

Michigan Journal of Race and Law

Volume 22

2016

The Tyranny of Small Things

Yxta Maya Murray
Loyola Law School

Follow this and additional works at: <https://repository.law.umich.edu/mjrl>



Part of the [Criminal Law Commons](#), [Law and Race Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Yxta M. Murray, *The Tyranny of Small Things*, 22 MICH. J. RACE & L. 1 (2016).
Available at: <https://repository.law.umich.edu/mjrl/vol22/iss1/1>

This Essay is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of Race and Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE TYRANNY OF SMALL THINGS

Yxta Maya Murray*

In this legal-literary essay, I recount a day I spent watching criminal sentencings in an Alhambra, California courthouse, highlighting the sometimes mundane, sometimes despairing, imports of those proceedings. I note that my analysis resembles that of other scholars who tackle state over-criminalization and selective law enforcement. My original addition exists in the granular attention I pay to the moment-by-moment effects of a sometimes baffling state power on poor and minority people. In this approach, I align myself with advocates of the law and literature school of thought, who believe that the study (or, in this case, practice) of literature will encourage calls for justice by disclosing buried, yet critical, human experience and emotions.

INTRODUCTION

December 16, 2015

The Alhambra Superior Courthouse broods over the empty stretch of Commonwealth Avenue in Los Angeles's San Gabriel Valley. Its dun-and-cream design bristles with concrete slabs standing sentry-like before an empty, rectilinear structure. The architecture broadcasts a brutalist message that I have heard many times during my 20 years of trying to talk back to the law: this is a physical threat being delivered to you in the voiceless drone of bureaucracy.

I make my way into the menacing building, passing the guarded bag check and moving across an expanse of mouse-colored linoleum. I enter the elevator. Here, I join an aging White man who, with his gaunt visage and disintegrating clothing, bears marks of homelessness. He does not make eye contact, not with me nor our other companion. This third traveler, a dark-haired Latino with large plastic glasses, wears a navy suit and a perky air of geriatricism. He and I exchange greetings and briefly talk about the weather before the elevator coughs us out onto the third floor. The possibly homeless man disappears, and I walk with the dapper gentleman into the courtroom, where I will be watching a Los Angeles Superior Court judge dispatch her morning's calendar.

The judge has won a recent reelection, and is a valued acquaintance. Two months earlier, at a Halloween party in Los Angeles, while dressed as Medusa (me) and a witch with candy cane stockings (her), we chatted about our work. I relayed that my recent project concerned the homelessness problem in our troubled city. The judge explained that during her

* Yxta Maya Murray is a Professor of Law at Loyola Law School. My thanks goes out to Sasha Natapoff, a great reader, friend, and colleague at Loyola, who directed my attention to the work of Amy Bach and the National Association of Criminal Defense Lawyers' report on judicial misconduct.

tenure at the East Los Angeles courthouse she presided over cases involving people sleeping under bridges. She questioned if I were aware that such a thing was illegal,¹ before inviting me to watch her proceedings, now in Alhambra. So I came here today in the hopes of gathering intelligence about Los Angeles, its laws, and its poverty. But what I will soon discover does not really fit into my scholarly agenda so much as infect me with a malaise, whose toxin draws from the senseless, enervating force of state power.

The judge is not presiding yet. My elevator companion saunters up through the short aisle separating rows of blue-upholstered seats in the courtroom's gallery, past a wooden partition-gate bifurcating this theater into two halves. On the other side of the gate sits a long table in the center, a jury box squatting to the left, and a bearded White male court clerk in his fifties lounging and rustling papers in an open cubicle to the right. To the far right, several chairs line up against the wall, one inhabited by a fifty-something Latina offering a brightly striped sweater to the fluorescent haze; I will eventually learn she serves as the much-needed translator. An Asian-American sheriff's deputy, enduring his thirties with the aid of a Cesarean haircut and lavishly muscled arms, guards these officials at his own small station by the partition-gate. A White, brunette female prosecutor with excellent posture perches at the center table alongside a White, bald male public defender who wears a boxy gray suit. The prosecutors briefly chat and giggle, the woman's shoulders shaking when she laughs. The judge's black ergonomic chair yawns behind her artless desk at the very front of the room. California state and federal flags bloom with electric emerald, reds, and blue from brass stands on either side of this homely throne.

