of Sinope, on what is now the Turkish coast, for "adulterating coin-

age." It seems that Diogenes had learned his trade from an accomplice, an old man who taught him how to counterfeit. The old man, Hicesias, was not only the head of the local mint, but also Diogenes' father.

The 1970s and 1980s was an exciting and trying time for counterfeiting. The old ways, using offset printing and paper that was extremely similar to the roughly 75 percent linen/25 percent cotton secret fibers, were changing. Photocopiers and computers led to an explosion of counterfeiting, not to mention several third-world countries, including Iran and North Korea, getting involved in the business as a means of bolstering their economies. Indeed, money became so easy to make that the U.S. Federal Sentencing Guidelines inserted an amendment that allowed for a slight reduction in a sentence if the counterfeit bills were produced in a way that they were so obviously counterfeit that it was unlikely they'd be accepted after minimal scrutiny.<sup>1</sup>

The U.S. Secret Service, a respected player in the cat-and-mouse game of law enforcement and counterfeiting, has two missions: to protect the President and other government officials and to make sure currency is genuine. The agency takes both missions very seriously. Kersten explains the process of the money makeover, which began in 1996, and the periodic upgrades, including watermarks, holographic shading, and security threads. Each new security measure was meant to address a certain problem and to cause the counterfeiter to be unable to use a single method. Yet, for all the ingenuity of the Secret Service, small-time entrepreneurs—to say nothing of the North Koreans—found a way to make very good bills. For example, the vaunted paper stock can be mimicked by using a certain grade of cheap newsprint—the kind used in telephone directories. The trick is to use several sheets to get the proper weight (approximately one gram, or the weight of a Sweet 'N Low® packet). This newsprint not only contains passable fibers but also has no starch that is easily detectable by the swipe of a yellow ink pen. Kersten's account of the industry that has sprung up

to manufacture yellow ink pens for cashiers to authenticate bills is one of the book's most fascinating tidbits. The micro-printing (lettering around the frame of the portrait) can be defeated by the newest computer technology. The security thread can be mimicked by having one's own security thread manufactured and slipping it into the cut paper. The color-shifting ink can be recreated quite simply with a car paint commonly used by custom shops—if you must know, it is Chroma Flair, originally used on the 1996 Mustang Cobra, made by Flex Products Inc., which also supplied the ink to the U.S. Bureau of Engraving and Printing. A Ryobi® two-color offset model is a good choice of printing press. All these products are easily accessible. The problem is that counterfeit bills can no longer be produced in bulk, as the new security measures make counterfeiting far more labor-intensive.

Today, the amount of time it takes to produce an individual bill could just as easily be spent earning it. The trick to recouping one's investment is to print a lot of bills and to circulate them. There are rules to such passing. First, it is critical not to pass the bills where they are made, as the Secret Service will quickly zero in if the bills all stay in one vicinity.<sup>2</sup> Second, counterfeiters must not themselves pass the bills, but must use middlemen, whether knowing or unwitting ones. The biggest market for counterfeit bills are organized crime syndicates, which can purchase good counterfeit bills for 25 cents on the dollar and then salt the bills in their payments for gambling and prostitution. (To salt the bills means to include them among genuine bills.) When Williams was on his own, he would purchase an item in a store with a fake \$100 bill, and would receive at least \$80 in change. He and a confederate could go through an entire mall and quickly turn his counterfeit bills into real money in one evening. Williams claims he assuaged his conscience by donating many of the items he purchased to reputable charities.

One learns much from following

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Williams' life and criminal career. Born to a grifter alcoholic father and a mentally ill mother, Williams grew up in an environment suffused not only with alcohol and mental illness, but with emotional and sexual abuse, poverty, and crime. Precocious as a child, he earned good grades in school, but was hampered by changing schools and homes several times a year. As a teenager in the Chicago projects in the 1970s, Williams was saved from running with gangs and getting caught up in the drug trade by a caring, elderly man who took the neglected youth under his wing. The man was an old world, old school, old master counterfeiter by the name of Albert DaVinci. It was from DaVinci that Williams learned the craft of counterfeiting.

