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Book Reviews

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BOOK REVIEWS

Fair and Certain Punishment

PUNISHING CRIMINALS. By Ernest van den Haag. New York: Basic Books, Inc., 1975. Pp. 283. $11.50.

THINKING ABOUT CRIME. By James Q. Wilson. New York: Basic Books, Inc., 1975. Pp. 231. $10.00.

*Review by Frank J. Remington**

Times change. So also do opinions about important social problems such as crime and government's response to crime. The books of both van den Haag and Wilson reflect changing opinions on crime and on what to do about crime. Both urge that we abandon the view that social conditions are an important cause of crime and that an improvement in social conditions will reduce crime substantially. Both urge that we give much less emphasis to the objective of rehabilitating those who commit crime. Rehabilitation is, in their view, a largely unrealistic goal. Both call for the minimization of discretion on the part of the sentencing judge and the virtual elimination of the parole board. This latter objective would be made possible by the abandonment of the indeterminate sentence.

To follow the advice of van den Haag and Wilson would require a change in the widely shared attitudes of recent years. The "war on crime" of the Johnson Administration reflected the view that social and economic conditions are related causally to crime and that the improvement of those conditions would bring about a substantial reduction in crime. No less widely held was the belief that rehabilitation of the offender should be the priority objective of criminal justice administration and that an indeterminate sentence with broad discretion in the judge and the parole board was the best system for adjusting correctional treatment to the needs of the individual offender.

In the place of emphasis upon social and economic deprivation, rehabilitation, and broad discretion, both van den Haag and Wilson would substitute an emphasis upon "justice," defined as punishment in proportion to the seriousness of the offense, public protection through deterrence and incapacitation, and the adoption of a

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more definite sentencing structure. They argue that experience has demonstrated that improvement in social and economic conditions does not reduce crime significantly, that rehabilitative programs do not work, and that the indeterminate sentence is applied capriciously by judge and parole boards. They add that available social science research seems to indicate that the threat of punishment in fact does have a significant restraining effect and that punishment, if regularly imposed, thus can reduce substantially the frequency of most forms of criminal behavior.

Both Wilson and van den Haag are effective advocates and present their points of view in a very convincing way. A realistic assessment of crime and the criminal justice system lends substantial support to their conclusion:

(1) Serious crimes are committed at an intolerable level in this country today. This is particularly true in cities, with the principal victims being those who are disadvantaged socially, economically, and culturally. Are not the victims and potential victims of serious crime entitled to have the serious offender locked up to furnish a lesson to others and to keep him off the street?

(2) The present criminal justice system is not effective and worse, is apparently on the verge of collapse in some urban areas. For example, Frank Looney, recent president of the International Association of Chiefs of Police and presently a commissioner in the New York City Police Department, points out that if every homicide arrest in the city resulted in a trial, no judicial manpower would be left for any burglary, robbery, assault, or rape prosecutions, let alone white collar crimes and less serious offenses. When, against these great odds, a trial does result in a conviction, should not the sentence be one that will deter others and incapacitate the offender?

(3) Judicial sentencing produces disparate sentences, the differences explainable more by variations in the attitudes of trial judges than by differences in the characteristics of offenders or the offenses they commit. Does consistency not require proportionality between the seriousness of the offense and the sentence? Can this not best be accomplished by fixed legislative sentences proportionate to the prohibited conduct?

(4) Correctional programs are largely ineffective and do not change or rehabilitate offenders. Many offenders do not want to change, and we lack methods of treatment that supply motivation to change. Others may want to change but cannot, and we often lack the requisite knowledge to be of significant help. Even when we have relevant knowledge (for example, that many inadequate criminals, such as child molesters, need satisfying social relationships with

other adults), the task of implementing a program (for example, the development of significant adult relationships with the chronic child molester) is extremely difficult to achieve. In view of the disappointing experience with expensive rehabilitative programs, does not the path of wisdom lie in the direction of using the criminal justice system for purposes of deterrence and incapacitation, both of which are more realistic and less expensive than so-called "treatment programs"?

