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SOME CHARACTERISTICS AND TENDENCIES OF ENGLISH CRIMINAL JUSTICE

By Pendleton Howard*

I

It is a significant historical fact that the accusatorial system of criminal procedure prevalent in English-speaking countries is due in no small measure to the tradition which obtained in early times that the state’s responsibility for the administration of justice was limited to providing means by which the injured person, or his kinsmen or friends, might secure adequate redress without resorting to private warfare. The early Saxons drew no nice distinctions between crimes and civil wrongs. Their criminal law and its administration were characterized by attempts to regulate private combat rather than to set up an orderly system of courts and police. The Normans, however, were classifiers and organizers. With abounding vitality they perfected and expanded the concept of the King's Peace, and their work bore fruit in the eventual abolition of private war. To put the matter in another way, their recognition of the state’s primary obligation to protect itself from disintegration by providing instrumentalities for suppressing domestic violence and disorder resulted in the substitution of the official public contest for the unofficial private skirmish.

The justice of the peace, at first a sort of superior police officer created to meet an emergency, developed through the centuries into perhaps the most active administrative and judicial official in the country. Mr. Justice Stephen, the historian of the English criminal law, has pointed out that the justice concerned himself with the detection and apprehension of criminal offenders, and the collection of evidence against them, to a greater extent and down to a later period than is commonly believed, and con-

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1 See 1 Stephen, History of the Criminal Law of England 245.

2 Trial by battle was not legally abolished until 1819 (59 Geo. III, ch. 46), although it was but rarely used for a century prior to that time. On the history of appeals see 1 Stephen, History of the Criminal Law of England, ch. 8; 2 Pollock and Maitland, History of English Law, 2nd ed., ch. 8, 9; and Carter, History of the English Courts, ch. 19.

cludes that for some centuries he discharged duties which in other countries were imposed upon the public prosecutor. But with the passage of time the justice's judicial functions came to overshadow, and finally to supplant, his activities in the field of criminal investigation and prosecution.

The Normans and their successors developed trial by jury and adapted it to the purposes of criminal law administration. The jury of men who investigated crimes and brought accusations based on their own knowledge changed very gradually into the jury which listened to the evidence of others. When the new institution finally superseded earlier guilt-finding devices, the failure of the state to take cognizance of its changing character and create public agencies, other than the police, to take over the prosecuting activities of these jurors and of justices of the peace and to carry forward criminal actions in the courts of law was responsible for the development of a system of privately instituted and conducted prosecutions. This mode of procedure was entirely compatible with prevailing conceptions of the functions of sovereignty in the domain of criminal law enforcement. The individual was at liberty to utilize the facilities established by the state for the purpose of redressing his own wrongs. While conducted in the name of the Crown, the criminal proceeding became in point of fact a judicial duel between complainant and defendant before a theoretically impartial court with a jury to determine the outcome.

The notion that the commission of a crime is an offense against the state itself as well as a mere private injury to one of its members is, at least so far as the English criminal law is concerned, of modern origin. That it has not as yet wholly supplanted the old idea is evidenced by the extent to which the principle of private prosecution pervades the theory and practice of English criminal procedure, by the comparatively recent and still inadequate provisions made for defraying the costs of criminal proceedings out of public funds, and by the similarity of the methods made use of in investigating and determining questions of fact

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42 See 1 Holdsworth, History of English Law 312 et seq.; Thayer, Preliminary Treatise On Evidence at the Common Law, ch. 2-4; von Moschzisker, Trial by Jury, ch. 1-3; Potter, An Introduction to the History of English Law, ch. 5.
43 For further discussion of this subject see Howard, Criminal Prosecution in England, (1929) 29 Col. L. Rev. 715.
in the trials of civil and criminal cases. In the words of Stephen:

“The fact that the private vengeance of the person wronged by a crime was the principal source to which men trusted for the administration of justice in early times is one of the most characteristic circumstances connected with English criminal law, and has had much to do with the development of what may perhaps be regarded as its principal distinctive peculiarity, namely, the degree to which a criminal trial resembles a private litigation.”