*The Art of Making Money* grew from a *Rolling Stone* article, and has all the virtues of engaging magazine writing: an interesting subject made all the more intriguing thanks to its illegality, an exaggerated and flawed character, arcane information, and a vivid writing style. Yet the book's focus on one deviant character is too much. Kersten wants Williams to be emblematic of something, but it is not clear what, and the story of a criminal—even an engaging and insightful story—is still that of a criminal. Williams was no Robin Hood. Yes, he had a terrible childhood and, yes, he suffered from neglect, but in the end, he made choices; and, as smart and driven as he is, Williams, having counterfeited upwards of \$10 million, remains unsympathetic. He comes across, yes, as counterfeit.

Kersten attempts to make Williams into a version of Frank Abagnale Jr., a serial defrauder who was dramatized in the 2002 film, "Catch Me If You Can." After his capture, Abagnale reformed and became a security consultant for the FBI. After Williams was captured and served three years in prison, he too tried to get into the fraud prevention business, but his probation officer forbade it, and Williams became a construction worker. An intelligent middle-aged man forced to do menial labor tends to prefer something more

challenging, and Williams began to counterfeit again. That is why he is presently serving an 87-month sentence. He is scheduled to be released in August 2013.

Taking a step back from an actual counterfeiter, Stephen Mihm's history of counterfeiting in the United States is well worth reading in the aftermath of the recent financial collapse and the era of easy credit. Mihm explores American currency and counterfeiting from the American Revolution through the Civil War. After America won its independence, of course, there was no national mint or national currency. Each bank would engrave its own bill designs under charters from the states. The Bank of the United States also joined in. Thousands of different bills circulated, with one's trust resting on the bank's reputation. Mihm estimates that, in the early 19th century, nearly a quarter of the bills and coinage in circulation were counterfeit.

Yet, in his engaging history, focusing on famous counterfeiting scandals and the efforts to control counterfeiting, Mihm makes the point that counterfeiting and capitalism share a set of fundamental values:

[Counterfeiting] depended on countless participants—buyers, distributors, jobbers, wholesalers, and retailers—who moved the goods from manufactory to market, eking out narrow margins of profit at every turn. In passing from hand to hand, these imitations affirmed a common faith in a shadow economy founded on the same principles embraced by capitalists who issued genuine bank notes: the sanctity of self-interest, the power of credit, the quest for profit, and the centrality of competition. Indeed, what the counterfeiters practiced was capitalism, stripped of its pretenses and dubious claims to morality, and reduced to its fundamental impulses and motives. How appropriate, then, that the illegitimate notes they manufactured swelled the streams of credit that underwrote more

accepted and sanctioned avenues for accumulating wealth.

Both counterfeit and legitimate notes depend on the power to instill faith and confidence. The best counterfeit notes, such as replicas of bills from the Bank of the United States, commanded the most confidence. Counterfeits of other well-known bank notes, such as those from Boston and New York banks, were also ranked confidently. The upstart banks of the West, on the other hand, received the lowest level of confidence. Thus, the esteem in which counterfeit notes were held depended upon the esteem in which legitimate notes of the relevant bank were held.

Counterfeiting grew with the increase in paper currency. There was a great deal of opposition to paper currency, including by Andrew Jackson, who, in his farewell speech, spoke of the evils of a paper system "founded on public confidence and having of itself no intrinsic value." Jackson lamented that bank notes encouraged a "wild spirit of speculation" that distracted citizens from sober and honest industry by fostering a "desire to amass wealth without labor." Jackson also bemoaned the fact that all currency "is easily counterfeited in such a manner as to require peculiar skill and much experience to distinguish the counterfeit from the genuine note."

Yet, despite Jackson's railing against counterfeiting, the federal government would not stop the system of paper currency. Although the charter for the Bank of the United States was allowed to expire, the U.S. Supreme Court, under Chief Justice Roger Taney, upheld the right of individual states to charter banks that issued notes. In *Briscoe v. Bank of Kentucky* (1837), the plaintiff argued that a state's issuing of notes violated the "bills of credit" clause of the Constitution. Although, in an earlier opinion, Taney's predecessor, Chief Justice John Marshall, had indicated a willingness to read the ban on bills of credit broadly, the Taney Court in *Briscoe* affirmed the constitutionality of the Bank of Kentucky and, by extension, all state-

chartered banks. The decision rested on dubious grounds and seems to have been based on fear that a contrary decision would have disastrous economic consequences.

