

1923

Rural Justice in New York State

Bruce Smith

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Bruce Smith, Rural Justice in New York State, 14 J. Am. Inst. Crim. L. & Criminology 284 (May 1923 to February 1924)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

RURAL JUSTICE IN NEW YORK STATE

BRUCE SMITH¹

Coroners, justices of the peace, sheriffs and constables; how frequently is the judicial system of which they are a part condemned, and yet how little is actually known of them! For the past year a legislative committee and a staff of investigators have been at work in the State of New York, examining, analyzing and collecting information relating to county government throughout the state. The report of the committee has been presented to the 1923 legislature and a number of legislative bills to carry out its recommendations have been prepared.

In the chapter on Justice, the committee and its staff have confined themselves within modest limits. Thus the county court and the juvenile and surrogate's courts are mentioned only to be excluded from the scope of the survey. However, a number of other offices of early origin and enjoying general acceptance in their present form in the rural districts were placed under searching examination and inquiry.

ABOLITION OF THE CORONERS

The coroner system heretofore has been the subject of criticism chiefly in urban counties where the volume of work performed in the office has been sufficient to warrant the substitution of a full-time "medical examiner" or similar specialist in morbid anatomy. Naturally, such expedients are not suited to the needs of the county having, say, thirty to forty thousand population. Nevertheless, the abuses surrounding the coroner system—abuses arising from the intrusion of petty and corrupt politics, from inefficiency in the collection and preservation of evidence, from lack of direct responsibility, loose organization, and the like—these abuses, in New York and elsewhere, have given rise to agitation for the complete abolition of the office and of the system. In the few cases where action has been taken, mere palliatives have been resorted to. Root and branch extermination failed because alternative schemes did not readily present themselves. In the rural counties it almost seemed as if the coroner system were a necessary evil.

¹Counsel, Special Joint Legislative Committee on Taxation and Retrenchment, State of New York, 1922-1923; Member of Staff, National Institute of Public Administration.

Now comes the committee and recommends complete abolition of the office in all counties of the state. In the larger counties, adoption of the medical examiner plan, to be incorporated in the district attorney's office, is accepted as the best solution. In the smaller units, however, where this method is clearly not practicable, the committee has had to resort to other expedients. The committee found that the simple and direct plan in operation in Jefferson County since 1916 has much to commend it. Under this device the powers and duties of the coroners are devolved upon the district attorney, or his assistant or other representative designated by him. In the words of the report, "this permits the district attorney, when he chooses, to deputize a local physician convenient to the scene of death to make such medical examination or investigation as may be required. In many cases where death from unknown causes is reported and in which it is clear that no crime has been committed, the district attorney simply authorizes a convenient local physician to sign the death certificate. Such authority is frequently given by telephone. In other cases where there is suspicion of crime, the district attorney makes a personal investigation, deputizes if necessary a local physician to make an autopsy or other examination, prepares the evidence as required, and requests the local committing officer to hold the suspected persons for the grand jury. The procedure in Jefferson County is by all means the most expeditious, efficient and economical observed in any of the counties studied."

Testimony of county officials appearing before the committee indicated that the cost of administering the new system was less than one-fifth that of the old. The point was clearly developed that in many counties operating under the old system the coroners entered into many cases where their services were not really required, thereby adding to the friction which is bound to develop from conflicting authority whenever independent agencies are forced to operate together. In the last analysis it is the district attorney who is responsible for success or failure. The Jefferson County plan gives him the powers consonant with that responsibility.

EXAMINATION AND EXEMPTION OF JURORS

Two methods for the examination and exemption of jurors are in general use in the state at the present time. In the larger counties a jury commissioner is appointed, usually by the judiciary, to administer this work. The committee found, however, that except in the very largest units, the office was a political sinecure and its use as a "base of political supplies" almost universal.

In the rural counties, on the other hand, the lists for grand and trial jurors are prepared by certain town officials and certified by them to the county authorities. The result is such as might be anticipated. The committee reports that "it has not been unusual for the court to find that a very large proportion of the jurors called are either disqualified (as by reason of extreme age, physical infirmity, unsound mind, or bad character) or possess valid and conclusive grounds for exemption by reason of the nature of their callings. It appears that the number of exempt firemen called for duty as trial jurors is especially large in some counties."

A county supervisor who appeared at one of the formal hearings testified that in preparing his first grand jury list he found that more than three-quarters of those on the preceding list were between seventy and eighty years of age. These could all claim exemption and still collect their per diem allowances together with mileage to and from the county seat.

As in the case of coroners, the report based its recommendations upon practices which have already stood the test of experience in the state. It therefore accepts the procedure established in Rensselaer County ten years ago under which the county clerk performs the same duties as are ordinarily devolved upon the jury commissioner or town officers. In those counties, however, where the extent of jury administration warrants the employment of a full-time force, it is recommended that the jury commissioner plan be adhered to.

JUSTICES OF THE PEACE

Justices of the peace in New York are town officers charged with a dual function. Not only do they exercise petty civil and criminal judicial powers, but they are ex-officiis members of the town board. As a result of its examination the committee concludes that these two functions are difficult to harmonize in a single individual. The direct testimony of county officials was frequently of a striking character. There was a quite general impression among these that the judicial aspect of the justices' duties were being sacrificed to their administrative and legislative functions. Many of the justices appear either completely or partially to have avoided exercise of their judicial powers by making it clear that this work was distasteful to them, with the result that a single justice usually performs all or practically all of the judicial functions of the town.

