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Review of "Sentencing: The Decision as to Type, Length, and Conditions of Sentence," By Robert O. Dawson

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approaches these questions from classical liberal, Lockeian premises. He asks us how, if we too support these principles (the ideas which underlie the Declaration of Independence and most of the American Credo), we can reach other conclusions.

This is where this book, so largely theoretical, becomes a ripe subject for scholarly legal thought. If we follow the logic of these essays, it is imperative to reconsider many of the assumptions of our law. Is there an implicit right, perhaps under the 9th Amendment, of the citizen to determine his own life, absent some special overriding governmental need? This need may, the author concedes, arise in times of national emergency, or when individual behavior is thoroughly other-regarding. But otherwise, the presumption would seem to be in favor of the citizen.

Yet, not exactly. For Walzer is a pluralist, a real old-fashioned one of the Figgis-Laski type. The individual is helpless before the state, so he must resist it or ignore it in groups, and these groups have a life of their own. The result seems to be that, as much as Walzer has rescued from the state, he snatches back to hand to the association. And here the author plays favorites. Not mean old corporations or absolutist churches, but good democratic groups. And, as much as he admires the Black Revolution, it does not qualify either. So, like Figgis and Laski before him, a comprehensive work of *haute politique* sometimes seems to end up as a nifty bit of special pleading for "our" side—here, the voluntary community of idealistic protesters. Walzer sees the problem and apologizes for the bias, but then proceeds on his way. This is understandable, but unfortunate, for beyond the advocacy (mixed with sage advice) is a fine work of general theory.

JOSEPH O. LOSOS*

SENTENCING: THE DECISION AS TO TYPE, LENGTH, AND CONDITIONS OF SENTENCE. By Robert O. Dawson.[1] Boston: Little, Brown and Company, 1969. Pp. xxi, 424. $12.50.

The sentencing of offenders has maintained an ambivalent position in the administration of criminal justice. Attorneys (both prosecuting and

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defending), judges, editorial writers, and legal scholars repeat such truisms as: "sentencing is highly important;" "it is a crucially strategic aspect of criminal justice" and "it is an awesome responsibility for the courts." In practice, however, the participants too often fail to take cognizance of, or act during the sentencing process as though they were aware of the importance of sentencing. Sentencing frequently is a callous, routine, and preemptory recitation of verbiage required before imposing the sanctions of the law. Seldom has it been this reviewer's privilege to witness or participate in a sentencing that could, by the most remote defintion, be identified as the belated beginning of the correctional process as, even in the eyes of the most punitive obserger, it should be. What could be an occasion for a clear, candid, reasonable and understanding explanation of the reasons for the sentence imposed, the expectations of the court, the future of the offender, and the alternatives available to him in the correctional system, degenerates instead into an emotion-laden confrontation, with the offender at the mercy of a caustic court or the recipient of maudlin platitudes.

I heartily recommend Professor Robert O. Dawson's *Sentencing: The Decision as to Type, Length, and Conditions of Sentence.* Professor Dawson has written a fine reference book for correctional administrators, supervisors, line staff, legislators and interested laymen concerned with the process. But *Sentencing* will also be of great practical value to counsel—especially appointed counsel—who are not familiar with the criminal courts, and to judges who have not studied the elements involved, the alternatives, or the goals of sentencing offenders. The justice system will improve in almost direct ratio to recognition on the part of the legal profession and corrections personnel that there is an extensive gap in the orientation, training and general knowledge of our system of criminal justice administration: to the extent that *Sentencing* fills this knowledge "gap", it is a useful book.

Recognizing the limitations of time, space and manpower that held Professor Dawson's survey to only three jurisdictions, it would appear desirable to have included a section discussing the general application of the data presented. Such a section might have pointed out that, as this reviewer believes the case to be, although other jurisdictions do not operate under identical statutory provisions, judicial or correctional policies, or with equal resources, they would have in some form the elements described in Professor Dawson's three-jurisdiction sample.

Issue may be taken with several statements, conclusions, and assumptions in *Sentencing*. Although they do not detract appreciably

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from the principal focus of the book, some are sufficiently important to require response.

First, I believe it specious to suggest that the courts should participate in administering correctional programs, especially probation services. Judges are neither trained, experienced, or especially adept at administering their own courts; it seems unlikely that they could add any administrative competence to correctional agencies. Current efforts to recruit court administrators are one of the brighter lights on the criminal justice horizon. It is the role of a court administrator to free judges for judicial duties. There is no contradiction in supporting, on the one hand, freeing judges of as much administrative duty as possible and urging them, on the other, to become thoroughly familiar with, and responsive to, all aspects of the justice system. Professor Dawson refers to both needs, and by implication at least, appears to encourage their development. *Sentencing* illustrates that, in spite of additional procedural safeguards, where the judge is actively involved in administering correction, the results seldom differ much. Encouraging additional involvement by judges in correctional programs, then, involves few gains for the offender and operates against the encouraged freedom for the judge to concentrate on being a judge.

I am particularly impressed with Professor Dawson's emphasis on the relationships that exist between the various elements of the justice system. The impact of each element on the other, and on the offenders caught up in the system, must be stated and restated. For corrections to be effective, the correctional approach to crime prevention and control should ultimately extend from an offender's initial contact with the justice system—usually with the police—through his return to the community. Police behavior can have a substantial influence on the attitude and actions of the offender as he passes through the system. Obviously there are limits, but the entire police process—including the manner of arrest, taking into custody, interrogation, and informing—can be a positive contribution to correction *if* the accused is treated fairly and humanely, with as much dignity as possible, and in a thoroughly professional manner. That kind of police practice is encouraged by good training and supervision, and good working conditions. The rest of the justice system should similarly operate at a high level of professional conduct and process. Such is not now the case, generally, at any level.