I sit at the back row of the field of blue seats. I notice that the room's demographics do not mirror Alhambra's.² In the defendants' territory, I count five Latinos, one Latina, two African-American men, and one other man whose dark hair confuses my racial taxonomy until I eventually hazard a guess on Italian-American. Everyone sits scattered about; no one trades glances. The morose mood recalls the atmosphere of a badly funded hospital. Five minutes after I enter, four young rascals, who might be Cambodian, file in and lift the pall with discreetly mischievous laughter. The men gladden my heart as they take their places right in front of me.

1. LOS ANGELES MUNICIPAL CODE ARTICLE I, § 41.18(b), *Sidewalks, Pedestrian Subways – Loitering*, <https://law.resource.org/pub/us/code/city/ca/LosAngeles/Municipal/chapter04.pdf>.

2. The 2010 U.S. Census counted a population of 28.3% white people, 34.4% Latino/a people, 1.5% African-American people, and 52.9% Asian people. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, ALHAMBRA CITY (2014), <https://www.census.gov/quickfacts/table/PST045215/0600884/accessible>. The median household income in Alhambra from 2010–2014 was \$53,195, *id.*, while California's was \$61,489, CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CALIFORNIA (2014), <https://www.census.gov/quickfacts/table/PST045215/06/accessible>.

The fellow now sitting directly in my eyeline wears a satin bomber jacket with the phrase “Wat Mo Heiztechnik” embroidered on the back. When I later Google this puzzling axiom, I find exactly 0 entries. He guffaws with his friends in a rapid idiom.

“What we’re going to do today is this,” I hear the Public Defender (“P.D.”) say to one of the Latinos, whom he apparently represents. When one of the African-American men tries to ask him a question, the P.D. smiles and shakes his head. “Just a minute,” he says. “I’ll get to you when I can.” He is looking at his files.

Twenty minutes pass. The linoleum floor teems with scuffs. A grove of faux wood paneling clads the walls. Four plastic signs taped to the gate-partition, one bearing the grim mien of Uncle Sam, promise the immediate confiscation of live phones. One Latino slumped to my left nevertheless pokes at his smartphone as if harassing some sleeping creature. He wears an intentional stubble-beard. While scrutinizing his text messages, he caresses his brow with a free hand. He looks up for a moment, scans the room, and we meet eyes. He sits up straight and stops cupping his forehead. Our eye contact jitters back and forth until he returns his attention to the machine. Meanwhile, one of the African-American men—the one who asked the question and was rebuffed—coughs at short intervals. He has a clean-shaven look like the P.D., and wears a plaid scarf across his massive neck. He stares straight ahead, occasionally shuddering from his bronchitis.

On the more triumphant side of the gate, the Latino man with the glasses that I rode with in the elevator sits next to the translator and shows photos of his grandchildren. They chat in Spanish and English.

“He’s so big now.”

“*Sí, verdad.*”

“He’s a good boy.”

“*Dios mio*, they can’t wait for Christmas.”

The White, bearded clerk in his half-cubicle continues ruffling his papers. The sheriff’s deputy looks at me once, then rises from his seat to gossip with the translator and the older Latino about the upcoming holiday.

The three beam with jollity.

A woman and a man walk in. They are both Latino. They sit on the divested side of the room. The woman appears twenty-years-old, and bears a miserable, pale face half-hidden by lanky brown hair. She wears scuffed black shoes, black pants, and a silk-like taupe blouse. The man, I think, is her father: He wears black glasses and a scarf, has no hair, and sits with a fierce, regal posture otherwise unrepresented apart from the prosecutors’ table.

Six of the male defendants, I suddenly notice, resemble boneless-looking heaps. They all unconsciously mirror one another: African-American, Latino, and White—but not the rascals—they slump in their chairs and cradle their faces with one hand. They are all delicately touching their

eyes and lips with their fingertips, the way you would want your mother or lover to touch your face if you were crying. One man in my row, a bearded Latino wearing low-slung jeans and a cap, leans far, far back in his chair, with his hand covering his lower face.

I take out my journal and my ink pen and begin to sketch him. I sketch, too, another woman who sits two rows ahead of us: this small Latina wears her dark-tinted hair in a ponytail festooned with not one, but two, elastic bands, so that her hair divides into three big puffs. She shakes her head at nothing.

