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Reform and Regret: The Story of Federal Judicial Involvement in the Alabama Prison System

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REFORM AND REGRET: THE STORY OF FEDERAL JUDICIAL INVOLVEMENT IN THE ALABAMA PRISON SYSTEM. *By Larry W. Yackle.* New York: Oxford University Press. 1989. Pp. xii, 322. $35.

I

In *Pugh v. Locke,*[1] U.S. District Court Judge Frank Johnson ruled that the oppressive conditions facing Alabama's prison population violated the eighth amendment's prohibition against cruel and unusual punishment.[2] Among the numerous abuses he found were rampant overcrowding, dilapidated facilities, brutal disciplinary methods, and inadequate protection from violence at the hands of other inmates.[3] Judge Johnson responded with a detailed and far-reaching order supervising the day-to-day operations of the state's entire prison system. Alabama's prisons would operate under court order for the next eight years.

Larry Yackle's[4] *Reform and Regret* is an intriguing account of the use of litigation in the federal courts to reform the Alabama prison system. The book analyzes the circumstances that gave rise to the litigation, the ensuing legal battles, and the subsequent attempts to implement court-ordered reforms.

Professor Yackle observed these reform efforts while a faculty member at the University of Alabama Law School. While his role in the prison cases was for the most part peripheral,[5] Yackle tells this story from an insider's perspective.[6] In writing the book, he received substantial cooperation from many of the key participants in the litigation. The U.S. Attorney's office and attorneys for both the prisoners

1. 406 F. Supp. 318 (M.D. Ala. 1976), *aff'd. and remanded sub nom.* Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), *revd. in part per curiam sub nom.* Alabama v. Pugh, 438 U.S. 781, *cert. denied,* 438 U.S. 915 (1978). This decision was in response to two class action suits brought on behalf of the present and future inmates of Alabama state penal institutions. Yackle refers to these cases as *Pugh v. Sullivan* and *James v. Wallace.* The Federal Supplement, however, reports Judge Johnson's opinion under the name *Pugh v. Locke.* This is also the name most often used in the legal literature.

2. The eighth amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. CONST. amend. VIII.

3. 406 F. Supp. at 322-26.

4. Professor of Law at the Boston University School of Law. Yackle taught at the University of Alabama Law School from 1974 until 1983.

5. Professor Yackle periodically provided legal advice to the prisoners' lawyers during the litigation. In addition, Yackle served as the University of Alabama's counsel when it became involved in one aspect of implementing Judge Johnson's order. During this period, Yackle also participated in a separate case concerning Alabama's sentencing laws. Pp. v-vi.

6. Although Yackle attempts to present the defendant's perspective, *Reform and Regret* primarily focuses on the internal activities of the plaintiffs, and his sympathies clearly lie with the forces for prison reform.

and the penal authorities gave Yackle access to their files. The Justice Department also allowed him to examine some records. Judge Johnson even permitted him to review previously confidential files kept by the Human Rights Committee, the body established by Judge Johnson to implement the court's program for reform (p. ix). Yackle supplemented this extensive documentary record with formal interviews conducted with more than thirty participants in the litigation.[7] This thorough research enables Yackle to provide valuable insights into the development and implementation of reform litigation.

The first two chapters of *Reform and Regret* provide the reader with background to the litigation and identify a number of themes that resurface during later attempts to implement Judge Johnson's order. In this section, Yackle explores a wide range of topics, including previous attempts to advance social reform in Alabama through public law litigation[8] and Alabama's penal history. For instance, Yackle discusses Alabama's adoption during the mid-1800s of a convict lease program "which moved prisoners out of the prisons to coal mines where they served private masters . . ." (p. 10). This system served two objectives: it helped to ease prison crowding by removing inmates from overburdened state facilities, and it generated revenues that reduced the amount of public funding needed to support prisons (p. 10). The notion that prisoners should support themselves rather than depend upon public revenues is one that Yackle describes as an "old and familiar theme in Alabama" (p. 117), "to which state officials [still] unanimously subscribed" (p. 107) when *Pugh v. Locke* was tried. The persistence of this theme, he argues, helps explain the stubborn refusal of Alabama's executive and legislative branches to commit the resources necessary to carry out significant reforms.

