

# A Concept of Justice

One of the greatest illusions that has hovered over national politics in recent years is the idea that the appointment of one or two or three new justices to the Supreme Court would result in, to use the current phrase, "taking the handcuffs off the police." This is an illusion for two reasons—the handcuffs are far more symbolic than real and the odds are that the Supreme Court, regardless of changes in its membership, will not reverse the key decisions that are said to restrict the police.

There is one exception to this thesis—the way the Court has handled the problem of confessions, particularly in *Miranda v. Arizona*—and it is that exception which Fred P. Graham describes as the Court's self-inflicted wound. In the long run of history, he may be right. The Court may have overreached itself in this one aspect of reforming the criminal law and its decision, some day, may be properly set alongside three or four others for which the Court was loudly and strongly rebuked.

If that is so, it will be a pity, not so much because of the inherent validity of this particular decision but because a permanent rebuke would detract from the remarkable achievement of the Court in reforming criminal law.

Mr. Graham's book is readily about that reform, of which the *Miranda* case and the problem of confessions are only a part.

It is the story of a change in the basic form of American justice so broad in its implications that Mr. Graham has trouble getting his arms around it. But that is not so much a criticism of his book as it is a commentary on what has happened in criminal law during the last decade. Mr. Graham's effort is the best that has been made so far to tell the story of what all of us have

*THE SELF-INFLICTED WOUND.* By Fred P. Graham.

(Macmillan, 377 pp., \$7.95)

Reviewed by James E. Clayton

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lived through and few of us have recognized.

Put simply, the situation 15 years ago was that most of the guarantees of individual freedom set out in the Bill of Rights did not protect a citizen from the activities of his state and local governments.

Unless his state had seen fit to grant similar protections in its own constitution, a citizen had no real guarantee against being tried without a jury and without a lawyer to defend him against having his home searched without cause or, even, of being tried two or three times for the same offense.

During the last decade, the Supreme Court has ruled that most of the provisions of the Bill of Rights do restrict state and local governments, as well as the government in Washington. It has compelled a nationalization of the process through which justice is administered and has forced every state to provide at least the same basic protections for its citizens that the federal government grants on a national level.

Mr. Graham tells the story of how and why this came about, pointing out the tales of injustice in local courts that inevitably led the Court to do what it has done. Since no one else, he rightly points out, was attempting to police the police and to ensure that the process of justice was basically fair, the burden of correcting what was really an intolerable situation fell on the Court.

Surely every one of the dozens of prosecutors who stood before the Court defending what had been done in a particular case, understood the problem when Chief Justice Warren asked, as he always did, "Were you fair?"

There are many things in Mr. Graham's book that could be quarreled with. The police will not like what he has to say about the phony nature of many sets of crime statistics. Those like President Nixon, who have made a business out of attacking the Court's handling of criminal law matters will not like the careful defense he makes of many of its decisions or his conclusion that, with the exception of *Miranda*, they now seem irreversible. And the Court's supporters will not like the almost snide tone he uses in describing the constitutional arguments and decisions with which he disagrees or his casual treatment of the ways found by police prosecutors to evade the Court's decisions.

Despite this, however, the book ought to be read by every politician who wants to talk about the Court and the police, and by every citizen who wants to understand what has really been going on.

The revolution wrought by the Court in the process by which justice is administered is too big to be conveyed by newspaper or magazine journalism and Mr. Graham, who covers the Court for *The New York Times*, has helped to fill a gap that sorely needs filling.

W. Post

11/10/70