(5) Parole boards, committed to the goal of releasing only those offenders who have been rehabilitated, have failed. This failure has resulted from the lack of knowledge of how to rehabilitate people and how to determine when a person has significantly changed, particularly when the person is institutionalized in a setting in which change is unlikely to occur and in which no means exists to identify those offenders changed by the mere fact of incarceration. Does this not suggest that parole boards should be abolished as unworkable and unnecessary, with all offenders serving a predetermined percentage of their sentence?

Increasingly, the answer has been in support of a system of fixed sentences, with less discretion in judge and parole board, the length of the sentence designed primarily to deter future offenders and incapacitate those who have committed serious crime. The support for this solution seems to come from various disparate sources, including the following:

(1) Those who view themselves as members of the political right, who have long opposed permissiveness in dealing with offenders, and who support the proposition that it is socially desirable to be "tough" on crime. Until recently, these were the only voices consistently calling for greater certainty and greater consistency in the punishment of crime.

(2) More recently, those who view themselves as members of the political left, who some years ago raised their voices in favor of flexibility, individualization, and rehabilitation, but whose views changed as a result of recent political situations. An important catalyst in this transformation was the Vietnam War, which subjected a greater number of young, politically active persons to first-hand experience with the correctional system. The "political prisoner" concluded that the system operated in arbitrary and capricious ways and that flexibility, individualization, and rehabilitation were not socially desirable, but, as applied by correctional agencies, served as a cover for treating the politically unpopular offender in an unfair and capricious manner. The political left has been urging change for about a decade. They favor greater certainty and predict-

ability, although, unlike the political right, not typically greater severity. Their view reflects more a disenchantment with government as a means of achieving socially desirable ends than a desire for a decrease in permissiveness and an increase in punishment as a means of achieving social control.

(3) Most recently, the academicians, who, until a decade ago, supported the indeterminate sentence, individualized to maximize the chances of rehabilitating the offender. With rare exceptions, academic people have viewed themselves as social critics, observing current social systems and pointing to their weaknesses. Much less often have academics seen their role as the builders of better alternatives, a task far more difficult and far more frustrating than pointing to the limitations of systems developed by others. In many ways, the former emphasis upon the indeterminate sentence and rehabilitation was criticism of the system of punishment that then existed. It was pointed out then that deterrence does not work and that social and behavioral scientific knowledge would convince one that something else should be tried; namely, an effort to individualize sentencing and to rehabilitate the offender. Having had about a generation of experience with the indeterminate sentence and with efforts at rehabilitation, it is the expected role of the social critic to point out that these do not work. One way to do this is to urge that social and behavioral scientific knowledge demonstrates that we do not have the kind of knowledge necessary to rehabilitate offenders and that the threat of punishment, if sufficiently certain and unpleasant, will have a significant deterrent effect upon those who otherwise might commit crime.

(4) Politicians, particularly state governors, who are confronting increasingly difficult fiscal decisions. Representative is Governor Brown of California, who campaigned for the Democratic presidential nomination on the platform that we have asked more of government than we can fairly expect government to do and more than the citizenry can be expected to pay for. In the minds of many, the rehabilitation of criminals is a prime illustration of expecting too much of government, more than we know how to do and more than we can afford. By replacing expensive rehabilitative programs with punishment for deterrent and incapacitative purposes, significant amounts of tax dollars can be saved. Filling prisons even beyond their capacity (if not carried so far that courts declare the system unconstitutional) should serve effectively the objectives of both deterrence and incapacitation. Incarceration is in itself appropriate punishment, and the elimination of fancy treatment programs is likely to be supported by the political right, by the political

left, if sentences are determinate and parole boards are eliminated, and by the academician, who urges the certainty of punishment as a socially more useful and more realistic approach to crime than the effort to rehabilitate offenders.

