

Summer 1928

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### Recommended Citation

Seymour H. Stone, *Is the Administration of Criminal Law in Great Britain Preferable to that Practised in the Commonwealth of Massachusetts*, 19 *Am. Inst. Crim. L. & Criminology* 237 (1928-1929)

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# IS THE ADMINISTRATION OF CRIMINAL LAW IN GREAT BRITAIN PREFERABLE TO THAT PRACTISED IN THE COMMONWEALTH OF MASSACHUSETTS?

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(This article is an argument submitted in a joint debate on this question.)

The consideration of this question involves the police, the courts, the legal profession, the medical profession on questions of insanity, feeble-mindedness and other mental peculiarities, and the jails, houses of correction, prisons, honor camps, reformatories and hospitals for the mentally abnormal. However, it is not my intention to cover all these aspects of the question.

In order to answer the question before us, yes or no, it is really necessary to compare the administration of the criminal law of Great Britain and Massachusetts, and this, at least in part, is not possible. Why not? Because the problems and the material to be handled are entirely different.

(1) Traditions of autocracy, and submission to authority in England still persist. In America every street corner or country grocery store holds embryo congressmen or presidents. The government and citizenship here in America being one and the same, the citizens have not the awe and reverence for government that they have in England where the entire country is filled from end to end with the monuments of a great tradition. Consequently in Massachusetts we find a lessening respect for that law and order which proceeds from government and a laxity of control which seems to be a part of a democracy.

(2) England is *homogeneous* in its population. It has no race problem. The forebears of England's present population for generations back were Englishmen, bred to English customs and traditions. To see the London "Bobby" at work, with no revolver or billy, dealing with people of his own race who understand him and whom he understands, is to learn a larger sympathy for his brother officer who walks the beat in our Massachusetts cities.

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Now what have the police, the first and most important line of defense in dealing with crimes in this state, to contend with in comparison?

The population of Massachusetts is *heterogeneous* to an extent almost without parallel. Only 3 per cent of London's population is foreign born and in the rest of England it is probably less. In Boston it is 36 per cent. The *native white* population of *native parentage* amounts to less than one-fourth of the population of Boston, while in Fall River it constitutes little more than .10 per cent. In other cities, such as Lowell, Lawrence, New Bedford, etc., it is somewhere between these figures.

We all know how these different nationalities come together in districts. Our cities have their Italian quarter, their Chinese quarter, their Polish, Lithuanian, Russian and Irish quarters and a negro quarter. These sections have their own leaders, newspapers, fraternal organizations, etc. It is this complex problem of nationality that our police are called upon to grapple with. The police often do not understand these alien citizens, and they in turn do not understand the police or our laws and customs. But the police must enforce the law, and if there is any misunderstanding the culprit is commanded to "tell it to the judge."

As Raymond B. Fosdick says in his book, "American Police Systems," the police of an American city are faced with a task such as European police organizations have no knowledge of. "The Metropolitan Police Force of London with all its splendid efficiency would be overwhelmed in New York." Fosdick ought to know, because he has studied the police systems of Europe and presented his findings in a volume entitled "European Police Systems."

With these facts before us how can we say that we prefer the administration of the criminal law, at least so far as police administration is concerned, in Great Britain to that in Massachusetts. We cannot make a comparison under these conditions.

Furthermore, what right have we to place any confidence in a comparison of statistics of arrests, crimes, etc., of Great Britain and Massachusetts? How do we know that the British administration of criminal law is any better or even as good as our own?

Last year we heard a great deal said about a "crime wave." I suppose this, and the fact that one or more important cases do not seem to have been handled properly by the police and courts, may be the principal reasons for this debate.

Well, what about this "crime wave"? Figures gathered under the mandate of the law do not prove that there was more crime in Massachusetts in 1925 than in 1924. As a matter of fact there were 1840 fewer arrests for crime in 1925 than in 1924. In 15 years juvenile crime in the Boston Juvenile Court has decreased from 1245 to 900 cases, and this in spite of the increase in population. Cases of neglected children have dropped from 215 to 41 in the same period.

There has of course been an increase in automobile violations in the last 15 years. In 1910 3,830 cases were begun in the courts, the number increasing in 1925 to 35,570. In this same period the number of registered automobiles in Massachusetts jumped from 31,000 to 672,000. Although we have twenty times as many automobiles we have only ten times as many violations.

