Journal of Criminal Law and Criminology

Volume 25
Issue 4 *November-December*

Article 10

Winter 1934

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ABOLITION OF THE GRAND JURY IN ENGLAND

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The grand jury in England died at midnight on the 31st of August last. Having sturdily resisted frequent attacks of ridicule and of reason it succumbed to an acute onset of depression, a world-wide disease peculiarly fatal to obsolete institutions.

The grand jury had long lagged superfluous on a stage where it had once played a great part. Its performance had grown perfunctory, and its service a burden to reluctant actors. During its last years it was kept in being only by that strong sentiment among lawyers which resents change however salutary; but, though the English people is patient, there is a certain vein of commonsense in its make-up, which, in the long run, prevails. After the grand jury ceased to be, some tears were shed by those who had failed to notice that the reason of the thing had passed away, but these are now dried.

The reason had passed. Originally the grand jury, in criminal procedure, were the informants. They told the King's judges what crimes had been committed in their venue, or neighborhood as the better Saxon word has it. In exceptional times and places their refusal to find true bill defeated tyrannous prosecution, but if history instead of vague sentiment be our guide we shall realize that such happenings were exceptional, and that to talk of the loss of a great safeguard of personal liberty is to talk nonsense. The very people who do so fail to note that the justice of the peace who, in the last analysis, has rendered the grand jury superfluous, is steadily supplanting the petty jury, a much more important and dangerous process, though the danger is being met, in characteristically English fashion, by getting on the benches of courts of summary jurisdiction a lay element drawn from all classes.

For very many years the grand jury has done little but ratify the committals for trial by examining justices. Here and there a bill was thrown out, but on no discoverable principle. It is a fact that the court usher, the only official allowed to be with the grand jury, frequently guided their deliberations.

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In times of emergency, exactly those when stretches of power are likely, the grand jury ceased to function. In the great war grand juries were suspended by Act of Parliament, and no one missed them, for the excellent reason that many grave offenses were triable summarily under the Defense of the Realm Acts and Regulations (the celebrated "Dora"), the right to claim trial by jury being expressly withdrawn, though the maximum penalty might be six months imprisonment plus a fine of one hundred pounds (with another three months imprisonment in default of payment).

By the Emergency Powers Act 1920, regulations for purposes essential to the public safety and the life of the community may be made by Order in Council whenever a proclamation of emergency is issued. Such proclamations were issued at the time of the General Strike in May, 1926. Offenses against the regulations are punishable summarily with three months imprisonment and a fine of one hundred pounds (an extra three months in default).

What is the sense in bemoaning the loss of the grand jury after that? In fact the real security against oppression lies not in outworn judicial machinery, but in the alertness and resolution of the citizen.

After the war was officially declared at an end and the fifth wheel was again fitted to the coach, efforts were made to get rid of the grand jury for good and all. The Criminal Justice Bill of 1925 included a proposal to abolish it at Sessions (leaving it at Assizes for the most serious offenses). Unexpected resistance developed in the House of Commons among people with more love of liberty than practical acquaintance with the history of the matter, and, to save other valuable clauses, the proposal was left to the free vote of the House; it was defeated by one hundred and eighty-four votes to one hundred and forty-nine. In 1933, the present government of public safety, representative of all sections of political opinion, and out before all things for economy, has found little difficulty in effecting this one.

The new procedure is in section 2 of an Act with the clumsy title of Administration of Justice (Miscellaneous Provisions) Act, 1933. To include the subject under this disarming name was sound political psychology; a Bill to abolish the Grand Jury might have been abortive. Under the Act have been made the Indictments (Procedure) Rules, 1933.

Any person may prefer a bill of indictment charging any person with an indictable offense, provided that the accused has been committed for trial or that the bill is preferred by the direction or with

the consent of a judge of the High Court. The preferment of a bill with the consent of a judge gives the prosecutor a proper opportunity of getting overruled a decision of examining magistrates with which he is not content.

This liberty to prefer a will will not, of course, override such special requirements as that of obtaining the consent of the Attorney General or the Solicitor General to a prosecution under the Prevention of Corruption Act, 1906.

A certain elasticity in drawing the indictment of a person committed for trial is given. Any counts founded on facts or evidence disclosed in the depositions which might be lawfully joined in the same indictment with the counts charging the offense for which the accused is committed may either be substituted or included, and a charge of a previous conviction, or of being an habitual criminal or an habitual drunkard, may be added.

A bill becomes an indictment when signed by the proper officer of the court, who has to be satisfied that there has been a committal or a direction or consent. The judge or chairman of the court, may, if satisfied that these requirements have been complied with, direct the proper officer to sign.

The indictment, if not preferred in accordance with the provisions outlined, may be quashed, but if there are several counts only the irregular ones are to be quashed. Indictments and counts will not be quashed on appeal where a person was committed for trial, unless application has been made to quash at the trial.

The Act contains a saving for the "grand jury of the County of London and the County of Middlesex," which still has to be summoned to pass upon a bill preferred under certain Acts relating mainly to treason and certain felonies committed abroad, including offenses under the Official Secrets Act. Thus a last poor shadow of the grand jury survives, in defiance of the diatribes uttered so long ago as 1853 by "Punch," who then wrote, "Any philosopher who wished for an example of the emptiness of grandeur, and its unsatisfactory effect upon the grand themselves, need look no further than the Grand Jury of Middlesex. This venerable body never assembles without being lectured on its "extreme antiquity," and "its utter uselessness," its "respectability" and its "superfluousness": in fine upon its having attained to such a good old age, as to be of no good at all."

In 1873, *Punch* returned to the charge once more and decided that the "calling of grand juries was a grand mistake." That decision of our shrewd and kindly mentor has now been followed by Parliament.