(5) Finally, active practitioners in the criminal justice system who have taken up the call for more definite and more certain sentences. In a single day, August 23, 1976, my mail brought me several publications in which the following views were expressed.

Richard C. Clement, President of the International Association of Chiefs of Police, in the September issue of *Police Chief*:

> We have proved again and again that speedy trials and the certainty of punishment for the guilty are the greatest deterrents to crime. Wherever these principles are employed, crime rates go down. . . .
>
> It is a well-documented fact that upwards of 75 percent of all youthful offenders under age 24 repeat their crimes. I am convinced that if these young people face a fair but unrelenting criminal justice system the first time they are arrested, there would be no need to concern ourselves with such impossible recidivism rates. The individual well on his way to a criminal career has internalized a concept that nothing will happen to him; that he is indeed free to pursue his nefarious ways unmolested; and he fully expects that society will "get him off the hook" if he just happens to be arrested again.
>
> We have tried everything else. Our crime rates keep rising daily. Now, let's get tough. Crime does not have to be a way of life for contemporary societies. We *can* reverse it! We *must* reverse it! And, we are losing precious time.[1]

The July-August 1976 *LEAA Newsletter*, reporting on statements by Norman A. Carlson, Director of the United States Bureau of Prisons:

> A critical re-examination of the criminal justice system is being forced by angry Americans who are calling for a crackdown on criminals, according to Norman A. Carlson, director of the U.S. Bureau of Prisons. . . .
>
> "In this new atmosphere, more and more people are questioning the validity of rehabilitation as the major goal of incarceration," Mr. Carlson observed . . . .
>
> "Most of us in the field of criminal justice are now willing to admit that we don't know how to change criminal offenders when they have no desire to change themselves.
>
> "This new sense of realism has led to a more balanced philosophy of corrections, one that recoguizes that retribution, deterrence, incapacitation and rehabilitation are all legitimate objectives of incarceration." . . .
>
> The prevailing sentiment now is, "even if we can't rehabilitate offenders, we can at least insure fairness in sentencing. If rehabilitation doesn't work, then hopefully certainty of punishment will deter people from further crime."[2]

The August 18, 1976, volume of the *Criminal Law Reporter*, discussing an address by Attorney General Edward H. Levi:

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1. POLICE CHIEF, Sept. 1976, at 8.
2. Carlson, *Nation Wants Crackdown on Criminals*, LEAA NEWSLETTER, July-Aug. 1976, at 7.

> In the United States increasing crime has resulted, at least in the past, in a decrease in the certainty that punishment will follow crime. This results from inadequacies in many stages of the criminal justice system and it is to these inadequacies that the present Administration is addressing its attention. In particular, the President has proposed legislation which would reduce judicial discretion in sentencing by establishing mandatory minimum sentences for persons convicted of certain serious crimes unless specific mitigating circumstances are present. President Ford has also instructed the Department of Justice to review the federal sentencing structure. "We have been giving consideration to the creation of a sentencing commission to draft guidelines setting forth narrow ranges of sentencing options for various crimes and various sorts of offenders." Moreover, legislation has been proposed that would authorize federal courts of appeal to increase or decrease sentences imposed by the trial courts and a recommendation is under study that would abolish parole and create a system in which an offender would serve the entire sentence imposed by the court except for a predetermined period deducted for good behavior.
>
> . . . "A legal system that fails to generate the confidence of the people loses one of its most important strengths. If the criminal law is to be effective, individuals must conform their behavior to it voluntarily. This voluntary adherence—which can and must be supplemented by the deterrence the criminal law's sanctions but can never be replaced by it—depends in large measure upon the faith people have in the efficacy and fairness of the legal process."[3]