Since the enactment of the new prohibition law, liquor violations have increased from 1989 to 12,482. But notwithstanding these apparent jumps in automobile and liquor offenses there is no real increase because the population of the state in the same period has increased 13 per cent.

Let's look for a moment at the figures regarding those offenses which we usually refer to when we talk about crime, crimes against the person, assault, murder, manslaughter, robbery. In 1915 there were 12,444 cases of this nature begun in the courts, while last year there were only 10,188, or a decrease of over 2,200 cases in 10 years. And the population of the state has increased.

Before the legislative committee hearing on crime legislation in 1926 the attorney-general hit this matter squarely on the head when he said that an epidemic of *spectacular automobile holdups and robberies* by certain young men increased the robberies from 461 to 509. But carrying of weapons has decreased from 817 to 770, larceny from 9,900 to 8,300 (1915 to 1925).

It may be that another reason for the belief that we have had a crime wave is that in the years 1917 to 1922 the tide of crime fell to a very low ebb. Our prisons were greatly depopulated. The prison population dropped from 6,800 to 2,352. Five jails were shut up and have never been reopened. In 1925 the prison population went up to 5,100 and consequently some of these jails were crowded. With figures like these before us ought we to let ourselves get into a panic, and clamor for the adoption of the British plan of administering the criminal law? We have nothing on which to base our assurance of its success.

What does the Englishman know about automobile violations when of the 18,023,584 autos in the world 15,092,177 are in the United States? Think of the crimes committed because of the advent of the automobile—namely, violations of the automobile laws, holdups, manslaughter, abductions, unlawful appropriation of cars, defrauding insurance companies, etc.

How many families are without an automobile? Not many. The prosperity of the masses of the American people is probably unexampled in the history of the world. Carpenters and washerwomen ride to their work in motor cars.

And what does this same Englishman know about the difficulties of the new liquor law, violated not only by the various nationalities who have been accustomed to a free use of wines and beers, but also by the so-called respectable American who is the customer of and the real cause of the bootlegger, and who at the same time thinks he is bringing up his sons and daughters to be law-respecting individuals. Do you really think that the British methods of dealing with conditions such as we have will bring forth better results than we ourselves can obtain? I can't believe it.

Our attention has been called to the certainty and celerity of English criminal justice. Here again our heterogeneous population and all its problems and complications plays its part and makes it impossible to make a fair comparison.

But even if rapid, how certain is the administration of the English law? The English courts are by no means infallible, for it has been proved that they have more than once convicted the innocent. The most notable recent case is that of Adolph Beck, three times convicted on mistaken testimony as to identity (how is that for celerity and certainty?) Ultimately the real culprit was discovered and convicted and Beck was pardoned and compensated by Parliament for his losses.

Another case is that of Mrs. Maybrick, convicted of murder after trial before one of the most eminent of English trial judges. In her case there was grave doubt whether a murder had been committed. After much agitation her sentence was commuted to imprisonment and ultimately she was released.

In the introduction to Watson's trial of Adolph Beck there is a long list of erroneous convictions by British courts in cases of mistaken identification. In 1925, while the International Prison Congress was in England, two of these false identification cases happened within a month. Such cases are almost unknown in America.

I should like, moreover, to point out that not all cases before British courts are handled rapidly. Special commissions to examine further into certain cases have been appointed and hearings held and these cases notably prolonged. The Home Secretary of England has repeatedly appointed a commissioner or commissions to investigate convictions of persons claimed to be innocent. In the Beck case a commission of five members was appointed and held public hearings. Some of the other instances were the Smithurst case and the Slater case. While it may therefore appear that the court is through with these cases, as a matter of fact they are being continued through these commission hearings, and are consequently not disposed of as rapidly as supposed.

In Massachusetts we use great care in safeguarding the rights of the individual. Perhaps we overdo it. Nevertheless, I believe public sentiment is strongly in favor of making sure that no innocent person suffers. The individual himself is not the only one that is touched by false accusations of guilt; the suffering extends to members of his family, perhaps for more than one generation, and also to his friends. Shall we exchange our fundamental guarantees of personal liberty for an occasional Beck case?

May I call attention to some features in the administration of the criminal law in which Great Britain is distinctly following the lead of Massachusetts, and some desirable ones which she has not yet adopted.