Interestingly, many counterfeit notes were recognized as counterfeit but still used and accepted. This was especially true on the Western frontier, where there was a paucity of currency and credit instruments. There was a need for business to be transacted and for the economy to hum. Merchants and bankers used counterfeits of the “trusted” institutional notes simply because of the need. Counterfeiting, in certain settings, was a “wink-wink” proposition. It was only when there was too much currency amassed, or one of the frequent panics took hold, that counterfeiting was exposed and the fake notes became worth less than a plugged nickel.

Counterfeiting in the early republic was not only illegal but also costly. It had to be done by presses, with highly skilled artisans copying the issuing bank’s notes. Banks would frequently change their currencies, and so counterfeiters had to as well. The profit margins were small and the distribution was difficult. One could not simply appear with hundreds of dollars in currency from one bank and not draw suspicion. Distribution required accomplices, and, talk being cheap—especially when fueled by whiskey and rum—indiscretions resulted.

The end of the age of state currency and the wild ride of counterfeiters came with the Civil War. As the federal government sought to pay its war debts, it also aspired to gain control of its currency. During the Civil War, Congress authorized the issuance of United States currency and made it illegal for states and banks to print their own tender. On Apr. 14, 1865, the day of his assassination, Abraham Lincoln signed an order authorizing the creation of an agency to suppress counterfeiting; on July 5, 1865, it was commissioned as the Secret Service Division of the Department of the Treasury. In the hands of capable directors, the Secret Service became one of the most effective federal law enforcement agencies, employing cutting-edge techniques, such as undercover infiltration, infor-

nants, and the turning of counterfeiters against one another. The unification of all American currency came under the Bureau of Engraving and Printing in 1877 and, by 1903, the amount of counterfeit currency had fallen to one dollar out of every 100. The Confederate States of America was less successful. Its money was cheaper to make, less intricate, and less counterfeit-proof, and, as a result, counterfeiting of Confederate notes—much of it done in the North—was widespread. This devalued such notes greatly.

Mihm’s history is an insightful glimpse into the rising entrepreneurial capitalist system of the early republic. The 19th century saw the remarkable growth of the United States’ economy, with counterfeiting encouraging this expansion. Together with the Civil War, the federal government’s nationalization of currency and its law enforcement presence forced counterfeiting underground and made money, in the form of federal notes, authentic. There were still fights over the gold standard or silver standard, but the note itself became the standard-bearer. What had been, in Mihm’s words, “a country of counterfeiters became a genuine nation, enjoying complete control over the money that circulated within its borders.”

The counterfeiting of notes, however, has some parallel to the instruments of credit that seem to have flowed and spun out of control before the recent recession. These were instruments of faith, created because there was a demand for investment. As is coming to light, few actually knew what they were, what they backed, or what they were worth—if anything. The banks that issued these instruments, or the brokers that vouched for them, had the confidence of investors. As so many holders of counterfeit notes in the 19th century learned, during a panic, it was a confidence misplaced. **TFL**

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*Jon M. Sands is the federal public defender for the District of Arizona.*

#### Endnotes

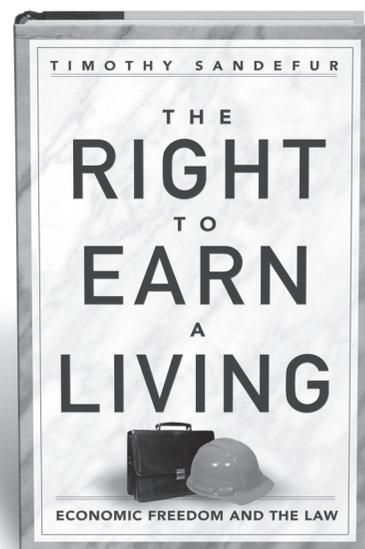
<sup>1</sup>U.S. Sentencing Guidelines § 2B5.1,

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## NEW BOOK FROM THE CATO INSTITUTE

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n.3. I was the assistant federal public defender detailed to the U.S. Sentencing Commission's legal staff when this amendment was promulgated.

<sup>2</sup>In one counterfeiting case where I represented a defendant, one passer of bills was caught. The rest decided to burn the bills. The trouble was that the smoke from the burning drum of cash alarmed the neighbors, who called the fire department, who doused the backyard fire only to discover millions of dollars of fake currency. Another danger of burning through money?

