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ACTIVITIES OF BAR ASSOCIATIONS AND LEGISLATURES IN CONNECTION WITH CRIMINAL LAW REFORM¹

JUSTIN MILLER²

It is the purpose of this report to give you, necessarily in sketchy form, an outline of the activities during the last two years of organizations controlled largely by lawyers, in the field of criminal law reform. The report has been prepared from replies to letters sent out to attorneys general and presidents of bar associations in all of the states. The list was supplied by the Secretary of the American Bar Association.

WORK OF OTHER ORGANIZATIONS

It is well to note in passing that important work in this field is being done by other organizations than legislatures and bar associations. In the first place the American Law Institute has appointed two reporters, Dean Mikell and Professor Keedy, both of the University of Pennsylvania Law School, to draft a model code of criminal procedure. These men, assisted by an advisory committee, have made substantial progress upon three chapters, Arrest, Bail and Preliminary Hearings. Other chapters have also been started. I have not time to elaborate upon this work other than to say that it is being done in a very thorough, painstaking way. The work is of quite a different character than that which is being done in restating the substantive law branches, and is presenting many difficulties.

Another important piece of work is that which has been undertaken by the Social Science Research Council. A number of lawyers, including Judge Learned Hand, Prof. John B. Waite of Michigan, Prof. Felix Frankfurter of Harvard, and your Secretary are participating in this work. The Council has under way a survey of all research work which has been or is being done in the United States in connection with the whole subject of crime and the administration of criminal justice. It is hoped that this may be followed by further research work in particular fields where no adequate work has yet been undertaken, as, for example, in such fields as juvenile delinquency, probation, police methods, the relation of the press to crime, criminal statistics, the purpose and methods of punishment and the organization of courts and administrative agencies.

¹A report presented at the meeting of the Section on Criminal Law and Criminology of the American Bar Association on August 30, 1927.

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NEED FOR RE-STATEMENT AND CLASSIFICATION OF CRIMINAL LAW

One of the most serious needs revealed by the preliminary survey is the reclassification and restatement of the criminal law itself, in much the same manner as the work which is being done by the American Law Institute in other branches. Before adequate criminal statistics can be collected, we must iron out some of the discrepancies in this field; before those discrepancies can be ironed out, some hard work must be done in determining the fundamental purposes of the criminal law and in reclassifying it in a more scientific way than has yet been done.

Another agency which is feeling its way in the big field first mentioned is the National Crime Commission. Some very valuable material is being gathered, important studies are being made and the Commission expects soon to be in a position to initiate a constructive program. Among other things it plans to hold a large meeting in Washington in the latter part of October, at which time a program is to be arranged, and representatives of all organizations interested in this field are to be invited. It is hoped that some sort of guidance or direction can be given to organizations of all kinds, which are interested in carrying on this work.

LINES OF APPROACH

In approaching the subject of this report, there are two obvious ways open to us: First, to consider the states one by one or by groups; second, to consider particular methods which have been used and particular laws which have been urged or adopted. For purposes of elimination I will first use the first method and report that from *five* states I received no answers to my letters. Those states are: Alabama, Kentucky, South Carolina, Utah and Vermont.

NO ACTIVITY OF EITHER BAR OR LEGISLATURE

From *thirteen* other states replies were received indicating that no important activity of either bar associations or legislatures had occurred during the last year or two. Those states are: Georgia, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, Oklahoma, Tennessee, Virginia, Washington and Wyoming. To this list should be added the Territory of Alaska.

BAR ASSOCIATIONS INACTIVE

In *ten* states neither the state nor local bar associations have been active in this work. Those states are: Florida, Kansas, Louisiana, Montana, New Mexico, Oregon, Pennsylvania, West Virginia and Wisconsin. To this list should be added the Territory of Hawaii.

LEGISLATIVE INACTIVITY

In *three* other states some activity upon the part of the Bar was reported, but no legislative activity. Those states are: Arkansas, Connecticut and Nevada. In both Arkansas and Nevada, however, the Bar Association activity referred to consisted merely in the discussion of reforms, without recommendation of any changes.

