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Opinions and Proposals

Here this Review inaugurates a new department—of contributed opinions or proposals, stated in short form. Other opinions and proposals are invited to be submitted to the Review.

A Modest Proposal For A Partial Reform of Our System of Criminal Law and its Enforcement

*J. Patrick Browne**

NO FAIR OBSERVER could deny that there are glaring flaws in our system of criminal justice. The mention of only a few will suffice to illustrate the point: The police are insensitive to civil rights, and brutal to the poor and to minorities; prosecutors victimize the defenseless who are unable to obtain adequate counsel to protect their rights. And all this is done in the name of law and order.

Only the brutalized members of minorities—both racial, ethnic, and financial—are more aware of these injustices than are today's law students. These students rightly burn with a combination of indignation at the system and a zeal for its reform. We can and we must use that zeal and that indignation to accomplish an immediate and apparent reform.

Now, no single scheme of reform can accomplish the miracle of a pure and perfect system. But I submit that the scheme I here propose will go far towards that end and will, in addition, fully utilize the youthful idealism and knowledge of the newly graduated lawyer.

My proposal is this: Immediately upon passing the bar (or graduation from law school, if that is recognized as the equivalent of a bar examination) the young lawyer would be "drafted" for not less than two years of *public service*. Those young men and women who are physically able would be given appropriate training and required to serve on a police force as policemen. Their wage would be the prevailing wage paid to the ordinary police recruit. Those who are not physically able to serve as policemen would be required to serve on the staff of the local criminal prosecutor (whatever he may be called in local parlance). Their wage would be the same as that of their contemporaries on the "beat." Only those who volunteer for duty with the armed forces as judge advocates (or the equivalent) would be exempt from this duty of service.

As a corollary to this, the staff of the local criminal prosecutor would be divided into two principal branches: the prosecution branch and the defense branch. Each "drafted" law graduate would receive an initial assignment to one of these two branches. Every accused would be assigned a defense counsel from the defense branch immediately after his arrest. He would, of course, retain the option to

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engage personal defense counsel at his own expense should he so desire, but his assigned counsel would serve without cost to the accused. Thus, in no case would an accused, no matter how rich or how poor, want for a lawyer from the moment of his arrest to the moment of his acquittal or final conviction. Every three months or so (Experience would here provide a more adequate measure of time.) the members of the prosecution branch and the defense branch would change roles so that the young lawyer would not acquire a prosecution or defense fix of mind.

The merits of this proposal are immediately apparent. The young lawyer would be able to satisfy the acknowledged requirement of public service without being forced to serve in the armed forces while those forces are engaged in an immoral war. The level of police service should rise as the police forces of the country are leavened with an influx of young recruits sensitive to civil rights and the needs of minorities. If these young and "aware" policemen are sent to serve in the ghettos and barrios of the big cities, accusations of "police brutality" would fade if not vanish. More arrests would "stick," since they would be made by policemen who are fully conversant with the legal rights of the accused as well as the requirements for a valid arrest. Every accused would be guaranteed adequate counsel from the moment of his arrest. His right to bail or release on his own recognizance would be guaranteed, and his trial would be speedy and fair.

In sum, the young law graduate's duty of public service could be combined with his enthusiasm for reform to produce a notable change in our system of criminal law and its enforcement.

This, of course, is the scheme in bare outline. A great many matters of detail would have to be developed. Not least among them the legal authority for drafting the law graduate. This authority would have to be ascertained or, if necessary, enacted. Do the states have the authority to enact such legislation, or must this be left to the federal government? And there is the matter of financing. But if this proposal is acceptable in theory, these questions can readily be solved.