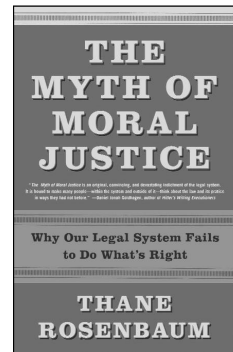


RECOMMENDED READING

The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right

by Thane Rosenbaum (2004, 354 pages)



REVIEWED BY BOWEN H. "BUZZ" MCCOY, CRE



Thane Rosenbaum, lawyer, law professor and novelist, explores the paradox that we are both fascinated and repulsed by our legal system. While we expect justice to be done, the legal system willfully ignores basic moral criteria.

As a result the justice system undermines truth, perpetuates secrets and lies, prevents victims from telling their stories, promotes adversarial enmity over community repair, and fails to equate legal duty with moral responsibility. Legal outcomes that make sense to lawyers and judges feel simply wrong to most people and enrage others. Many view the law as overly logical, technical, narrow, bureaucratic and insensitive to basic human emotions and moral principles. Rosenbaum explores our longing for moral justice using examples from literature and feature films.

Rosenbaum claims to attempt to teach his law students how to enter their chosen profession with a deeper spiritual and moral awareness of what the law lacks. As a novelist, he claims that with all its obsessive insularity and narrowness, its pretense that all that matters is what takes place under oath, the law misses the emotional back-story, the suppressed part of every lawsuit. It relies too much on logic and not enough on compassion. The institution of law defines itself as an arbiter of legal disputes, and not a dispenser of moral lessons or seeker of truths. It thrives on an adversarial process that only takes prisoners and leaves little room for peace. Legal facts override the moral

dimensions of emotional and literal truth. Procedural correctness becomes more important than establishing the truth. Legal ethics has more to do with legal correctness than moral values. Courts pick winners and losers in a zero sum game that fails to resolve emotional distress. The irreconcilable split between the legal and the moral shatters the public's faith in the law.

The novelist Rosenbaum states that the process of the law keeps one from telling their story coherently. Evidence rules truncate and rob stories of their meaning. For one who has suffered pain or loss, the telling of their story is an important aspect of healing, and the court does not provide this outlet. There is a basic incompatibility between grief and monetary damages. When the legal system shuts itself off from the story, it cannot do moral justice. In accepting plea bargaining, we have bargained away the sanctity of the truth for the certainty of jail sentences. The proliferation of settlements prior to trial have robbed the legal process of its therapeutic healing potential of bringing together the community in the search of the truth and the moral lessons that are learned from those truths. A settlement is tantamount to an entirely lawful, economically efficient bribe. Perjury is probably the most under-prosecuted crime in America.

About our Featured Columnist

Bowen H. "Buzz" McCoy is a retired investment banker and former President of the Counselors.

RESOURCE REVIEW

We are trained by lawyers never to admit guilt or apologize. In Japan, when an airplane crash occurs, the president of an airline will go to the homes of each of the families who suffered loss and virtually beg for forgiveness. In many cases this is more redemptive than monetary damages. We risk being punished if we go to someone else's aid. The law cannot compel one to become virtuous. We are all better off when virtue exists in the general population, and we are worse off when it is absent. As the Southern writer, Ala Tate, has written: "The religious unity of intellect and emotion, of reason and instinct, is the sole technique for the realization of values."

Great moralists from Dante to Kierkegaard have warned us that the law cannot be the final arbiter of the good in society. There is a level deeper than the law from which we draw our values. It is the level of the spiritual, religious, or transcendent. It is where in our innermost quiet times, we listen to what the good truly can be. It goes far beyond procedures and precedents. We must each discover our own inner strength, stability and emotional maturity. Perhaps Rosenbaum is asking us to place too much weight

on the law and not take enough responsibility for our own lives.

Once he has made his valid point, the book seems to continue longer than necessary, becoming preachy without resolution. The book is more visionary than practical, and lawyers will be annoyed at the author's superior tone. Provoking lawyers is clearly the book's point.

It is difficult to understand from a practical standpoint how the court system can also be expected to provide emotional healing. Should courtrooms serve as public forums for aggrieved parties cathartically to tell their stories rather than pursue monetary settlements? One can readily predict the reaction of a hardened courtroom lawyer suggesting that the client should: "Get his loving at home!"

Nevertheless, the book provides a mirror into which a middle-aged, burnt-out lawyer can examine himself and recognize once again the potential of what the law could be. ■