The White clerk stands up and disappears out a back door. The sheriff's deputy follows. A few moments later, they lead the judge into the courtroom and the theater suddenly fills with vivacity. The judge is a brisk, small woman of Color, blessed with energy and harmonious goodwill. Upon absorbing her curriculum vitae, as I have, one perceives that her achievements spring from the bounties of impeccable education and generous ambition. She smiles at everyone and sits at her chair, immediately issuing bench warrants for missing defendants.

"Christopher Estrada, failure to appear at, what is it? 10:40 a.m. Bench warrant issued, with a one hundred thousand dollar bond, this is his third failure to appear. . . Alex Hernandez, failure to appear, 10:42. Bench warrant issued, probation revoked. Bench warrant set at thirty-five thousand dollars. . ."

The prosecutor fiddles with her phone, and does not look up. The scruffy-bearded Latino defendant with the smartphone continues likewise. The sheriff's deputy stands up and walks through the partition, straight to him. The defendant slips his phone in his jeans. The sheriff's deputy says, in an easy, quiet voice.

"There's no phone usage here."

"My phone isn't on."

"You can't use that in here."

"It's not on, it's not on."

"I see the light on—come outside with me," the sheriff's deputy says. The bearded man looks at him with a flat expression. The two men walk out and then walk back in about thirty seconds later. The judge has not looked up, and continues issuing bench warrants. The chastened defendant sits back in his chair, his eyes harder. The sheriff's deputy comes up to me.

"Why are you here?"

I look up at the sheriff's deputy. He is handsome and imposing. I am wearing a woolen dress with a pink scarf and black high heels. In my Moleskine journal I write down everything. I am a forty-seven year-old, minimally-built Latina, and so crammed with privilege that I cannot take another bite. But I do not say, "These proceedings are open to the public." I do not say, "That is not your business." I do not say, "This whole thing is kind of gross." I say:

“I’m a law professor and am here to observe and I am friends with the judge and we are having lunch after.”

“She didn’t tell me.”

“I emailed with her this morning, and she said it was okay.”

“Okay. I’ll check with her.”

He leaves and sits back in his chair on the other side of the partition, as the judge begins to take cases. She calls the phone-user’s name, Carlos Nava. He walks through the partition and stands before her. He is about six feet tall, has a full head of black hair that matches his beard, a nice profile, and wears a plaid shirt and jeans. He is about thirty-seven years old. It looks like he is shrinking second-by-second as he stands before the court. His jeans are rumpled and his hands hang at his sides. His dead phone peeks out of his back pocket.

“Mr. Nava you are representing yourself?” the judge asks.

“Yes,” he says.

The judges’ face clouds then clears. “Mr. Nava, you were charged with driving without a valid license and failed to appear. . . what. . . *seven years ago*. Why didn’t you show?”

Mr. Nava’s voice carries to the front of the room, faint and meek. “It was the first time ever I got a ticket and I was waiting for something in the mail, and I didn’t know that I had to come in.”

“But I understand that you now have a California driver’s license?”

“Yes.”

“You had been charged with a misdemeanor, but the People agree to lower that to an infraction as long as you enter a no contest plea. That’s the same as a guilty plea in my eyes. You would have to pay a fifty-dollar penalty, plus assessments, which would amount to \$250. I can give you three months to pay the fine and assessments. With an infraction, you have no right to a jury trial, but a right to a bench trial, which means a trial presided over by a judge like me. You would have a right to put on a defense and a right to remain silent. Are you giving up those rights?”

Mr. Nava does not appear to understand, so she asks him again. “Do you want to go to trial and have the police officer testify? Or do you want to pay?”

The rascals in front of me murmur and chuckle during this exchange.

The sheriff’s deputy leans over the partition. “Do not talk,” he says, with startling clarity. “You cannot talk while Court is in session.”

The four men quiet down and stare at him. The deputy stares back. *Got it?* The deputy turns around and the four silenced scallywags look at each other and smile. But they do not speak to each other or emit a sound for the rest of the proceeding.

“I want to plead guilty,” Mr. Nava says in his low voice.

“Do you want to give up all of your rights?” the judge asks in ringing tones. “Did anyone threaten you to plead? Do you freely plea and waive

your rights? Understand that if you do plead guilty, you could face deportation or be denied naturalization, should you ever apply for it.”

