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BOOK REVIEWS

Justice Defiled: Perverts, Potheads, Serial Killers and Lawyers

Alan Young

Toronto: Key Porter Books Ltd, 2003 (337 pp.)

Reviewed by Michael Spratt[†] and Emilie Taman[‡]

I. INTRODUCTION

Alan Young's *Justice Defiled: Perverts, Potheads, Serial Killers and Lawyers* is a self-styled celebration of legal vulgarity.¹ In keeping with this theme, Young rejects conventional academic discourse, preferring instead the use of profane and often shocking language to convey his disgust with the state of the criminal law. Young's use of language is not troubling in principle; to the contrary, the vulgarity of his language might have served to complement an otherwise persuasive argument. Unfortunately, however, many of Young's arguments fall flat because they are not situated in a constructive analytical framework.

Young explores two general themes in *Justice Defiled*, although a traditional thesis is more difficult to identify. He contends firstly that consensual acts which are harmless to everyone but the actor should not be prohibited by the criminal law. His secondary theme is that lawyers are part of a fundamentally flawed oligarchy whose self-interest drives them to perpetuate the status quo. The absence of a defined thesis results in a series of disjointed criticisms of the legal profession lacking the

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¹ A. Young, *Justice Defiled: Perverts, Potheads, Serial Killers and Lawyers*, (Toronto: Key Porter Books Ltd., 2003).

necessary academic stamina needed to act as an effective impetus for institutional reform.

The timing of this review is fortuitous as it coincides with the release of the Supreme Court of Canada's decision in *R. v. Malmo-Levine*.² This case raised one of the two issues that troubles Young: the criminal prohibition of activities that cause no harm to the actor, an identifiable victim, or society at large.³ The majority decision and the main dissent by Justice Arbour explore whether there is a "harm principle," based on the theories of John Stuart Mill, which underlies the criminal law. The majority rejects the argument that harm, as a pre-requisite to criminal sanction, is a legal principle so fundamental to our notion of justice as to enjoy the constitutional protection of section 7 of the *Charter of Rights and Freedoms*.⁴ However, the majority nonetheless accepts that there is a legitimate State interest in prohibiting only those acts that cause harm to others. Justice Arbour, on the other hand, argues that where an offence carries with it the possibility of imprisonment, section 7 of the Charter will be unjustifiably infringed where it cannot be demonstrated that the prohibited act causes harm.

While Young argues that only truly harmful acts should be prohibited, he does not explore the idea that harm may be a constitutional prerequisite to criminal sanction. Indeed, there is no cogent legal theory forming the basis of his argument which could reflect, at least in part, his disdain for the law. Instead of using harm or some other principle to argue that the State *cannot* legislate with respect to certain harmless crimes, Young often slips into highly emotional and reactionary arguments as to why the State *should not* criminalize harmless moral choices. These arguments, although thought-provoking, do not provide the "conventionally moral" reader with a sound legal justification for why others should be able to make such choices without engaging the criminal law.

Young characterizes *Justice Defiled* as an attack on the legal profession – a profession which is, in his view, largely hypocritical, corrupt and apathetic. He blames the lawyers for perpetuating the status quo by blindly applying laws they know to be unfair or which they choose not

² *R. v. Malmo-Levine*, 2003 SCC 74 [Malmo-Levine].

³ At issue in *Malmo-Levine* was possession of marijuana.

⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [the "Charter"].

to follow in their own lives. Why he blames the profession exclusively, and not Parliament, for the existence of so many “morally hygienic” crimes is unclear. Some incarnation of the harm principle, as discussed in *Malmo-Levine*, would have provided Young with a more constructive vehicle to promote the changes to the justice system he believes are necessary. The use of a principled argument may not be the most shocking or awe-inspiring impetus for reform, but it does stand up to academic scrutiny in a way that *Justice Defiled*—though passionate and ambitious—does not.

