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## POLICE DISCRETION NOT TO PROSECUTE STUDENTS: A BRITISH PROBLEM

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"This discretion [in prosecuting] forms an area of great power, which has never been properly studied or discussed."<sup>1</sup>

These words of Ben Whitaker focus attention on a serious gap in contemporary studies of the criminal process.<sup>2</sup> We subject to minute analysis the history, the meaning, and the implications of the actual rules of the substantive criminal law, but we fail to bear in mind that if people were not actually prosecuted there would be no need for these intellectual pursuits at all. The justification for these mental activities is, in fact, the existence and the setting in motion of the procedural machinery of the criminal law. That should never be forgotten.

There are other reasons, too, why a study of this machinery should not be neglected.

When the machinery is set in motion it is almost invariably by the police. But—and it is vital that this should be grasped—the machinery is not set in motion on every occasion on which it might be. Any one of several factors may be responsible and without claiming to be comprehensive we may here list:

1. The non-detection of the offender;
2. Insufficient evidence on which to proceed against the offender;
3. Reluctance to prosecute on account of the kind of offence involved;
4. A sense of mercy;
5. Inconvenience; and
6. Corrupt influence.<sup>3</sup>

<sup>1</sup> BEN WHITAKER, *THE POLICE* (Penguin Books 1964), p. 170.

<sup>2</sup> An important contribution is made by J. GOLDSTEIN in *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 *YALE L.J.* 543 (1960).

See too G. WILLIAMS, *Discretion In Prosecuting* (1956) *CRIM. L.R.* 222.

<sup>3</sup> For a fuller discussion and an analysis of the terms "total enforcement," "full enforcement," "actual enforcement" and "no-enforcement" see J. GOLDSTEIN, *op. cit.*

The existence of this discretionary power must be admitted. Equally important is that it should be realized for what it is, *viz.*, a possible source of praise for or complaint against the police. In programmes of crime prevention and in the detection and apprehension of offenders the police count on co-operation from the public. It is only right that they should. When it is felt, as it may be these days, that that co-operation is not all that it might be,<sup>4</sup> it is imperative, under any scientific approach to the criminal process, to subject to scrutiny all possible sources of the public's refusal or reluctance to co-operate. The exercise of the police discretion over prosecutions in a socially acceptable manner will have no bad side effects; the opposite may well be true where society has reason to be critical.<sup>5</sup>

The circumstances that give rise to a police decision not to prosecute are, as has already been shown, many and various. In this article interest is confined to considering the discretion not to prosecute students in the context of recent events in Britain. There are two reasons why the study of this discretion is of especial value. First, the non-prosecution of a recognisably distinct group in the community raises an interesting political

<sup>4</sup> For comment on relations between the police and the public in Britain see *THE ROYAL COMMISSION ON THE POLICE 1962 FINAL REPORT*, Cmnd. 1728, ch. VIII; C. H. ROLPH (ed.), *THE POLICE AND THE PUBLIC* (1962); and BEN WHITAKER, *THE POLICE* (1964). At one level the decision of the House of Lords in the case of *Sykes v. Director of Public Prosecutions* (1962) A.C. 528, (1961) 3 W.L.R. 371, (1961) 3 All E. R. 33, 45 Cr. App. R. 230 may be viewed as evidence of judicial concern over public non-co-operation with the police. The non-communication of information to the police in the belief that certain newspapers would be prepared to pay a price for that information adds an uniquely modern perspective to the difficulties under which the police labour.

<sup>5</sup> This, of course, posits some dissemination through the various media of communication of information about the apprehension but nonprosecution of offenders on which alone critical social judgments can be founded. Dissemination of some kind of information will most likely occur when the public interest is aroused.

question. Secondly, it is of value to study the mechanics of the decision where students are concerned. Students, it should be remembered, can be subjected to internal disciplinary machinery; perhaps, then, the police may not prosecute if they know the university will utilize that machinery. This in turn poses the neat question of which "status degradation ceremony"<sup>6</sup> the community prefers, or should prefer, students to suffer. Those organized publicly for everyone, including students, or those organized privately within universities and colleges for students only?

It should be emphasized right at the start that we are here concerned with students as students and not as individuals who happen also to be students. There is no reason to believe that a British student who commits a motoring offence whilst driving his Jaguar or who indulges a propensity to petty thieving in the neighbourhood is likely to be treated one whit differently from the local lad who never got to university and crashed a Jaguar or shoplifted from the corner grocery store. Rather, we are concerned with police decisions not to prosecute students who in the course of some recognized student activity, say a student prank or charity week stunt, commit criminal offences.