COLLATERAL ACTIVITIES

In *two* other states, Arizona and Connecticut, the Bar Association activity reported related rather to collateral matters. So in Arizona a report was made of activities having to do with the regulation of admission of lawyers to practice, and to a decision of the Supreme Court announcing a forward looking attitude in connection with criminal appeals, a result which has been accomplished in a few other jurisdictions by constitutional amendment or legislative enactment to the effect that unless the error complained of shall have resulted in a miscarriage of justice, it shall not be available on appeal or shall not be the basis of reversal. In Connecticut the State Bar Association has sponsored and secured legislation which has provided for public defenders throughout the state; and the Bar Association of New Haven made a thorough-going investigation of the notorious criminal case of *State v. Macri* in which aggravated shyster practices were investigated and condemned.

ACTIVE BAR ASSOCIATION COMMITTEES

Seven states reported active Bar Association committees working upon the subject of criminal law and procedure. These were: Colorado, Illinois, Minnesota, North Carolina, Ohio, South Dakota and Texas.

CITY AND COUNTY ORGANIZATIONS

Nine City or County Associations reported active committees similarly engaged. These are the Bar Associations of the following places: Los Angeles County, Denver, New Haven, Chicago, Boston, Ramsey County and Hennepin County, Minnesota (where the Twin Cities are located), New York City, Cleveland and Philadelphia.

COMMISSIONS AND COMMITTEES

In *thirteen* states there have been created commissions for the survey of crime conditions or for the revision of the criminal law; California (in which state a commission for the revision of criminal procedure has completed its work and a new commission for a crime survey has been provided for with a substantial legislative appropriation), Illinois, Louisiana (to draft a code of criminal procedure), Massachusetts (a survey of Greater Boston conducted by Harvard Law School, in

which the Boston Bar Association has participated through an advisory committee), Michigan (prepared a new criminal procedure Act), Minnesota (has completed a crime survey), Missouri (originally sponsored by the Bar Association, the Missouri Association for Criminal Justice carried on the most extensive survey to date), New Hampshire (appointed a Commission without funds, which recommended a state police and a bureau of criminal statistics but the legislature failed to act upon these suggestions), New York (is now engaged in conducting a criminal survey), Ohio (provided for by the legislature to draft a new criminal code. The Governor vetoed the appropriation, but the commission is going ahead, anyway), Pennsylvania (1. The Law Association of Philadelphia conducted a survey and published a report thereon in 1926. 2. A penal law commission has been created to study and revise criminal law and procedure. 3. A commission on penal institutions has been created to make a similar study), Rhode Island (a continuing unsalaried commission of seven members called a "Criminal Law Advisory Commission" to make a complete study and survey of criminal law and procedure and to report annually), West Virginia (a codification commission has been at work for six years; it will eventually revise the criminal procedure of this state). To this list should be added the District of Columbia where, under a resolution of Congress, an extensive revision of criminal law and criminal procedure is planned for the near future.

CODE REVISION

In *five* states more or less extensive revision of the code of criminal procedure was accomplished at the last session of the legislature. These states were: California, Indiana, Michigan, Minnesota and New York. In addition, in *ten* other states minor revisions have taken place. These states are: Colorado, Florida, Idaho, Iowa, Kansas, Missouri, Montana, Pennsylvania, South Dakota and Texas. To this list should be added the Territory of Hawaii.

TENDENCIES IN LEGISLATION

Some of the most common tendencies in legislation are illustrated by the following examples:

1. Legislation designed to eliminate delay in the process of criminal trials, including the time within which appeals can be taken in criminal cases. *Eight* states, California, Delaware, Idaho, Indiana, North Dakota, Oregon, Pennsylvania and Wisconsin, have passed laws to accomplish this end.