Those who work in the justice system, in an operating agency, a planning agency or a consultative capacity, are universally committed to

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the idea that responsible, highly trained, skilled and adequately compensated personnel in sufficient numbers are essential to develop a system equal to the demands on it. Impoverishment is pleaded too often. Probation and parole are both advocated as more effective and cheaper correctional methods. This latter argument is, however, essentially apologetic since probation and parole deal with different types of offenders under altogether different circumstances; the true rationale must be seen as economic. We should recognize the illogic of encouraging use of certain correctional mechanisms solely on the basis of their relatively low cost. The extension of that line of reasoning can only lead to total use of the suspended sentence without supervision as the most economical correctional method. Corrections is, as are all other elements of the justice system, an expensive public service. The sooner our legislators, administrators and taxpayers accept that fact, the sooner society will support a system of effective crime prevention and control.

References in *Sentencing* to probation as *leniency* can only hinder efforts to have probation recognized as an effective correctional procedure to be used whenever and wherever the situation indicates it to be the best method for specific defendants. The fact that release is more pleasant than confinement should be incidental to a court's sentencing decision. On the other hand, an advocate's desire to obtain leniency for his client is not necessarily consistent with the correctionally appropriate sentence. One of the primary reasons correctional administrators have some apprehension about encouraging the presence of counsel in correctional decision-making is this single-sided advocacy for leniency for clients, whether or not appropriate.

Ideally, no defendant should be excluded from probation consideration, and the probation department should be independent of the court so as not to be influenced by the known views, attitudes, or preferences of judges. The recommendations of the probation department should be based on a professional evaluation of the particular defendant in relation to the most effective correctional service available, whether it is the offender's first or tenth conviction. The information needed to make that kind of determination cannot be developed in a post-plea of guilty hearing. The verbal ability of the defendant and his counsel to present his side of the matter, will prevail in all areas, except that relating to his criminal history. Proper allocution and a competent pre-sentence investigation provide the best means for assuring the guilt of the accused and the most appropriate sentence.

It is impossible to refrain from commenting on what *Sentencing*

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indicates to be the reliance of some Detroit judges, for sentencing purposes, on psychiatric examination. Psychiatrists are not especially well-informed about the correctional resources in a state or community. They seldom are familiar with the social-cultural norms of the typical offender or of his relationship with the criminal justice apparatus. Hopefully, the report included on pages 44-45 of *Sentencing* is atypical of those relied on by most courts. That report, so obviously distorted in its evaluation and recommendation, is a disservice to the court. For instance, "He is unstable, alcoholic, nomadic," describes a man who worked in the same city for thirty-one years on two jobs. The recommendation, "[b]ecause of the nature of the offense . . ." included institutionalization with no references to the victim-precipitation aspect of the offense.

The Model Sentencing Act would bring reason, realism and a greater precision into the sentencing of offenders. The Act requires a much broader use of probation and parole and relatively short term sentences to institutions. It would end the ridiculous accumulative sentences of hundreds of years or multiple life sentences that create the "walking dead" in our correctional institutions. Professor Dawson refers to the Model Sentencing Act and the Model Penal Code in a manner that I interpret to be an endorsement of their basic methods. These methods include a greatly expanded use of probation, relatively short maximum sentences, and the development of a variety of correctional institutions. Readers of *Sentencing*—hopefully many will be lawyer-legislators—will readily recognize the dearth of coordination, cooperation and mutual understanding of the sentencing process by the courts, correctional agencies, legislatures and appellate courts. The Model Sentencing Act provides great improvement in sentencing. Adoption of the Model Penal Code would also be a significant advance for most states. A combination of the best features of both proposals can provide excellent guides to legislatures in alleviating the problems which *Sentencing* highlights for the reader.[2]

The message provided by Robert Dawson is clear and comprehensive to this reviewer. It is a resounding declaration that our entire system of criminal justice must be completely reformed: that procedures, practices, philosophies and personnel must be related to a mutually agreed upon

2 1970 is the centennial year for the Congress of Correction. At its meeting, the Congress will very likely adopt another set of principles even though the original ones, if followed throughout the United States, would require comprehensive improvement in most correctional programs.

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set of goals. These goals, in a broad sense, include protection of the individual in our society from personal and property loss at the hands of any other individual who has been through the criminal justice system. Further, that system should stop young offenders at the time of their earliest encounter with the justice system from beginning a life sentence "on the installment plan."

CHARLES MANN*

UPGRADING THE AMERICAN POLICE. By Charles B. Saunders, Jr.[1] Washington: The Brookings Institution, 1970. Pp. 172. $5.95.

It has become increasingly fashionable in recent years for everyone from wild-eyed militants to grim-faced conservatives, from the President's commissions to neighborhood commissions, from learned political scientists to anyone with an "axe to grind" to offer comments and criticisms on what are the problems facing the criminal justice system in the United States, and particularly the field of Law Enforcement as it relates to the "cop on the beat". No matter what the true intention may be: political, revolutionary, patriotic, self-serving, it is generally accepted by knowledgeable citizens and sometimes, though grudgingly, the police themselves that Law Enforcement has been remiss in initiating programs necessary to upgrade the police. Scholars for half a century have recognized the crucial need for improving the quality of the police. An attempt was made to raise the quality of police agencies in the early 1900's, particularly by August Vollmer, Chief of Police, Berkeley, California, who almost single-handedly was applying new principles of organization and professionalism in the police field. It was not until crime in the streets became a selling point for politicians, recent Supreme Court decisions became a matter of controversy, the total ills of present society raised their ugly heads and with the drastically overdue awakening within the Law Enforcement field, that it became apparent to the average citizen of our country that the state of the art of police work was antiquated, under-staffed, under-educated, under-trained, and under-budgeted.

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