II. JUSTICE DEFILED

Justice Defiled is divided into four parts. In the first, “Entering the Arena,” Young explores his conclusion that the legal profession is a social cancer. The second part, “Sex, Drugs and the Illegality of Paradise,” examines how the criminal justice system wastes time combating consensual lifestyle decisions that do not threaten the fabric of society. In the third part, “Victims, Violence and the Beast,” Young submits that the law’s preoccupation with moral hygiene and other trivialities has left the criminal justice system ill-equipped to deal with serious issues of violence and exploitation. Finally, in “Legal Professionals as Fallen Priests,” Young attempts to show that the nature of an adversarial legal culture breeds arrogance, elitism and a captious spirit.

III. ENTERING THE ARENA

This first part of *Justice Defiled* lays out Young’s contention that lawyers are a cancer. As law students, the authors of this review are nearing the completion of what Young would refer to as our transformation into a privileged and oppressive class. In casting lawyers as a cancer, blindly applying oppressive laws, Young writes: “I don’t need a control group to show that most law students are in it for the money. I see it in their eyes,” and “the ‘law as oppression’ rant is so well known I don’t have the academic strength to recount it.”⁵ These statements illustrate a major

⁵ *Supra* note 1 at 3.

flaw that permeates much of Young's analysis: lack of authority. One does not need to be a member of a privileged group to understand that broad, sweeping statements of fact should not be made authoritatively in the absence of some form of substantiation.

Nonetheless, buried in the rhetoric that permeates this section is a grain of academic gold, a statement that if expanded upon could have provided the analytical framework *Justice Defiled* is in desperate need of. This is Young's statement that the criminal law should only target behaviour that is harmful to others.⁶ This statement, however, is made somewhat in passing, and is not elaborated or drawn on as a legal justification for the decriminalization of certain crimes.

Young begins the second chapter of this section with an anecdote about a sexually frustrated man named Homer and his quest for sexual gratification that falls short of actual intercourse. Young uses this as an example of the criminal law's misuse of resources combating social issues that are not inherently "criminal." In other words, the criminal law should only be engaged, in Young's view, to regulate activity that causes harm to third parties or society at large. Young contends that prostitution and escort laws target behaviour that does not harm anyone, and that the current criminal law sanctions amount to little more than a licensing fee. While Young acknowledges that women who are coerced into prostitution through physical abuse or who enter the trade to fuel drug addiction are harmed, he contends that these harms are consequent to the criminalization of the sex trade.

This statement is an example of Young's typical response to the contrary argument that the trade in drugs and sex and other so-called moral crimes are inherently harmful. Young may be right that the effect of criminalization is often the transformation of otherwise harmless activities into dangerous ones—this premise is certainly worth exploring—but little analysis of any kind is provided on the issue. Further, Young is often quick to point out flaws in the criminal justice system while offering few solutions. He often argues that offences should be taken out of the *Criminal Code* while simultaneously recognizing that an alternative form of non-criminal regulation may be justified. *Justice Defiled* does not provide an exit strategy or alternative regulation mechanism to

⁶ *Supra* note 1 at 12.

replace the present regime of criminalization. Without a coherent exit strategy, the removal of “harmless” activities from the *Criminal Code* may, in fact, cause more harm than good in the short term.

In the final chapter of Part I, the reader is subjected to the first of Young’s disjointed musings about the criminal justice system. His main criticism in this chapter is that the criminal law is too concerned with what he calls the “where, what, who and when” aspects of crime, but not the “why.” Young uses the extreme example of murderer and serial-rapist Paul Bernardo to illustrate this point. He argues that millions of dollars were wasted in the Bernardo trial to prove something we already knew: that Bernardo was guilty.⁷ Young suggests that the money spent on Bernardo’s trial could have been better spent seeking to understand why Bernardo had committed such horrible crimes. On the facts of the Bernardo case, where the Crown had videotapes depicting Mr. Bernardo committing the offences, it is possible to see how a reader would agree that resources were wasted. However, would the alternative be any more compelling? It is unlikely that Young would advocate for a system providing for the discretionary denial of trials where the Crown or the police believed that a trial is unwarranted. Young does not include the section on Bernardo to demonstrate a need for criminal justice reform but rather to advance his “lawyers are scum” position. He concludes the section by arguing that the only people who benefited from the Bernardo trial were the lawyers. Contrary to what the section on Bernardo suggests, a fair trial and the legitimacy it brings to the system benefits all accused persons and the entire criminal justice process. This is true even where the accused’s guilt is near certain.

