

1918

## Reforms of the Criminal Law

John P. Briscoe

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

John P. Briscoe, Reforms of the Criminal Law, 8 J. Am. Inst. Crim. L. & Criminology 653 (May 1917 to March 1918)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

## REFORMS OF THE CRIMINAL LAW

JOHN P. BRISCOE.<sup>1</sup>

The Constitution of the American Institute of Criminal Law and Criminology provides that the president of the institute shall make an address at the annual meeting in which "he shall review the field of criminal law and criminology" and its results for the preceding year, together with such suggestions and recommendations for the ensuing year as may be considered for the best interest of the institute.

The object and purpose of this Institute is to advance the scientific study of crime, criminal law and procedure; to formulate and promote measures for solving the problems connected therewith; and to co-ordinate the efforts of individuals and of organizations interested in the administration of certain, speedy justice.

Criminology is defined as the scientific study and doctrine of crime and criminals, but in its development it has taken a wider meaning and embraces larger researches. In its practical application, it has inquired into the sources and causes of crime, it has collected criminal statistics and deduced valuable lessons from them, it has sought and obtained guidance in the best methods of prevention, repression and forms of procedure. The champions of law and order have been greatly aided in carrying on the continual combat with crime, and dealing with the most complicated of social problems.

The work and labor of the criminologist has strengthened the hands of the administrators of the law, emphasized the paramount importance of child-rescue and judicious direction of adults, held the balance between penal methods advocating the moralizing effect of open-air labor as opposed to prolonged isolation, and insisted upon the desirability of indefinite detention for all who have obstinately determined to wage perpetual war against society by the persistent perpetration of crime.

Thus, it will be seen we are moving steadily forward to a future improved treatment of the criminal, and may thus arrive at the increased morality and greater safety of society. Very appreciable advance has been made in the increased attention paid to juvenile and adult crime, the acceptance of the theory, now well established, that there is an especially criminal age in the sense of a period when the

---

<sup>1</sup>Justice of the Court of Appeals, of Maryland.

Address of the retiring president of the American Institute at the annual meeting in Saratoga, N. Y., Sept. 2, 1917.

moral fiber is weaker and more yielding to temptation to crime, when happily human nature is more malleable and susceptible to improvement and reform.

The prevention of crime and the treatment of the criminal are largely connected with and may be controlled by proper legislation; and, as crime cannot be entirely suppressed, it is important that such laws should be enacted as will tend to reduce it, and to ameliorate the condition of the criminal.

To this end, the Constitution of the Institute provides, there shall be annually appointed certain standing, general and special committees, who shall deal with the specific problems, the subject matter for the consideration of the committees, and report upon such subjects as may have been decided upon for discussion and consideration by this body. The reports of these committees will be presented in regular order, as they now appear upon the program, and after discussion and consideration they will be open to such action as may be determined upon by the Institute. These committees cover a wide field of criminal law and the important subjects of criminology, such as insanity and criminal responsibility, probation and suspended sentence, drugs and crime, crime and immigration, indeterminate sentence, release on parole and pardon, and many others, which will more fully appear by reference to the program now before you.

In view of the recent decision of the Supreme Court of the United States in *ex parte* United States, reported in 242 U. S. 27, wherein it is held that the federal judges are without power to suspend imposition or execution of sentence permanently in criminal cases, without legislation, the subject matters of probation and suspended sentence, indeterminate sentence, release on parole and pardon, become important and worthy of our careful consideration.

The facts of the case presenting the question to the Supreme Court were these: An accused person was sentenced in a district court of the United States pursuant to an act of Congress, and the court then immediately made an order that execution of the sentence be suspended "during the good behavior of the defendant," the effect of which, if sustained, would have been to exempt him permanently and absolutely from the punishment provided by the act and reflected in the sentence.

Mr. Chief Justice White, in speaking for the Supreme Court in a carefully prepared opinion, said (I quote from the syllabus of the case):

"The Constitution assigns to the legislature the power to enact laws defining crimes and fixing the degree and method of punishment;

to the judiciary the power to try offenses under those laws and impose punishment within the limits and according to the methods therein provided; to the executive the power to relieve from the punishment so fixed by law and so judicially ascertained and imposed.

"The power of Congress to fix punishment for crime includes the power, by probation or other suitable legislation, to equip the courts in advance with such latitude of discretion as will enable them to vary and control the application of punishment to suit the exigencies of each case, in accord with obvious considerations of humanity and public well-being.