II

In sharp contrast with the accusatorial type of criminal procedure is the system which has prevailed on the continent of Europe, and is generally denominated as the inquisitorial system. Dr. W. F. Willoughby has pointed out:

“The principle underlying this system is that all infractions of the criminal law are offenses against the state rather than against an individual and that responsibility rests directly upon the state to take the necessary steps to apprehend and determine the guilt of the responsible person.”

Primarily the product of the Roman and the Canon Law, this procedure utilizes methods which are more secret, rigorous, complex, scientific, and in the words of Esmein “better adapted to meet the needs of social repression.”

In France, for example, a searching preliminary inquiry (l'instruction) is made in all felony cases by a subordinate officer known as a juge d'instruction whose function it is in reality (if not in legal theory) not merely to discover whether there is sufficient evidence to justify indictment and trial, but whether the accused is in fact guilty of the crime charged. The magistrate visits the scene of the crime and makes a personal investigation of all the circumstances. The next step is the examination of the

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7 There is no power at common law to render judgment for costs in a criminal proceeding, either out of public funds or, as between the parties, in favor of either the prosecution or the accused. This disability has gradually been removed by comparatively modern legislation in England, the latest statute dealing with the subject being the Costs in Criminal Cases Act, 1908, 8 Edw. VII, ch. 15, sec. 1. Prior to 1752 no allowance for costs to prosecutors and witnesses was made out of any public fund, and 25 Geo. II, ch. 36, recited that “many persons were deterred from prosecuting persons guilty of felony upon account of the expense.”


9 Willoughby, Principles of Judicial Administration 203.


prisoner which takes place in the chamber of the juge d'instruction and is secret. The accused may be represented by counsel, but his examination is thorough and searching, often covering his entire past life. If the magistrate finds that there are sufficient grounds to justify further prosecution, the case is sent to the Chamber of Accusation, composed of five judges of the Court of Appeals, which is the indicting body. Upon indictment the prisoner is brought up for trial before a jury in the Court of Assizes, where he is prosecuted by an officer called the Procureur Général. The Anglo-American procedure of cross-examination does not exist in France. The accused himself, however, is subject to a stringent examination (l'interrogatoire) conducted by the presiding judge. The prisoner must satisfy the jury that he is not guilty.

The distinguishing characteristics of the French system are that the accused is rigorously interrogated at every stage of the proceedings, that the evidence is sifted and classified with meticulous care before it is presented at the trial, and that the trial judge more often than not assumes the role of investigator and prosecutor in chief, despite the presence of the official public prosecutor.12

III

Criminal procedure in the United States is essentially accusatorial in nature. The old concept of the judicial duel is still a salient characteristic of the administration of justice in this country. The several constitutional guarantees and safeguards instituted for the purpose of protecting the interests of the defendant are the products of Anglo-Norman, and not continental jurisprudence. The methods employed in investigating and determining guilt are litigious rather than inquisitorial.

Conceding these unquestioned facts, it is nevertheless submitted that the influence of the continental system on criminal law administration in the United States is plainly discernible. Since colonial times the American states have utilized the political device of the public prosecutor.13 The burden of prosecuting offenders is undertaken by the state, and criminal proceedings are car-

12For a dramatic portrayal of a thoroughgoing examination conducted by a juge d'instruction see the first act of Eugene Brieux's play, La Robe Rouge.
13For a discussion of the colonial beginnings of the office of county prosecuting attorney see, James, Local Government in the United States 144.
ried on in the courts by local public officials who frequently assume quasi-judicial functions of a most important character. When we consider the great and constantly increasing significance of the American prosecuting attorney, as demonstrated by recent surveys of criminal justice conducted in a fairly representative group of states including both urban and rural jurisdictions, we are forcibly reminded of this important procedural difference between the English and American systems of criminal law enforcement.\(^4\)

