

Book Review

Kristin Henning, *The Rage of Innocence: How America Criminalizes Black Youth*, New York: Pantheon, 2021, pp. 484, \$30, hardcover

Laura Coates, *Just Pursuit: A Black Prosecutor's Fight for Fairness*, New York: Simon & Schuster, 2022, pp. 257, \$27, hardcover

Reviewed by Peter A. Joy

These two compelling books about race and the criminal justice system in the United States present contrasting and, at times, complementary accounts of the practice of criminal law, from Professor Kristin Henning's defense and juvenile justice perspectives to Laura Coates's primarily prosecutorial point of view. Henning focuses on the unjustness to the accused, most often presumed guilty because they are Black, and broader issues of race and the criminalization of Black youths. Coates focuses largely, though not entirely, on victims and Coates's own struggles, at times, as an African American prosecutor in a criminal justice system in which race permeates every aspect from arrest, charging decisions, setting bail, jury selection, and jury deliberations to sentencing. Both Henning and Coates focus on stereotyping in which citizens, police, prosecutors, judges, and defense lawyers engage.

Both books achieve their respective purposes and are well worth reading. Henning's book is a close, thorough and in-depth examination of race and the juvenile justice system. She presents the hard realities her clients face as Black youths, as well as the policies and practices that comprise the systemic racism embedded in the juvenile justice system. Coates's book is largely a personal, introspective account of challenges she faced in a "white boys" prosecutorial environment. In telling the stories about the cases she handled, Coates touches upon many of the same themes Henning addresses, along with the difficulties she faced in pursuing justice in an unjust, racialized criminal justice system. By the end of their books, both Henning and Coates are advocating for reforms, though Henning's list is longer and more concrete.

These two books draw on the authors' personal experiences, but in very different ways. Henning intermixes examples from her more than twenty-five years of experience representing youths, first with the Public Defender Service (PDS) of the District of Columbia and later at the Georgetown University

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Law Center's Juvenile Justice Clinic, which she directs. Henning estimates that in all those years, she remembers being involved in the defense of only four youths who were not Black. She uses her experiences, and her research into juvenile justice issues, to contrast vividly how the criminal justice system treats Black youths and white youths. Henning also places many of her clients and stories about her clients' cases in the context of high-profile tragedies, such as the killings of Emmett Till, Trayvon Martin and Tamir Rice, and the unjust convictions of the Central Park Five. She also discusses a multitude of criminal justice statistics and studies that demonstrate and distinctly underscore the injustice of the juvenile justice and wider criminal justice systems.

In contrast to Henning's extensive investigation and account of the criminalization of Black youths, Coates has written a memoir of her time working with the Department of Justice (DOJ). While Coates started with the DOJ during the George W. Bush and Barack Obama administrations in the Civil Rights Division enforcing the Voting Rights Act, she focuses most of her book on the years spent as an assistant United States attorney (AUSA) in the District of Columbia. Though she does not disclose how many years she worked as an AUSA prosecuting charged offenses, she states in the introduction that she made a four-year commitment. At the end of that commitment, Coates left both the DOJ and the practice of law to become a CNN senior analyst and SiriusXM host. Coates is also a former adjunct professor of law at George Washington University Law School.

The Rage of Innocence

In *The Rage of Innocence*, Henning dives right into the inequities of the criminal justice system based on the color of one's skin in her introduction, "Molotov Cocktail or Science Experiment?" (vii-xviii). It is worth summarizing her story to illustrate some of the injustices and unequal treatment the criminal justice system metes out to her clients, which she and her clinic students help their clients combat.

Henning describes her representation of "Eric,"¹ a thirteen-year-old with a vivid imagination. After seeing a Molotov cocktail in a movie, Eric wanted to see if he could make something that looked like one. In his family's kitchen, Eric found a bottle and filled it with a variety of cleaning fluids, including Pine-Sol and bleach, and put a piece of toilet paper under the cap. After admiring his handiwork, Eric placed the bottle in his book bag so it would not spill on the white carpet in his home. This was on a Saturday, and on Monday, when he returned to school, he forgot about the bottle inside his book bag. At the school entrance, where he was screened, a police officer assigned as a "school resource officer" saw the bottle and asked Eric about it. Eric said it was nothing and the officer could just throw it away. It didn't matter to any of the school officials, the police, or the prosecutor that the bottle of household cleaners could never ignite and that the toilet paper could never serve as a viable wick. Eric did not

1. Henning notes at the outset that throughout her book she changed the names of her clients and their family members to protect their confidentiality (vii).

even have a lighter or matches with him. Eric, who was Black, came from a stable home, was a good student, and had never been in trouble. Still, Eric was arrested and charged with possession of a Molotov cocktail, attempted arson, and carrying a dangerous weapon.

