

Seeking Justice

A review of *The Fear of Too Much Justice*

By John Charles Boger

The Divine Comedy, the fourteenth-century masterpiece by Italian poet Dante Alighieri, has been celebrated for seven centuries as an extraordinary act of literary and religious imagination. Its gripping opening finds Dante's narrator unexpectedly awakening, "midway this way of life we're bound upon," to find himself in a "dark wood, where the right road was wholly lost and gone," confronted by savage beasts that force him back when he vainly tries to ascend to the sunlit heights above. Dante quickly conjures up a wise and reliable guide, the immortal Roman poet Virgil, who proposes to lead our narrator back to those sunlit heights, though by a circuitous route: by first descending, circle by circle, through the labyrinthine depths of Hell, the *Inferno*, where narrator Dante meets and speaks with a succession of condemned souls, each of whom has succumbed to one of the sins that corrupt any who fall prey to them — lust, anger, deceit, cruelty, selfishness.

The book introduces, one by one, each of the major institutional actors who people the modern criminal justice system, including prosecutors, judges, private and appointed defense counsel, jailhouse informants, juries, prison officials, parole officers and other denizens of this world and underworld.

I hope the readers of *Hospitality* will countenance what may seem an overwrought analogy, yet it was of the *Inferno* I repeatedly thought as I read through this powerful new work by Steven B. Bright and James Kwak. For the authors take readers on a powerful and disturbing journey through the many dark woods and spiraling depths of the modern criminal justice system, revealing one substantive and/or procedural flaw after another — a vision that makes the promise of "equal justice under law" as distant as the sunlit heights toward which Dante looked in vain, especially for America's racial minorities and its poor.

No better Virgil to guide readers here than Steve Bright, the resourceful and undaunted young Kentuckian drawn after law school in the late 1970s first to the nationally renowned Public Defender Service in Washington, D.C., and soon thereafter south to Atlanta and the Southern Prisoners' Defense Committee, where he began a three-decade career as its leader and moral center. Making his home among a small, underfunded yet fearless cadre of lawyers, Steve fought the death penalty and other criminal law injustices across the South. For years he and others at what became the Southern Center for Human Rights stood side by side with shackled death

row clients, some of them defenseless juveniles, in the rural courthouses of Georgia, Alabama and Mississippi, raising constitutional claims before impatient, skeptical, or overtly hostile trial judges.

Bright's evident generosity and selflessness, his legal brilliance, and his unrelenting moral clarity drew to his side a remarkable group of talented and dedicated associates, among them James Kwak, along with others who would go on to create state centers for capital defense work, like Bryan Stevenson with his Equal Justice Initiative in Alabama, Clive Stafford-Smith in Louisiana and Robert McGlasson in Texas. Still others like Sarah Geraghty stayed on at SCHR for two decades to litigate against prison and jail conditions or, like co-author Kwak, eventually to become law professors.

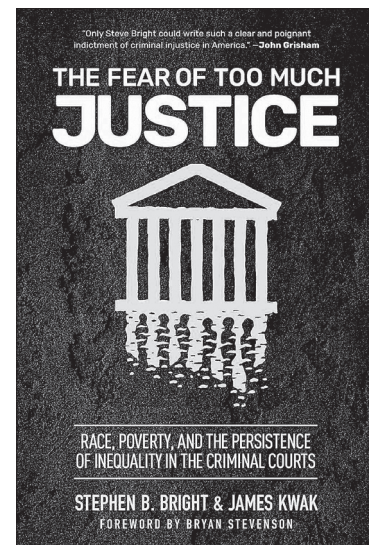
Bright and Kwak have chosen in this book to tell not a single personalized story — like the compelling narrative of wrongfully convicted Walter McMillian whose legal odyssey Bryan Stevenson documented in the brilliant modern legal classic *Just Mercy* — but instead provide a comprehensive catalogue of structural problems for the reader. The book introduces, one by one, each of the major institutional actors who people the modern criminal justice system, including prosecutors, judges, private and appointed defense counsel, jailhouse informants, juries, prison officials, parole officers and other denizens of this world and underworld. It then interweaves an account of many current prosecutorial and judicial practices: demanding high pretrial bail or pretrial imprisonment for most defendants; imposing multiple costs and fees; allowing prosecutors regularly to remove prospective jurors (frequently all the Black or minority jurors summoned); appellate courts deferring to the "choices" deemed made by clearly hapless and/or uninformed defense counsel or by all-white trial juries; and above all, affording prosecutors the awesome, unchecked power to decide what legal charges to bring against arrestees, whether to reduce those charges in exchange for pleas of guilty, and in many states,

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with a foreword by Bryan Stevenson

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whether to reveal or conceal evidence from defense attorneys that might offer valuable defenses. All of these, they show, particularly burden the poor and thoroughly skew the odds to favor conviction and the likelihood of death sentences for many capital defendants.

Step by step, in chapters entitled "The All-Powerful Prosecutor," "Judges and the Politics of Crime," "The White-Washed Jury," "Courts of Profit," and more, Bright and Kwak cast their eyes on the potential for, and the lamentable presence of, abuses that lie everywhere at hand. Moreover, beyond the confines of the courtroom, DA's office, and jailhouse, Bright and Kwak discuss the vast, corrupting sums of private money that have poured into judicial and prosecutorial elections in recent decades and that induce many judges or prosecutors to swear to uneasy voters that they will forever stay "tough on crime" and merciless toward convicted defendants.

Two features of this book's descent through America's contemporary criminal justice *Inferno* prove instructive, if unsettling. First, it provides repeated, real-world examples of astounding acts or omissions committed by ruthless prosecutors, drunk or clueless court-appointed defense attorneys, overworked public defenders, or highhanded and dismissive reviewing courts. We read of injustice after injustice and learn how distressingly many of them, even when brought to light, go uncorrected as innocent prisoners languish for years in prison or go to their deaths by execution. Some of these stories are truly harrowing, almost unbelievable to those who assume that true injustices, once revealed, will surely be remedied.

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A second feature deepens the reader's distress. Bright and Kwak refute any suspicion that they may have selectively chosen outlier examples by sharing multiple credible empirical studies, carried out over decades in dozens of states, that find significant percentages of convictions or sentences have been tainted by one or more of these evils.

Like *The Divine Comedy* itself, which did not heartlessly abandon its narrator in the ninth circle of the *Inferno* but gradually guided him through *Purgatorio* toward the *Paradiso* resplendent above, Bright and Kwak, at each point in their journey, share with readers a series of enlightened criminal justice practices that have been adopted in some model jurisdictions that might well work to eliminate, or at least curb, the worst abuses and practices that they have just disclosed. Conscientious legislators, judicial oversight committees and social justice advocates like *Hospitality* readers could all rely on this book as their guide for reform, demanding a system that at long last lives up to the promise of providing criminal justice. One mystery is why so many states and localities fail to do so. Why do so many harbor a fear of too much justice, as the book's

title laments? Whatever the answer, Steve Bright and James Kwak clearly show why readers should set their shoulders to the wheel to resist oppression and work for a world that would impartially deliver equal justice under law. ♣

John Charles (Jack) Boger is a longtime friend of the Open Door Community. While a death penalty defense lawyer with the NAACP Legal Defense & Educational Fund, Inc. from 1978-1990, he frequently worked with Murphy Davis in support of Georgia Death Row inmates. Jack later taught at the University of North Carolina School of Law, serving as UNC's dean from 2006-2015.



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