



5-1-1928

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Recommended Citation

Charles A. Haskell, *Criminal Law and It's Enforcement*, 3 Notre Dame L. Rev. 253 (1928).

Available at: <http://scholarship.law.nd.edu/ndlr/vol3/iss5/4>

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CRIMINAL LAW AND ITS ENFORCEMENT*

By CHARLES A. HASKELL

Nothing in the administration of justice has been the cause of more public comment than the general belief that the machinery of our criminal courts is functioning poorly. The pages of our newspapers and magazines all attest a growing interest in this question which we are coming to realize is of fundamental importance to the maintenance of organized society.

You might ask: Is there anything of truth in this charge of incompetency on the part of our judiciary? Is it not but the broadcasting of idle reformers? My purpose is to convince you that there is wide range and urgent need for intelligent and immediate reform in the legislative and judicial structures of our government.

Statistics on the criminal situation are poor and inadequate; yet there are some that merit our attention. Last year, a committee of the American Bar Association, created for the purpose of investigating criminal conditions in this country, summed up its findings in this statement, "We, the people of the United States, are the most lawless civilized people in the world today". A serious charge, indeed but a few of their most conservatively estimated figures will show that there is some basis for their conclusion. The committee found that last year, in New York City, there were eight times as many murders as in all of England; five times as many murders as in all of France; that there were twenty times as many burglaries in New York City as in England; and, a more singular fact, that England apprehended and convicted ninety per cent of her burglars; New York City, thirteen per cent.

This is proof, if proof be needed, that an efficient meting out of justice is a great factor tending to minimize crime. How often have you heard that old proverb, "You cannot burn the candle at both ends." Never do you see that the rule of the natural law violated without a swift and a certain retribution. Therein

*The prize oration in the contest for the McNerny Prize for best public speaker in the Law School, May, 1928.

lies the effectiveness of the natural law, and that is the reason we see it so seldom violated. In the early days of this country, on the frontier, there would occasionally crop out a spirit of lawlessness that gripped at the very roots of life, liberty and safety. What remedy was it those frontiersmen so successfully applied? Vigilance committees. Bodies of men determined to stamp out such a condition at any cost: and it was only through the swift and the certain justice that they administered that order was restored from the existing chaos.

And so, down the ages, the entire history of organized government, bears witness to the fact that crime increases or decreases proportionately as justice is swift and certain or sluggish and evasive. Therefore, let us look to our judicial system and see where we are wanting.

First, there are the laws themselves, and we a bounty of them. Justice is not a matter of well formulated laws alone; nor of a multiplicity of laws; rather is it of sound, enforceable laws, sanctioned by public opinion. Roman law may be said to have reached its perfection during the classical period of its codification; yet it cannot be said that it was then that Rome excelled in the wise and just administration of her law; no, rather did that mark the twilight of the decay of the Roman Empire. And so, on our statute books, there are a multiplicity of laws, of petty laws, themselves but the breeders of crime.

Stephen A. Douglas, on his deathbed, made a last request for his children, "Tell them", he said, "to obey the laws and uphold the constitution". If his children were living in Chicago today, and attempting to carry out this last request of a devoted father, it would necessitate their being familiar with five millions of words of federal statutes, three millions of words of Illinois statutes, and additional millions of words of district and city ordinances. And yet we say that a man is presumed to know the law. This disreputable condition was aptly described by the distinguished Senator Reed of Missouri, when he said, "It would take a lifetime to read the laws of this country, and ten lifetimes to understand them. So numerous are they, there is scarce a person ten years of age in our entire land, who has not been guilty of some statutory violation".

Deplorable as this condition is, even as great faults exist in the administration of our laws. The watchword of America to-

day is "Efficiency". From a commercial standpoint, we are masters of efficiency. Why not turn this genius in the direction of the administration of justice? I would overrate our criminal courts were I to say they are fifty per cent efficient. Yet, what business man; what one of you would continue to operate a business, on such a basis? Why this condition? Because the leprous hand of materialism has touched the backbone of our government; and while we have basked in the sunlight of a seductive prosperity, the disease has eaten its way throughout our entire governmental organism. Now, in our courts, it taints the life-blood of our individuality, and when this is polluted, democracy is no more.