What is likely to be the result of this increasingly frequent critical reevaluation of the current criminal justice system, particularly the sentencing and correctional stages? Although it is too soon to be certain, some indications already are worrisome. The desire to be "tough" on crime, to substitute definiteness for indeterminacy, and punishment and deterrence for rehabilitation, and at the same time to save tax dollars, seems to be resulting in more prison sentences of longer duration, which will have to be served in badly overcrowded prisons that have few, if any, institutional programs likely to help inmates. To conclude that this is the most probable result of current criticism is not to impugn the motives of the critics: the political right, which wants more certain punishment, not confinement in overcrowded and inhumane prisons; the political left, which wants more certainty and less capriciousness, but by means of certain short sentences, not overly long sentences in crowded prisons; the governor, who most wants to find a politically acceptable means of saving tax dollars; or the social critic, such as Wilson and van den Haag, who properly wants to point out the apparent shortcomings of current correctional programs and also wish to emphasize that fair and certain punishment legitimately and effectively can serve the community desire for safety from fear and from harm.

3. Address by Attorney General Levi, American Bar Association Annual Meeting, Aug. 18, 1976, in 19 BNA CRIM. L. REP. 2415-16 (1976).

Nonetheless, it seems fair and appropriate to confront the critic of current correctional practices with some hard questions. If legislatively fixed sentences are to be instituted, proportionate to the seriousness of the conduct and reasonably short in duration, how can the risk that legislatures will prescribe fixed and very long sentences be avoided? No one has suggested a way of requiring legislatures to prescribe sentences of only reasonable duration. History teaches that legislators react to social problems by imposing long sentences. Certainly, this was the situation in early legislative reactions to the drug abuse problem. Federal penitentiaries were filled with inmates serving long certain sentences which seemed, at the time at least, to be more destructive of inmate morale than the uncertainties of the current indeterminate sentence.

If arbitrariness and disparity by judges and parole boards are to be eliminated by requiring the judge to impose a legislatively prescribed sentence that must be served without eligibility for parole, how can the exercise of prosecution discretion (characterized by arbitrariness and disparity) be prevented at the charging and plea agreement stage? Experience teaches that an elimination of discretion at one stage of the criminal justice system results in tremendous pressure to exercise discretion at another stage. The willingness to be definite and strict is common at the legislative stage, but is much more difficult to apply to an individual human being with widely varying characteristics that bear upon the seriousness of his conduct and the impact of a sentence upon him and his family. In Detroit during the 1950's, state statutes prohibited probation for burglary in the nighttime and imposed a significant, mandatory minimum sentence for armed robbery. In practice, all burglaries committed after dark resulted in pleas to daytime burglary, and all robberies committed with a gun ended up as pleas of guilty to unarmed robbery. So common was the practice that the Michigan parole board would often start the interview with "I see you were convicted of unarmed robbery in Detroit. What caliber gun did you use?" Without even a smile, the inmate would respond "a .38 caliber revolver." Does it make sense to substitute prosecutorial choice of sentence for determination by a judge or parole board? Certainly, the decisions of prosecutors are less visible and less subject to review and control. If this is not to be the result, how must the system be structured?

Apart from the practical problems of implementation, is it likely that a system of fixed responses to most of the varieties of criminality would produce salutary effects? Is definite punishment, proportional to the seriousness of the offense, a universal cure? With

respect to this issue, some relatively recent experience in Madison, Wisconsin is informative regarding official response to shoplifting. Some few years ago, merchants blamed the criminal justice system for the increase in shoplifting—an increase which the merchants attributed to undue leniency with shoplifters reflected in a practice of reducing shoplifting charges to the lesser offense of disorderly conduct, a civil offense based on a violation of a city ordinance. In response to the criticism, the trial judiciary disclaimed fault, attributing responsibility to the prosecutor, who they alleged was the one who reduced the charges. In a politically vulnerable position, the prosecutor announced the termination of the practice: all shoplifting charges henceforth would be prosecuted under the theft statute. The resulting situation was one in which full enforcement was the invariable rule. Retail stores were serviced by off-duty policemen committed to turning over all violators to the district attorney for prosecution. The prosecutor was committed to charging all violators with theft. The judges were now in a situation in which, having criticized the prosecutor for leniency, they had to convict when the evidence was sufficient and had to impose what might, in recent terminology, be called a "proportionate" sentence.

