Judge and Punish: The Penal State on Trial

by Geoffroy De Lagasnerie

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Review by Dr Rick Rhodes - University of Hull

Assumed wisdom, and presumed legal fictions are the primary victims of Geoffroy De Lagasnerie’s excoriation of criminal justice processes in liberal democracies.  The core thesis of *Judge and Punish* - a book constructed from primary empirical research (the author observing and extracting the narratives of real criminal trials) and a secondary theoretical analysis - is that the criminal justice system is far from the benign domain of righteous punishment for rules contravened as it is depicted in media, art, and literature, but is in itself an entity that trades in violence.  Through exploiting systems justified on habitual process, or tradition, De Lagasnerie purports that the state employs the criminal process as a mechanism for arbitrary control, and disempowerment of the individual.  The courts become a conduit for violence exacted by a capricious and vengeful state, a state that is purported to protect and serve, but do little more than objectify and sublimate the individual at the price of expeditious political power.  The author concludes that violence is ever-present in the justice system, it is endemic.

In *Judge and Punish* (Stanford University Press; 2018) Geoffroy De Lagasnerie - a Professor of Sociology and Philosophy at the École Nationale Supérieure D’Arts de Paris - invites the reader to undertake a critical assessment of the criminal process.  In disavowing preconceptions based on a socially constructed idea of what justice is meant to be, he asks the reader to see the courtroom not as the arena for administering justice, but instead, to view it as a theatre of violence in which state agencies, operating under a faux legitimacy granted through a coerced social consensus, subjugate, and suborn the rights of the citizenry.  In the author’s opinion, the accused is punished less for the harm caused, and more the proportion to which the state views the action as harmful. De Lagasnerie asserts that courts economize a sacrosanct currency, namely, the liberty of the individual and operationalise it to garner power and control.  In his view the state has monopolized violence.  He notes that where private actors would be reproached for their extra-judicial conduct, the state evades criticism through instructing, or coercing the citizenry to adopt an infra conscious acceptance that perpetuation of violence by the state is prima facie not violence.  Instead, the citizenry regard state exacted domination in a deferential way, sublimating their individual and conjoined autonomy to the unassailable authority of the state.  Leaving the citizen to eventually arrive at two direct and distinctive conclusions.  Firstly, where the state employs violence, it is - de facto - not violence.  Secondly, where we may typify it as violence, the citizenry views the use of said violence as necessary and secondary to the goals of the state - to protect and enable.

The above may imply that the book is without hope, that we are locked in an Orwellian nightmare where the state mandates the rules and instructs the social agencies (the courts) to arbitrate accordingly.  However, it possesses a hopeful tone throughout.  De Lagasnerie contends that all we must do is approach these discussions critically, to rethink, to question, and to problematize, and in doing so, change is possible.

The strengths of Judge and Punish are innumerable.  It confronts the reader, mandating an unbiased inquisition of criminal justice, asking them to view the court process as an external spectator, to ignore, or dismiss the socially constructed understanding of justice we are all victim to, and to explore the processes coldly, and neutrally, and with relentless, critical fervour. Throughout the book is littered with hypothetical interrogative: Why do we allow the system to self-justify, why don’t we question the validity and veracity of criminal sentences?  Should we accept that the rationale for the deprivation of liberty exacted by the court is simply, ‘because those are the rules’?  If nothing else, it asks us to think twice about something we so often accept as given. This academic and intellectual exercise is invaluable for anyone who desires a holistic and serious understanding of criminal justice, an entity and process that is all too often accepted and unquestioned.  Understood as part of the social fabric of life, not as a system constructed by and arbitrated on, by human beings.

Whilst undoubtedly a thought provoking and important text, one cannot help but feel that De Lagasnerie’s work lacks practicality, or the promotion of an alternative model of justice.  Perhaps, one less susceptible to the power imbalance he identifies in the current system. He has much to say about the failures of contemporary criminal justice but barring a theoretical proposition of how we may think about justice in a more informed, and comprehensive way, he offers little on any functional substitute. In some sense it leaves the reader questioning, if not this system, then which?  Whilst this mild criticism may be unfair, as it is not the intention of the author to proffer an alternative model of justice, simply to explore weaknesses and to undertake disquisition, it is the reality that an understood, certain, and effectual solution to criminality is a necessary social imperative. Without this, it may be that De Lagasnerie’s work is limited in its impact, interesting, but impotent.

However, those criticisms notwithstanding, De Lagasnerie’s book is an essential read for anyone possessing even a peripheral interest in justice, criminality, sociology, criminology, or political philosophy.  It is an enlightening tome which moves beyond superficial or socially accepted notions of our responses to crime, and asks the reader tangible questions, most commonly, how we can do better.  This book focuses on an area that is important to us all, the tangible questions of life, liberty and harm that take place every day, in every court, and if De Lagasnerie’s book can improve how we respond to those questions, it justifies itself on that basis alone.