Mr. Nava’s shoulders stiffen, but he nods. “Yes, ma’am.”

“I find you guilty. All in all it will come to . . . three hundred and nine dollars, which you can pay today.”

A beat of silence follows. Perhaps Mr. Nava does not understand how fifty, then two hundred and fifty, dollars turns into three hundred and nine. He nods again. “I will pay it today.”

Mr. Nava shuffles off, to be replaced by the young woman with the silk blouse and the fierce-faced father, one Priscilla Ortiz. Ms. Ortiz pleads guilty to a D.U.I., and is sentenced to thirty-six months probation and mandatory enrollment in an alcohol program, as well as thirteen days of community labor. Her blood alcohol level, the judge frets, was .17.

“That is very high,” the judge says to Ms. Ortiz, who resembles a vanishing specter in her flimsy clothes. The girl’s head and shoulders jut forward, as if she wishes she could dive into an ectoplasmic wormhole that would erupt in the center of the courtroom. “It is very dangerous to human life,” the judge continues. “Understand this: You are getting a good deal today, but if you continue to do this and someone’s killed, you can be charged with murder.”

“Yes, I’m sorry.”

Ms. Ortiz’s father glares at his daughter with such a grim visage, it is as if he is already looking at his daughter behind bars.

More defendants line up and are dispatched. Deputies drag in a shackled Latina whose astonishingly beautiful eyes convey zero emotion when her P.D., a plump White woman with a bob, negotiates a continuance. After the deputies haul her back out, another Latino stands in front of the judge on charges I cannot quite make out. Enrique Alvarez. He, too, has stubble, as well as a glimmering bald spot and loose jeans into whose apertures he plunges his fists. The judge orders Mr. Alvarez to take his hands out of his pockets. He extracts his hands from his pants and says “sorry” in a low mumble. But his limited facility at apologizing in English does not extend to pleading guilty, a process for which he needs the translator and effects in a stuttering back and forth. His renunciation earns him two-hundred-and-ninety-four dollars in fines and fees, as well as ten days community labor.

Next, the White defendant with the dark hair, one Charles Schmitt, faces his charge of possessing Alprazolam, or Xanax. He gets “diversion,” which means that he will avoid criminal charges entirely if, the judge says, he attends twenty-six Alcoholics or Narcotics Anonymous meetings within the next six months and is sure to give the name of his sponsor to the court.

A fourth driving without a proper license case appears on the docket. By my admittedly imperfect count, all of the defendants charged with this

offense today have been Latino or Latina.³ In California, driving with a revoked or suspended license earns the defendant a fine of at least three hundred dollars and a possible jail sentence of up to six months,⁴ and if the defendant drives without a license at all, or with an improper license, the defendant may face a fine of up to \$1000 dollars and a possible jail sentence of up to six months.⁵

The defendant is the woman with the puffy ponytail: Cynthia Noriega, a tiny, gnarled, fifty-something with hollow eyes who wears a loose cotton sweater and jeans. She stands awkwardly before the court next to the bald male P.D., who does most of the talking. Apparently she evaporated after getting ticketed for unlicensed driving.

“That was *twelve years ago*,” the judge says, flabbergasted.

“Well, my son was murdered, and I wasn’t doing too good after that,” Ms. Noriega says. “And I’m bipolar, I have anxiety attacks, I didn’t know what to do –”

The judge puts up a finger. “Ma’am, you have a lawyer, let him do the talking. If you want to talk, whisper in his ear.”

“Okay.”

Ms. Noriega whispers to the P.D., getting up on tip toes to reach him. He leans down, listens, and nods. He does not repeat anything she has said to the court. He stands there and refrains from speaking much at all.

“Do you plead guilty?” the judge asks. Then she goes through the litany of enormous rights that the defendant will waive if she does so.

“I plead no contest.”