### ***In the Place of Justice: A Story of Punishment and Deliverance***

By Wilbert Rideau

*Alfred A. Knopf, New York, NY, 2010. 350 pages, \$26.95.*

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REVIEWED BY JON M. SANDS

In 1962, 19-year-old Wilbert Rideau was confined to death row in Louisiana's state penitentiary, Angola, for his involvement in a senseless killing during a botched bank robbery and a panicked kidnapping in Lake Charles, La. During his 44 years as a prisoner, Rideau became a brilliant advocacy journalist, breaking stories and winning awards for his writings about the prison conditions he and thousands of other inmates endured at Angola. Along the way, Rideau also became known as "the most rehabilitated man in America."

*In the Place of Justice* is Rideau's chronicle of his life, his crime, his punishment, and his redemption. He was saved from the electric chair three times by the U.S. Supreme Court. Facing life in Angola, Rideau transformed himself through reading and reflection. Transcending a brutal and abusive childhood, a lack of education, and a racially polarized society, he became the editor of *The Angolite*, the prison newspaper. Rideau became a spokesperson for the inmates and the recipient of numerous national awards for his and his staff's investigation of and stories about prison

corruption, lack of medical care, and the plight of "lifers." Despite his accomplishments, Rideau was never paroled or pardoned. He finally got out of Angola, but only after being granted a new trial after more than four decades of incarceration.

Rideau's account reflects the dramatic changes of recent decades in the criminal justice system, sentencing, and prison policies in America. He was sentenced before *Gideon*, *Miranda*, and *Furman*, the last of which saved him from execution. He was also incarcerated when rehabilitation was an important penological goal, effected through parole. Indeed, parole, even for those with life sentences, was possible. Over the years, however, "truth in sentencing" replaced parole with determinate sentences of ever-increasing lengths. No amount of rehabilitation or transformation could save many inmates from decades lost or death behind bars. Rideau witnessed prisons ruled by inmate gangs being reformed to provide some safety and security, and later witnessed regression from those successes that resulted from fiscal constraints and overcrowding.

Rideau's story is also one of race. He suffered discrimination and deprivation as an African-American youth, and those experiences filled him with hate and left him distrustful and suspicious. Hating himself and hating others, Rideau turned to crime. Race was a factor in the crime of which he was convicted. The victim he killed was white, and Rideau came close to being lynched before he had what then passed for a trial, and he was sentenced to death. The Angola at which the young Rideau arrived oozed with racial tension. Located in the northeast corner of Louisiana, near the Mississippi border, Angola housed 5,000 inmates on 18,000 acres, surrounded on three sides by the Mississippi River—a world within a world, where violence reigned. The white administrators and guards lorded over the inmate population, 85 percent of whom were African-American.

Racial attitudes at Angola changed during Rideau's time there, due in

large part to federal court intervention in state court practices and prison systems. Rideau benefitted from these changes by being given previously unthinkable opportunities, such as an editorial role with the inmate newspaper.

After four decades, Rideau's murder conviction was vacated and, in his third trial, he was convicted of manslaughter and was released, as he had served much longer than he could be sentenced for that crime. In the 44 years between committing his crime and walking out of prison a free man, Rideau never forgot that he terrified three victims and killed one. Rideau expresses remorse and understands that no amount of penance can restore the life of the bank teller he killed. Rideau, however, adamantly denies that he lined up the victims and sought to kill them execution-style. He attributes such dramatizations to prosecutorial overreaching for a death sentence. The little forensic evidence there was lends credibility to his claim.

Even if Rideau's murder conviction had not been vacated, under the parole system in place when he was sentenced, he would have been released before he was. By any measure, Rideau had rehabilitated himself. In the 44 years he spent behind prison walls, the only write-up he received was for once having a bottle of Wite-Out® in his cell, which he used for proofing newspaper copy. Why then, did he not receive parole? And, after the system disallowed parole, why did he not receive clemency? The answer is politics. Indeed, the power of prosecutors (running on "get tough" platforms and promises to victims' rights groups) has made parole or clemency difficult, especially in high-profile cases. Rideau's fame worked against him, despite his rehabilitation. The atmosphere surrounding black-on-white killing, with the spin that the crime was committed execution-style, led successive Lake Charles district attorneys vigorously to oppose any parole. A surviving victim made it her life's work to deny Rideau any relief. This antagonism against him

is understandable: the victims were terrorized, and a woman's life was brutally ended without reason, by a crime that demanded tough punishment. How much, though, is enough? Is incarcerating someone for life the answer? Rideau's account seems to rebut such a claim.

