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Book Reviews

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BOOK REVIEWS

JUSTICE WITHOUT TRIAL, by Jerome H. Skolnick (John Wiley & Sons, 1966. Pp. 279. \$7.95).

This book is a report of a study conducted in a middle-sized city in Northern California. The author spent over two years observing by participating and asking questions of the members of a police department. The central focus of the study was the activities of the policeman as related to other policemen and various members of the legal profession. From a methodological and technical point of view, this study is one of the best to be found in the sociological literature.

The central question of the study is: How do the value conflicts in our democratic system of government create problems which inhibit the behavior of policemen with regard to the rule of law? In other words, how are the activities of policemen related to our democratic notions about law and order. In order to answer this question, Skolnick devotes a large part of the study to description and interpretation of the activities of policemen as they carry out their work.

Skolnick begins with a discussion of the concepts of "law" and "order" utilized generally in our legal system. The rule of law or legality deals mainly with the criminal adjudicatory processes. Within the rule of law is the notion that each individual's rights must be protected. To deny the rule of law is to deny someone, or some portion of the citizenry, individual rights. The concept of order, on the other hand, pays very little attention to individual rights. What is central to the establishment of order is the conformity of all the individuals to the same behavior pattern. Hence, one can see that these notions, law and order, can be in conflict with one another.

Another problem is that the conceptions of order and the procedures by which it should be established vary across police organizations. If the police organization is structured in such a way that there is a direct line of hierarchical command, then the activities of the officers will be patterned after the military or a rigid conception of order. Therefore, the type of organizational structure that is created to attend to "law" and "order" has an effect on procedures utilized to establish order.

Finally, an additional problem deals with the rules of law. There are also varying degrees of clarity regarding the laws

which are established. If the laws are ambiguous or unenforceable, then they will tend to increase the very behavior they were devised to restrain. On the other hand, if the laws are too rigid or detailed, then there will be an increase in behavior which violates the law. Hence, some compromise must be instituted to avoid the problems with the rule of law.

With this dilemma between the rule of law and order, the question as to how justice can be maintained becomes crucial. Skolnick maintains that there is justice without trial. This occurs because the majority of the cases are solved within the police organization. Cases are often decided in an informal setting and within the relations implicating the policeman, the accused, the judge, the prosecutor and the defense lawyer. This informal system raises several important questions regarding the rule of law: (1) do these procedures hide from public view violations of the law by the policemen, (2) does the guilty plea obscure the activities which take place at the beginning of the process, and (3) what factors affect the guilty plea? These are several of the specific questions which this section of the study attempts to answer.

In this study, law is viewed as an enterprise. A study of law from this perspective involves a detailed analysis of its social foundations. There must be an empirical elaboration of the processes through which legal activities are carried out. In order to have a complete picture of legality from this perspective, the role of culture and ideology must be taken into account. Important in the procedure is the nature of the organizations which men form in order to carry out the laws. In fact, one of the working hypotheses in this study is that the nature of the organizations determines the nature of legality.

In several chapters, Skolnick describes the workings of the police organization in the city he studies. He describes the conceptions the policemen have of their role, the procedures within the organization which determine the activities of the policemen, how subjects are approached, the prejudices and presumptions of the policemen, the informer system, the attitudes which are developed toward the judiciary and the law, the procedures used to train policemen, and several other aspects of the organization. These are described in such detail that a complete summary is not possible. But there are some general patterns which emerge from the data.

Skolnick makes a distinction between a craftsman and a legal actor. A legal actor is one who knows and attends to the legal procedures. He sees the rule of law as the master ideal. What is prescribed and proscribed by law, within boundaries of interpretation, is the model a legal actor follows. The most common example of a legal actor is a lawyer. A craftsman on the other hand, deals with practical matters. He is concerned with efficiency, production, organizational details and being a skilled worker. In sum, the legal, the legal actor views himself as a civil servant while the craftsman views himself as a workman.

The organizations in which policemen find themselves are conducive to producing craftsmen but not legal actors. Within the organization, there are demands of efficiency and production. There are procedures whereby the officers can avoid visibility of a large portion of their activities. The policeman, however, sees judicial policy such as the exclusionary rule as prohibiting him from carrying out his tasks as craftsmen. He eventually comes to view the legal process as one based solely on efficiency and rationality.

The consequence of developing craftsmen in the area of law is to increase the separation between law and order. The craftsman is concerned, in the main, with order. When legal rules are altered problems are created for the craftsman since legal rules do not always give greatest emphasis to the notion of order. This is the central problem for the police—the craftsman-administration bias—which is created within the organization.

This problem cannot be solved by increased professionalization because professional procedures have brought about this state of affairs. Until the citizens of the community are willing to support an organization which produces legal actors, there will be a continuation of the present system in which the rule of law is ignored. Then the courts will continue to react in such a way as to make the policeman's job more difficult under this system. Until there is a complete reorganization of the typical law enforcement bureaucracy, the separation of law and order, with the ensuing violations of the rules of law, will remain.

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