“I find you guilty,” the judge says. Ms. Noriega shifts her weight from one foot to the other, as if she is in a hugely long drugstore line. The frayed hem of her jeans drags on the floor. “You did not show up for eleven years,” the judge continues. I do not know why the time has shrunk from twelve to eleven. “I’m giving you eighteen days of community labor.” The P.D. leans down to Ms. Noriega and whispers, loud

3. Data on the racial composition of defendants charged with driving without a license in Los Angeles is difficult to come by. In 2015, Governor Jerry Brown signed ASSEMBLY BILL 953 LAW ENFORCEMENT: RACIAL PROFILING, which will mandate that law enforcement agencies collect data on the racial makeup “of all those encountered by police.” Kim Christensen & Matt Hamilton, *California’s Racial Profiling Law Is ‘Terrible’ Legislation, Police Officials Say*, L.A. TIMES, Oct. 4, 2015, <http://www.latimes.com/local/crime/la-me-brown-reax-20151005-story.html>. There is good reason to worry about racial profiling in the driving-without-a-license and other criminal justice contexts. A “2008 study of LAPD data by a Yale researcher found blacks and Latinos were subjected to stops, frisks, searches and arrests at significantly higher rates than whites, regardless of whether they lived in high-crime neighborhoods.” Joel Rubin, *LAPD Officer Profiled Latinos in Traffic Stops, Internal Probe Concludes*, L.A. TIMES, Mar. 27, 2012, <http://articles.latimes.com/2012/mar/27/local/la-me-lapd-racial-profile-20120326>.

4. CAL. VEH. CODE, § 14601.2, subd. (a), (d)(1) (effective Jan. 1, 2015).

5. CAL. VEH. CODE, §§ 12500 (a), 40000.11; CAL. PEN. CODE § 19.

enough for me to hear: “That’s picking up garbage by the freeway, it’s a good deal.”

Ms. Noriega moves her body in an ambiguous gesture. She twists her back up, as if she has just been prodded between the shoulder blades with a broomstick. She does not say anything.

Three other defendants line up in front of the judge. The coughing man with the plaid scarf accepts three days in jail in lieu of paying a one-hundred dollar fine for another offense I cannot make out, and keeps calling the judge “ma’am” in a warbly voice that he did not use when asking the P.D. his question. A Latino defendant with yet another spindly beard, who has pled guilty to domestic violence, agrees to anger management classes and to pay his seven-hundred-and-twenty-two dollar fine on an installment plan. “I can pay three hundred now,” he says.

“Okay,” says the judge, writing in a ledger.

When the sleeping face-copper who sat in my row shuffles up to accept a two-hundred-and-ninety-five dollar fine for yet another case of unlicensed driving, the room sits nearly empty, except for the four muzzled rascals and me. I am feeling as stone-faced as the Gorgon who was forced to witness her own mirrored reflection. I teach criminal law. I do so with an orderly pedagogy. I have not turned my classroom into a wild-eyed Emma Goldmanian revival. This has been my mistake. Research I later conduct teaches me that California has earned billions of dollars in moving violation fines since 2006.⁶ This jurisprudential Kmart is as confounding as the “Wat Mo Heiztechnik” bomber jacket homily, which I now fancifully imagine as an untranslated Kafka quote.

Aside from Xanax spankings and a price tag of seven-hundred and twenty-two dollars for domestic abuse, the real problem seems to come down to two forces: the paranoid, micro-retributive State and the low-income racial minority, who possesses either a bad filing system or a worse case of manic depression. In what world should going AWOL on a traffic ticket be treated the same as drunk driving,⁷ which kills just under ten thousand people nationwide a year?⁸ Add to this the crime of assigning a

6. See Jon Coupal, *A traffic ticket in California Could Cost You A Week's Pay*, L.A. DAILY NEWS, Apr. 23, 2015, <http://www.dailynews.com/opinion/20150423/a-traffic-ticket-in-california-could-cost-you-a-weeks-pay>.

7. Recall that Ms. Noriega, who was convicted of unlicensed driving, received eighteen days of community labor, and Ms. Ortiz, convicted of a D.U.I., received probation and eleven days of community labor.