As in most prison memoirs, as we follow the transformation of the inmate, we are also introduced to the harsh, nasty, and brutal life of the prison. We learn how a prisoner figures out how to protect himself—how to walk, talk, and navigate this anti-society within a society. We also learn about some of the surprising penological practices in Louisiana, such as allowing model prisoners like Rideau out of the prison to speak to groups and associations about prison life. Rideau could be gone for weeks at a time on a speaking tour.

*In the Place of Justice* is not simply a prison tale: it is also a notable contribution to the ever-growing genre of journalism memoirs. Rideau does a good job of outlining the politics of a prison newspaper, such as the need to work alongside corrections administration officials and yet not to be beholden to them. As a prison journalist, Rideau struggled to serve his inmate readership within the constraints of lock-down, curfew, and recalcitrant and hostile sources. Rideau also faces the issue of who read the newspaper and what they sought from it. Some readers simply wanted a listing of Alcoholics Anonymous meetings, church services, and schedules of intramural sports teams. Readers in the administration desired a prison newspaper that extolled opportunities and told heartwarming tales. Still other readers wished for the prison newspaper to be a forum for airing grievances and injustices. Finally, racial blocs saw the newspaper as a means of advancing their interests. Rideau's apparent

ability to navigate these stakeholders is remarkable. He gives an excellent account of his carefully considered editorial decisions, which frequently conflicted with conventional journalistic ethics. For example, Rideau used his position and his access to advise wardens on prison policies and to negotiate on behalf of inmates—all the while having to remember that he *was* an inmate, under the power of the guards. Rideau credits a series of Angola wardens who recognized the worth of *The Angolite* and who supported him in his writing endeavors.

*The Angolite* broke news stories that were not being covered by mainstream journalism outlets. Under Rideau's editorship, stories were published about corrupt guards, prison rape, abuse of inmates for entertainment, lack of educational and training programs, and aspects of prison life that had never before been considered, including end-of-life care for lifers. *The Angolite* was consistently nominated for national awards for journalistic excellence, and Rideau himself was offered opportunities to write for mainstream publications.

The skills of an investigative journalist, however, do not necessarily produce literature. Rideau's narrative is straightforward and flat. The story unfolds but his writing is detached, and we never really learn how an impulse killer became a thoughtful and sensitive reporter and editor. Rideau speaks of his changed attitude, but why he changed remains elusive. He speaks of an epiphany that he must make his life matter. Clearly, his intelligence mattered, but his decision to speak for others rather than to remain silent and sullen or order around weaker inmates, is a mystery. Rideau's account of the wide sweeps of emotion, setbacks, triumphs, and disappointments he endured is candid, but not transcen-

dent. As in many prison memoirs, legal issues are sketched but not fully explained or developed. Rideau criticizes his original legal defense team (pre-*Gideon*, pre-*Miranda*, but post-*Scottsboro*) for not mounting a more aggressive defense. Yes, they made mistakes, but they stuck with Rideau, and they raised issues that laid the groundwork for later relief. As Rideau became a celebrity, his defense team swelled to include celebrity lawyers, such as the late Johnny Cochran. The hard legal work, however, was undertaken by experienced capital litigators who toiled for years arguing the issues that eventually led to Rideau's release. These issues included the deliberate exclusion of African-Americans from grand juries in Lake Charles.

*In the Place of Justice* tells one man's story. Hundreds of inmates crossed Rideau's path but did not receive the breaks or benefits that he did. Like Rideau, many regret their crimes and have been similarly rehabilitated, yet they serve year after year. This raises the question, again, of what citizens expect from the criminal justice system. Is punishment simply to be societal vengeance, whereby we define a person forever by the worst thing he has ever done, or should justice include, in addition to punishment and deterrence, the opportunity for rehabilitation? It is perhaps fitting to remind ourselves of Dostoevsky's observation in *Memoirs from the House of the Dead*: "the degree of civilization in a society can be judged by entering its prisons." At this time, in this country, the judgment may not be to our liking. **TFL**

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*Jon M. Sands is the federal public defender for the District of Arizona.*

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