

James: Crisis in the Courts

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In fact, it may convince the reader that no solution is possible, but if a solution is to be found it can only be found from an understanding of the problem. A degree of understanding comes from a reading of *Moment of Madness*.

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Crisis in the Courts. BY HOWARD JAMES. New York: David McKay, Inc., 1967. Pp. 267. \$5.50.

Every age of civilization is favored with a gadfly who compels attention to the ailments of society. Not very long ago Ralph Nader told us about our automobiles and we were shocked by his revelations. We may not be as stunned by Howard James' revelations about our administration of justice, because it is doubtful that there are as many in contact with our courts as there are drivers of automobiles. But our shock and resolve to right the situation should be no less. Certainly the administration of justice is at least as important to a good and just society as our safety of mobility within that society.

This is a disturbing book. We tend to think and believe that our democracy is just about the most perfect political, social, humane and economic system man has ever known. If there are faults, they are minor. Mr. James makes it obvious that in the administration of justice the faults are many and not minor. Our complacency suffers a shock from which, hopefully, it should not recover.

The scholar should not expect in this book an exhaustive study in depth. Rather, this is a general "bird's eye view," painted in broad strokes that crash against our senses. The range of the author's survey carries the reader from the judge who sleeps on the bench to the bail-bond system. Every practicing attorney will identify with the faults enumerated by Mr. James. Perhaps the practitioner has not seen any judges go to sleep while the evidence was being presented, but not many could say they have not witnessed a judge engaging in a whispered conversation with a visitor while a trial was in progress. Nor can many attorneys say that they have not wondered at the juridical ignorance of some judges. These are just a sample of Mr. James' justified criticisms of our judicial system.

Our law schools do an excellent job in teaching the law. It is not uncommon, however, to hear experienced advocates say that the law school graduate does not have a realistic idea of what the practice of law is until he begins his practice. The law school would do well to make Mr. James' book required reading for graduation. The fledgling attorney might then get some small idea of the legal world he is entering. He might then be somewhat prepared for the legally ignorant judge, the stalling colleague, the frustrations of chokingly clogged calendars, *ad infinitum*.

While this is a very worthwhile book, it too, like its thesis, has its failures. Any field of human activity will reflect human nature; it will claim the successes in human nature, and conversely, it will display the imperfections in human nature. So it is with man's administration of justice. Once one admits the frailties and failings in human nature, one must admit that man's institutions, among them our courts, will reflect those frailties and failings. This need not induce one to the pessimism

that it must always be so. As man progresses from barbarity to something less than the angels, his institutions progress to something less than the perfect, but less imperfect. Thus, even Mr. James concedes that in the administration of justice, "Progress has been made, and is being made year by year."¹

This reviewer wonders if Mr. James' exposition might not have had more validity if his study had been framed more within the context of human nature. It is one thing to castigate the administration of justice for its failings. It is another thing to place the failings in perspective with relation to human nature and the entire fabric of justice. Of course the author desired to restrict his field to point out the evils. While this is a valid endeavor, his book necessarily suffers from lack of perspective. While it is certain that the author did not mean to infer that the entire system of judicial administration is rotten, the layman could very well presume so because of the unrelieved nature of the critique. Although one may well understand that Mr. James' purpose was not to repeat the good things, but to show where improvement was needed, the reader may still wonder if he has not departed too much from "telling it like it is" for the purpose of recounting the failings.

The administration of justice has come a long way, perhaps at a faster rate than any other field of human endeavor. It is not too many years ago that the hands of thieves were amputated. Perhaps in certain parts of the world this is still done. The fact is, however, now such barbarism is not usual. It is not too many years ago that children were hung for the commission of crimes. Now, on the other hand, witness the campaigns and agitation against capital punishment even for adults. Would that mankind could have progressed as far and as fast in matters between nations and races as it has progressed in the administration of justice. As long as the judicial system is a human institution it will suffer from human frailties and failings. The question is not so much how bad it is, but rather the degree of its perfection vis-à-vis human perfection. Mr. James has not chosen to present any material in this connection. While this is the privilege of the author as he views his task, it is submitted that at least a mention of this factor would have placed his study in better perspective and lent it greater validity.

There is no question, as Mr. James indicates, that there is a long way to go in the perfecting of the administration of justice. Perhaps one would have to be the highest sort of optimist to believe that absolute perfection will or can be achieved. Our main course should be, as the author pleads, to strive to make our judicial system less imperfect. With this plea, this reviewer heartily agrees. Fortunately, and to his credit, Mr. James concludes his book with recommendations for improvement. Certainly justices of the peace and magistrates without legal training should be eliminated wherever they still exist in this nation. Without a doubt the caliber of judges could and should be improved. Most clearly the bar should take the lead in obtaining for the poor the same degrees of legal representation as the wealthy. It is submitted that progress is being made in all fields of judicial administration. It may be that our progress is a little too slow to suit Mr. James. It may be a little too slow to please the members of the bench and bar. This reviewer, however, submits that all worthwhile improvements in the human condition of a permanent nature, must inevitably proceed slowly while man gropes his way through the darkness of imperfection.

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¹ JAMES, *CRISIS IN THE COURTS* 260 (1967).

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