

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

Sentencing the convicted offender is a critically important nexus in the process of criminal justice administration. Signalizing, on the one hand, the termination of the trial phase, sentencing must accurately reflect the community's attitude toward the misconduct of which the offender has been adjudged guilty, and thereby ratify and reinforce community values. Marking, on the other hand, the threshold of the sanction or treatment phase, however, and largely defining its character and length, sentencing must also look to the offender's rehabilitation, to his restoration as a functioning, productive, responsible member of the community.

These objectives are, in a sense, somewhat complementary. Both recognize and subserve the interests of the community and those of the offender, however different their emphases may be. Thus, the first objective, despite its strong community orientation, does not ignore the offender as an individual, since his rehabilitation requires his acknowledgment and acceptance of the obligations of community life. The second objective, likewise, despite its focus on the offender as an individual, does not ignore the community, since the community has a vital stake in his realization of his potential and the consequent social contribution that he can make. Nevertheless, the sentencing authority must, in each case, still discriminate the quite distinct policies underlying these objectives, strike an appropriate balance between them, and shape its decision accordingly.

But how is this discretion optimally to be exercised? Where should responsibility for decision be vested? What alternative types of disposition should be made available? What limitations should be imposed on severity of the sentence? What criteria should be employed as guides? It is to an examination of these and other related questions that this symposium is directed.

The conscientious discharge of the sentencing function, wherever it may be lodged and however it may be circumscribed, has been greatly facilitated by scientific tools and techniques. Their constant refinement and growing reliability and precision are rendering them increasingly more widely and readily employable. Designed to disclose the unique needs of each offender, these adjuncts purport, within certain broad bounds, to obviate the more blatant shortcomings of present sentencing practices by permitting a rational and supportable individualization of justice. Many

of these advances are still in a rather primitive stage of development and are not, of course, as completely satisfactory in actual operation as ideally might be wished. But their promise is bright, and the prospect of their even greater utility and recognition and influence is hopeful.

In effecting any changes in sentencing practices, however, due regard must be had for the institutional framework within which they must be implemented. Existing systems of criminal justice administration are geared to certain pragmatic patterns and procedures. The expected benefits of any projected sentencing structure or correctional philosophy, therefore, must carefully be weighed against the resultant disequilibrium its adoption might entail, and appropriate safeguards must be taken. Otherwise, supposed progress may well prove to be illusory, and the hard-gained victory Pyrrhic.

Much in the way of time, energy, and resources has been devoted in recent years to thorough-going analysis and evaluation of these and other aspects of the sentencing problem. The fruits these studies have borne may be seen most clearly in the sentencing proposals now being articulated by the American Law Institute and the National Probation and Parole Association, which, although similar in many particulars, diverge quite markedly in others. In assessing the merits of these and similar formulations, the extensive and highly-varied experience of other countries of more or less cognate culture and tradition may, perhaps, afford illuminating insights.

The editors recognize that few, if any, new considerations may be injected into a discussion of this much mulled-over subject at this late date; and in this sense, their efforts may be superogatory. They hope, however, that by its balanced, unified, and rather comprehensive presentation, this symposium will generate interest in still new quarters, promote still further ventilation of basic issues, and, thus, albeit in a small way, conduce the sound resolution of a pressing social problem.

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