Chapters 3 and 4 of *Reform and Regret* focus on the trial proceedings and the relief granted. Yackle provides insights into the legal strategies as well as other aspects of trial preparation by the prisoners' attorneys. He recounts the testimony of key witnesses and evaluates its impact upon the litigation. The evidence presented by the prisoners' lawyers was so damaging that state penal authorities accepted de-

7. Among those interviewed were Judge Johnson, lawyers on both sides, prison reform advocates, and Alabama penal authorities. Pp. x-xii.

8. There had been several previous attempts in Alabama to utilize litigation in the federal courts to implement social reform, a number of which had been successful. Yackle asserts that the federal courts' involvement in desegregation cases during the 1950s and 1960s "demonstrated [the] extraordinary capacity [of the courts] to manage elaborate lawsuits whose design was not merely to vindicate constitutional rights but, in a real sense, to reform the operations of complex public institutions." P. 4. The most famous Alabama case in which reform litigation was pursued in the federal courts also involved Judge Johnson. In Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971), *enforced,* 344 F. Supp. 373 and 344 F. Supp. 387 (M.D. Ala. 1972), *modified sub nom.* Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1972), Judge Johnson held that patients confined to Alabama's mental hospitals had a constitutional right to treatment. In that case Judge Johnson fashioned ambitious remedial techniques which he utilized again in the prison litigation. Pp. 24-29.

feat halfway through the trial (pp. 93-94). Yackle also examines the expansive relief granted by the court. Judge Johnson promulgated a detailed set of "Minimum Constitutional Standards for Inmates of [the] Alabama Penal System."[9] These standards required that prisoners regularly receive specified clothing, linens, storage lockers, and other personal items. Each prisoner was entitled to at least sixty square feet of living space. Judge Johnson further ordered that all prisoners were entitled to have "meaningful" jobs and a chance to enroll in "basic" education or "vocational training programs" (pp. 102-03). In addition, he required that prisoners be classified and separated on the basis of their propensity for violence, their educational and vocational needs, and their qualifications for "community-based" facilities (p. 102). Finally, he enjoined state officials from "accepting or permitting acceptance" of new prisoners into the system until the population in the state's facilities was reduced to "design capacity."[10] To monitor compliance with his order, Judge Johnson established and delegated authority to a Human Rights Committee.[11] These remedial measures constituted an extremely ambitious intervention by a federal judge into the field of prison reform.

The remainder of *Reform and Regret* details the difficult process of implementing Judge Johnson's order. In this section, Yackle identifies the many obstacles in the way of reform. Yackle is especially critical of several Alabama politicians, most notably Governor George Wallace, who sought political gain from the crisis facing the state's prison system. Compliance with Judge Johnson's order required the expenditure of substantial amounts of state funds.[12] Some Alabamians were doubtful that the cause of prison reform was worth such a cost. Others resented a federal judge imposing change upon state institu-

9. Pp. 101-04; Pugh v. Locke, 406 F. Supp. 318, 331-35 (M.D. Ala. 1976), *affd. and remanded sub nom.* Newman v. Alabama, 559 F.2d 283 (5th Cir. 1977), *revd. in part per curiam sub nom.* Alabama v. Pugh, 438 U.S. 781, *cert. denied sub. nom.* Newman v. Alabama, 438 U.S. 915 (1978).

10. P. 95. This proved to be one of the most controversial aspects of Judge Johnson's order. Because of the order, new convicts could not immediately be placed in state facilities. Unfortunately, this caused serious overcrowding in local jails where prisoners were kept while awaiting admission to the state prisons. Pp. 122-23, 168-76.

11. The Human Rights Committee (HRC) was authorized to "inspect facilities and records, interview prisoners, and review any plans developed by the defendants." Pp. 103-04. On appeal, the Fifth Circuit ordered that the HRC be dissolved. Newman v. Alabama, 559 F.2d 283, 290 (5th Cir. 1977), *revd. in part per curiam sub nom.* Alabama v. Pugh, 438 U.S. 781, *cert. denied, sub nom.* Newman v. Alabama 438 U.S. 915 (1978). Judge James Coleman, writing for the court, asserted that "the Committee undoubtedly did impermissibly intrude, and had every appearance of impermissibly intruding, upon functions properly belonging to the daily operation of the Alabama prison system." 559 F.2d at 289. Accordingly, the HRC was disbanded. Judge Johnson's order was sustained in all other significant respects. Pp. 136-37.