When Henning shared Eric's story at a conference, a white woman approached her and told Henning that her son had done the same thing: He had tried to make a Molotov cocktail, and he, too, had brought it to his school. When Henning asked the woman what happened to her son, she said that the school rearranged her son's schedule so that he could take a chemistry class (ix).

In contrast, the police conducted a public arrest of Eric at his school, and thereafter he was ridiculed by classmates and labeled a troublemaker. The school suspended him, and he could no longer participate in group activities. It took Henning and the defense team months of work, including hiring an arson expert to prove that liquid in the bottle would never catch fire and the toilet paper could never work as a wick, before a judge dismissed the charges against Eric "in the interest of justice."

The outrage Henning felt for how Eric was treated, and how so many of her clients have been and continue to be treated, served as the motivation for her book. Throughout the book, the reader sees time and time again more instances of unequal treatment in the juvenile justice system based on race, often combined with class—though, as Eric's story illustrates, even middle-class Black youths face a discriminatory justice system.

In contrast to Eric's story, the first chapter of Henning's book begins with her representation of her first white client, "Jason." Jason, a sixteen-year-old, and four of his classmates crashed a Jewish fraternity party. After being kicked out, one of the boys was angry and spray-painted a swastika outside of the fraternity house. That boy ran away, but Jason and the other boys were arrested and charged with burglary as a hate crime. When the boys were brought for their initial appearance the next day, the judge was surprised to see white teenagers and their parents in his courtroom and, without even hearing the charges, ordered them released—something Henning had never seen a judge do with her Black clients. Later, when Henning met with Jason at his home, he showed her a white supremacy magazine and said he was a skinhead, though "not because I hate Blacks and Jews," but because of economics and politics (4). A few weeks after the youths' arrest, the prosecutor made the unusual offer to dismiss the cases against them if they stayed out of trouble for six months (5). At the time, such a dismissal was extremely rare.

Henning's thorough research is abundantly evident throughout her book, and she presents her findings clearly and convincingly, touching upon every subject related to youths and the criminal justice system. For example, she starts with the "invention" of adolescence by white middle-class parents after the Industrial Revolution, a move designed to give their children the privilege of extended education and greater job opportunities (9). Henning then focuses on disparities between Black and white youths: At every stage of the criminal

justice system, Black youths are treated more harshly. Henning weaves in and intersperses statistics about the disparate treatment based on race with high-profile stories, such as the police killings of Black youths at play, and stories about several of her clients.

Henning does a thorough and thoughtful job of exploring various aspects of the criminalization of Black youths in a trio of early chapters. The first chapter addresses police killing Black youths, such as Tamir Rice, for playing with guns, using cellphones, or attending parties (25-47). The next discusses hoodies, headwraps, and hip-hop to demonstrate the criminalization of Black adolescent culture (48-80). In the final of these initial chapters, Henning refers to the raising of “Brutes” and “Jezebels” and how Black adolescent sexuality has been criminalized (81-105). Together, these chapters paint a convincing picture of how America criminalizes Black youths.

In the next five chapters, Henning explores various aspects of policing. She starts with the policing of Black identity and moves on to police in schools, how police use arrests to enforce obedience even for noncriminal actions, and how neighborhood watch groups are policing by proxy. Henning shows how the constant presence of the police and their proxies causes trauma among Black youth and their communities.

With this background, Henning discusses how Black children are not really treated as children but rather are dehumanized by police and much of society. Henning then uses her penultimate chapter to discuss Black families in an era of mass incarceration. In this chapter, she also discusses how the surviving parents of children victimized by police have become activists for change.

In her last chapter, Henning offers some hope for systemic reform. She circles back to Eric, who, in the summer of 2020, was feeding protestors after the murder of George Floyd (298-302). Eric had turned into an activist for change.

In fact, change is what Henning advocates, and her list of needed changes is long. She starts by advocating for schools to do more to incorporate affirming race history into the curriculum to help students, especially Black and Latinx youths, develop healthy adolescent identities (308-09). Then she advocates for police-free schools (309-13). She discusses proven approaches for safer schools, such as more school-based mental health services to improve attendance and reduced suspensions and expulsions, strategies that can lead to better academic achievement and higher graduation rates (313-16).