The influence of the different methods made use of in England in managing prosecutions is also apparent in the conduct of criminal trials. An American onlooker at an English jury trial who is familiar with the procedure in the criminal courts of large cities in his country—where the same prosecuting officials day after day present cases before the same judges who rarely, if ever, are permitted to vary their judicial routine by hearing civil actions—cannot fail to detect a difference in atmosphere in the courts of the two nations which, I venture to believe, is due in large measure to the fact that in the United States the government, and not the individual, is responsible for the institution and conduct of prosecutions. The English trial, while essentially litigious in form, partakes more of the nature of a serious, dignified and impartial investigation into the facts. Counsel representing the Crown are, on the whole, much less partisan in their methods than are prosecuting attorneys on this side of the water. The fact that in England all prosecutions during a single term of court may be conducted by different counsel, or that the same barristers may appear for the Crown in some cases and for the defense in others, is of fundamental importance. It is, moreover, a consideration frequently lost sight of by institutional commentators who undertake to contrast criminal law administration in the two countries.

IV

Despite the fact that the English system places much more responsibility upon private persons than does the existing procedure in the United States, in actual practice the great majority of

\(^4\)See, for example, (1922) Criminal Justice in Cleveland, (1926) The Missouri Crime Survey and (1929) The Illinois Crime Survey. Summary statements may be found in Moley, An Outline of the Cleveland Crime Survey, and Moley, The Administration of Criminal Justice in Missouri, a Summary. For general comparative reviews see the same writer's Politics and Criminal Prosecution, and Our Criminal Courts.
important criminal cases are now conducted either by the police or by the director of public prosecutions. These undertaken by the police are ordinarily referred to as "police" prosecutions, while those instituted or taken over by the director are termed "public" prosecutions, since they are carried on under the authority and by the agents of the government. In addition to those cases prosecuted through private initiative, by the police, and by the director, a considerable number of criminal proceedings of a less important nature are undertaken by the several governmental departments and boards and by municipal and county authorities. These prosecutions must also be classified as public, since they are carried on by governmental authority.

The director of public prosecutions is not a prosecuting official of the sort utilized in most other countries. The framers of the laws which created his office and defined the scope of his powers did not intend to commit the government to the policy of prosecuting any except the most important or difficult criminal proceedings. These laws, in truth, did little more than sanction the limited system of governmental prosecutions which had been evolved informally with the gradual expansion of the functions of the solicitor to the treasury. There was no provision for the establishment of a unified ministry of justice or for local officials to conduct the ordinary run of prosecutions throughout the country. The number of cases prosecuted by the director is now, and always has been, small in comparison with the total number of criminal actions disposed of in the courts. The significance of his office lies mainly in his defense of the great majority of criminal appeals, in the restraining influence which he exercises over the activities of private prosecutors due to their knowledge of the broad powers which the law gives him of intervention and control, in the outstanding importance of the cases in which he does participate, and in the advice and aid he frequently gives to poor complainants and to the police.

The director of public prosecutions is charged with the responsibility of conducting the prosecutions of all offenses punishable by death, all matters in which he is especially ordered to take action.

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by the attorney-general or a secretary of state, and all cases where it appears to the director that the offense is of such character that its effective prosecution is demanded in the public interest, and is necessary in order to bring the offender to justice. The director is thus empowered to undertake any criminal proceeding, indictable or non-indictable, where in his opinion the circumstances of the case for any reason demand the intervention of his office. In actual practice the director conducts the prosecutions of all murders, certain cases of outstanding importance or difficulty (such as manslaughters, attempts to commit murder, the more serious types of sexual offenses, crimes of violence where the circumstances are unusual, offenses against the election laws, difficult commercial and company fraud cases, fraudulent bankruptcy prosecutions and the like), crimes having a political or governmental aspect, and exceptional cases where it is feared that the proceedings may be terminated without due regard to the ends of justice. In deciding whether to institute or take over a prosecution the principal test applied by the director is: does a prosecution appear necessary to protect the public interest and prevent a miscarriage of justice, either on account of the character of the case itself, or the circumstances surrounding it, or because of the unwillingness or inability of the injured person to set the law in motion in his own behalf?