8. Mothers Against Drunk Driving estimates that in 2012, 802 Californians were killed by drunk driving accidents. *2012 Drunk Driving Fatalities by State*, MOTHER'S AGAINST DRUNK DRIVING (Nov. 15, 2013), <http://www.madd.org/blog/2013/november/2012-drunk-driving-fatalities.html>. It also estimates that in 2014, 9,967 people were killed in drunk driving accidents and 290,000 were injured in drunk driving crashes. *Drunk Driving Statistics*, MOTHER'S AGAINST DRUNK DRIVING <http://www.madd.org/drunk-driving/about/drunk-driving-statistics.html> (last visited Sept. 19, 2016). CAL. VEH. CODE § 23152 (a)-(b) make driving under the influence of alcohol or drugs a misdemeanor, and driving with 0.08 percent blood alcohol a misdemeanor.

hyper-achieving judge to this absurdist task. In another life she might have been able to cure cancer or solve the Libor problem. And what is worse is that I suspect that I am witnessing the apex of available justice in U.S. courts: this gifted judge cares about other human beings, tries to listen to them, and advises them of their rights in a clear and patient manner.⁹ Moreover, the P.D. stays alert during the proceedings.¹⁰ Yet, the judge's and lawyer's goodness and gifts do not guard against these proceedings' waste and harm.

But it's dangerous to let people drive without a license, a voice says in my head. *It is better to pay fines than go to jail*, it continues. The party line, though, is swiftly drowned out by my clamorous memory of the shy homeless man in the elevator, whose evident and maybe life-crushing inability to pay hundreds of dollars in fines, assessments, and interest seems the end game of this low-end law enforcement.¹¹ In the age of Black Lives Matter, this, too, should gain our full panic, along with the police shootings and the stop-and-frisks: overcriminalization, which makes unregistered driving as punishable as violence against your family. This tiny-scale, yet industrial, degradation of human beings. This tyranny of small things.

At the very least, these miniature traffic offenses should not enter the dark chambers of the criminal law, particularly when we consider the four charms upon which the sorcery of criminal justice practices: retribution, deterrence, rehabilitation, and incapacitation.¹² Retribution and deterrence prove the only mantras that can affirm today's proceedings (at least, I can see no evidence of defendant improvement or fruitful disablement in this melancholy spectacle). Yet the old acrobatics of race and class discrimination probably upends these punishments' corrective powers,¹³ and wring

9. See Robert C. Boruchowitz, Malia N. Brink & Maureen Dimino, *MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA'S BROKEN MISDEMEANOR COURTS* 44-45 (2009) (detailing judicial conduct in misdemeanor courtrooms, including bias against the poor, rushing of cases, illegal jailings, and denials of fundamental rights of defendants); see also AMY BACH, *ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT* 11-25 (2009) (telling of a New York judge who stopped notifying defendants of their rights to have an attorney, started assigning lawyers to the indigent, and recorded guilty pleas without defendants' knowledge).

10. See *id.*, at 3 (telling the story of Joe Frank Cannon, who defended Calvin Burdine for murder at a trial where he, Cannon, fell asleep repeatedly; Burdine was convicted and then sentenced to death).

11. See, e.g., Carimah Townes, *How Driving While Poor Became a Crime in California*, THINK PROGRESS (APR. 8, 2015), <http://thinkprogress.org/justice/2015/04/08/3643497/california-courts-are-just-as-messed-up-as-fergusons> (telling the story of Thaddeus Ford, who became homeless after being unable to pay a fine for a moving violation).

12. See, e.g., *Ewing v. California*, 538 U.S. 11 (2003) (listing the theories of punishment).

13. See, e.g., Jeffrey Fagan & Tracey L. Meares, *Punishment, Deterrence, and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 219 (2008) ("If members of a minority group do not believe that the prison sentences that members of their group receive are fairly distributed, then they may conclude that the policy that produces the unfair distribution is illegitimate. If minority group members reach this conclusion because the law and order program produces asymmetrical incarceration rates, then [some studies suggest]

them of their (already modest) retributive justifications.¹⁴ Make driving without a license a citation-only offense, and let the states turn to other sources of revenue. We may still deal with unlicensed driving: why not attack, instead, the *reasons* for driving without licenses and failures to appear – such as the fear of being marked by the state,¹⁵ paucities of life skills,¹⁶ and health problems¹⁷ – instead of insisting on this sad showing?

Others before me have studied the criminal law's end game: Alexandra Natapoff¹⁸ has winnowed cases and legal thought in her reckoning with the catastrophic effects of misdemeanor arrests and prosecutions, and seeks citations and jail bans.¹⁹ Douglas Husak²⁰ has dug deep into legal theory to develop a jurisprudence that would shrink criminal law's scope.²¹ Many other scholars have also tangled with the codes and philoso-

that members of the group are less likely to comply with the law.”). See also Christensen & Hamilton, *supra* note 4; Rubin *supra*, note 4.

