

Book Review: Report of the Canadian Committee on Corrections

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BOOK REVIEWS

HERBERT L. PACKER*

REPORT OF THE CANADIAN COMMITTEE ON CORRECTIONS.
Ottawa, 1969. \$5.00.

There are both advantages and disadvantages in asking a non-Canadian observer to review this Report. The primary disadvantage is that the reviewer is unacquainted with the details of the Canadian situation. On the other hand, there is the advantage that the reviewer may have had occasion to review a similar Report in his own country.¹ One, no matter what his familiarity with the general subject-matter nor his unfamiliarity with its Canadian aspects may be, cannot help recording at the outset his admiration for the work of the Ouimet Committee.²

At the outset, the composition of the Committee requires comment. Two lawyers (one a judge),³ a police official,⁴ a correctional officer⁵ and one laywoman⁶ made up the Committee. As I have elsewhere observed,⁷ the composition of commissions studying the crime problem leaves much to be desired. I should have liked to see a legal scholar, a philosopher and a behavioral scientist included. The predominantly "official" nature of the group at least did not run afoul of the President's Crime Commission's police and prosecutorial bias.⁸ The one separate statement by the lay member is reminiscent of the minority statement, also by lay members, which challenged the President's Crime Commission for burking the issue whether narcotics possession ought to be criminal.⁹

I can't comment on Mrs. McArton's federalism point, but I heartily approve her statement that:

The kinds of behaviour which I consider are appropriately viewed in this light include vagrancy, attempted suicide, use of harmful drugs, excessive use of alcohol, sexually deviant behaviour which does not involve violence or the corruption of minors, and most forms of prostitution. In view of the principles

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¹ See, e.g., Packer, *Review of A Report on the President's Commission on Law Enforcement and the Administration of Justice*, *The New York Review of Books*, October 12, 1967, p. 17.

² So referred to after its Chairman, Mr. Justice Robert Ouimet.

³ Mr. Justice Ouimet and Mr. G. Arthur Martin, Q.C.

⁴ Deputy Commissioner J. R. Lemieux, R.C.M.P.

⁵ Mr. W. T. McGrath, Executive Secretary, Canadian Corrections Association.

⁶ Mrs. S. P. McArton, Executive Director, Family Bureau of Greater Winnipeg.

⁷ *Supra*, n. 1.

⁸ *Ibid.*

⁹ See *Additional Views of Dr. Brewster (President of Yale University) et al., Report of the President's Commission on Law Enforcement and Administration of Justice*, p. 302.

outlined in Chapter 2 of our report, I do not believe these forms of behaviour to be appropriate to the jurisdiction of the criminal law or the methods of the criminal justice system. They should be considered primarily as social problems, to be met by social treatment measures. (p. 504)

It is, I submit, a pity that this statement was not included in Chapter 2 of the Report. The problems with which the Report is concerned would, in my judgment, be greatly ameliorated if the scope of the criminal law was subjected to a thoughtful reconsideration.¹⁰ Until this task is undertaken, the work of the Ouimet Committee must be termed incomplete.

The Report is replete, nonetheless, with a spirit of the kind of humanism in which the reconsideration which I have applauded Mrs. McArton for advocating must be carried on. I particularly admired much that I found in Chapter 5 on the role of the police in a democratic society. It would be tedious to compare details in the United States; but I think that few would question that the Canadian police seem to be far less infected with the kind of para-military totalitarianism that afflicts the police in my country. Despite differences in the judicial roles in the two countries, a common-sensical attitude appears to influence official attitudes in Canada. How very admirable I find the Committee's recommendation on the permissible use of firearms by the police.¹¹ I might make the same comment on the Committee's explicit refusal to recommend "stop and frisk" legislation.¹² I venture to observe that this statement could not, in the prevailing climate, have been made by a body including a high police official in the United States. It is also refreshing to note the Committee's attitude toward sanctions for illegal searches,¹³ toward entrapment,¹⁴ and toward electronic surveillance.¹⁵

Chapter 7, dealing with *Bail*, is somewhat puzzling to an American. On the one hand, the proposals to extend the "powers" of magistrates to grant bail¹⁶ and the flat recommendation that professional bondsmen be outlawed by legislation¹⁷ seem eminently forward-looking. However, the endorsement of the "preventive detention" function of holding people in pre-trial custody seems odd to one schooled in a legal tradition which views pre-trial release as a "right".¹⁸ The Report scants the difficulties of the kind of prediction required by pre-trial preventive detention.¹⁹

Chapter 8, on *Representation of the Accused*, presents a vivid picture of the disarray which seems to prevail in Canada with respect to the provision of legal services. Here, "federalism" seems to bulk large as a stumbling-block. Having regard to difficulties of which an outsider must be unaware, I found the

¹⁰ See, e.g., Packer, *THE LIMITS OF THE CRIMINAL SANCTION* (1968).

¹¹ p. 61.

¹² p. 57.

¹³ pp. 74-75.

¹⁴ pp. 79-80.

¹⁵ pp. 85-87.

¹⁶ pp. 115-118.

¹⁷ p. 119.

¹⁸ U.S. CONST. AMEND. VIII.

¹⁹ See, e.g., Dershowitz, *The New York Review of Books*, March 13, 1969.

Report timid to a fault in failing to recommend a uniform system of assistance in criminal cases throughout Canada.

The reasons inhibiting the development of a uniform system of courts and of sentencing, again, seemed unconvincing to me. Why "federalism" should be a factor in a country which has the good fortune to have a unitary Criminal Code I am simply unable to understand. Doubtless, some knowledgeable Canadian (but not this Report) could easily remedy this deficiency in my understanding.

I found Chapter 13, dealing with *Dangerous Offenders*, hard to understand. The term "indeterminate sentencing" which the Committee uses without definition carries for me a connotation that would be better expressed by the term "partial indeterminate sentence". A scheme like California's, which limits the judicial function to pronouncing one of the authorized sentences, like "not more than five years", or the Model Penal Code's sentencing structure, might or might not be termed "indeterminate". I can't make out whether the Report approves or disapproves such a scheme. I should have thought the argument for it to be beyond dispute. This structure strikes me as *toto coelo* different from the recommendation that I would define as totally indeterminate sentences be passed on "dangerous offenders"²⁰—whoever they may be.

The remainder of the Report, dealing with the organization of correctional services, struck me as in general exhibiting sensitivity and humanity. Once again, the spectre of "federalism" seemed to be an inhibiting factor. As Mrs. McArton said in her separate statement:

The position reflected in this Committee's report is based on the belief that achieving integration through centralizing all relevant services under the direct administration of the federal government is not possible for Canada and is incompatible with our system of government. (p. 492)

"Incompatible with [y]our system of government" though it may be, the tribulations of a society plagued with the out-moded federalism of its Constitution arouse the liveliest sympathy in this observer.

²⁰ p. 257.