Henning’s list of reforms is too long to list here, but her recommendation to rewrite laws to decriminalize Black adolescence, such as by eliminating “sagging pants” laws and those criminalizing “disrupting class” and “disturbing schools,” is essential. As Henning points out, in many ways laws such as these either single out Black youths or permit the police wide latitude to enforce such laws disproportionately against Black youths (330-32). In addition to eliminating some laws, Henning advocates for lawmakers to enact anti-racial-profiling laws, which at least thirty states have done, and to make it illegal to place frivolous 911 calls that criminalize and harass Black people (332-34).

Henning's book complements those by Michelle Alexander, *The New Jim Crow*,² and James Forman Jr., *Locking Up Our Own*.³ Alexander's book, published in 2010, demonstrated how the criminal justice system and the mass incarceration of people of color, especially Black Americans, effectively functions as a system of subordination and racial control. Forman's book, published in 2017, primarily focused on the District of Columbia and how African American leaders and other elites supported tougher penalties for drug offenses and gun possession starting in the 1970s that have contributed to the mass incarceration of Black people. Henning's book directs our focus to the criminalization of Black youths and fills in a missing piece of the mass incarceration picture painted by Alexander and Forman.

Just Pursuit

In *Just Pursuit*, Coates also explores some of the problems of race in the criminal justice system that Henning discusses, though without the research, studies, and data. Instead, it is a collection of stories about Laura Coates's experiences and the "seismic shift" she experienced from being "a trusted champion of people who looked like me" while enforcing the Voting Rights Act to an "often distrusted . . . agent of a system that disproportionately filled prisons with people who looked like me" as a prosecutor (3).

Each chapter tells a different story, and the few chapters that focus on Coates's experiences in the Civil Rights Division present a very different view of her experiences from those in her role as a prosecutor. Not only was she fighting for the rights of Black people in the Civil Rights Division, but she speaks of her own fears of law enforcement while traveling in the South. In contrast, as a prosecutor, she admits to some delight in having power and authority, though, at times, not enough authority to do what she thought was right.

This tension between having some power, but not enough, is the centerpiece of her first chapter. She recounts her struggle and internal conflict between what she thinks is the right thing to do and her role in enforcing a law with unjust consequences when she aids in the deportation of a law-abiding, gainfully employed, undocumented person with a twenty-year-old warrant for deportation. When she discovers the warrant before a trial in which the undocumented person would testify about his ownership of a car that had been stolen, she follows procedures and advises her supervisors. During the balance of the chapter she recounts her struggles to find some way to protect the undocumented victim from deportation. Toward the end of the chapter, Coates finds little comfort in the fact that she was following orders in turning over the undocumented victim to immigration authorities. She concludes the chapter by stating, "But the law, no matter how unjust the consequence, came first that day. . . . I will question that choice for the rest of my life" (22).

2. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLOR-BLINDNESS* (2010).
3. JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017).

The next chapter recounts the callousness of a colleague toward the accused in a case recently assigned to Coates, and the indifference or ineptitude of the defendant's lawyer. Her colleague mocked the defendant and set him up to look like a snitch, presumably to turn him into one, letting the defendant know that he would be treated as a snitch by other persons in custody. Throughout this charade, Coates does her best to interject some decency, but fairness was still missing.

Another chapter focuses on the valiant efforts of a victim, an elderly Black woman whose car was stolen, to cut a break for a twenty-year-old Black defendant. The woman did not want to see the defendant have his life ruined by being sent to jail, and she stated that she wanted no part in prosecuting the young man (47-50). Coates was sympathetic to the young man's situation, but she did not budge from a recommendation for jail time plus probation, even though the judge invited her to reconsider the recommendation after hearing the elderly woman eloquently plead for leniency for the defendant. Coates's rationale for not recommending probation was to maintain her credibility with the judge to help another defendant for whom she planned to ask for leniency. One cannot help but wonder if Coates was really being fair to the first defendant, and the reader feels Coates's uncertainty in making that trade-off.

Later in her book, Coates relates another story of a victim's family begging a judge not to send their son's killers to prison. Coates was not involved in the case but had walked into the courtroom right before the judge, a Black man, sentenced the two young Black men to nearly life sentences (133-36). Coates describes the outbursts by the victim's family pleading with the judge to show some mercy to the defendants, and how the judge held firm, though he was surely troubled by the situation.

In other chapters focusing on her time as a prosecutor, Coates explores several instances in which she sought justice. In one story, she recounts the time she supported and advocated for a domestic violence survivor who feared that the grand jury would judge her harshly for not leaving an abusive relationship. In another chapter she relates her discomfort as a female judge victim-blamed a teenage rape victim for wearing a short skirt. In yet another story, Coates champions a man charged with a crime because of mistaken identity when an incredulous judge barely permitted Coates the time to verify the man's claim. In these and other chapters, Coates demonstrates her caring for victims, including the wrongly accused, and her attempts to seek justice for them.