This condition has had two immediate effects. In the first place, the town is deprived of the convenience of having several justices

distributed over the entire area. Second, there is the far more serious consideration that these inactive justices, who not only are not learned in the law but receive no practical experience in the performance of their official duties, occasionally are called upon to sit as committing magistrates. District attorneys cited specific cases in which the justices' unfamiliarity with the law resulted in failures of the prosecution, and in the release of offenders who properly should have been held for the grand jury.

The vigorous nature of the testimony adduced at the hearings, together with the striking degree of unanimity which was displayed, convinced the committee that the office of justice of the peace has almost outlived its usefulness in the State of New York.

"It is fully appreciated," reads the report, "that the office of justice of the peace is a venerable institution and that there would be a considerable body of public sentiment opposed to its abolition. The argument for cheap and informal justice administered by a neighbor is bound to be very persuasive. But the office has already broken with that tradition to which so much sentiment attaches, for it must be borne in mind that justices of the peace were originally creatures of the central government (i. e., of the Crown, in England) and that their election by popular vote from small districts deprived them not alone of the dignity derived from selection by high authority, but also tended to make them subservient to the supposed interest of the inhabitants of their respective towns."

Four alternatives received serious consideration, but because the office is constitutional in character, and because the most thoroughgoing of these would have added materially to the cost of local rural government, the committee contented itself with recommending that the number of justices in each town be reduced to one or two, and that they be deprived of their status as members of the town board.

The testimony of county and town officials on these points was direct and convincing. The chairman of a county board of supervisors declared: "We find that the law which provides that justices of the peace shall comprise the town board is a very serious handicap in the proper administration of the town, because men who are qualified to act as members of the town board will not take the position of justice of the peace. We have to conceal that fact from them. It is an unfortunate way to select men to handle town matters because they consider themselves to be primarily members of the town board."

On the judicial aspect of the justices' work, the following testimony bears significant witness: "Not half of the justices of the peace ever make out a summons or issue a warrant. They would not know

how to do it. The average justice of the peace, so far as his court is concerned—if he does any court work at all, which is seldom—usually has some lawyer who, he thinks, knows all the law there is. . . . As far as his knowledge of actual practice is concerned, he has none worth mentioning. There are some exceptions, of course, but they are very rare. We had a justice of the peace in my county a few years ago who realized the importance of his duties to such a degree that in the ordinary course of events he granted a divorce.”

The chairman of another county board, who was the only witness to defend the existing system, threw a flood of light on certain aspects of the situation. His remarks on this point were confined to few words and not untouched with humor: “We have had a very sensible lot of justices in our town and they have always agreed with me.”

The recommendations of the committee, if carried into effect, are expected to eliminate at least a portion of the defects inherent in the present system, without setting in motion the cumbersome legislative and popular referendum machinery necessary to constitutional amendment, or increasing the cost of town and county government.

SHERIFFS' FEES

The sheriff also is a constitutional office in New York and, like the justice of the peace, his origins are deeply imbedded in the past. An examination of a number of sheriffs' offices revealed only one condition warranting special attention at the present time. The question of the fees paid to the sheriff for the service of criminal process, for boarding prisoners, and the like, was widely and actively agitated in New York some years ago and resulted in their general abolition. Civil fees, however, remain as personal perquisites of the office in all of the counties not included within New York City. Its first-hand examination of conditions and the public hearings which followed it convinced the committee that retention of these civil fees by the sheriff in some instances afforded a compensation which was disproportionately large. But because this condition was not universal, nor even fairly typical, and because it was recognized that the civil fees provide a convenient measure of compensation for services rendered, and an incentive to the prompt execution of civil process, the committee confined its recommendations within rather narrow limits. Briefly stated, these are to the effect that the sheriffs be required periodically to report all civil fees received by them, and the board of supervisors authorized to deprive the sheriff of all civil fees as personal perquisites whenever

they considered the remuneration accruing to the sheriff to be unduly large, or for any other reason in their discretion.

RURAL CRIME AND THE CONSTABLE

It proved to be a rather difficult matter to direct the inquiry into the administration and operation of the town constable system along serious lines. Mention of constables usually elicited caustic witticisms in spite of the gravity of the rural crime problem. To quote the report, "the rural districts no longer have to cope merely with the crimes arising from the offenses of their own inhabitants. The automobile has made all sections of the state readily accessible to the criminal element which formerly confined its activity to the cities. The railroad has ceased to be the sole avenue of escape."

County and town officers showed themselves to be keenly aware of this situation, but argued that although the constables did not assume any responsibility for general crime conditions, being for the most part mere civil process-servers, it was upon the State Police, and not the constables, that the people of the rural districts now rely for protection. While the committee was disposed to agree that the State Police represent by far the largest single factor in rural crime repression and the apprehension of offenders, nevertheless their work is so extensive as to require the undivided attention of the state force. The conclusion was thereby drawn that in spite of the general consensus that "the office of constable is relatively so unimportant that it would make no great difference whether it is retained or abolished altogether," the constable system might well be retained in modified form to deal with misdemeanors and other minor infractions. The committee therefore recommended that the constables in each town be reduced to one or two in number and that the town board be authorized by law in their discretion to substitute a fixed salary for the present fee system of compensation.

"These measures," concludes the report, "are merely palliatives, and do not go to the root of the matter. The crime situation which the rural communities are facing requires the attention of a professionally trained police force, of which the State Police is an example. If this body of peace officers were increased in number so that their work could be carried on more intensively in the rural areas, the problem would be brought much nearer to a satisfactory solution."