The ordinary types of cases involving the so-called professional criminal class are prosecuted by the police. In conducting their prosecutions the police receive direction, advice and assistance from several important sources, depending to some extent on the custom of the jurisdiction in which the case is pending and to some extent on the grade of offense that is being prosecuted. As a matter of fact, there is very little uniformity throughout the country in the method of conducting police prosecutions, since, as already indicated, the matter is so largely dependent on local usage.

In courts of summary jurisdiction—which now dispose of an increasingly large number of important indictable offenses which were formerly triable only before juries—the clerks to the justices usually assist in the examination of witnesses in order to insure that all competent and relevant evidence has been properly presented. In important or difficult cases the police in many of the larger boroughs are represented by their own solicitors. Sometimes, as in Greater London, these solicitors are paid out of police

18Prosecution of Offenses Act, 1879, 42 & 43 Vict. ch. 22.
funds and act under instructions from the commissioner of police of the metropolis. Sometimes, as in the larger provincial cities, they are especially employed by the corporations and devote all, or a large part, of their time to the management of prosecutions. Still again, work of this character is performed by the town clerk, or one of his deputies, or by a special solicitor or solicitors nominated for each particular case by the local police establishment.

The provisions made for prosecuting cases which have been committed for trial before juries depend almost wholly upon the usage of the local governmental unit having jurisdiction of the offense. Those cases sent for trial at the higher courts by justices of the peace for the boroughs or by stipendiary magistrates in the larger provincial cities are prosecuted either by the town clerks of the respective localities, or deputies acting under their direction and control, or by official prosecuting solicitors. In some boroughs these solicitors work under the supervision of the town clerks, while in others they are independent officials who are responsible only to the governing bodies of the municipal corporations which employ them. Those cases which come to the trial courts from county justices are prosecuted in the main by solicitors selected by the local police establishments, or by the clerks to the committing justices. In some of these cases, especially those disposed of on circuit and in the Courts of Quaker Sessions for counties, the trials are conducted by counsel freely chosen by the prosecuting solicitors. In other cases, especially those disposed of in the area of Greater London and in the Courts of Quarter Sessions for boroughs, an attempt is made to select counsel in rotation from among the local barristers in attendance at the sessions.

V

Having summarized the essential features of the accusatorial system of criminal procedure and pointed out wherein it differs from the inquisitorial method which prevails on the continent of Europe, it may be of interest to consider the question as to which of the two systems is more efficacious in dealing with the problem of crime.

Partisans of the inquisitorial system point to the fact that its underlying premise—the concept that violations of the criminal law are primarily offenses against the state and therefore that the prosecution of such offenses is wholly a matter of state concern—
is more compatible with modern political theory. They stress the fact that "the retention under the English and American accusatorial system of the idea of an accuser represents an inheritance from an old and primitive system of jurisprudence."\(^1\) They maintain that an immediate and rigorous examination with a view to discovering the guilt or innocence of the defendant cannot help but result in a more effective administration of justice than the superficial inquiry conducted by a police magistrate for the purpose of determining whether or not a more thorough examination in the form of a trial should be made later. They contend, in other words, that continental systems of investigation and prosecution discriminate guilt from innocence more surely because they are more thoroughgoing, scientific, expert, and are unencumbered by hypocritical legal fictions which serve only as a means of permitting guilty defendants to escape the toils of the law.

Critics of the inquisitorial system maintain, on the other hand, that however well fitted it may be for the nations of continental Europe, it is at hopeless variance with the juristic conceptions of English-speaking countries in that it does not afford adequate protection to the accused at any stage of the proceedings. They point, for example, to the two features of French criminal procedure which most distinguish it from Anglo-American methods and which are perhaps most frequently excoriated—the preliminary examination (l'instruction) by the juge d'instruction and the interrogatory (l'interrogatoire) by the presiding judge of the court of trial. They contend that the procedure at both these hearings prevents an unbiased investigation into the facts since it denies to the accused a full and free opportunity to cross-examine material witnesses. It is pointed out that the substitution of a secret "instruction" for the open investigation before a committing magistrate violates deep-rooted and fundamental principles of English jurisprudence. The trial itself, it is charged, degenerates into an unseemly and violent verbal duel between the prisoner and the presiding judge with the result that the jury is frequently disposed to acquit the defendant as an expression of its resentment at the unfair treatment accorded him. An English judge, it has been said, would feel himself degraded if he were required to enter into a personal contest with the prisoner and extort admissions from him by elaborate

