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Postscript: Proposals for a Long-Range Program

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POSTSCRIPT: PROPOSALS FOR A LONG-RANGE PROGRAM †

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In accepting the Editor's kind invitation to participate in a Symposium of Connecticut men discussing Connecticut problems, I have found a rationalization in the belief that an outsider may perhaps bring a somewhat more neutral or objective attitude to bear on questions that are important in all the states. Moreover, I have a definite proposal to make regarding a long-range program to improve the entire operation of the criminal law. This proposal may be evaluated in the light of needs and issues disclosed in the foregoing essays, and they, in turn, may find a degree of fruition and permanence in the plan to be proposed.

The contributions to this Symposium are without exception thoughtful observations on important aspects of criminal law administration. They reveal expert appraisals of what goes on and they contain many sound suggestions to improve the present legal institutions. More important yet, they establish the existence of competent officials and students of criminal law who are also conscientious and dependable. Accordingly, nothing said in the following comments may be construed as adverse personal criticism.

The basis for the proposals to be suggested is the inadequacy of the existing criminal law and its administration; hence it is essential to recognize that the present limitations cannot be removed merely by improvement in personnel,

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† [*Editor's note*: We wish to acknowledge our indebtedness to Professor Hall for his valuable comments which he made after reading carbon copies of the various essays. Owing to pressure of time under which we were all laboring in order to meet our September dead-line, it was not possible to work from galley sheets—this made Professor Hall's task all the harder.]

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important as that may be. I assume that a highly competent personnel exists in Connecticut, and proceed to note the limitations that obtain nonetheless.

Approaching the foregoing essays from this perspective, we quickly note some of the prevailing difficulties. In the first place, each writer is rather satisfied and correspondingly uncritical of his own office. This becomes evident when one compares what the writer says about his own office with his remarks about other phases of the criminal law. For example, Commissioner Hickey does not engage in serious criticism of the police, but he has acute and no doubt valid criticism of certain lawyers and trial judges – which, in turn, did not engage Judge King's attention. Mr. Robinson quickly disposes of objections raised against the public defender without really appraising the charge that many more convictions are secured under that system; but he is acutely aware of the advantages of the State's Attorney's office and the need for financial support if the defense of indigent persons is to be adequate. Mr. Steiber finds much merit in the office of the coroner, as it operates in Connecticut, and he hardly considers the objections to that office which abound in the recent literature of criminal law administration. But he definitely recognizes the difficulties resulting from the prosecutor's interference with the coroner's functions. Judge King seems satisfied with the sentencing process while Professor Dession thinks it needs drastic revision.

Turning to another type of situation, we find Professor Dession and Mr. Hodgson supporting different theories of punishment. This concerns perhaps the most important phase of the criminal law, and it merits detailed consideration, which is obviously impossible here. It happens that the writer shares the views implied in Mr. Hodgson's essay and does not accept Professor Dession's thesis that punishment as now administered by competent judges is "merely retaliatory," that it is only an expression of emotion, and that it has negligible deterrent effects. The writer has else-

where discussed in detail an integrative theory of punishment which, while including both deterrence and reformation, also defends the moral significance of just punishment.[1] What is especially significant, however, is that Professor Dession is willing to compromise his views in the light of prevailing public attitudes. There is thus common ground upon which persons espousing conflicting theories of punishment can cooperate in the immediate improvement of the criminal law. But it is necessary to determine precisely what differences in opinion exist and what effects, if any, they have on the solution of actual problems.

Nextly, it is evident that the able essays comprising this Symposium are lacking in the precision necessary to institute sound reforms. What is the actual business of the various offices? What is brought to their attention? What goes on? What is the outcome? Sentences vary greatly, but what do we know about the ingredients of the sentencing process and of the judges who participate in it – beyond guessing that some of them are "tough," others, soft?" How does the present record of convictions under the public defender system compare with previous records? Just what can psychiatrists contribute? How many competent psychiatrists are available and what would be the cost of wide use of their services? How many crimes are committed, how many arrests are made, and what happens ultimately in the various actions initiated? These and many other questions are the sort of questions which any competent board of directors would ask about their business operations. The criminal law and its administration are surely of sufficient importance to engage the necessary efforts to improve it by adopting similarly thorough methods of analysis and study.

Thus, to summarize the appraisal of the present situation: There is no agency in Connecticut to discover exactly what goes on in each office or department of criminal law administration; to *interrelate* the functioning of the various offices

[1] Hall, *General Principles of Criminal Law* (1947).

so that a precise picture of *the whole apparatus* becomes available; to investigate the practices and procedures of other states with a view to discovering areas of possible improvement; to appraise critically proposals for reform and thus make available actual knowledge – not wild claims – which can be utilized; to draft proposed laws and to confer with officials and other groups interested in the improvement of the criminal law and its processes; to conduct its own researches on important problems, e. g., effects of alcoholism on crime, narcotics, better control of automobiles, juvenile courts, etc.

In sum, it is proposed to organize an agency which will combine the functions of a law revision commission with those of a factual research institute as a permanent state organ. It would engage in no advocacy or agitation of any kind, but would restrict its work to research and scholarly exposition of findings and recommendations.

That is my principal suggestion regarding a long-range permanent program for Connecticut. In a state whose Bar includes many thoughtful conscientious lawyers, such a proposal should receive a fair hearing. In order to render such a hearing possible, it would first be necessary to describe the above proposal in detail, or, let it be emphasized, other proposals for long-range programs (e.g., how many persons would be required; just what would their qualifications, duties and objectives be; how and where would they function? What would it cost? How would it cooperate with the legislature? etc.)

To consider such a detailed program might well be the specific objective of a two or three-day conference where experts from both within and outside the State would be invited to discuss certain problems as precisely as possible – in a word, (a) to provide a detailed audit and stock-taking of the existing criminal laws, procedure and administration, and careful recommendations on particular phases of the legal institution and its operation; (b) a Committee to combine and summarize all the specific contributions and draft

a set of Resolutions of the conference regarding a long-range program in such detail as to allow definite evaluation and definite action in pursuance of it.

A final word regarding the need for persistent concerted action must be uttered. Despite the fact that the criminal law concerns the basic interests of the community, it has been neglected by many of the ablest members of the Bar. This has been a very natural development of our culture and no one can be censured for it. But we live in rapidly changing times when, regret it as much as one may, the criminal law is becoming ever more important not only to lawyers in their professional work but to all of us as citizens facing an era of increasing governmental controls. Unless our ablest lawyers are willing to contribute to the breeding of a sound criminal law, they may find themselves and their clients caught in an inextricable web of inefficient, costly, or even suffocating controls. We authoritarians are fully aware of the uses of criminal law. It is time that the able lawyers of a democratic society freed themselves from a suicidal snobbish aloofness, and gave time and effort to the maintenance and improvement of a sound criminal law. This does not mean nor is it intended to suggest that the particular proposals made above are the only avenues of improvement. But it is certain that any sound measures for conserving what is valid and improving what can and should be improved will depend on knowledge rather than on guesses or preferences. Much of the required knowledge is already available; much more can be provided. It will require the cooperation of able, imaginative members of the Bar to provide the initiative and energy to translate rich potentialities into fact.