It is only too plain and only too well known that a student charity week in a British university city or town sees some student criminality. Students put a considerable amount of effort into these collection drives on behalf of charities and invariably manage to collect large sums of money for a number of worthy causes. In order to attract publicity to the collection drives, but also simply in order to "have a good time," "let off steam," "paint the town red," call it what you will, students do, through the stunts they arrange and perform, commit technical or more substantial breaches of the criminal law.

In areas where relations between the police and the students are generally good, the police are inclined to adopt a benevolent attitude towards the behaviour of the students on such occasions. Typical of this attitude are the following remarks of a police spokesman in Belfast, Northern Ireland, made shortly before its university's 1964 rag week:

"The students are no trouble at all. Great to work with. Rag doesn't disrupt anything any more than the Twelfth,<sup>7</sup> and a dozen other pro-

<sup>6</sup> The jargon, believed to be helpful, is borrowed from J. GOLDSTEIN, *op. cit. supra*, note 2.

<sup>7</sup> The reference is to the Parade of Orangemen in Belfast on each July 12.

cessions during the summer. And it's for a worthy cause. We wish them all the very best. Very few complaints are ever received, and what does arise, is dealt with in the most lenient fashion."<sup>8</sup>

On some occasions, however, students do provoke the police. That is obvious from some of the incidents that do take place. One thinks primarily of incidents such as the one that took place in one of the main streets of Welwyn Garden City in England at noon on April 21, 1964. On that date a group of students carried out a mock bank raid. The "raid" was a stunt performed during a rag week organized jointly by students of the Mid-Hertfordshire College of Further Education and the Hatfield College of Technology whose aim was to raise money for the blind. Here is a portion of *The Times'* report of the incident:

"Three hundred police answered alarm calls after the raid . . .

"As an organizer agreed later, the rag got out of hand . . . especially when one student, with his face covered with raspberry jam . . . ran up the High Street shouting 'I've been shot!'

"The alarm had already been given by a shopper who saw five young men masked with silk stockings, goggles, and balaclava helmets run from Lloyd's Bank into the street towards a car. One student carried a bulging briefcase. Two others shot off toy cap guns as they ran.

"A third planted outside, was knocked down as he 'tried to stop the escapers.' Another posing as a bank clerk his face streaming with something red, ran out shouting 'Stop thieves' and clutching a 'wound' in his head. Two girls screamed as the men made off in a hired car.

"Police cars arrived within seconds from the town's police station, and the headquarters at Hatfield circulated a radio description of the 'bank robbers' and their get-away car.

"Police cars from all over the country drove to Welwyn and were posted in all main exit roads from the town. 'Armed robbery' messages

<sup>8</sup> Quoted in GOWN (the Queen's University of Belfast student newspaper) March 6, 1964. The University Discipline Committee issues regulations covering student behaviour on rag day. These include a ban on the wearing of indecent dress, the throwing of missiles and liquids, and the staging of events tending to incite political or religious controversy. The University's Vice-Chancellor receives each year a detailed and confidential report of incidents involving students during rag day.

were flashed to newspapers and news agencies."<sup>9</sup>

There were several scarcely unexpected reactions to this stunt. The local council threatened to withhold permission for future street collections by the students. Superintendent C. Day of the Hertfordshire Police struck a more serious note. "This could amount to behaviour likely to cause a breach of the peace. We have the public to consider—some of them were very frightened."<sup>10</sup> A report of the incident was sent to the Chief Constable, but he apparently decided not to launch a prosecution.

The Chief Constable's decision would probably not have commended itself to some members of the editorial staff of *The Daily Mirror*. That newspaper, the day after the "raid," printed a stinging editorial urging the police to prosecute under the heading "Smack Their Bottoms—Hard":

"All decent citizens are heartily sick of students who, under the guise of a charity rag week behave like a load of ignorant, bird-brained, disgusting louts.

"The latest idiotic example comes from Welwyn Garden City where some of these allegedly intelligent youngsters faked a bank raid, terrified onlookers, and disrupted police patrols throughout the county.

"There is no possible excuse for these nitwits. They are supposed to be brainy and sensible. They are supposed to be capable of benefiting from the finest education the nation can offer. How do they justify themselves?

"They go mad. They behave like hooligans. 'Collecting for charity' becomes a cover for their craze for kicks and their own twisted idea of having fun.

"Their kind of fun means spoiling life for a lot of other people.

