

September 1942

Book Reviews

William F. Zacharias

E. W. Burke

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>

 Part of the [Law Commons](#)

Recommended Citation

William F. Zacharias & E. W. Burke, *Book Reviews*, 20 Chi.-Kent L. Rev. 374 (1942).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol20/iss4/5>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.

BOOK REVIEWS

REPORT TO THE JUDICIAL CONFERENCE OF THE COMMITTEE ON PUNISHMENT FOR CRIME. Washington, D. C.: United States Government Printing Office, 1942. Pp. v, 126.

The Judicial Conference of Senior Circuit Judges for the United States, having previously adopted a recommendation for the passage of an indeterminate sentence law, Senate Bill 1638, by the 77th Congress, found considerable objection thereto among the district judges who were primarily concerned with sentencing offenders against federal laws. By reason thereof, the entire matter of the punishment and treatment of offenders was referred to a committee, presided over by Judge John J. Parker, Fourth Circuit, for report and recommendations. This committee has now reported with six specific recommendations which may be briefly stated as covering: (1) control of sentencing function by the trial court; (2) imposition of maximum term of punishment at time of sentence, but providing for review thereof after service of enough of such sentence to permit adequate study of the offender and his needs; (3) separate treatment, following the lines of the Borstal System used in England, for youthful offenders up to 24 years of age in work camps modeled along the lines of the Civilian Conservation Corps;¹ (4) service of terms shorter than one year, whether by youths or adults, in institutions or camps more sanitary and wholesome than the average county jail; (5) adoption of legislation permitting the waiving of indictment and allowing plea of guilty or trial before judge without jury, to shorten time between arrest and disposition of proceedings; and (6) supervision of parolees for a period of not less than two years in all cases. Since these recommendations, if adopted, would require a closer co-ordination between judiciary and institutional officials, a seventh recommendation calls for realignment of the duties of those serving under the Attorney General.

That most of these objectives would secure the approval of all in any way connected with criminals goes without saying. Any effort which would prevent a repetition of crime by even a single youthful offender would be a social gain of infinite value. Criticism, however, might be directed toward the proposal to permit waiver of indictment and trial by jury, since the United States Supreme Court might adopt the view of *People ex rel. Battista v. Christian*,² wherein language of the New York Constitution similar to that of the Fifth Amendment was held to require indictment despite the willingness of the accused to waive the same.³ It is to be hoped that, far from regarding indictment as an es-

¹ Though not identical with, this recommendation follows along the lines of the American Law Institute Youth Correction Authority Act of June 22, 1940.

² 249 N. Y. 314, 164 N.E. 111, 61 A.L.R. 793 (1928).

³ Leaning in that direction are *Ex parte Wilson*, 114 U. S. 417, 5 S. Ct. 935, 29 L. Ed. 89 (1885); *Mackin v. United States*, 117 U. S. 348, 6 S. Ct. 777, 29 L. Ed. 909 (1886); and *Parkinson v. United States*, 121 U. S. 281, 7 S. Ct. 896, 30 L. Ed.

sential part of the framework of government analogous to the separation of powers doctrine, the saner view of *Commonwealth ex rel. Stanton v. Francies*⁴ would prevail.

It is almost universally recognized that the ordinary county jail is a breeder of crime. That persons who have committed offenses of such minor character as not to deserve a severe prison sentence should be subjected to such influences is, to say the least, disgraceful. Assignment of such offenders to work camps, so long as chain-gang methods are not permitted, should help salvage human material otherwise likely to be lost. Adequate supervision on parole, both as to quality and duration, should likewise help in the problems of reconstruction.

The efforts of the committee to ameliorate abuses in the field of federal criminal punishment should find ready response on the part of the bar.

W. F. ZACHARIAS

CASES ON TORTS. Edward S. Thurston and Warren A. Seavey. St. Paul, Minn.: American Casebook Series, West Publishing Company, 1942. Pp. xxxix, 1027.

Too often, the work of the freshman student in the law school is hampered by the confusing welter of immaterial detail contained in the judicial opinions presented in the usual casebook. Not infrequently, the patient labor of the tyro, in digesting assigned cases, results in complete misconception of the real problem involved because of the distraction provided by these extraneous issues. Seasoned students should be, and usually are, able to sift wheat from chaff, but entering students, dealing with foundation courses, are not usually so endowed. Any instructor in these subjects knows only too well that more than half the battle involves the elimination of such confusion as well as the necessity of keeping the subject within reasonable bounds.

Doubtless similar experiences by the authors of this casebook must have influenced their treatment of the cases presented, as all such non-essential material has been carefully eliminated from the opinions printed therein. The scope of the work has not suffered thereby, for, in place of such, for the purpose, worthless material, several hundred additional

959 (1887). In *Ex parte McCluskey*, 40 F. 71 (1889), it was held that defendant, by pleading guilty to an information, had not waived the requirement of prosecution on indictment, since the latter was jurisdictional. Phillips, J., in *United States v. Gill*, 55 F. (2d) 399 (1931), intimated that the provision relating to indictment was a personal privilege which could be waived, but felt that enabling legislation was essential to permit trial upon information, hence he vacated sentence upon an information filed at defendant's request and upon his express written waiver of indictment.

⁴ 250 Pa. 496, 95 A. 527 (1915).

related digests of other cases have been supplied to show how the major principles of tort law have been utilized in other factual situations.

It should not be supposed that the work is so simplified a primer as to be unworthy of consideration by institutions of the scholastic rank of law schools—the standing of the authors alone would forbid such an assumption. If more need be said, their work stems, in part, from the venerable Ames collection of cases on Trespass, Conversion and Defamation first published in 1874. The genealogical record runs without break from Ames, direct through Smith, Pound, and Beale, to the present authors. This is, however, no mere reprinting of ancient materials under a new name. Rather, it represents a studied effort to provide a clearer, more illuminating view across a congested field.

E. W. BURKE