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Enforcing Freedom: Drug Courts, Therapeutic Communities, and the Intimacies of the State. By Kerwin Kaye. New York: Columbia University Press, 2020. 360 pp. \$35.00 paperback.

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The story of how mass incarceration grew and metastasized over the past half-century in the United States is by now sadly familiar. One source of it was net-widening; criminal sanctions began to be applied to people who previously would have been subjected to other forms of social control, or none at all. Drug courts are a prime example. In the 1980s, the “War on Drugs” captured an expanding number of drug users even as sentencing got harsher. By 1999, “faced with the task of processing too large a number of drug offenders... many jurisdictions turned to the concept of the Drug Treatment Court in order to cope with the increased workload.” (Hora et al. 1999: 439 at 449). Drug courts diverted defendants from expensive incarceration by imposing treatment instead, thus expanding the criminalization net and growing its apparatus, all with the stated goal of creating “normal, ordinary, responsible persons” (NORPS)—that is, drug-free workers who have learned through a program of behavioral intervention to abandon their “drugs lifestyle.” So says Kerwin Kaye in this thorough and critical ethnography of one such program in New York City.

By “December 31, 2014, there were 3057 drug courts in the United States, representing a 24% increase in five years.” (Marlowe et al. 2016: 7) They spawned an entire industry of such “courts,” which are really judicial probation departments: community courts, teen courts, veterans’ courts, gun courts—even, lately, “trafficking courts” in which victims of sex trafficking, not regarded as having committed crimes at all, are nevertheless required to participate in programs. By now, we ought to have a good idea of how well the therapy is working. But the programs

are seldom evaluated in terms of whether participants give up drugs and become NORPs. Instead, lowering criminal recidivism is the measure of success. In this, there has been some, though not spectacular success. Six meta-analyses found 8%–14% reductions in recidivism. (Marlowe 2016: Table 1).

At the beginning of this movement, Hora and her colleagues observed that “DTCs unknowingly apply the concepts of therapeutic jurisprudence.” (1999: 439 at 448. See Nolan’s alarm [1998].) In 2007, Kaye deep-dived into a New York drug court and its partner “therapeutic community” (TC), producing a similar finding, though with a twist. Judges espoused therapeutic justice and energetically coached, cheered, and graduated-sanctioned, but they did not understand the methods or operations of the programs to which they ordered the addicts. Kaye’s excellent analysis of this behavior-modification program and its connection to neo-liberal aims rings true: “neo-liberal crime control... simply presumes a rational actor who would make calculations about the possible repercussions that might follow from criminalized activity ... a far cry from the ethic of self-actualization” supposedly animating therapeutic jurisprudence. “While ‘drug addiction’ plays a justifying role,” he says, “the concept of addiction in no way animates the treatment methodology. Indeed, it is a telling fact that the same model of graduated sanctions is [used] within other parts of the criminal justice system that do not revolve around drug use in any way.” (pp. 52–53).

So, why courts? Shouldn’t judges “adjudicate, not medicate”? (McCoy et al. 2015). Kaye offers a cogent and detailed explanation of the drug court judiciary’s true role, describing coercive paternalism and observing that the law does not permit health workers to intrude into patients’ private facts about drug or alcohol use, but sentencing courts can (Kaye 2019: 59). As for governmentality, he opines, the aim is to create a class of minimum-wage-slaves, formerly enmeshed in “drugs lifestyles,” now taxpayers.

Kaye pushes the point further, claiming that the “racialized” goal is to repress people of color through pseudo-therapy, and he claims that white people are not subjected to such drug court-imposed control, citing data comparing New York City drug courts to those in mostly-white rural New York State. But his urban group excludes the mostly-white NYC borough of Staten Island’s DTCs precisely because their “clients” are white, which biases the statistics (Kaye 2019: 18). If he had delved into the subject of how the state controls white drug users, he would have had to consider the politics of opioids. Between 1999 and 2018, over 667,000 Americans died of drug overdoses, mostly opioid-related. Among these, non-Hispanic white people in non-urban areas had the highest death rates by far. (Planalp and Lahr 2017) Is it better to let people die

than to control them with coercive therapy? That is a topic for a different book. Kaye's careful look into an almost exclusively African American urban TC is excellent; however, overgeneralizing to other communities comes across as puffy academic-speak, as do occasional Foucauldian passages on gender or race.

Ethnography from inside the therapeutic community, the heart of his research, reveals more about neoliberal coercion than high theory does. These TCs escape Eighth Amendment challenges because they are privately-owned. (Kaye 2019: 211–212) Their methods of “treatment” come from 12-step programs and the cult Synanon (which Kaye eviscerates.) They aim for a reconfiguration of the self, achieved through degrading practices aimed at behavioral modification. It is not enough to kick drugs; you have to refashion your entire identity. This is not the managerial risk-assessment utilitarianism of the new penology, which no longer seems new. It is not old-fashioned penal welfarism through rehabilitation, either. Kaye cites Teresa Gowan in calling it “authoritarian medicalization.” (Kaye 2019: 230) Previous punishment philosophies aimed to control the body. These new guys want your soul.

Yet the title of the book is *Enforcing Freedom*. How can drug courts and their treatment facilities as Kaye so clearly describes them possibly be concerned with freedom? The Nazis’ “work will make you free” worryingly comes to mind, but Kaye quotes Rousseau. I do not want to give you a spoiler. Read this incisive critique of therapeutic justice yourself to see the chilling political philosophy.

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