

Louis E. Wolcher. *The Ethics of Justice Without Illusions*. Routledge 2016. 250 pp. \$140.00 USD (Hardcover ISBN 9781138855649).

The Ethics of Justice Without Illusions, by Louis E. Wolcher, is a detailed and incisive book that critically examines the extent to which the practical, day-to-day operations of a modern legal system assist or hinder it in its aim of providing justice. Louis seeks out the injustices which are routinely created by the processes and procedures of legal decision making. This book finds those shortcomings of the legal system and aims to show how they are explained by those same decision making processes. Louis then explores the disenchantment and disillusionment that can occur when someone experiences these shortcomings first-hand in the gap between law and justice, and discusses what might then be done with that disenchantment by someone striving to live ethically within such a legal system. This book grasps and painstakingly unpacks a crucial issue in applied ethics and critical legal theory. I would strongly recommend it to readers interested in those fields, and to anyone for whom the feeling of disenchantment with the law is familiar.

Ethics of Justice acknowledges a line of intellectual forebears from the continental tradition, and it has been written in an enjoyable style. It begins by laying the groundwork for the question the book ultimately aims to answer. An error, it contends, was made quite some time ago. This was when truth was equated, whether directly or metaphorically, with unity, tidiness, and parsimony. While I'd say we could fruitfully discuss which contexts this applies in and which it doesn't, this book makes a strong case that law and justice are one domain where this way of thinking is currently ascendant and yet limiting. Louis argues that because a legal decision must be truthful, the idea of good legal practice and judgement inherited the preferences for neatness from a crisp version of truth. This book doesn't dwell on the history and provenance of these ideas, and moves on to argue that this approach can compromise the law in its aim of delivering justice.

Wolcher argues that these preferences unfolded in the practical operation of our legal system via their processes and procedures, which one imagines were written with the intention of ensuring that the legal system reaches truthful, just conclusions even as it handles an enormous volume of cases each year. Those processes, for example, include those around admissible evidence: a court discards many kinds of information from its deliberations. The admissibility of information is prescribed in advance, and so the facts in the case are a subset of a wider, perhaps more complete, view of what occurred. As another example, it is generally true that unless one is an injured party, or has some kind of personal stake in an issue, then one has no 'standing' to bring a case and the court will not consider the dispute. At face value this may be—and perhaps sometimes is—fair, but in many other situations the operation of law detaches it from what many believe is its aim, justice. The rub is that, because this is done in accord with a respected, and one might assume morally just, legal process, it gives a clear conscience to anyone involved regardless of what they may have actually done or how just it is. *Ethics of Justice* argues that, in this way, the law can be detached from justice without the practitioners having cause to ask themselves too many questions.

One also might note, for those of us who have seen *Making a Murderer*, that these concerns have been borne out before, and regardless of what one may think about the particular case, at the very least it raises questions. If the worst is true, then it stands as an example that the rules that govern the operation of law can be used by questionable or straightforwardly bad actors to reach unjust outcomes. Taking together the detachment of law from justice, and the ability for law to be used in manifestly unjust ways, the author argues that the airs and graces, the aura of marble-columned solemnity which colonnade the law are dispelled, so that many are left disillusioned. If the aura of correctness around law, and perhaps rules-based justice generally, is dispelled, then the pathway

forwards needs to be discussed. Wolcher then poses a question: Is a life in the law – even one spent in the pursuit of justice – worth living, and if so, how can a disenchanted person come to bear the living of it without constantly having to engage in self-deception?

This book aims to examine whether, and if so how, we can form an ethics which acknowledges the particularities of lived ethical experience and the questions within it, rather than discarding those details to assist with the smooth operation of a system of ethical rules. To be clear, this book isn't suggesting that all legal systems are mistaken, but it makes the point that law never produced justice because it followed a process—it found justice because it sought it out. Wolcher argues that the enriched confidence, the surety that comes with believing that following a system of presumably just rules ensures a just outcome can be a problem. He states that a just outcome is more accurately reached by considering the particulars as they appear at first, and what they are likely to become as a result of acting. This is distinct from a rules based system, which takes that same situation and, highlighting some features as relevant over others, then squeezes it through a process to produce a conclusion. If norms and rules suffocate the relevant particulars, then *The Ethics of Justice Without Illusions* argues that a more meaningful ethics can be found by reconsidering, changing or setting aside rules where they would limit one's ability to think an ethical problem and respond accordingly.

These ideas are unpacked and explored further in the latter chapters of the first half of the book. If law creates an uneven justice, then over time, this will encourage people to agitate for change in the law, to even the scales somewhat. This agitation can take many forms, but it is politics in a broad sense of the term. If and when those changes are made and a new political arrangement enters, Wolcher argues that the new justice produced by any fresh regime will still be uneven, just in a different way. This completes the loop, and encourages different parties which are disadvantaged by those new arrangements to agitate politically for change. I would agree with this view as an abstraction, as I imagine that this is more complex in reality. The broader point is that the injustice, both real and perceived, which this book arises from, the way the law is practiced and operated, is not contained to individual cases. This feeling of disenchantment and distrust builds in the community and those affected by those feelings will find ways to express them.

I have a lot of sympathy for the ideas detailed in *The Ethics of Justice Without Illusions*. I believe that a significant point is being made; however, care needs to be taken. The central idea, that a legal system which creates winners and losers is ethically dubious at the very least and may lead to political ill-ease, is convincing to me. However, it is not clear how we should proceed, if we agree. I would caution that solutions will not be straightforward. We should also consider the enormous volume of cases and disputes processed by any given legal system each year. We might first question how often the kinds of errors this book describes occur, and why that is—but even if we had a set of alterations, or even an alternative legal system in mind, the project of moving over to this would be a wickedly complicated undertaking. This in itself may limit the appetite for change.

It would, most thornily, raise the question of what happens to those cases which were raised under the old, perhaps less fair regime. Many people would attempt to re-litigate their dispute under a new system, and any attempt to block those re-litigations which relied on some artificial border between one system and the other, such as 'the new system took effect on this date,' would be unconvincing in the extreme and would in fact perpetuate the same kind of rules-based injustice that we would be aiming to avoid. While I believe the issues raised in *The Ethics of Justice Without Illusions* are pressing, further research would need to be done to begin on a solution.

The Ethics of Justice Without Illusions raises engaging questions, and yet it respects their complexity by not rushing to suggest solutions. It is precisely for these reasons that I would not

hesitate to recommend it to readers interested in critical legal theory, applied ethics, legal and political philosophy.

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