

# VERA, POLITICS, AND REFORM

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Douglas Corry McDonald. *Punishment Without Walls: Community Service Sentences in New York City*. (New Brunswick: Rutgers University Press, 1986). xix + 278 pp. Notes, index. \$30.00.

Like hot dogs at a baseball game, the Vera Institute of Justice in New York City is part and parcel of criminal justice reform in America. No thorough study of the development and diffusion of pretrial release, diversion of youthful offenders, or victim/witness programs—to take just three examples—can ignore Vera. Yet, despite its importance, much remains unknown about its role as a political entity.

Douglas McDonald, a Vera research associate and project director, did not set out to correct this situation in *Punishment Without Walls*. Instead he ably continues Vera's rare tradition of rigorously evaluating its reforms by examining a recent institute project—community service sentencing in the Bronx, Brooklyn, and Manhattan criminal courts.

McDonald's competent evaluation shows that these courts substituted community service sentences for short-term incarceration and probation or fines even though the target group comprised recidivistic property offenders. This change did not occur without resistance, but it did take place; in this sense community service, at least as designed by Vera, is feasible. In addition, McDonald assesses the policy trade-offs associated with community service, particularly the loss of incapacitative effects.

Accompanying this evaluation is a case study of the reform's implementation. McDonald concludes that bureaucratic or organizational theories of plea bargaining overemphasize the binding effects of consensus and going rates on courthouse participants. Instead he suggests that a "battle model" best describes the adversarial bargaining that he claims prevails in New York's courts. Perhaps Blumberg's (1967) picture is overdrawn, but McDonald offers little direct evidence to support his revisionist interpretation.\*

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\* The guilty plea process mixes consensus and concessions with going rates structuring but not determining negotiations when they occur. The imprecision of McDonald's (p. 259) remark that "the exact proportion of . . . pleas that were negotiated is not easy to discern, but it is undoubtedly very high"

McDonald's (p. 215) criticism stems from his realization that "there is a 'political' aspect of court reforms that involves battles over resources, prerogatives, and power." Yet he fails to extend this idea to include Vera itself; consequently, Vera remains largely in the shadows in much of his account. As an insider, his perspective is turned outward; he highlights the power and interests of players affecting the success of community service sentencing, but not Vera's. Fortunately, the case study provides enough information that a short survey will help in showing Vera as a "reflexively strategic reformer," a model of reform McDonald does not develop very fully in his conclusions.

Community service, Vera hoped, would drive a wedge between jail and probation and thus become an alternative for punishing minor property offenders with prior records. Vera planned to draw half of the program's participants from defendants who otherwise would receive short jail terms and the other half from those who would be fined or placed on probation; in effect, it would reduce the severity of punishment for some while increasing it for others to create a third tier or sentencing level. This 50/50 split later created problems for Vera because it changed who won and who lost under going rates.

This goal came out of Vera's negotiations with the mayor's office, which was concerned about relieving overcrowding in the city's jails but also felt that misdemeanor property offenders were escaping punishment because of limited jail space. Vera, not insensitive to the present *Zeitgeist* regarding the punishment of criminals, stressed restitution and retribution, not rehabilitation or limiting social control, in justifying the program. Despite its track record of authoring or promoting less punitively oriented reforms, Vera portrayed community service as real punishment.

The project's design reflected these goals and conditions. Court representatives were hired to screen eligible defendants, an administratively costly but necessary step if going rates were to be changed. Vera also supervised the work of program participants rather than assigning them to public agencies. Behind this decision (besides objections from public employee unions) was the disillusioning lesson Vera had learned years earlier when its bail project failed after being taken over by the city's probation department. Finally, offenders were sentenced to seventy hours, or ten days, of community service. Absence from the job site or failure to do the work most often resulted in jail terms. As Norval Morris points out in his foreword to McDonald's book, Vera's project was "hard-headed" and "by no means . . . sentimental" (p. xv).

Vera was just as unsentimental when the time came to imple-

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cannot be ignored when he discusses his "battle model." See Nardulli *et al.* (1984; 1985) for a quantitative assessment of individual influences on the guilty plea process and an effort to operationalize the going rate concept.

ment the project. Reform, if it is to be more than tilting at windmills, needs allies, and first in the Bronx and then later in Brooklyn, Vera allied itself with the prosecutor's office. McDonald argues that Vera took this path because current plea bargaining theories led it to believe that going rates pivoted about the prosecutor's office. Political realities also influenced its choice.

Judicial skepticism about community service and defense attorney worries that it would increase punishments left Vera in the arms of the district attorneys, who expressed more enthusiasm for the idea and offered Vera access to their files. More critically, Vera's court representatives used the prosecutors' opening plea offers to identify defendants who were likely to receive short jail sentences, and prosecutors were given a veto over the selection of program participants.

These decisions backfired on Vera. As defense attorneys feared, the projects served prosecutorial interests in the Bronx and Brooklyn. According to McDonald (p. 87), "prosecutors in these two boroughs worked to keep out of the community service project exactly those defendants who were most likely to receive jail sentences . . . thereby frustrating the project planners' ambitions." The net result was an increase in punishment as community service became largely a substitute for probation or fines. Curiously, despite Vera's obeisance to theories stressing the role of consensus in plea bargaining, McDonald does not indicate that Vera tried very hard to win its critics' support before it learned of its mistakes.

These errors came to light through earlier research by McDonald and after the Manhattan project got under way. In Manhattan, where the district attorney staunchly opposed the reform, the program easily achieved its fifty-fifty goal because Vera's new allies—judges and defense attorneys—filled the roles occupied by prosecutors in the other boroughs. With these lessons in mind and an alternative model in hand, Vera sat down with the Bronx and Brooklyn district attorneys (who saw they could lose all influence over the projects) and renegotiated the design of the programs to bring them closer to the Manhattan model. These changes succeeded, but not before Vera fired its Brooklyn court representatives, who had rebelled against the changes and had to be replaced.

Theory and politics interact to create reform. The mix is often uneven, and theory frequently only rationalizes politically guided decisions. This may have been the case with Vera's original plans in the Bronx and Brooklyn, although McDonald would steadfastly disagree. Nevertheless, Vera acted strategically with respect to goals shaped by both political realities and its institutional interests in getting the projects off the ground and working efficiently. If theoretical corners had to be cut, they were, as Vera's tardiness in molding a consensus around the new sentencing alternative suggests.

Vera corrected its mistakes in part because of its reflexivity. A tradition of program evaluation makes it a self-conscious reformer. When research revealed that the prosecutor-oriented programs in the Bronx and Brooklyn had fallen short of expectations, Vera rearranged its alliances. These changes, however, reflect Vera's ability to pull those levers of power to which it has access and to negotiate conflicting interests in implementing criminal justice reforms.

Whether the Vera Institute of Justice can be exported to other cities is an open question. What McDonald's book makes clear is how much more needs to be known about the political workings of this reflexively strategic reformer.

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