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BOOK REVIEWS

Privilege and Punishment: How Race and Class Matter in Criminal Court

By Matthew Clair. Princeton University Press, 2020. 320 pp., $29.95 Cloth

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What difference do race and class make in the attorney–client relationships that are formed between defendants and their lawyers in the criminal justice system? Matthew Clair's deeply observed book, based on qualitative work conducted over a period of years in Boston, offers important insights into the answer. The project began with broader questions about the experience of criminal defendants, who Clair points out are undertheorized in work on the criminal justice. One contribution of this book stems from detailed interviews he conducted with 52 defendants system.

An even larger contribution of this book stems from the observation of the attorney–client relationship of eighteen defendants. That relationship is obviously important, yet extremely difficult to study. Clair first examined it through observation in open court, without having to face what seemed like insurmountable barriers to studying the privileged communications between lawyers and clients. Recognizing the limits of what he learned from that approach, Clair arranged an unpaid internship at the Public Defender's Office that provided a vehicle for observing the privileged communications that constitute the attorney–client relationship. Clair followed three Public Defenders: a Latina woman, a black woman, and a white man. All but one of their clients agreed to permit Clair to observe their interactions. The result is a triumph of qualitative research, providing insight into a relationship that is literally confidential.

Clair makes a persuasive case that the attorney–client relationship *reproduces* race and class inequalities. One of the most striking indications: none of the middle-class defendants disagreed with the statement that their lawyer "did their best to defend them." Fifty-three percent of poor defendants and 42 percent of Black defendants did *not* think that they lawyer did their best to defend them. These stark differences, Clair argues, reflect the difference between "delegation" in the attorney–client relationship and "withdrawal." Delegation, in Clair's terms, means trusting your lawyer, and being able to trust your lawyer is what it means

to be a privileged. Disadvantaged defendants withdraw, in forms that Clair describes as resignation or resistance.

Privilege and Punishment challenges us to take those differences seriously. How should the legal system respond? Clair argues that public defender offices should experiment with ways to allow defendants to choose their lawyer. The lack of choice in the public defender system and the difficulties experienced in trying to change lawyers were common complaints among defendants. But whether some form of choice could ever overcome the underlying reasons for mistrust, or the unfair stigma that stems from "free" services, is questionable.

Clair also argues for more opportunities for defendants to "voice their concerns." One of his recurring observations about defendants who do not trust their lawyers is that they are not passive, as might be assumed. These individuals "make concerted efforts to accrue knowledge about, and to assert their rights." Clair describes how this leads to conflicts between public defenders and clients over strategy, particularly the filing of particular motions. These are framed as conflicts between the norms of professional lawyers and the "cultivated expertise" of defendants. While that framing makes sociological sense, its application does not necessarily come to terms with the problems that result when "cultivated expertise" insists on motions that are clearly inappropriate or legally without basis. Clair softens any conclusion that lay expertise might be wrong, acknowledging instead that it "may be legally irrelevant, at least in the minds of lawyers" (p. 81) or that it "may not be legible to professionals." (p. 77) Clair ultimately argues that defendants' "preferences regarding legal outcomes and procedures should be central to a lawyer's decision making." (p. 188) The case for the former is much more persuasive than the case for deferring to defendants on matters of procedure.

The attorney–client relationship for those with public defenders is defined by the limited, and contested, role of the criminal justice system. The end of the book struggles with the tension between reforms that might improve that relationship and the fact that the relationship would still exist in the broader context of mass incarceration. The desire of defendants "to be heard" often stemmed from issues of police misconduct. Whether those issues were directly relevant to the case at hand was not always clear. But their importance to defendants is undeniable. So is Clair's observation that "[h]istories of racism and classism experienced by disadvantaged defendants are rarely taken into account" in criminal cases. (p.185) The concept of "holistic defense" and the model of Bronx Defenders (p.188) is also a recognition of the limits of courts.

This book was carefully researched, and it is an admirable model of self-conscious scholarship. The book also contains an impressive appendix on the study's methods that describes dilemmas, details key choices, and provides extensive detail on the qualitative data. This is an excellent model for graduate students and a thought-provoking book for anyone interested in how race and class interact with the attorney–client relationship. It is a book that should inspire many future studies.

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