This situation prevailed for a few years, with somewhat surprising results. Shoplifting was not reduced. The "get-tough" policy resulted in a serious public relations problem for some retailers. Consequently, the merchants requested that a substantial degree of discretion be returned to the system, an objective achieved by the creation of a first-offender school to which shoplifters were diverted in lieu of prosecution.

It is evident that relatively certain punishment with the unpleasant consequence of conviction as a "thief" did not reduce shoplifting significantly, although it might be asserted that the incidence would have been higher without the full enforcement policy. Alternatively, it might be urged that not enough shoplifters were caught, that the mortality was at the detection level rather than at the prosecution, conviction, or sentencing stage.

Most likely, however, the explanation for the failure to reduce shoplifting lay in two problems. First, several retailers, including a very large retail discount store, followed a deliberate policy of using a minimum number of employees—too few to observe customers' conduct in the store—and relied instead on the criminal justice system to control shoplifting. This one store, responsible for only a small fraction of the total retail sales, accounted for about forty percent of all shoplifters referred for prosecution. A second problem was the prevalent attitude among University of Wisconsin students

that retailers "ripped off" students and that it was therefore perfectly proper for the student to try to reciprocate by "ripping off" the merchant.

What should be the response to the shoplifting problem? Should it be more certain and perhaps more severe punishment? Is the social cost of labeling a lot of young people as thieves worthwhile if it does not deter shoplifting significantly? Is the need instead for a more comprehensive response? Would it be appropriate for government to control retail practices, to require some measure of self-protection, rather than "dumping" the problem on the criminal justice system? To cite another illustration that arguably may be somewhat comparable: theft of social security and welfare checks was formerly a major problem, particularly in urban low-income neighborhoods. Should prompt, certain, and adequate punishment have been the primary goal? In fact, someone conceived the idea of sending the checks directly to the bank, and the crime problem was almost entirely eliminated by this single change in practice.

What is being asked is whether we should really continue our search for a single panacea for crime, whether it lies in rehabilitation of the offender as we thought some few years ago or in the certain and substantial punishment of offenders as is urged by Wilson and van den Haag. If we go all out for certain punishment, will we not inevitably be told in a few years that punishments are often too long and dehumanizing (as the uncertainty of the indeterminate sentence is said to be today), that even severe sentences do not deter many types of criminal conduct, and that the social cost of substantial prison terms, routinely imposed, is too high to pay?

To have doubts is in no way to suggest that the proposals of Wilson and van den Haag are unimportant. Undoubtedly, certain types of criminal behavior warrant (as a matter of justice) swift, certain, and substantial punishment when this will deter others significantly or protect the public by incarcerating the offender. In these situations, carefully selected, a full-enforcement, strict-punishment, governmental response would seem appropriate. Surely, there are other situations, however, in which the social cost of punishment as a means of control is too high. Is this not the evident situation with respect to the alcohol and marijuana abuser? Does not wisdom and experience tell us that other methods of social control should be developed in lieu of punishment?

Does the conclusion (which both Wilson and van den Haag share) that rehabilitation does not work, require that a corrective system totally be replaced by a punishment-oriented system? Experience with father-daughter incest cases demonstrates the existence

of ways to protect daughters (the daughter may leave home, the family may separate by divorce). The offending father can be released without any substantial risk to persons inside or outside the family. Is early release, whenever the release can be made with safety to members of the family, unwise? Should we try to deter incest by the threat of certain and substantial punishment? Is this kind of corrective program (by change in the environment) outside the criticism of the rehabilitative system and thus not necessarily to be replaced by the punishment-deterrence system?