I shall not attempt a lengthy enumeration of the many changes that are desirable and needed; that is a task for those long schooled at the bar; I shall be satisfied can I convince you that the condition is bad, and merits the thought and consideration of every patriotic spirited citizen. Let us but look at a few flagrant faults we see before us today.

We say that justice should be swift and certain. But last summer, after seven years of toil, the state of Massachusetts, through the agency of the Sacco-Venzetti case, completed the erection of an everlasting monument, that might well bear the inscription—The Technicalities of American Law. Technicalities. You hear that word every day. Do you ever stop and think it is but a name for those laws on our statute books which utterly fail to meet the demands of modern society? You do not; if you did, those barnacles of justice would long since have been abrogated. In the English courts the average murder case is brought to judgment in four days: in our courts it is only the exceptional murder case that is brought to judgment in less than sixty days. This demonstrates the speedy fashion in which we administer justice.

And as to certainty, the condition is no better. A citizen of this state might instinctively point to official corruption. That is a major fault. But here again, the greatest influence making for an uncertain administration of justice is our archaic and ineffective criminal procedure: it glorifies technicalities; places a no-man's-land between the criminal and his conviction; and furnishes wholesome food for a flabby sense of justice among our people. Our procedure was taken from the common law of

England. While England has advanced, we have clung to basic technicalities, yes, and multiplied those technicalities.

Take our jury system. An institution created primarily to protect the people against the domination of sovereignty: a condition non-existent under our democratic form of government, yet we fight for the right of a trial by jury as though it were a God-given right without which liberty could not exist. How far we have wandered. In the beginning jurymen were selected for their peculiar knowledge of all the facts and circumstances of a given case. Today, the all-important qualification is ignorance; ignorance not only of the case, if you please, but ignorance in general. In a recent murder case in Chicago, *People v. Lewis*, three months were consumed in the selection of a jury, twelve-hundred jurymen were disqualified, and the case cost the state \$50,000. Who can say that this is substantial justice, or praise the system that effects such results? Yet that case is typically American.

Take our law of evidence. We place a witness on the stand, make him swear by his creator to tell the truth, the whole truth, and nothing but the truth. In steps our law of evidence and virtually seals his mouth. He testifies, yes, but only as carefully propounded questions are directed at him. Again, our law of evidence says, "The accused shall not be made to testify, nor is his silence to be placed in the balance against him." Now, who is more competent to throw light on the guilt or innocence of the accused than he himself. He should be made to testify. If he be innocent, the act will harm him not; if he be guilty, it should harm him. To all but the lawyer, yes, and to many a lawyer, our law of evidence is but a network of static to keep the truth from our courts.

Indeed, our policy today, with due appreciation to the newspapers of the country, is to forget the man sinned against, and elicit sympathy and protection for the sinner. Take the recent Hickman murder case in California. You place it immediately. How many of you could call to mind the name of the unfortunate family that suffered at the hands of that degenerate criminal? Not many. And why? Because that family were forgotten; while for days, and weeks, and months, we followed the newspapers as they detailed the building up of a defense whereby the sinner might evade the law.

My friends, this is a sad condition. Most sad when we realize the many, many difficulties that lie in the path of improvement. We thank God the majority of our people have no contact with our criminal courts; yet, it is this very diversity of interest that makes improvement so difficult. Law and equity are two things which God has joined together and man has put asunder. The burden of a reunion rests upon the shoulders of our bar, and reunion will take place only when lawyers rise above the sphere of lucre-gaining pettifoggery, and work and sacrifice and consecrate themselves to the ends of justice and the common good. Our position at the social controls is a sacred trust. We may not bank on Wall Street; our names may not be heralded across the country as champion defenders of criminals and masters of insanity pleas. But then, and only then, shall we have fulfilled our sacred duty, voiced by the immortal Webster, when he said, "The law, it has honored us. May we honor it."

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