IV. SEX, DRUGS AND THE ILLEGALITY OF PARADISE

In this second part of *Justice Defiled*, Young argues for the decriminalization of a number of specific offences that he views as harmless. He considers such offences to be within the range of reasonable consensual lifestyle choices that should be available to Canadians. In particular, Young is critical of sex-trade laws and the prohibitions against the purchase and sale of drugs such as marijuana and heroin.

⁷ *Supra* note 1 at 26.

With respect to crimes of a sexual nature, Young sees consent as the only legitimate limiting factor. He argues that adults should be legally permitted to consent to whatever sexual activity they choose, in the place and under the circumstances they desire, and with the partner or partners of their choice.⁸ This is not an unreasonable position to take. Indeed, Young is not the first to argue that “the State has no place in the bedrooms of the nation.”⁹ However, he takes a very superficial view of consent in advancing his position that only a minute number of sex-based crimes are the legitimate subjects of the criminal law. A more in-depth analysis of the relationship between consent and lack of harm would better serve to situate this valuable section in a larger analytical framework, providing both legitimacy and academic fortitude to this otherwise important argument.

Despite the shortcomings of the chapter dedicated to sex-trade laws, Young moves on to provide significant empirical evidence in support of his view that marijuana is harmless to both its users and society at large. With respect to marijuana use, some of the evidence upon which he relies was accepted by the Supreme Court of Canada in *R. v. Clay*,¹⁰ the companion case to *Malmo-Levine*, with which Mr. Young was involved. However, Young’s tendency to overreach is once again exposed in this section.

After having built a solid evidentiary foundation with respect to marijuana use, Young goes on to make the bald and unsupported assertion that heroin is as harmless as marijuana if used with care, planning and prudence, and that in most case quitting cold-turkey is no worse than getting the flu. Young presents very little evidence to this effect, but indicates that “studies abound” providing the relative numbers of individuals who are likely to be overwhelmed by their given vice. He states he is unaware of “any study indicating that more than twenty percent of users or participants in *any vice activity* lose control over their lives.”¹¹ On that basis he concludes that no more than twenty percent of heroin

⁸ It is of interesting note that while Young takes great offence to crimes rooted in concepts of personal morality, he writes the following about the offence of bestiality: “If you consider this a serious deprivation of freedom, then you are actually too sick for me to even defend.”

⁹ Pierre Elliot Trudeau, December 22, 1967, discussing amendments to the *Criminal Code* to liberalize laws relating to abortion and homosexuality.

¹⁰ *R v Clay*, [2003] SCC 75.

¹¹ *Supra* note 1 at 111[emphasis added].

users are at risk of causing harm to others. This is an absurd inference, and even if it were legitimate, a one in five chance of harm is hardly insignificant. Further, Young does not address the fact that heroin is addictive and that this will often negate the planning and prudence which he insists will usually curtail the potentially harmful effects of its use. In Young's desire to be sensational, a legitimate legal argument for the decriminalization of marijuana is grossly undermined by his unreasoned claims about heroin.

Young draws on his earlier arguments about the hypocrisy of lawyers by alluding to the number of practicing lawyers who use drugs themselves. This is another example of an argument that may evoke the kind of response Young seems to crave, but it does little to advance any meaningful thesis. If criminal defence lawyers represented only those defendants with whom they morally agreed, or if prosecutors refused to enforce laws with which they disagreed, the criminal justice system would become unworkable.

Young goes on to make an interesting point about the exorbitant economic cost of enforcing laws that prohibit harmless acts. Even discounting the more controversial activities such as heroin-use, the prosecution of offences relating to harmless acts such as consensual sex or marijuana-use consumes vast quantities of resources. Young argues that the police suffer from a financial and public relations addiction to the enforcement of marijuana laws. Unfortunately, this intriguing theory, like Young's arguments about the decriminalization of marijuana, is at risk of being lost in a sea of rhetoric. Young should have devoted more time to the more weighty arguments laid out in this part of *Justice Defiled* before moving on to the third part, where he again deviates from the harm principle and returns to an unfocused critique of the criminal justice system.