14. Alice Ristroph, *Desert, Democracy, and Sentencing*, 96 J. CRIM. L. & CRIMINOLOGY 1293, 1345 (2006) (“for those who doubt that law’s benefits and burdens are equally distributed today, there is good reason to be a skeptic about desert as a sentencing principle.”). The issue of race discrimination is addressed in notes 4 and 17, *supra*; class discrimination issues are also raised by the specter of the state charging evidently lower middle class and poor people such high fines and assessments. See also Coupal, *supra* note 10.

15. California recently passed a law permitting undocumented immigrants to apply for and receive a state driver’s license. However, news reports indicate that immigrants may fear giving the state personal information. See Elizabeth Lee, *Undocumented Immigrants Apply for Driver’s License*, VOICES AM., (Jan. 9, 2015, 8:01 PM), <http://www.voanews.com/content/undocumented-immigrants-apply-for-drivers-licenses-in-california/2591987.html>.

16. Education in basic life skills may help crime prevention, which is why it is used in jails. See Cindy Chang, *L.A. County Jail Launches Program to Keep Inmates From Coming Back*, L.A. TIMES (Mar. 11, 2015), <http://www.latimes.com/local/lanow/la-me-ln-antirecidivism-jail-20150311-story.html>. It could be made more available in educational facilities serving both minors and adults, though care should be taken that it doesn’t devolve into a pyramid scheme as have some programs. See Lee Romney, *Firm That Teaches ‘Life Skills’ to Suspected Shoplifters Extorts Them, Suit Alleges*, L.A. TIMES (Dec. 29, 2015), <http://www.latimes.com/local/lanow/la-me-ln-shoplifting-suit-20151123-story.html>.

17. See Michelle S. Bernstein, *A Comparison of Mentally Ill Detainees Who Opt-In Or Opt-Out of Mental Health Court 29* (2008) (unpublished Ph.D. dissertation, Nova Southeastern University) (on file with ProQuest) (reviewing studies indicating that mentally ill people were more likely to be charged for failures to appear), <http://search.proquest.com/docview/89128634>.

18. Alexandra Natapoff is Associate Dean for Research at Loyola Law School and a renowned expert on the criminal justice system. See *Alexandra Natapoff*, LOYOLA LAW SCHOOL, http://www.lls.edu/aboutus/facultyadministration/faculty/facultylistlr/natapoff_alexandra (last visited June 20, 2016).

19. Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 101, 162 (2012); see also *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055 (2015).

20. Douglas Husak is a philosophy professor at Rutgers University. See *Douglas N. Husak*, RUTGERS UNIVERSITY, <http://fas-philosophy.rutgers.edu/husak> (last visited June 20, 2016).

21. DOUGLAS HUSAK, *OVERCRIMINALIZATION: THE LIMITS OF THE CRIMINAL LAW* (2008).

phies that drive the criminal justice system's over-extended reach.²² In Alhambra, a ground-level perspective provides a different, yet persuasive intelligence: a close observation of the defendants' poverty and lack of power inspires a refreshment of these arguments so ably that they also chill the heart.²³

I look up, to see that the judge has left the room. The air smells stale. The prosecutor continues checking her phone. I consider the vast amounts of human capital that endow this shabby business. As my calculations swiftly morph into rash, anarchic fantasies, the sheriff's deputy turns around in his seat and looks at the rascals from his side of the room. Another correction appears imminent. The four men look back at him in silence, as he smiles.

"You can talk now," he says.

22. See, e.g., Darryl K. Brown, *Can Criminal Law Be Controlled?* 108 MICH. L. REV. 971 (2010); Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703 (2005); Ellen S. Podgor, *Overcriminalization: The Politics of Crime, Foreword*, 54 AM. U. L. REV. 541 (2005).

23. In this approach, I align myself with advocates of the law and literature school of thought who believe that the study (or, in this case, practice) of literature will aid the aims of justice by disclosing buried yet critical human experience and emotions. See, e.g., MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 43 (1995) ("[I]magination—including its playfulness, including its eroticism—is the necessary basis for good government of a country of equal and free citizens. With it, reason is beneficent, steered by a generous view of its objects; without its charity, reason is cold and cruel."); Robin West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867, 874 (1988) (observing that the literary person can help us "empathize in the [legal] hard case").