"But the courts, albeit under the Constitution they are possessed inherently of a judicial, discretionary authority which is ample for the wise performance of their duties in the trying of offenses and imposing of penalties as the laws provide, have no inherent constitutional power to mitigate or avert those penalties by refusing to inflict them in individual cases.

"At common law, while the courts exercised a discretion to suspend either imposition or execution of sentence temporarily for purposes and in ways consistent with the due enforcement of the penal laws, so as to facilitate action by the pardoning power and avoid miscarriages of justice, they neither possessed nor claimed the power of permanent refusal to enforce them.

"In weight and reason the decisions of the state courts deny the power of suspension here in question.

"The order of suspension, being essentially unconstitutional, may not be sustained because it accords with a practice (of long standing though intermittent and not universal) indulged for the highest motives by many federal judges in Ohio and elsewhere."

Prior to this decision, the practice had existed in some of the state and federal courts to permanently suspend a sentence, and the asserted power was upheld. But the case of *ex parte* United States removes all doubt, as to the want of this power, except in those cases where this power has been exerted and sanctioned by legislation. So far as wrong resulting from an attempt to do away with the consequences of the mistaken exercise of the power in the past is concerned, Mr. Justice White says complete remedy may be afforded by the exertion of the pardoning power: and so far as the future is concerned, that is, the causing of the imposition of penalties as fixed to be subject, by probation legislation or such other means as the legislative mind may devise to such judicial discretion as may be adequate to enable courts to meet by the exercise of an enlarged but wise discretion the infinite variations which may be presented to them for judgment, recourse must be had to Congress, whose legislative power on the subject is in the very nature of things adequately complete.

In some of the states the power is conferred by statute upon the

courts to suspend sentence generally or for a definite time; and they may make such orders and impose such terms as to costs, recognizance for appearance, or matters relating to the residence or conduct of the convicts as may be deemed proper, and if the convict is a minor, the courts may make such orders as to the detention in any care or custody as may be proper.

It would, therefore, seem to be clear in the interest of the administration of the criminal law in the federal courts and for considerations of humanity and public welfare, that the power to suspend sentence and to parole should be controlled and covered by an act of Congress, with such limitations as would not conflict with either the legislative or executive authority as fixed by the Constitution. My own observation and experience upon the bench has convinced me that the statute in force in my own state, empowering the suspension of sentences in criminal cases, is a useful one, if the power is properly and judiciously exercised.

During the past year, three new committees have been appointed: A. Public Defender; B. Teaching Criminalistics in our Colleges and Universities, and C. Drugs and Crimes. These are important subjects to be considered by the Institute, and the subjects will be more fully discussed in the reports of these committees.

Two new subjects, it appears, may be suggested for future consideration, viz., the relation of national prohibition to the commission of crime, and the use of convicts, as laborers, in our army and navy, or upon the farms, and in the occupational and industrial business and pursuits of the country.

The subject of the inferior criminal courts of our various cities could also be a topic of interest, and a committee on criminal courts would be an important addition to the list of the committees of this Institute.

While I have had no opportunity to consult with the various committees or to examine their reports as made and to be read at this meeting, I trust that the suggestions made in this paper will not in any way conflict with those made by them upon the various subjects to be submitted for consideration.

It is apparent that the reforms in the criminal law are being gradually effected by both federal and state legislation, and the modernization of criminal procedure is being so adjusted as to be a guarantee to every man that for any injury done to him in his person or property, he will have justice and right freely without sale, fully

without any denial and speedily without delay, according to the law of the land.

While the present system of the administration of the law cannot be held to be unsound, yet it may be open to reform in some of its details, viz., in the reduction of the costs of litigation and in the solution of the problem of the law's delay.

The members of this Institute of Criminal Law may congratulate themselves upon the success of our work in the promotion of criminological science and in the consideration of the practical problems connected with the administration of criminal justice. There is, however, further and urgent work in the accomplishment of the objects for which this institute was organized, and this will be best attained by a co-operative effort upon the part of those interested in the various problems connected with the Institute for the advancement of the common good.

In conclusion, permit me to say that in preparing this very brief paper, I have been influenced by the sole desire of presenting some practical thoughts or suggestions that might be of service or advantage to the Institute, and not merely to furnish entertainment for the members. The field of criminal law and criminology is a broad one, and the science of jurisprudence is still open for advancement. The law has not been reformed to a state of absolute perfection, and if I have submitted any suggestions that will be found of any help or advantage to this Institute or that will result in improving the procedure or the laws, I will be satisfied.

I now declare the annual meeting of the Institute for the year 1917, to be in session and ready for the transaction of business.