

Free justice: A history of the public defender in twentieth-century America. By Sara Mayeux. Chapel Hill, NC: University of North Carolina Press, 2020. 286 pp. \$26.95 paperback

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Anyone who has worked in or studied public defense has wondered, how did we get here? How did we get to the place where public defender organizations differ so greatly state-by-state and county by county? To this mish-mash of public and private funding? To this uneasy straddle between state agent and vindicator of individual rights? These are some of the questions that *Free Justice: A History of the Public Defender in Twentieth-Century America*, by Sara Mayeux, sheds light upon in a vivid portrait of public defense between the Progressive era and the 1970s.

Free Justice details the origins of the public defender in American legal thought, and its development into the morass we know today. Rich with details about the lawyers and legislators who advanced the idea that a public defender was a necessary piece of the criminal legal system, the book also elucidates the origin concept of the public defender as envisioned by the elite lawyers who championed the office into existence. First and foremost, the organizing principle was, says Mayeux, these lawyers' concept of the "American identity" set in opposition to socialism (p. 15). Second, and relatedly, was the vision of the public defender as the state's adversary, "standing up for the lonely against the state" (p. 113). This champion of the individual merely "happened to receive his paycheck from the government" (p. 16). These conceptions of a defender directly influenced the public/private nature of many public defender's offices in existence today. These offices are chronically underfunded by their state governments and often reliant on private and corporate donations to make up the difference (pp. 130–32). The book is at its best when Mayeux casts her eye on legal history, shedding new light on the importance that both Progressive (Ch. 1) and Cold War (Ch. 3) era ideology shaped the elite lawyers who in turn shaped and controlled the legal profession generally and the infancy of the public defender more specifically. The stories she tells and connections she allows the reader to make are fascinating and exciting.

Free Justice also continues important revisions to the history of the public defender. It clearly demonstrates that public defense neither began nor was hugely changed in character by *Gideon v. Wainwright* (1963). Many have been led to assume that the famous Supreme Court decision was the start to publicly funded defense but as Mayeux makes clear, this is ahistorical (p. 119). *Gideon's* important relegation from centerpiece to just one factor in the shaping of public defense suggests that some of the immense focus on that case as the origin point for celebrations and disappointments voiced over public defense is misplaced (p. 141). On the other hand, *Gideon* did usher in the era of the public defender's work as "triage," a common phrase among the overburdened and underpaid lawyer that populate today's offices (p. 153). As so often is the case when the Court announced new rights, it abdicated entirely any regulatory role for how to execute its pronouncement in the realm of local-court-reality. The Court envisioned an alternate world where courts were pristine bastions of due process rights rather than the world of assembly line justice that is criminal court reality (p. 153). The Court's lack of realism and, perhaps therefore, guidance on executing its vision led to the uneven representation we now see from state to state and even jurisdictions within one state (p. 152).

A combination then of the elite lawyers who dreamed up the offices, and the elite lawyers who made them a constitutional mandate, are responsible for the triage-based representation that many indigent clients receive. Despite the brilliance of many lawyers who run public defender offices and who represent clients, these offices are often a disappointment to the communities they serve

(p. 159; Clair 2020). The most prominent explanation for this is underfunding, but Mayeux's book suggests that it may also be attributable to the disconnect between what elite lawyers held as sacred (individual representation, defenders of due process, adversaries of the state, the triumph of liberalism over socialism) and what the community served by public defenders actually needs, for example, holistic practices, culturally competent attorneys, and intra-racial representation (for more on this see Hoag, 2021).

While Mayeux gestures to the lack of fit between the largely BIPOC communities served by public defenders and the organizing themes of these offices (p. 14), *Free Justice* could have painted an even richer picture if it had attempted to understand and explain the history of the criminal legal system's particular scourge of Black communities, and their experiences with public defenders. This story paints a very different picture than one that focuses on White, elite lawyers (Hoag, 2022). And, indeed, it sheds light on the "could have been" story that Mayeux tells about the idea of "compulsory public defense"—a world in which everyone, rich, poor, Black, and White would be assigned a public defender (pp. 44–45).

Although the concept of abolishing the private defense bar seems entirely foreign today, Mayeux tells us it was a very live idea in the Progressive era, when the concept of public defense was nascent and perhaps at its most idealistic (p. 47). Mayeux is too careful an historian to do so, but we can extrapolate from this idea that compulsory public defense might have landed the largely poor, BIPOC clientele of today in a different situation. In this world, the elite White lawyers' children and friends would also be assigned public defenders. We might then ask, in this world, would we see such chronic underfunding of public defender offices? Would we see such varied representation quality? Would we see public defenders forced to triage cases?

Free Justice sets other scholars up beautifully to ask many new questions. And this is why, along with the many other insights it provides, it is a book very worthy of attention.

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Pragmatism, logic and law. By Frederick Kellogg. Washington, DC: Lexington Books, 2020. 204 pp. \$45.00 paperback

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Professor Frederick Kellogg's recent book, *Pragmatism, Logic and Law*, is hard to describe. It lacks a clear over-arching argument or narrative account, consisting instead of a series of disparate insights and observations. Nevertheless, a theme emerges from it that is both real and important.

The book may be best described as an interpretation and endorsement of a particular version of legal pragmatism, one attributed to Oliver Wendell Holmes, Jr. Professor Kellogg has written four other books on Holmes, and this book continues the theme. He argues that early in his career Holmes drew on his knowledge of the common law in wrestling with fundamental philosophical issues, such as the problem of induction and the nature of scientific inquiry more broadly. According to Professor Kellogg, Holmes's chief insight was to see that scientific inquiry is a social process, which involves many minds and takes place over time—just like the common law (pp. 5–6, 41–42).