V. VICTIMS, VIOLENCE AND THE BEAST

Here Young takes a shotgun approach to the critique of current criminal law policy. First he explores the reasons why we punish. Young examines the deontological and utilitarian approaches to punishment, viewing the criminal law as a form of social contract between society and the State, and questions the utility of punishing individuals who have

derived little personal benefit from the criminal law. He questions, for example, the justice in convicting an individual of assault who has endured a lifetime of abuse. Again however, Young offers little in the way of answers or solutions .

Young then takes on the verbosity of the *Criminal Code*.¹² He rightly points out that the Code is confusing, repetitive and ambiguous. No doubt, the removal of the numerous incarnations of the crime of theft,¹³ for example, would make the *Criminal Code* more accessible to Canadians. Furthermore, the removal of offences that cause no harm to others would make the Code fairer. However, rather than rooting his concerns about the Code in notions such as accessibility or justice, Young reverts to sensationalism, suggesting that it is ambiguous because ambiguity leads to inflated profits for lawyers. This might appeal to an already jaded public, but it does little to advance a persuasive justification for legal reform.

Young then revisits his earlier argument that the decriminalization of harmless offences would save the justice system money and free up resources that could be directed toward truly harmful acts. This argument is appealing on its face, and we agree that reform in this area is needed. Young does not, however, address the cost of delegating these harmless offences to a regulatory board or tribunal. It is quite possible that a parallel but non-criminal regulatory scheme would be equally costly. The criticism of crimes on the basis of their economic cost is likely to have wide-spread appeal. Yet given that it is not clear that the alternative would be any more cost-effective, by rooting this argument in an analytical concept, such as harm, Young could have made an equally compelling argument on the basis of social rather than economic costs.

VI. LEGAL PROFESSIONALS AS FALLEN PRIESTS

In this final part of *Justice Defiled*, Young abandons completely the idea of harm and reverts back to an attack on the legal profession as a whole. The closing chapters of the book focus mainly on legal education and the nature of the adversarial system. This part appears to be a popu-

¹² *Criminal Code*, R.S.C. 1985, c. C-46 [the “Code”].

¹³ See e.g. *Criminal Code*, *ibid* at s. 322 (theft), s. 323 (theft from an oyster bed), s. 338 (theft of cattle), s. 339 (theft of drift timber).

larized attack on lawyers, designed to rekindle readers' enthusiasm in order to bring them on side as the book comes to a close. As law students, our experience leads us to think that Young's criticisms of the legal education system are overly simplistic and often grossly unfair. Pro bono, legal aid and the promotion of "alternative" careers are a prominent feature of legal education at Dalhousie and many other law schools across Canada. This may be a reflection of student initiative as opposed to institutional foresight, but the students with whom we have come in contact are moral, ethical, socially progressive, and lack the adversarial mean-streak that Young seems to be familiar with.

VII. CONCLUSION

Justice Defiled is a timely and interesting general critique of the criminal justice system. Young's use of colourful language and personal anecdotes is highly effective at evoking an emotional response from the reader. With a little more focus and less sensationalism, Young's ideas might have transcended purely emotional responses and given rise to a persuasive justification for reform. Unfortunately, as it stands, *Justice Defiled* caters more to those who are already of a like mind with the author. The legal profession in Canada is not bereft of those who would be amenable to criminal justice reform that could lead to an accessible, minimally intrusive, just system that Young seeks. Through his choice of tone and style, however, Young risks undermining the movement for reform. This book, lacking as it is in academic rigor, may well alienate legal academics and others who are in a position to effect change. Without the offer of concrete ways to implement the change he seeks, Young's sensationalistic tendencies may simply serve to reinforce the status quo, rather than bringing us closer to the ideal.