terrorists and hordes of economic migrants, we run the risk that we will turn away those who need our protection most" (p. 268). Others might suggest that the bigger challenge lies in the fact that noncitizens, including asylum seekers, are excluded from the sphere of citizenship rights; the long-standing discourse of foreigners as either potential threats to the nation or subjects of the nations' compassion and humanitarian care leaves little room to argue for their legal entitlements.

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Decisions to Imprison: Court Decision-Making Inside and Outside the Law. By Rasmus H. Wandall. Aldershot, United Kingdom: Ashgate, 2007. Pp. xi+203. $99.95 cloth.

Reviewed by Hadar Aviram, University of California, Hastings College of the Law

Recently, a growing body of literature has examined the implications of Luhmann's systems theory (Luhmann 2004; Teubner 1989) for understanding the legal system, both theoretically (Priban & Nelken 2001) and empirically (King & Piper 1990). Wandall's book is a welcome contribution to the latter category for two reasons: first, it revives the classic criminal courtroom research tradition, redirecting its focus from organizational case processing to the substantive sentencing process. Second, it is set in Denmark, which offers foreign readers a peek into a realm of less punitive criminal justice discourse, more prevalent alternatives to imprisonment, and a more flexible sentencing scheme. Wandall's book focuses on a crucially important court decision, namely, whether to imprison a convicted offender. The book uncovers the legal considerations behind this decision and their permeability to external ideas.

The book opens with a concise explanation of the relevant aspects of Luhmann's theory (particularly, legal closure and contextual openness), providing a workable and not oversimplified introduction to their interpretation in the legal context. Following a brief overview of the sentencing system in Denmark, Wandall presents his methodology, which follows the solid tradition of ethnographic courtroom research, combining statistical analysis with observations and in-depth interviews. He uses it, however, to examine substantive ideas and concepts, rather than systemic and bureaucratic constraints.

Wandall's multivariate logistic regression model explains the decision to imprison as a function of three groups of variables: offense-related (severity of the offense and prior offenses), system-related (specifically, whether the defendant sought a "full layman trial," before a judge and two laymen, or a shorter "summary

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trial"), and offender-related. The model shows that all three sets of variables influence the eventual decision whether to imprison, but the ways they operate differ, in their patterns and combinations, between residential burglaries and violence. As Wandall points out, "[s]tatistical analysis reveals little of the meanings, the rationalities, or the ideologies of sentencing decision-making" (p. 60). And indeed, these findings are not conclusively tied to the overall theme of "internal" and "external" considerations, which is given more attention in the qualitative parts of the book.

Through interviews with judges, prosecutors, and defense attorneys, Wandall shows that the actors are not concerned with abstract penal theories as such. However, his examples demonstrate how these theories are translated into everyday considerations in individual cases, through what he cleverly labels "programmes of imprisonment" (p. 83). Formal variables act as proxies in a process of judicial meaning-making, in which the judges seek to make sense of the past and predict the future. The character and severity of the crime, for example, serve not only as a tool for assessing severity ("standardizing the crime"), but also for understanding the context for the act. Similarly, prior convictions are used as predictors of future offending. Another interesting example is the offender's age, which serves as a proxy for various penal considerations, such as a rationale for giving a "second chance" or an inability to predict dangerousness. Through these examples, we see how these external considerations are "imported" into the legal system, and how their meaning is transformed to make them legitimate internal concerns.

While most of Wandall's findings address substantive considerations of the offense and the offender, he does recognize the organizational need for case processing, which he calls "finality." His conclusion about the importance of finality validates previous work on the subject.

One glaring absence from this discussion, which is fascinating for non-Danish readers, is the impact of race and ethnicity. While foreign birth is one of the variables in the quantitative model, it is later left out of the qualitative discussion and hardly problematized in the book. This can be partly explained by the Danish setting, but one wishes the book provided some broader background that would explain its lack of importance in Danish society. Another interesting theme is Wandall's discussion of actuarial justice (Feeley & Simon 1992) and its absence from Danish penal discourse. Given that the classic literature in the field (Feeley 1979; Eisenstein & Jacob 1977) was produced mostly in American and British settings, and given the book's commitment to uncover the law's openness to external context, it would benefit from a richer socio-demographic discussion.

Notwithstanding these small problems, Wandall's book is a fascinating and important enterprise, which takes seriously what

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judges and other actors say, and not just what they do. Wandall concludes that, notwithstanding the system's adherence to legal discourse, "[s]ome sentencing programmes were applied in manners not intended by the law" (p. 147), and that the organizational perspective, absent from doctrinal analysis, contributes much to the decision to imprison. The book will be of great interest not only to students of systems theory and of criminal courtrooms, but also to anyone who seeks to infuse new life into established research traditions using fresh theoretical frameworks.

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Rule by Law: The Politics of Courts in Authoritarian Regimes. By Tom Ginsburg and Tamir Moustafa, eds. New York: Cambridge University Press, 2008. Pp. 378. $34.99 paper.

Reviewed by Miguel Schor, Suffolk University Law School.

Edited volumes are a necessary scholarly evil. They facilitate broad coverage, but the chapters may be uneven and the themes lost in the wealth of detail. *Rule by Law* is the rare exception that has fine individual chapters and themes that transcend the sum of the parts. It lays to rest the misconception that courts in authoritarian regimes are marginalized political actors. More important, the theory that courts are best understood as part of a democratic regime (Dahl 1957) is enriched by examining the role that courts play in authoritarian regimes. Shapiro is right to conclude *Rule by Law* by stating, "This project represents something of a high water mark in the study of law and courts in general and judicial review in particular" (p. 326).

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