12. Shortly after Judge Johnson's decision, the Alabama legislature commissioned a study to determine the cost of implementing certain basic reforms. The study concluded that at a minimum, physical improvements at the major Alabama institutions required an expenditure of $79 million more than the prison systems' annual budget. P. 108.

tions. Governor Wallace played upon these sentiments. In a news conference following Johnson's decision, Wallace asserted that the decision was " 'just another example of the federal court trying to run our state' " (p. 105). In a later statement, Wallace claimed that " 'thugs and federal judges' " had " 'just about taken over society' " and that " 'a vote for George C. Wallace might give a political barbed wire enema to some federal judges . . . .' "[13]

Politics also conflicted with reform on a less visceral level. During this period, many state officials adopted tough "anti-crime" postures that frustrated attempts to ameliorate the overcrowding problem in the state's prisons. While prison reform advocates were attempting to reduce the state's prison population, many politicians advocated tougher sentencing laws and less liberal parole policies.[14] The culmination of this conflict occurred when U.S. District Judge Robert Varner ordered the state to release prisoners as a means of reducing overcrowding.[15]

Yackle also cites bureaucratic intransigence and incompetence as major obstacles to reform. Penal authorities reacted very defensively to charges that they had mismanaged the state's prison system. They also resented the intrusive judicial involvement in their area of expertise. One particularly telling example of this is the ill-fated attempt by Judge Johnson to fashion an effective prisoner classification system. Most reform advocates regarded the establishment of such a program as central to the task of reform. Classification of prisoners provided a means of improving safety within the prisons by separating violent from nonviolent inmates. In addition, classification identified prisoners who were candidates for educational and vocational training, thus enhancing their opportunities for rehabilitation (p. 138). Judge Johnson was convinced that state officials were incapable of formulating an adequate classification system on their own. He therefore ordered the state to contract with the University of Alabama's Center for Correctional Psychology to aid in implementing a classification program. Unfortunately, the Center and penal authorities failed to cooperate. Personal animosities and differences in approach frustrated any chance of the program's success. Eventually, the project was abandoned and the task of classification was left to state officials. In their hands, classification never achieved the objectives hoped for by reform advocates.

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13. P. 105. Governor Wallace advanced many of these same themes years earlier during the struggle for desegregation in Alabama.

14. It is of course the prerogative of Alabama's elected officials to advocate these policies. The important point to note is the difficulty of implementing judicially imposed reform absent cooperation from the executive and legislative branches.

15. Pp. 171-72, 175-77, 196-221. Judge Varner took control of the Alabama prison litigation in 1979 when Judge Johnson was elevated to the Fifth Circuit.

II

Yackle's goal is to develop a thorough record of the Alabama prison litigation (p. vi). In the process, he hopes to contribute to a greater understanding of the advantages and limitations of judicially imposed institutional reform. Yackle's thoroughly researched and carefully presented account is successful in achieving both goals. For this reason, *Reform and Regret* provides a useful contribution to current scholarship in this area. Yackle, however, leaves unaddressed several important and controversial issues raised by the Alabama prison litigation. Yackle's analysis does not explore in any detail the constitutional rights at issue in this litigation, or the propriety of the intrusive remedy chosen by Judge Johnson to protect those rights.