2. *Seven* states at the last sessions of their legislatures adopted habitual criminal Acts modeled in large part after the Baumes Act in

New York, about which we will hear at our session this evening. These states are: California, Florida, Minnesota, Missouri, North Dakota, South Dakota and Wisconsin.

3. Another tendency which has manifested itself is the simplifying and liberalizing of pleading in criminal cases. *Four* states, California, Delaware, Iowa, Minnesota and the Territory of Hawaii have passed laws designed to accomplish this purpose.

BUREAUS OF CRIMINAL IDENTIFICATION

Four states created Bureaus of Criminal Identification at the last legislative sessions. These were: Indiana, Minnesota, Rhode Island and Wisconsin. The most comprehensive of these laws is the one adopted in Minnesota, where the Bureau is known as one for "Criminal Apprehension" rather than identification.

INCREASED PUNISHMENT, WHERE ACCUSED HAD DEADLY WEAPON

In *four* states, California, Minnesota, Missouri and New York, laws were passed providing heavier punishment in case the accused should be found to have possessed a deadly weapon at the time of the commission of the offense or at the time of his arrest.

INITIATION OF PROSECUTION

In *three* states greater liberality in the initiation of prosecution has taken place. So in Indiana the power of the Prosecuting Attorney to initiate prosecution by an affidavit without preliminary hearing has been extended. In New Mexico the information has been authorized to be used in lieu of the indictment and the Grand Jury has been cut from twenty-one to twelve members. In Oregon the District Attorney is now permitted to file an amended indictment to cure defects in form and, where the accused waives indictment, an information may be used.

JUDICIAL COUNCIL

From *four* states reports have come regarding judicial councils. So in California power has been given to the Judicial Council to prescribe rules governing the making up of the record on appeal in criminal cases. In North Dakota the Judicial Council is given power to organize a bureau of criminal statistics and all state officers are required to co-operate in gathering the same. In Rhode Island and Kansas councils have been created with instructions to study the criminal laws and to suggest changes.

BAIL BONDS

In *four* states, California, Indiana, Minnesota and New York, an effort has been made to remedy existing evils in connection with bail bonds by making more stringent regulations governing their use.

INTERESTING NEW CRIMES

In California and in Iowa it has been made a felony to possess a machine gun. In California the offenses of larceny, embezzlement and false pretenses have been consolidated under the title of "Theft," and in the same state it is made a felony to own or operate a still.

EXTENSION OF IDEA OF CLINICAL TREATMENT

1. In Colorado it is provided that in the case of persons who enter pleas of insanity, they shall be placed under observation and given clinical treatment.

2. In Wisconsin it is provided that medical and psychiatric examinations shall be made of all persons convicted under the Habitual Criminal Act, and it is further provided that medical examinations of all convicted persons may be required by city or county ordinances.

PLEA OF INSANITY

In California and Colorado special pleas of insanity are required, the issue being no longer available under a plea of not guilty.

STERILIZATION

Indiana has joined the ranks of those states which have provided for the sterilization of "inmates of state institutions."

OTHER INTERESTING CHANGES

Other interesting changes are to be found:

1. In South Dakota and Wisconsin, where the defendant's failure to testify has been made a proper subject of comment by the Prosecuting Attorney.

2. In New York the state has been given the right of appeal in all criminal cases except from verdicts of not guilty.

3. In California provision has been made for the examination and selection of jurors in criminal cases by the trial judge.

A NOTE OF OPTIMISM

It would not be proper to close this report without commenting on the fact that from three states have come reports that all is well in the administration of criminal justice. Messages of such import have been received from Nebraska, Oregon and Wisconsin.

In conclusion let me suggest that such a report as this might well be made an annual contribution of the Section on Criminal Law. It would serve to put in perspective the activities of the legislatures and bar associations throughout the country. Its publication in the report would no doubt serve to suggest other means of approach to those states in which an interest is being taken in the reform of criminal law and procedure, and in states where nothing is being done, it might provide an inspiration.