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The Tyranny of Good Intentions: How Prosecutors and Bureaucrats Are Trampling the Constitution in the Name of Justice

Paul Craig Roberts and Lawrence M. Stratton
Roseville, Calif.: Forum, 2000, 242 pp.

As I began to read Paul Craig Roberts's and Lawrence M. Stratton's short book on a large subject, my initial question was: What are an economist and a non-practicing lawyer doing writing a book about how the administration of justice has gone awry? It is only upon completion of the volume that the answer becomes apparent: Almost no practicing lawyer would have the perspective, much less the guts, to write such a straightforward and searing indictment of the system in which he practices and from which he draws much of his income and identity. As the authors point out, defense lawyers have joined with prosecutors and judges in an unspoken pact that has effectively destroyed, over several decades, many of what Roberts and Stratton call, in old-fashioned but historically accurate terminology, the Rights of Englishmen. A tyranny of law has replaced the citizen's protection of law, and those two outsiders have blown the whistle.

The lawyer-reader may fault the authors for failing to give sufficient details or adequate analysis of the plethora of cases discussed. However, the strength of this book lies in its taking a step back and sweeping broadly through English legal history to pinpoint the principles and protections adopted in our Constitution, and then sweeping broadly again, with an occasional stop to discuss a case in more (but never exhaustive) detail, to demonstrate the myriad ways in which modern criminal prosecution and punitive civil and administrative law enforcement have turned on their head those very rights and thereby betrayed the rule of law.

Extensive footnotes and bibliography provide food for the thoughtful reader, but even with those aids the skeptic will likely think the authors hyperbolic. This reader, however, found the experience of reading this remarkable volume breathtaking. Skepticism was held at bay for one essential reason: I have been a criminal defense and civil liberties lawyer for 33 years; I have grown disgusted with and alarmed over what I have seen and been pressured to participate in; and I have been personally involved in three of the cases discussed and I can vouch that the authors, notwithstanding the absence of detail, have it just right.

Roberts's thesis is that the truth-seeking and justice-dispensing functions of the criminal justice system, both state and federal, have virtually disappeared, replaced by a concatenation of rules, practices, and laws that have turned the system into an instrument of falsehood and oppression. Plea bargaining, now the rule rather than the exception, perverts the system by pressuring defendants to "admit to what did not happen in order to avoid charges for what did happen," which ultimately "permits prosecutors to bring charges in the absence of crimes." To coerce de-

fendants—including both the guilty and the innocent—into guilty pleas that enhance prosecutors' careers and avoid the need for actual proof, prosecutors engage in a range of tactics, including ruination of targets' reputations with the connivance of naive or ambitious journalists, threats to charge close relatives (effectively hostages) in the absence of a guilty plea from the main target, threats to lay more serious charges under vague laws and court decisions, use of prevaricating witnesses who follow the prosecutor's script in exchange for leniency or other rewards, attempts to freeze or seize the defendant's assets to deprive him of the wherewithal to mount an effective defense, and other equally shocking but utterly commonplace tactics that fail to shock participants in the system.

Roberts criticizes practices that attack the target's property without resorting to formal criminal prosecution, including asset forfeiture and punitive fines in such areas as pollution and securities fraud. In this way the prosecutor is able to visit upon a targeted citizen disabling judgments without the state's having the burden of proving both the commission of an unlawful act and the *intention* to do so. Indeed, even in *criminal* prosecutions, the historic requirement that prosecutors prove the juncture of *act and intent to do wrong* has been watered down by legislation, administrative rulemaking, and a compliant Supreme Court. Under such pressures, defense lawyers—most of whom are former prosecutors who have bought deeply into the system—convince even the most sophisticated and innocent individuals and corporations to plea bargain. The corruption-inducing nature of police undercover operations is highlighted, along with other techniques that have law enforcement officers essentially producing crimes in which citizens are entrapped. Such crimes are not solved; rather, they are manufactured.

Juries are not to blame for allowing those activities to result in citizens' being convicted, the authors argue; they naturally assume that prosecutions come from "police and prosecutors [who] are committed to justice and are bringing legitimate cases—not cases based on tainted and fabricated evidence." Were jurors allowed to see the way prosecutions are *really* concocted, there would doubtless be more jury nullification—jurors acquitting regardless of what they are shown or told, or instructed by the judge. We live in a time of sharply decreasing faith in the criminal justice system. Even support for the death penalty, which only a few years ago was at historic highs, has dropped sharply as citizens have come to recognize the disturbingly large number of demonstrably innocent people on death rows all over the country, put there by corrupt or incompetent law enforcement and abetted by co-opted lawyers and judges. Roberts and Stratton argue that the legal disputes between liberals and conservatives—such as that "between partisans of 'judicial activism' and advocates of 'original intent'—are interesting but irrelevant." Arguments over the impact of racism in the system are, too, largely beside the point, because, the authors argue, the system has been so



degraded that the Constitution is now incapable of protecting *all* citizens, black and white.

Thus, argue the authors, the saga of the wrongly convicted and subsequently vindicated Rubin “Hurricane” Carter, made famous by the major motion picture, missed “an opportunity to educate the public about corruption in the criminal justice system” because “politically correct” viewers focused on Carter as victim of racism, “as if whites are any safer.” To prove the point, the book goes into some detail concerning the hunt for Michael Milken by a bevy of ambitious federal regulators and prosecutors led by Rudolph Giuliani (a case in which I was involved as co-counsel for Milken).

This is a powerful and courageous book that attempts to make reform of police and prosecutorial practices, and of the laws that enable them, an urgent agenda item for conservatives and liberals. The authors make common cause with pro-liberty and anti-prosecutorial abuse leaders from both ends of the political spectrum—Alan Dershowitz and Henry Hyde, the New York City Bar Association, the ACLU, and the National Association of Criminal Defense Lawyers. Indeed, the book jacket sports appropriately glowing blurbs from Milton Freedman, Alan Dershowitz, and G. Gordon Liddy.

It is only in their paltry seven-page discussion of remedies that the authors fall short. “We see one hope for an intellectual rebirth that would let us reclaim our legal tradition of restrained power. This cause for hope is the universal failure of government.” Some would argue that a perceived diminution in confidence in government may not embolden society to rebel against official abuse; instead, cynicism might result. What the authors do not say, but which may suggest a more hopeful weapon, is that more liberals and conservatives are coming together in the realization that, regardless of whether one thinks government is good or bad, *corrupt* government in the form of out-of-control law enforcement aided and abetted by compliant judges, lazy and co-opted defense lawyers, and leak-addicted journalists is coming within the sights of people like Roberts and Stratton who are sparking alliances, across the political spectrum, of citizens who are beginning to shout that they just won’t take it anymore.

Harvey A. Silverglate
Foundation for Individual Rights in Education

