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## Editorial Comments

Notre Dame Law Review Editors

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## **EDITORIAL COMMENTS**

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### **THE ENGLISH CRIMINAL CODE**

Benjamin Franklin was noted for many things. He was the founder of the Saturday Evening Post and he was the moulder of the Constitution of the United States. His epigrams and pithy philosophy are in every grammar school text and perhaps he was America's first philosopher. Then came Abe Lincoln the man for the people, who placed entirely too much confidence in the American mind. Lincoln too was a philosopher of note. Later, out of the horizon emerged a man who contrary to Lincoln placed no confidence in the thinking minds of American's. His philosophy was, "There is one born every minute," and his name was P. T. Barnum. Barnum knew people and his experience with people made him come to the above conclusion.

Ben Franklin has been dead many years and the Constitution is still with us, but, it is not the immortal document that he thought it would be. American people laugh at Constitutional rights when it stands in the way of efficiency and expediency.

Abe Lincoln has been dead many years too. He taught us to love our neighbor and he died at the hands of a dissatisfied "would be" politician. Abraham Lincoln was a most lovable man and deserved a better fate.

P. T. Barnum is dead too, his homely philosophy lives on, and on. Barnum succeeded, because he could put out propaganda and sell the American people "nothing" for "something" Barnum is gone but the same people are here with the same minds, just as gullible. The descendants of Barnum's people are having propaganda shoved down their throats daily and in recent years this propaganda has been directed at our criminal procedure.

Crime is increasing, that is not denied. Disrespect for the law is increasing, and it is an old American custom that when something increases or decreases the best method to find out the cause of such increase or decrease is to appoint a committee and a half dozen sub-committees to find the proximate cause. Crime

is closely allied with criminal procedure so Congress, the American Bar Association and every other organization through their committees concluded that the weakness of our courts and criminal procedure was the cause of the increase in crime. For the present we will not dispute that. Lets us first consider how the associations and investigating committees came to this conclusion.

Did the critics of our procedure recommend any changes in our procedure? The answer is that they did and plenty of them. The committees' found that the crime rate in England was much less than the rate in America. The next step was the sending of more investigating committees' to England and to find the reason for Englands small crime rates. Many of these investigators never saw the inside of a court room, but that did not stop them from filing a report that the criminal code of England was far superior to that of America and recommended the adoption of a code in America like that of Englands. That sounds about as original as the story about the apple and Adam and Eve.

Debates, articles, magazines, books and lectures have been taking up the call of arms for the cause of the English criminal code. In this article the writer proposes to scan English procedure generally and let the reader form his or her own conclusion as to the magnificence of it.

The reader should not be misled into believing that there is such a thing as an English Code because there is none. The English criminal procedure is *not* codified but is based upon decisions and a few enactments.

The United States and England are entirely two different nations. The expanse of America in comparison to England is ludicrous. The two forms of government are entirely different and the percentage of foreign born in England is negligible to that of the United States. There are forty-nine distinct and separate governments in the United States each entirely separable from the other in many respects. These are just a few of the general conditions that should put the Amercian people on guard when the English criminal procedure is mentioned.

Space does not permit to take up the provisions of the so-called criminal code of England and compare them with those codes existing in the United States. The Code of Appeals of

England is more technical than that of the state of Indiana, in prescribing the method of perfecting an appeal.

The power, the extreme power, that the trial judge exercises in England is not given to him by the code but is usurped by him and there is no Constitution as there is in America to limit this power. There is no power that the English judge exercises (except the power to comment on the of the evidence) that can't be exercised in the majority of the states of this country. The power to comment on the evidence is given to the Federal judges in this country and in about ten of the state courts, and the Caraway Bill which is in the hands of the Judiciary Committee of the House is directed at the use of this power, and seeks to abolish it.

There is no prosecutor in England as exists in this country. The judges are trained from the time they start to study law to be judges and they are men of the highest attainments who are not dependent upon the will of the voting public for their positions. The adoption of the most perfect code in the world wouldn't remedy our political situation and the evils thereof, and their effect on the stability and the effectiveness of our criminal justice.

Much has been said in the reports of the committees concerning the speed of impaneling juries in England. That is not a result of the English code for there is nothing in the English statutes in positive terms concerning the selection of a jury in two, three or fifty minutes. The judges in England use their iron hand to see to it that the prospective jurors aren't given the "third degree", but they could let the *voir dire* extend indefinitely.

The investigating committees' report that the courts of England hear criminal cases in a much shorter time than our courts do. In England over 85% of the criminal cases are tried without a jury while in America most criminals demand a jury. With only 15% of the cases in England necessitating the calling of jury it is no startling disclosure that they clear their dockets so quickly. The juries in England are inconsequential because of the autocratic powers exercised by the trial judge. It may be interesting to know that a few years ago in the criminal courts of Baltimore the percentage of cases tried by jury about equalled that of England one the criminal courts of that city closed their doors because of the lack of cases on the docket.

The crowded court dockets in America are pointed at with a scolding finger by the critics of our procedure. The adoption the code of England won't remedy that. If an institution finds that enrollment has increased to such an extent that provision must be made to relieve the crowded conditions, it builds new building, more buildings. It does not raze all the buildings and erect new ones the same size as the old ones, with *English* architecture.

Prohibition made a once legitimate business a crime. If there is enough people who will patronize a business (especially if it isn't "*malam in se*") you will find people who will set up places to supply the demand. It doesn't take an expert juggler of public utilities valuations to figure that out, and even the most dry congressman will have to admit that the demand for liquor is great. All these dealers in liquor are criminals *after* they are caught and the prosecution of bootleggers has greatly increased, doubled and even tripled the criminal cases on the court dockets. The odd part of the whole problem is that very little was done in supplying extra courts to take care of such cases. That is just one solution, not the adoption of the English code, or any thing else from Great Britain.

It is to be hoped that the American people will overthrow this propaganda and innovate an intelligent survey of the true cause of the increase of crime and create facilities to accomodate the flooded dockets. This can't be solved by the adoption of the criminal code of Great Britain but a solution must be worked out along true American lines in harmony with American ideals.