

BOOK REVIEW

LEGAL ACCENTS, LEGAL BORROWING: THE INTERNATIONAL PROBLEM- SOLVING COURT MOVEMENT

James L. Nolan, Jr.
Princeton University Press 2009
264 pages

*Reviewed by Ben Ullmann**

“If you give me another positive urinalysis test, I’ll kick you out on the ass,”¹ said the judge. You might expect these words to have come from a drug court in the United States or perhaps a Hollywood film, but they were spoken by an English judge in a West London courtroom. The judge, who presides over one of the few dedicated drug courts, also said: “I’ve got no problem, if someone’s done well, whether it’s a woman or a man, in giving them a hug and a kiss.”² What is going on here? Whatever happened to powdered wigs, judicial reserve and the stiff upper lip?

Both quotations are from James L. Nolan, Jr.’s latest foray into the world of problem-solving justice, *Legal Accents, Legal Borrowing: The International Problem-Solving Movement*, which

* Ben Ullmann is a Research Fellow at the London-based think tank Policy Exchange and specializes in criminal justice policy.

1. JAMES L. NOLAN, JR., *LEGAL ACCENTS, LEGAL BORROWING: THE INTERNATIONAL PROBLEM-SOLVING COURT MOVEMENT* 57 (2009).

2. *Id.*

describes 20 years of development of what he calls the “international problem-solving court movement.”³ The judge who said them, Judge Justin Philips, presides over the West London dedicated drug court and is one of many judges all over the world who have been influenced by the international problem-solving movement.⁴ His colorful language and bright yellow shirt (emblazoned with “Hugs not Drugs”)⁵ are a far cry from the traditional haughtiness and black robes of a district judge. Although Judge Philips’ eccentricities are still an anomaly on the court circuit, the problem-solving approach has already gained international traction.

In his latest book, Nolan offers a detailed overview and comparative analysis of the international problem-solving court movement. Although the book is critical, it is not polemical. Nolan acknowledges the positive aspects of the problem-solving movement and considers it an “important legal innovation.”⁶ The approach of the book is more a plea to pause for thought, rather than an outright rejection of the problem-solving movement.

Nolan has written previously on the problem-solving court movement. In 2001, he published a critique of the drug court movement, *Reinventing Justice: The American Drug Court Movement*, where he provides a potted history of judicial theories and practices in America since the eighteenth century, and the context and development of drug courts since 1989—when the first drug court in Dade County, Florida was established.⁷ He characterizes the drug court movement as “court-as-theater” where the court doubles as the stage with the judge, lawyers, and court staff being the players.⁸ Nolan suggests that redefining the courtroom roles to emphasize therapy for the “client” could cause serious implications for the conventional frames of justice.⁹

3. See *id.* at 22-23.

4. *Id.* at 46.

5. *Id.* at 58-59.

6. *Id.* at 23.

7. JAMES L. NOLAN, JR., *REINVENTING JUSTICE: THE AMERICAN DRUG COURT MOVEMENT* 39 (2001).

8. *Id.* at 70.

9. See *id.* at 37.

In his latest book, ten years in the making, James Nolan contrasts how other countries (specifically England, Wales, Scotland, Ireland, Australia, and Canada) have imported a number of problem-solving courts from the United States and attempted to adapt them to their own legal cultures.¹⁰ Through this comparative analysis Nolan argues that “while importers often see themselves as adapting the American courts to suit local conditions, they may actually be taking in more aspects of American law and culture than they realize or desire. In the countries that adopt them, problem-solving courts may in fact fundamentally challenge traditional ideas about justice.”

Nolan considers this book a natural sequel to his previous work on drug courts, he turns to the problem-solving movement as a whole. He documents the evolution of the drug court model to other types of problem-solving courts in the United States and how they have been imported to other countries.¹¹ In almost all cases, the non-U.S. countries that have set up problem-solving courts have looked to the United States for their initial inspiration (particularly the Red Hook Community Justice Center and other Center for Court Innovation initiatives).¹² However, Nolan’s critique of the international problem-solving court movement is not based on efficacy. He does not attempt to make a judgment about whether problem-solving courts *work*. His concern is primarily the consequences, intended and unintended, of transplanting a culturally-influenced legal apparatus (in this case the problem-solving court) from one country to another.

In some cases, Nolan argues that the change in process or delivery (e.g., hugs in court) will not be appropriate for the importing country since it will have been influenced by a cultural phenomenon specific to the United States.¹³ In fact, the attitude toward this kind of therapeutic theater is a lot more reserved in the non-U.S. jurisdictions. A comparison, says Nolan, of the development process of problem-solving courts in the United States, England, Wales, Scotland, Ireland, Canada, and Australia reveals an important difference between an American dispo-

10. See NOLAN, *supra* note 1, at 43-135.

11. *Id.* at 251.

12. *Id.* at 84-85.

13. See *id.* at 157-78.

sition characterized by enthusiasm, boldness, and pragmatism, and the contrasting penchant of other countries toward moderation, deliberation, and restraint.¹⁴

In Scotland, for example, one court practitioner noted that self-help groups such as Alcoholics and Narcotics Anonymous, common in the United States, simply do not work in Scottish culture.¹⁵ With a healthy dose of irony she says:

We don't like speaking up, particularly in front of groups. I mean, I'd have to be drunk to stand up in a group and say I'm an alcoholic. I could only do it if I was drunk. If I was sober, nothing on earth would induce me to stand up among a crowd of strangers and talk about myself.¹⁶

Nolan's basic analytical assumption is that law and culture are integrally related and that any kind of international transference of a legal innovation such as problem-solving courts will have some intended and unintended consequences. One of his main concerns is that in the countries that adopt them, problem-solving courts may in fact fundamentally challenge traditional ideas about justice. He uses the image of Lady Justice to describe this fundamental shift:

The image of Lady Justice . . . represents several themes central to classical understandings of justice. Her scales convey notions of fairness and proportionality; her sword, the power of the court to impose a punishment and act decisively; and her blindfold, the ideas of neutrality and impartiality and the absence of prejudice and bias.¹⁷

One participant, at an exchange between American and British officials on the topic of community courts in 2004, defined community justice as "removing the blindfolds from Lady Justice."¹⁸ Nolan considers this an apt description, and one that is potentially problematic for international legal traditions.¹⁹

Professionals involved in problem-solving courts in Canada and Australia are, in general, more disposed to critical reflection and restraint than their American counter-parts. One practitioner in Australia says, "In the excitement to 'progress' the practice of therapeutic jurisprudence in our courts . . . at-

14. See *id.* at 136-56.

15. See *id.* at 133-35.

16. *Id.* at 133.

17. *Id.* at 194.

18. *Id.*

19. See *id.*

tention must be paid to basic principles of justice to ensure the rights of court participants are not eroded.”²⁰

Nolan suggests that “[o]nly time will tell whether and to what extent these cultural infiltrations—be they welcomed or regretted—will result in further homogenization” of legal cultures.²¹ He says that “importing countries wishing to maintain such qualities as deliberation, moderation, and restraint in their local legal cultures [should] recognize the difficulty of disentangling law from its cultural roots.”²² Such an understanding might lead those countries to return to Lady Justice and “more firmly affix her blindfold.”²³

20. *Id.* at 91.

21. *Id.* at 196.

22. *Id.*

23. *Id.*