"Nobody seeks to excuse the equally oafish behaviour of the young fools who recently 'invaded' Clacton.<sup>11</sup> But it can at least be said that they come from more restricted circumstances than the students.

"At least they are not living on funds pro-

<sup>9</sup> THE TIMES (London) April 22, 1964.

<sup>10</sup> *Ibid.* Photographs of the "raid" appeared in THE DAILY MIRROR (London) of April 22, 1964.

<sup>11</sup> The reference is to certain incidents at Clacton, an English seaside resort, on Easter Monday, 1964. The incidents received considerable publicity which was later admitted to be unwarranted. For a short synopsis of what happened see the speech of Mr. Brooke, the British Home Secretary, 694 H.C. DEBS. 89 (April 27, 1964).

vided by the hard pressed taxpayer to further their education—as some of the students responsible for silly rags are.

"After the Welwyn rag, as usual, after such exhibitions, come all the pathetic excuses. It was just a stunt... Done for publicity... Meant no harm...

"The police ought to crack down on these college numbskulls and prosecute."<sup>12</sup>

The Welwyn Garden City students were not proceeded against. Another group of students, this time in London, were not so fortunate. On April 16, 1964 four students from Ealing Technical College arranged a bomb hoax during a rag week. They were so successful that the Mansion House Underground station was closed for a time and thousands of rush-hour passengers delayed. *The Times* of May 13, 1964 had a good description of what happened:

"When a shuttle service train from Ealing Broadway arrived at Mansion House at 3:37 p.m. . . . the guard found a parcel hidden under a sheet of brown paper. He took the paper off and saw what appeared to be three cardboard cylinders, 2 ft. long, taped together and attached to an electrical contrivance.

"On each cylinder the word 'explosive' had been stencilled in bold red letters."

The guard became frightened and thought he had discovered a genuine homemade bomb. He feared that it would blow up, so he called the motorman and the station master.

"An inspector from the City Police and the divisional inspector of the line arrived. They all came to the conclusion that the parcel might be lethal.

"As a result they cleared the station of all passengers, no train was allowed to stop at Mansion House, and the train on which it had been found was sealed. In addition the offices immediately above the station, occupied by London Transport staff and some independent firms were evacuated.

"A bomb disposal unit from the R.A.O.C. looked at the bomb, and also formed the view that it could be lethal. When they eventually dismantled it they could not find any explosive in it at all. All they found were some advertisements for the Ealing Technical College rag week."<sup>13</sup>

<sup>12</sup> THE DAILY MIRROR (London) April 22, 1964.

<sup>13</sup> This account is based largely on the resume given by the prosecution lawyer at the court hearing.

Services on the line only returned to normal at 5:45 p.m.

In this case summonses were issued by the British Transport Police against the four students involved charging them with interfering with the comfort of passengers on the railway at the Mansion House station and with obstructing a guard in the execution of his duties. The four students pleaded guilty, apologized in court, and were each fined £5 with 5 guineas costs.<sup>14</sup>

An important factor that bears on whether the police decide to prosecute is what the university or college disciplinary authority decides to do. Dr. W. V. Lloyd, principal of the Mid-Hertfordshire College of Further Education, stated after the mock bank raid involving some of the College's students that he was not considering suspending them. Later, however, it seems some disciplinary action was taken and, as we know, no police prosecution was launched.<sup>15</sup>

The immediate response of the governors of the Ealing Technical College to the bomb hoax was to suspend the guilty students. On May 1, by which time, presumably, the governors may have learnt of the police's own action, they recommended the lifting of the suspension on the students.<sup>16</sup>

It would appear, then, that a university or college may prevent a police prosecution by taking some independent initiative or by setting the university or college disciplinary machinery in motion.<sup>17</sup> There is no guarantee, however, that such action will be effective. Still, if the university or college is concerned to protect its students from public criminal processes and in this fashion to save them from public status degradation ceremonies, a

<sup>14</sup> THE TIMES (London) April 22, 1964.

<sup>15</sup> See the implications of the remarks of Lady Wootton 257 H.L. DEBS 1144 (May 5, 1964). *Vide post*, note 20.

<sup>16</sup> THE TIMES (London) May 13, 1964.