Coates's book reflects tensions previously discussed in two very different law review articles concerning prosecutors—Roscoe Howard's "Changing the System from Within: An Essay Calling on More African Americans to Consider Being Prosecutors,"⁴ and Abbe Smith's "Can You Be a Good Person and a

4. Roscoe C. Howard, Jr., *Changing the System from Within: An Essay Calling on More African Americans to Consider Being Prosecutors*, 6 WIDENER L. SYMP. J. 139 (2000). Roscoe Howard was the United States attorney for the District of Columbia from August 2001 to May 2004.

Good Prosecutor?”⁵ These two articles present different perspectives on the issues prosecutors face, and Coates’s book also deals with the issues of being an African American prosecutor and trying to be a good person in a criminal justice system that is extremely punitive, especially against people of color.

Howard explored the disproportionate representation of African Americans in the criminal justice system as arrestees and defendants⁶ and how Black people are targeted by law enforcement because of their race and not their activities.⁷ He then argued that having more diverse prosecutors, especially more African American prosecutors, should have a positive impact on decisions concerning whom to investigate and whom to prosecute.⁸ Howard was also realistic about the pressures prosecutors face.⁹

It is clear that Coates struggled with the same disparities that Howard discussed, and it is also clear the Coates believed she could be a force for some positive changes from within. Still, unlike Howard, who believed that as a prosecutor one could exercise discretion to avoid injustice, Coates has been led by her experiences -- such as aiding in the deportation of an undocumented victim and being reluctant to seek mercy for a young man who committed auto theft -- to acknowledge the reality that a line-prosecutor, especially a young one, often has very limited discretion.

In contrast to both Howard’s article and Coates’s book, both of which present the perspective that prosecutors are good, Smith questioned the entire prosecutorial enterprise. She started off with the popular vision of prosecutors being the “good guys” with “white hats,” a view that is widely held.¹⁰ Smith then questioned that view, and explored the morality of the prosecutor’s role in the mass incarceration of and the disproportionate impact on African Americans.¹¹ In discussing these issues, Smith shifted the focus to how the criminal justice system corrupts the good intentions of those lawyers who become prosecutors¹² and the reality that most prosecutors have very little discretion.¹³ Smith concluded her article by stating that she hopes a good person can be a good prosecutor, but that, given the realities of today’s criminal justice system in the United States, she thinks not.¹⁴

5. Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?* 14 *Geo. J. Legal Ethics* 355 (2001).

6. Howard, *supra* note 4, at pt. I.

7. *Id.* at pt. II.

8. *Id.* at pt. III.

9. *Id.*

10. Smith, *supra* note 5, at 355-56.

11. *Id.* at 362-72.

12. *Id.* at 375-79.

13. *Id.* at 385-88.

14. *Id.* at 396-400.

Coates's stories reflect the realities that Smith frankly discussed. Coates was trying to be a good prosecutor but found that meant at times enforcing laws that led to unjust results. Coates's stories are full of African American defendants, and, except in the case of mistaken identity and a defendant who benefited from a judge's victim-blaming, Coates assisted in incarcerating them. It is clear that at times Coates felt uncomfortable in her role within a system requiring her to compromise what she thought was right. Coates also viewed her role as one of prosecuting the conduct and the wrong done to victims; in doing so, she helped to bring justice for the victims—as she put it in her conclusion, “an affirmation that you or someone you love matters, a punitive consequence, and a morsel of hope that the one who wronged you so will be denied the opportunity to be either oblivious to or dismissive of your pain” (253).

One story Coates tells that does not reflect issues discussed by either Howard or Smith is one centering on the tension between Black defense attorneys and prosecutors. In that chapter, a Black female defense attorney questioned Coates about why she is a prosecutor. As Coates tells it, the defense attorney was at times condescending and at other times patronizing, and Coates was annoyed by her condescension (95). When Coates explained that she is motivated to fight for justice for victims, she also stated that she likes being a decision-maker and getting the opportunity to prevent an injustice. When the defense attorney asked Coates to explain the prosecution of drug cases, which Coates's office calls “victimless crimes,” the conversation petered out, and Coates never provided an answer (98). That question remains unanswered by the end of her book.

Conclusion

In their books, Henning and Coates remind us about the stark inequities in the criminal justice system, especially around race. Though their respective roles as a defense lawyer and prosecutor would set them up as adversaries in the courtroom, on this point they are on the same side. If only lawmakers and school officials would heed Henning's call for reforms, there could be some meaningful changes. Until that occurs, there will not be fairness in the criminal justice system.