

Winter 1943

Report to the Judicial Conference of the Committee on Punishment For Crime

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Recommended Citation

Hall, Jerome (1943) "Report to the Judicial Conference of the Committee on Punishment For Crime," *Indiana Law Journal*: Vol. 18: Iss. 2, Article 18.

Available at: <http://www.repository.law.indiana.edu/ilj/vol18/iss2/18>

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REVIEW OF GOVERNMENT PUBLICATIONS

REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME. Washington: United States Government Printing Office. June, 1942. Pp. v, 126.

This is the report of a committee of Federal judges appointed by the Judicial Conference of Senior Circuit Judges to study the indeterminate sentence, the objections of the district judges to Senate Bill 1638 (which provided for the transfer of the sentencing power from the courts to administrative boards), and the general subject of punishment, especially of youthful offenders. The Committee appointed several sub-committees which conducted a number of investigations, consulted specialists in various related fields, submitted reports on Federal Youthful Offenders, The Borstal System, The Los Angeles Forestry Camps for Delinquent Boys, and State Sentencing Practices and Parole Administration, which are published as appendixes to the above report. The report also includes drafts of various acts recommended by the Committee for adoption by Congress.

The significance of this report may be appreciated when it is placed in the context of the long history to improve penological methods. In a word, the chief objectives have been to diminish the purely repressive side of punishment, and, instead, to focus on rehabilitation of offenders. Individualization of treatment has been stressed as against indiscriminate penalization. In all of these matters, quite naturally, youthful offenders have received most attention; for humanitarian motives reach their peak at the spectacle of the enormous rate of criminality in youths under 24, and their appallingly high recidivism. The major difficulties that have blocked progress in this field have been the unfounded claims of the availability of scientific knowledge to rehabilitate, to detect incorrigibility and the like with the corollary that this science could nowise be understood or applied by judges. The fact is that such knowledge is presently almost non-existent. Secondly, some of the reformers, being neither lawyers nor appreciative of the function of law in society and especially in democracies, have ridden roughshod over basic values cherished in this country and protected by a legal system that limits the State and its officials in what they may do to persons charged with or convicted of crime. For these and other reasons the Federal judges by a very large majority objected to Bill 1638, and serious criticism has been made of such proposals as the Youth Correction Authority Act (see, e. g., the reviewer's article in the May issue A. B. A. J.).

Accordingly the Committee faced two basic problems: how to utilize what knowledge is available to aid in wiser sentencing and treatment of offenders and, at the same time, preserve the constitutional and other legal safeguards of the individual against oppression. In the opinion of this reviewer, the present report represents, by far, the best proposals that have thus far been made by any official organization in this country to achieve these ends. This may be seen most readily from the general conclusions reached by the Committee:

1. "The Committee recommends that the sentencing function be left in the trial courts."

2. That before final sentence is imposed, "a board of corrections, upon the basis of a thorough study of the offender in the institution, shall report to the trial court the sentence which it would regard as most suitable . . . the trial court giving to the report such weight as it may deem proper."

3. That the advantages of the English Borstal System of treatment of youthful offenders should be utilized.

4. That, where feasible, various camps be substituted for the vicious conditions in local jails as regards youths sentenced for short periods.

5. That provision be made to permit waiver of indictment and plea of guilty to avoid long incarceration in local jails pending the meeting of grand juries.

6. That every offender be placed on parole for two years following his release, and that various agencies be enlisted to facilitate re-entry into the normal life of the community.

7. That co-ordination of the sentencing, institutional, and parole functions be facilitated (plans and organization are suggested).

The report is recommended for study by all persons interested in improvement of criminal law administration. In an era when the criminal law is embracing wide, new areas of conduct and developing new functions, lawyers engaged in private practice may well be informed in these directions. The report reveals unusually high competence, balanced judgment, and, not least, provides, also, abundant evidence of the qualification of judges to understand the relevant social disciplines, and even to make highly significant contributions thereto.

Jerome Hall