To suggest that there are some difficult unanswered questions is not to suggest that Wilson and van den Haag are unaware of the difficulties. For example, Wilson says: "We can certainly reduce the arbitrary and socially irrational exercise of prosecutorial discretion over whom to charge and whom to release . . . ."[4] Also:

> Such proposals will be opposed by judges unwilling to surrender their authority to do as they please; by legislators who feel that it is necessary to pass bills requiring massive sentences that are rarely imposed; by taxpayers' groups that do not wish to foot the bill for the substantial additional expenditures required for new correctional facilities and more court and correctional personnel . . . .[5]

Nor does the existence of difficult and largely unanswered questions lessen the importance of those matters about which there is substantial and increasing agreement. For example, both Wilson and van den Haag agree that it is unwise to proceed on the assumption that the best response to crime is the improvement of social and economic conditions. Van den Haag concludes succinctly: "The alternatives 'improve social conditions' and 'increase punishment' are not mutually exclusive. They are cumulative. The question is which combination promises the greatest benefits at the least cost."[6] Wilson is critical of those "who feel that punishment does not work, or that, whether it works or not, it is wrong to apply it to criminals until society itself has been punished for 'producing' criminals."[7]

Both agree that punishment must be proportional to the seriousness of the conduct and not to the needs of the individual offender for rehabilitative treatment. Wilson says:

> Furthermore, if rehabilitation is the goal, and persons differ in their capacity to be rehabilitated, then two persons who have committed precisely the same crime under precisely the same circumstances might receive very differ-

4. J. WILSON, THINKING ABOUT CRIME 208 (1975) [hereinafter cited as WILSON].

5. *Id.* at 181.

6. E. VAN DEN HAAG, PUNISHING CRIMINALS 104 (1975) [hereinafter cited as VAN DEN HAAG].

7. WILSON, *supra* note 4, at 181.

ent sentences, thereby violating the offenders' and our sense of justice. The indeterminate sentence, widely used in many states, is expressive of the rehabilitation ideal: A convict will be released from an institution, not at the end of a fixed period, but when someone (a parole board, a sentencing board) decides he is "ready" to be released. Rigorously applied on the basis of existing evidence about what factors are associated with recidivism, this theory would mean that if two persons together rob a liquor store, the one who is a young black male from a broken family, with little education and a record of drug abuse, will be kept in prison indefinitely, while an older white male from an intact family, with a high school diploma and no drug experience, will be released almost immediately. Not only the young black male, but most fair-minded observers, would regard that outcome as profoundly unjust.[8]

Van den Haag states:

Our laws try to do so because it is "a precept of justice that punishment for crime should be graduated and proportioned to the offense." The precept is universal. "There is no society where the rule does not exist that the punishment must be proportioned to the offense," according to Emile Durkheim.[9]

Finally, both agree that the fear of punishment can deter a significant number of people from committing crimes that they otherwise would commit. Wilson concludes his final chapter with this statement:

Since the days of the crime commission we have learned a great deal, more than we are prepared to admit. Perhaps we fear to admit it because of a newfound modesty about the foundations of our knowledge, but perhaps also because the implications of that knowledge suggest an unflattering view of man. Intellectuals, although they often dislike the common person as an individual, do not wish to be caught saying uncomplimentary things about humankind. Nevertheless, some persons will shun crime even if we do nothing to deter them, while others will seek it out even if we do everything to reform them. Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent, and encouraged the calculators. Justice suffers, and so do we all.[10]

To conclude, as I do, that most of what Wilson and van den Haag say is both right and constructive is not, however, to answer the question that bothers me most.

Does agreement, for example, lead to the conclusion that the Twentieth Century Fund is right in its recommendation of relatively fixed sentences in its report on *Fair and Certain Punishment*,[11] or can the conclusions of Wilson and van den Haag be implemented

8. *Id.* at 171.