(1) In the matter of the classification of offenders let me quote from that excellent book, "The English Prison System," by Sir Evelyn Ruggles-Brise, Chairman of the Prison Commission for England and Wales and President of the International Prison Commission. He says: "In the United States of America, where science and humanity march hand in hand in exploring prisons and places of punishment, and in surveying the whole field of crime, we find that practical steps have been taken by the establishment of criminal laboratories, as at Chicago and Boston, to classify offenders, especially the young, according to the nature and degree of their mental capacity for distinguishing right from wrong. There is nothing so elaborate as this in England." In alluding to Boston he refers to the Judge Baker Foundation established in memory of Judge Harvey H. Baker of our Boston Juvenile Court. This Foundation is co-operating with the juvenile courts and other institutions in carrying on a special study of the unusual cases that come to them and making recommendations that will aid in their solution, and also to the examina-

tion, mental, physical and social by the Massachusetts Department of Mental Diseases of all prisoners committed to houses of correction for 30 days or more.

(2) Let me also call your attention to probation, started in this state 50 years ago. Massachusetts is in fact the mother state of this progressive movement, and has developed it more completely than any other community. England has only comparatively recently started probation and is still behind Massachusetts in its standards, coming to us continually for advice on this matter.

(3) We have here the indeterminate sentence which, together with the reformatory and parole systems, has made it possible to improve the results of our administration of the criminal law. The indeterminate sentence presents an opportunity to train men and women prisoners through the earning, by good conduct and industry and a system of credits, of an earlier release. This applies largely to the reformatories, although to a lesser degree to our state prison. The common indeterminate sentence in the reformatories is for five years, but by a system of credits for conduct and industry it is possible for a prisoner to get out on parole at a much earlier period. The prisoner, however, must be prepared to conduct himself well while out on parole or he may be promptly returned and kept for the balance of the five years. The courts all know this plan and have its possibilities in mind when sentencing a prisoner.

A modified reformatory scheme was started in England by the Prison Commissioner, Sir Ruggles-Brise, after he had studied the reformatories in the United States, particularly those in New York and Massachusetts. But England has not yet brought about the degree of improvement noticeable in our reformatories. Sir Ruggles-Brise says in his book: "I was impressed by all that I saw and learned at the principal state reformatories of America, at that time chiefly in the states of New York and Massachusetts. The elaborate system of moral, physical and industrial training of these prisoners, the enthusiasm which dominated the work, the elaborate machinery for supervision of parole, all these things, if stripped of their extravagances, satisfied me that a real, human effort was being made in these states for the rehabilitation of the youthful criminal."

May I also quote from a letter written to me by Louis N. Robinson, secretary of a committee of the National Crime Commission. He says, speaking of our Massachusetts Women's Reformatory: "I do not believe there is a woman's institution in England that is doing as good work." He also says: "I am inclined to think that your

parole work is perhaps better than one would find on the average in England."

(4) I should like to go into the juvenile court question, but time will not permit me to do more than quote again from Mr. Robinson, who says: "Of course, the juvenile courts of Boston and the work of Dr. Healy (meaning the Judge Baker Foundation) is not surpassed in England."

(5) I should also like to give more details than is possible in this brief paper about parole, our industrial training in prisons and reformatories and our system of sending men to honor camps as a reward for good conduct, all of which work cannot be outclassed by anything in England.

(6) Then there is our own State Commission on Crime Prevention, appointed by Sanford Bates, Commissioner, Massachusetts Department of Correction, the only one that exists, so far as we know, with its plan of studying the *real causes of crime*.

(7) And finally there is the special effort being made to individualize our treatment of prisoners. Notice I use the word treatment rather than punishment. This treatment means an effort to diagnose the causes for the commission of crimes. In crime as in medicine we are trying to find out the ultimate cause and what is at the bottom of the individual commission of crime, and to treat the prisoner according to the special diagnosis.

In a great majority of these cases we find that social conditions of one kind or another are at the bottom as the cause. This individualization, studying, classifying and treating the individual criminal, is the next big step towards diminishing crime, and this state is making greater strides in this direction than Great Britain. We shall make still greater strides if we can secure the public support we need.

My study of this question under debate convinces me that Massachusetts does not want to substitute the British administration of the criminal law for its own. I think that our system is on the whole better, and that we are progressing in the right direction more rapidly than Great Britain. I only hope that this paper has convinced you that blindly to reshape our procedure to conform to Great Britain's is undesirable.