<sup>17</sup> After the discovery was made that two undergraduates of Downing College, Cambridge were responsible for causing damage to the cricket pitch on Parker's Piece, the Master of the College wrote to the Cambridge evening newspaper as follows: "On behalf of the college I wish to express to the city my deep regret that any of our members should have been capable of this senseless act and to say that the offenders will be dealt with by the college authorities irrespective of any penalty which may be imposed by the courts." THE TIMES (London) April 30, 1964. Such action may be taken in an effort to protect the student. It may also be a way of expressing to the local community the university authority's simple shock and regret at what has occurred and its determination to mete out punishment whatever is done elsewhere. In this particular Cambridge case, the police did take action. See THE TIMES (London) May 31, 1964.

guarantee of independent university or college action is well worth making. There is one other point. What if the university or college authorities, on the one hand, and the police, on the other, are not agreed as to the necessity of exposing the students to a status degradation ceremony? Let us assume that a university, say, is inclined to be charitable but the police want something done. It seems that in such circumstances the police can cajole the university into the latter's taking action against the student despite an actual reluctance to do so, under the very real threat of the police taking action if the university does not see eye to eye with them.<sup>18</sup>

A final point to consider is whether the students themselves would prefer university disciplinary action to court sentence. By and large it seems they would. A criminal conviction is a criminal conviction, however it is viewed. A conviction connotes a social stigma, and for the majority of British students that is something to be avoided at all costs. This is not to deny that in an era of revolt against university paternalism and of identification with mature responsible adulthood a few students might well be loath to be disciplined by a university or college. Usually, as we have already suggested, students would prefer internal discipline, and this preference can be compared to the preference of military personnel for a military rather than a civil trial where a choice is open.<sup>19</sup>

Factors other than the university or college's own intended course of action will affect the police's decision on whether or not to prosecute. Amongst these, of course, will be the police's own reluctance to tar their image by proceeding against students who have acted in the cause of charity, especially where the offence is technical or minor. Public tolerance of students generally, the reaction to past incidents, the state of relations between the local community and the university or college as well as the individual make-up, including the sense of humour, of the police officer responsible for deciding will also be crucial.

A new element entering into the decision may be the recognition of some public disquiet over students enjoying an immunity that other youths

<sup>18</sup> The correspondence files of Vice-Chancellors and Chief Constables (or their equivalents) would alone provide an adequate picture.

<sup>19</sup> In *Sparks v. R.* (1964) 2 W.L.R. 566, (1964) 1 All E.R. 727 the accused, a staff sergeant in the United States Air Force, urged that one of the inducements offered to him to sign a confession was a promise of immunity from the civil courts.

not at a university or college do not. *The Daily Mirror*, as we have seen, has voiced some concern. So too has Lady Wootton, in the House of Lords.<sup>20</sup>

The idea of equality before the law entails as a corollary the notion of equal subjection to the same criminal law processes. By this strict democratic standard what favoured treatment of British students that does exist—and it is necessary to remember that there does not appear to be very much evidence of their being “the pampered darlings of the law”—is patently indefensible. The idealism of students who collect for charity and a

<sup>20</sup> 257 H.L. DEBS. 1144 (May 5, 1964) Amongst the questions Lady Wootton asked were these two.

“Is the Minister aware that there have been in the past year two incidents—one at Oxford and one at Cambridge—each of which resulted in a death, and a third at Welwyn Garden City by which a breach of the peace might have been caused, and that in not one of these cases were criminal proceedings instituted, and that in the two more serious cases no disciplinary action was taken by the university authorities? Does the Minister appreciate that it has been widely said that there is one law for the student bodies and another for the rest?”

tolerance of student peccadilloes traditionally based on the nostalgia of the elderly and the middle-aged for youth and for the things that young men and women do have prevented the democratic standard from being rigidly observed. We are none the poorer for that. Whilst care should be taken, especially in an age of meritocracy,<sup>21</sup> to avoid giving non-student youth legitimate cause for any grievance, the non-prosecution of students on certain occasions is surely to be commended.<sup>22</sup> That should hold true anywhere.

<sup>21</sup> The horrors of the meritocracy are set out at some length in MICHAEL YOUNG, *THE RISE OF THE MERITOCRACY 1870-2033* (1958) and nowhere so succinctly as in this footnote (on p. 184 of the 1961 Penguin edition).

“In *Rook v. Partner* [2028] 4 Q.B. it was alleged that Mr. and Mrs. Rook had promised £150,000 in exchange for an I.Q. of 140, and a sum of £50,000 to the doctor who arranged the deal. Mr. Justice Finch’s animadversions in his summing up led to the setting up of the Salmon Committee on the Adoption of Children.”

<sup>22</sup> For a further discussion of some of the matters raised above see A. L. PORTERFIELD, *Delinquency and Its Outcome in Court and College*, 49 *AMERICAN JOURNAL OF SOCIOLOGY* 199 (1943).