9. VAN DEN HAAG, *supra* note 6, at 194.

10. WILSON, *supra* note 4, at 209.

11. TWENTIETH CENTURY FUND TASK FORCE ON CRIMINAL SENTENCING, FAIR AND CERTAIN PUNISHMENT (1976).

better by the development of a more sophisticated system which attempts to treat differently

(1) Serious crimes committed under circumstances that indicate that "fair and certain punishment" will result in a lessening of the frequency of such criminal behavior;

(2) Serious crimes committed by persons whose individual characteristics are so indicative of continuing, highly dangerous behavior as to justify prolonged incarceration (van den Haag reaches this conclusion);[12]

(3) Crimes, such as theft of welfare and social security checks and shoplifting, that may be curtailed by change in the methods of delivering the checks or in merchandising retail goods;

(4) Crimes committed by persons in social situations who will not commit further crime, if the social situation feasibly can be changed or controlled (intrafamily sexual misconduct involving father and daughter, for example);

(5) Crimes committed by persons for whom there is effective individual treatment (vocational training, for example), granted that there are unlikely to be many situations in which treatment is in fact an effective way of reducing crime. We are committed, however, to detoxification of the public drunk and despite the modest results, this seems better than attempting to deter public intoxication by the threat of "fair and certain" punishment.

The danger, as I see it, is that disenchantment with rehabilitation will lead us back to punishment, where we have been before. After a period of time, disenchantment with punishment will cause us once again to try to individualize sentences. The reason for the vacillation probably will be that neither rehabilitation nor punishment is a panacea. Rather, what is needed are carefully worked-out governmental responses to significantly different kinds of socially deviant behavior, responses that are calculated to deal both fairly and effectively with the conduct involved. To say that it is desirable to apply fair and certain punishment to the armed robber does not require that we abandon individualized treatment of the father convicted of incest.

12. VAN DEN HAAG, *supra* note 6, at 241-51.

Massive Resistance in Virginia

THE CRISIS OF CONSERVATIVE VIRGINIA: THE BYRD ORGANIZATION AND THE POLITICS OF MASSIVE RESISTANCE. By James W. Ely, Jr. Knoxville: University of Tennessee Press, 1976. Pp. vii, 220. $13.50.

*Reviewed by George B. Tindall**

The massive literature on massive resistance in Virginia continues to grow. The focus on Virginia is perhaps appropriate, since the state furnished two stirring battle cries for the segregationists—interposition preceded massive resistance—and stood as the one bastion against even token integration north of the Lower South belt from South Carolina to Louisiana: the hard core of secessionists, segregationists, Dixiecrats, Wallaceites, and Goldwaterites. The rise of Virginia's massive resistance, therefore, bolstered resistance farther south and its collapse heralded the coming collapse elsewhere, as Senator Harry F. Byrd had predicated: "Let Virginia surrender to this illegal demand and you'll find the ranks of the other Southern states broken."

In treating the story, James W. Ely, Jr., has certain advantages. His recent book follows a parade of earlier accounts led by Benjamin Muse's *Virginia's Massive Resistance,* followed by Robbins L. Gates, *The Making of Massive Resistance;* Bob Smith, *They Closed Their Schools* (on Prince Edward County); and J. Harvie Wilkinson, III, *Harry Byrd and the Changing Face of Virginia Politics*. These are augmented by James J. Kilpatrick's *The Sovereign States* and *The Southern Case for School Segregation;* Len Holt's *An Act of Conscience* (on the Danville demonstrations); Sarah Patton Boyle's *The Desegregated Heart;* and Francis Pickens Miller's memoirs, *Man from the Valley*.

In addition, Ely had access to previously unavailable manuscripts: the papers of such figures as Byrd, Kilpatrick, Miller, Boyle, Robert Whitehead, Howard W. Smith, Governors J. Lindsay Almond, Jr. and Albertis S. Harrison, as well as others. These he supplemented with interviews, notes of which will be deposited in the Alderman Library in Charlottesville.