With respect to the constitutional rights at issue in the prison litigation, considerable controversy remains regarding the precise requirements imposed by the eighth amendment, and the standard to be used to determine if a constitutional violation exists.[16] Judge Johnson embraced the "totality of conditions" approach in holding that the Alabama prison conditions violated the eighth amendment (p. 100). Under this analysis, courts examine the cumulative impact of prison conditions upon inmates. Given this approach, courts may intervene even though no single condition rises to the level of a constitutional violation.[17] Judge Johnson was among the first to employ this analysis,[18] and although it has since been adopted by other courts, it remains controversial.[19]

Yackle provides little analysis of the totality of conditions approach, nor does he devote significant attention to the proper scope of the eighth amendment. Given the history of the Alabama prison litigation, however, this is understandable. The defendants conceded during the trial that the condition of the state's prisons violated the eighth amendment (pp. 93-94). Therefore, the finding of a constitutional violation was not the focus of the litigation. Nevertheless, read-

16. *See, e.g.*, Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of* Pugh v. Locke *and Federal Court Supervision of State Penal Administration Under the Eighth Amendment*, 29 STAN. L. REV. 893, 900-20 (1977); Comment, *Challenging Cruel and Unusual Conditions of Prison Confinement: Refining the Totality of Conditions Approach*, 26 HOW. L.J. 227, 231 (1983).

17. *See* Comment, *supra* note 16, at 230-31.

18. Judge J. Smith Henley was the first to adopt the totality of conditions analysis in Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd. and remanded*, 442 F.2d 304 (8th Cir. 1971). *See* Comment, *supra* note 16, 232.

19. Several circuits have been extremely skeptical about embracing the totality of conditions approach. *See e.g.*, Groseclose v. Dutton, 829 F.2d 581, 585 (6th Cir. 1987) (lower court erred in utilizing a totality of the circumstances standard); Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986) ("[A] number of *unrelated* conditions, each of which satisfy eighth amendment requirements, cannot in combination amount to an eighth amendment violation."), *cert. denied*, 481 U.S. 1069 (1987); *see also* Comment, *supra* note 16, at 231 ("As a vehicle for judicially-imposed prison reform, the totality approach has incited considerable controversy.").

ers hoping for a comprehensive analysis of prison reform litigation are likely to be disappointed by the lack of attention given to these eighth amendment issues.

Also controversial is the propriety of the kind of expansive relief granted in *Pugh v. Locke,* which involves federal judges in the day-to-day operations of state prisons. Many commentators argue that the principles of federalism and comity should place constraints on federal court involvement in state prison reform.[20] Separation of powers concerns also are asserted by those who claim that the judicially supervised operation of prisons intrudes upon the proper spheres of the legislative and executive branches.[21] Finally, many observers question the judiciary's competence to undertake such a task. They argue that the administration of prisons requires an expertise that judges simply do not possess.[22]

Reform and Regret does not explicitly address these issues. It may be simply that Yackle chose not to include this within the focus of his book. The more likely explanation, however, is that Yackle does not share these concerns. *Reform and Regret* is an endorsement of reform. Perhaps Yackle would have preferred reform to have occurred through means other than by judicial intervention. Certainly he believes that reform would have been more effective had it been supported by Alabama's executive and legislative branches. Unfortunately, they did not. Alabama officials had, time and again, abdicated their responsibilities in the area of civil rights, thus necessitating judicial action. Judge Johnson described this phenomenon as "Alabama's Punting Syndrome."[23] The history of federal civil rights litigation in Alabama, he once wrote, is replete with instances in which state officials "punted" their problems to the federal courts (pp. 16-17). For this reason Yackle believes that, despite its problems and limitations, judicial involvement is sometimes the only available means to bring about reform.

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20. *See* Herman, *Institutional Litigation in the Post-*Chapman *World,* 12 N.Y. U. REV. L. & SOC. CHANGE 299, 301 (1983-1984) ("The play of federalism and comity concepts has been particularly evident in cases involving prisoners' rights."); Robbins & Buser, *supra* note 16, at 897-900 (discussing federalism concerns raised by the Alabama prison litigation); *see also* Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973) (strong considerations of comity place constraints on federal court involvement in prison reform).

21. *See generally,* Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies,* 30 STAN. L. REV. 661, 664 (1978) ("[S]eparation of powers clearly does impose limitations on the authority of federal courts to undertake executive and legislative functions when ordering relief against state officials.").

22. *See e.g.,* Procunier v. Martinez, 416 U.S. 396, 405 (1974) ("Courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.").

23. *See* Johnson, *The Alabama Punting Syndrome,* JUDGES' J., Spring 1979, at 4.