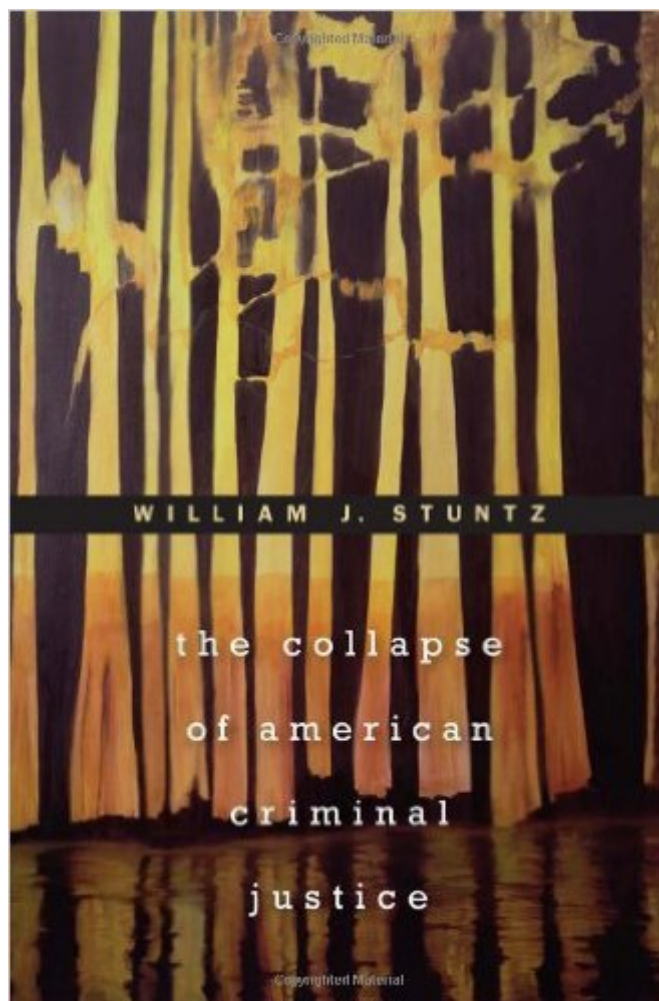


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The Collapse Of American Criminal Justice



Synopsis

The rule of law has vanished in America's criminal justice system. Prosecutors now decide whom to punish and how severely. Almost no one accused of a crime will ever face a jury. Inconsistent policing, rampant plea bargaining, overcrowded courtrooms, and ever more draconian sentencing have produced a gigantic prison population, with black citizens the primary defendants and victims of crime. In this passionately argued book, the leading criminal law scholar of his generation looks to history for the roots of these problems and for their solutions. *The Collapse of American Criminal Justice* takes us deep into the dramatic history of American crime—bar fights in nineteenth-century Chicago, New Orleans bordellos, Prohibition, and decades of murderous lynching. Digging into these crimes and the strategies that attempted to control them, Stuntz reveals the costs of abandoning local democratic control. The system has become more centralized, with state legislators and federal judges given increasing power. The liberal Warren Supreme Court's emphasis on procedures, not equity, joined hands with conservative insistence on severe punishment to create a system that is both harsh and ineffective. What would get us out of this Kafkaesque world? More trials with local juries; laws that accurately define what prosecutors seek to punish; and an equal protection guarantee like the one that died in the 1870s, to make prosecution and punishment less discriminatory. Above all, Stuntz eloquently argues, Americans need to remember again that criminal punishment is a necessary but terrible tool, to use effectively, and sparingly.

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Customer Reviews

The legal academy lost a giant earlier this year when William Stuntz passed away from an aggressive cancer. Stuntz was an amazing scholar who had the gift of explaining how legal doctrine in the area of criminal procedure frequently failed to measure up to the real world. "The Collapse of American Criminal Justice" is his defining masterpiece that marshals statistics, history, and logic to argue that our current criminal justice system is badly broken. He points to the facts that (1) we incarcerate more people per capita by far than our peer nations (550+ per 100,000, versus the 50-150 range), and in fact, we eclipse even Russia; (2) we incarcerate so many African-American men that in some cities, 1/3 or more of young African-American men are in prison, probation, or supervised release; (3) most criminal defendants plead guilty. The reasons for this breakdown are complicated, but Stuntz attributes it to a number of key factors. First, he points to the increasing centralization of criminal justice. It used to be that the judges, prosecutors, and juries in criminal cases came directly from the neighborhood that the criminal defendant did. This meant that there were local pressures to temper justice with mercy, since the defendant being sent away for incarceration was part of the community too. With the growth in suburban population, however, coupled with having larger districts -- meaning that the jury pool came from a wider swath of the population -- this local control was lost. Worse yet, the voting strength of the suburbs meant that the increasing bulk of voters were voting to reduce crime, even though they (suburbanites) were hardly the target of crime. The inner cities were.

We have a book outlining William J. Stuntz's contribution to our understanding of criminal law. He is no longer with us, but we have the book to memorialize his life's work. Stuntz tells us quite clearly how our criminal justice system works today. Crimes are numerous, narrowly defined and almost self proving. Three factors (ease of proof by the prosecution, multiple offenses chargeable for the same events, and the high cost of trials) mean that 90 to 95 percent of defendants perceive that they do not have a chance to defeat the prosecution and enter into "plea bargains." Stuntz shows accurately that these are not "bargains" in the traditional sense of the word (negotiated agreements in which both sides reach an improved position) but rather Hobson's choices in which one can elect between the devil and the deep blue sea. Consequently, both state and federal prisons are always full, and only the limited supply of beds prevents more convictions. Stuntz is very correct to tell us that this is not the criminal justice system taught in civics classes. It flunks Stuntz's personal standard of justice and most people's common sense notion of justice. Persons accused of crimes are not imprisoned based on fair proceedings conducted by unbiased judges and based on facts decided by juries of their peers. Persons accused of crimes in most cases go to prison because acts

they have committed (or are thought to have committed) are judged to be threats to the community by police and prosecutors with limited supervision by overworked judges and the rare jury trial. Jury nullification is limited by the narrow definitions of crimes, so that even in the rare jury trial a jury cannot often interpose its values about who should or should not be punished for particular actions.

This book is a reminder of what well-meaning people could do if they worked together towards a common goal, and a rueful reminder of what happens in our hurly burly trading of interests in a world where no politician has ever lost an election by being tough on crime. According to Stuntz: "The criminal justice system has run off the rails. The system dispenses not justice according to law, but the "justice" of official discretion. Discretionary justice too often amounts to discriminatory justice." Stuntz gives a great and detailed description of the historical forces that led to this accidental train wreck. "That conventional wisdom gives too much credit to the politicians, whose conduct offers little evidence that they were seeking to create a justice system like the one we have today." "They followed their own preferences when the voters allowed, and made choices that conformed to short-term political incentives when the voters insisted on a different tack. Cumulatively, those choices changed the justice system radically: first in one direction, then the other. But neither the officials in charge of criminal justice-from Supreme Court Justices to state legislators, from prosecutors to police chiefs-nor the voters planned on such radical change, in either direction." Stuntz' opinions seem to be an thoughtful conglomeration of Chicago School economics, a liberal interest in ending discrimination, a conservative view of the role of government and an over abiding belief in democracy. For example, Stuntz writes: "Because federal criminal law has such small consequences for the federal budget, Congress makes too much of it.

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