Not least of the author's advantages was a longer hindsight, the perspective afforded by knowing the sequel to massive resistance. Part of the trouble with previous interpretations, Ely argues, stems

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from the influence of Muse's earliest account and particularly from a misunderstanding of Virginia's "moderates." The point is that even the moderates, as distinguished from a politically helpless group of liberals, for the most part harbored a "basic hostility to racial integration" and repeatedly called on Negroes to reduce their demands. Legislator Robert Whitehead of rural Nelson County, for instance, while resigned to compliance with court rulings, expressed racial views hardly different from those of the resisters, but looked upon Byrd with suspicion. Miller and Armistead L. Boothe pursued a cautious course that evaded outright approval of integration.

With some reason, the Old Dominion is supposed to reflect a higher rectitude and decorum, in contrast to the vulgar emotionalism of the Lower South, and thus Wilkinson regarded massive resistance as an aberration. Not so, Ely asserts. After all, the resisters led by Kilpatrick and Byrd managed in large part to put the argument on a plane of constitutional doctrine and to avoid the feverish swamps of racial dogma. Ely concludes that a realistic view must acknowledge that the Byrd organization was defending the conviction of all but a minority of whites and especially the conviction of its strongest supporters in the black-belt Southside. Ely challenges also the view of Wilkinson and others that massive resistance was mainly a political ploy, but recognizes that it did give a new lease on life to a political machine beset by growing urban Republicanism and Democratic insurgency. The moderates, too, were engaged in political maneuvering on the other side.

With the resources now available, this book fills out in greater factual detail the already familiar story of the Virginia experience. The year's wait between the ruling of 1954 and the "deliberate speed" order of 1955 permitted time for the resisters to mobilize. That, Ely suggests in retrospect, may have been a mistake on the part of the Supreme Court. The Court order was followed by the report of the (Garland) Gray Commission, which advanced a plan to hold the line with token integration according to local conditions; Kilpatrick's editorial campaign in the Richmond *News-Leader* for interposition; then, Byrd's pronouncement of massive resistance in February 1956, which Governor Thomas P. Stanley's administration carried out with plans for pupil assignments, eventual school closings, and tuition grants, and which Governor J. Lindsay Almond, Jr., promised to enforce. Ely recounts actual closings in three communities, the reaction, and Almond's retreat after an emotional television speech and his consequent exile from Byrd's favor.

What seems to cry out for explanation, given the white opinion that Ely emphasized, is the sudden collapse of massive resistance

once the string was played out. Ely has an explanation. It is simply that no collapse occurred. What happened was just a retreat to yet another line of resistance, in the author's words, from massive resistance to passive resistance. The book closes with some telling evidence to that effect. While Almond was retreating in 1959, Prince Edward County was preparing to close its schools that fall. They would remain closed five years and reopen with most of the whites boycotting the public schools. Surry County is a less-known variation on the same theme: no school closing, but a general exodus of teachers and pupils from public education, leaving only the poorly financed black schools. Elsewhere, white flight has tended to resegregate the schools.

Even the statewide (Mosby G.) Perrow Plan, which Almond supported, continued the life of a state Pupil Placement Board, which held the line at token integration for several years more. As late as 1971, the Democratic majority leader in the legislature would declare, "I do believe in a segregated society." He continued thereafter to serve as Democratic leader. Negro voters have been generally impotent after strong appearances in the presidential race of 1964 and the gubernatorial races of 1965 and 1969. Renewed racial frictions have tended to isolate them.

Some things have changed, of course. After the Byrd machine's Indian summer came first a period of political fragmentation, then the apparent emergence of a two party system. Still the ghost of the Byrd machine haunts both parties, not to mention the independents—Harry F. Byrd, Jr., in fact was returned to the Senate with an independent label and his party standing remains ambiguous.

All in all, Ely has given a sound and convincing account of Virginia's political upheaval. It lacks some of the color of human drama to be found in other accounts, for instance Smith's story of the school closing in Prince Edward—Negroes, in fact, seldom come on-stage in Ely's story any more than they came on the main stage of Virginia politics. Ely, however, writing in a spare and readable style, has given us the most thorough factual account now available, along with a persuasively realistic interpretation.

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