

# The Crimes of Punishment

**Author :** Elizabeth Ruth Dale

**Date :** October 21, 2016

Nicole Gonzalez Van Cleve, [Crook County: Racism and Injustice in America's Largest Criminal Court](#) (2016).

[Crook County: Racism and Injustice in America's Largest Criminal Court](#), by Nicole Gonzalez Van Cleve, is a call to action. "Go," she writes in her conclusion. "Go to the courts. Bear witness to what attorneys and judges do and bear witness en masse. Don't let them show you trials, sensationalized murder cases, or heroic acts of litigation. Go as an everyday person, wearing jeans, hoodies, and the like, and take some field notes and some court-watching forms while you are at it." (P. 189.) And then, she writes, act. Vote based on what you see, serve on juries, take pro bono cases, and "slow down the ceremonial charade." (P. 190.) Nothing less, she says, will help us turn the islands of racial punishment that comprise the nation's courtrooms into parts of a just system of law.

As that suggests, Van Cleve has written a stark criticism of the criminal courts at the start of the twenty-first century. Her focus is on Cook County, specifically the felony courts at 26th and California, in Chicago. But the book condemns state criminal courts more generally. Her ethnographic study, based on a thousand hours of interviews and observations conducted by students and court watchers, describes the familiar elements of the modern criminal justice system—plea bargains, inadequate representation—but also highlights recurring moments of racial degradation and racist assumptions at the hands of court personnel, moments that Van Cleve argues distort nearly every interaction in the courts.

The problem of how court actors engage in acts of racialized justice, distorting the promises of due process and other constitutional rights, is the crux of her tale. And in that respect, her work consciously builds on other works that have argued that the "justice" practiced in the criminal courts of the United States is actually punishment. If the idea that the process is the punishment is not unique to Van Cleve, her own contribution is to show, with a degree of detail that is often excruciating and painful, that the punishment provided by legal process is a specifically racial punishment (P. 189).

It is a book that is written in the present, and for the present. Yet her call to action should be answered by legal historians and historians of criminal justice, not just mobilized citizens. Van Cleve's study directly challenges the conventional, if lazy, wisdom that criminal justice in the twentieth century was marked by the rise of rights and the protections of due process. It also nudges us away from the more complicated, but still incomplete, idea that criminal justice over the past hundred years has seen efforts at reform pushed back by policymakers intent on appearing tough on crime. In Van Cleve's account, criminal justice is not so much a system as it is a collection of everyday enactments of Jim Crow.

While many aspects of her book invite inquiry into the histories of the wrongs she describes, two in particular stand out: First, her observation that what was practiced in the courtrooms is "street law," a system of informal adjudication that prioritizes ad hoc punishment over due process. In other parts of the book, she ties that street law to lawless (and often racist) traditions of popular justice, an argument that echoes observations by others, including [Jonathan Simon](#), [Michael Pfeifer](#), and [David Garland](#), that specific court reforms often snuck popular justice into the courts at the expense of the rule of law. Yet Van Cleve's discussion goes well beyond theirs, suggesting that the entire criminal justice system has

become a space of ad hoc, and explicitly racial, injustice. That is a dramatic claim. It is one that historians of criminal law and criminal justice would do well to pursue in more detail.

Equally notable is her second suggestion that while all court personnel—judges, lawyers, and staff—practice racialized justice, the police drive the process. In her study, police officers openly expressed contempt for judges, and used the threat of their ability to destroy a prosecution’s case—by forgetting to appear at trial or at a crucial hearing—to force prosecutors to overlook police misconduct. I found similar moments in my own [recent study](#) of criminal justice in Chicago between 1871 and 1971, which suggest the problem has a longer history than that recorded by Van Cleve’s study. This is, again, a matter of some consequence. As Van Cleve notes, the picture of a court system in thrall of the police, and unable to check police misconduct as a result, explains how Jon Burge and his associates could abuse defendants for so long. It is another problem that deserves greater study by legal historians and other students of criminal justice.

Cite as: Elizabeth Ruth Dale, *The Crimes of Punishment*, JOTWELL (October 21, 2016) (reviewing Nicole Gonzalez Van Cleve, **Crook County: Racism and Injustice in America’s Largest Criminal Court** (2016)), <https://legalhist.jotwell.com/the-crimes-of-punishment/>.