\(^1\)Willoughby, *Principles of Judicial Administration* 206.
cross-examination. In his interesting description of the French system Professor Garner concedes that "French judges have never been able to gain the public confidence or to acquire an influence over juries to the same extent that the English judges have" and that "in too many cases the interrogatory serves to arouse the sympathy of the jury for the accused and leads to acquittals where the evidence clearly shows guilt."  

The principal difficulty in the way of arriving at any reasoned conclusions concerning the merits of the respective systems lies in the paucity of information at our disposal with respect to the actual working of the inquisitorial system. The available data, consisting chiefly of articles in legal periodicals, while interesting and suggestive, are at best fragmentary and inconclusive. We need that type of detailed information which can be secured only as the result of a thoroughgoing survey of all phases of the administration of justice in several of the leading continental nations. If it is true, as it seems to be in France, that the result of inquisitorial methods of procedure is to render juries unwilling to convict in the face of unmistakable evidence of guilt, we may well doubt the effectiveness of the system. It is highly dubious, to say the least, whether life and property are any more secure in France than they are in England. It may be argued, moreover, that the partisan attitude of the trial judge renders incongruous the presence of the jury. If, as the French system seems to presuppose, it is the primary function and duty of the state through its prosecutors and judges to satisfy itself of the prisoner's guilt or innocence, why submit the issues to a jury at all? Viewed from this angle, either the jury or the judge is superfluous. The presence of the jury transforms the judge into a virtual prosecutor, compromises his dignity, results in a lack of confidence in his impartiality and often leads to disastrous consequences. Many French students of their own administration of justice, recognizing the defects of the system as now administered, advocate the abolition of the interrogatory by the presiding judge and the substitution therefor of the Anglo-American method of examination by counsel.  

VI  

As already indicated, the fundamental procedural difference

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between the English and American systems of criminal law enforcement lies in the adoption in this country of the continental device of the public prosecutor. In view of the outstanding importance of the rôle played by the American district attorney, it may be profitable to inquire whether or not the plan of publicly managed prosecutions through the agency of local public officials is preferable to the English method of private prosecution. To this end let us summarize briefly the arguments on both sides of the question.

Critics of the English system call attention to the lack of uniformity in the management of prosecutions, pointing out that one method prevails in the area of the metropolis while various others obtain in the country, the whole of them dependent not upon any general practice established by law but upon the custom of the jurisdiction in which the offense was committed. They charge that many offenses go unpunished because of the unwillingness or inability of the persons injured to go to the trouble and expense of instituting and carrying forward criminal proceedings. For example, it is said upon high authority that banks do not now, save in exceptional instances, prosecute forgery cases, that fire insurance companies rarely bring to justice those who present fraudulent claims, and that many other classes of private employers fail to press larceny charges against their employees.\(^2\)

Opponents of the prevailing system contend, finally, that many criminal cases which find their way into the courts are inadequately prepared and ineffectively presented, largely because of the inability or disinclination of the complainants to employ skilled solicitors and competent trial counsel, with the result that guilty defendants are oftentimes acquitted.

That there is a considerable element of truth in all these contentions cannot be denied. There is no question about the lack of uniformity in the English system, and there is little doubt but that under existing arrangements a certain number of offenders—how many it is impossible to say—either go unpunished or are ineffectively prosecuted. Were it not for the rapid and steady growth during the last century of a highly trained and remarkably efficient body of police throughout the entire country, for an effective method of managing public prosecutions, and for a

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\(^2\)See, Bodkin, The Prosecution of Offenders: English Practice, 1 The Police Journal 355, n. 15. I do not mean to create the impression, however, that the writer of the article cited (who is the English director of public prosecutions) is opposed to the English system.
system of criminal courts manned by judges and clerks of exceptional capacity and integrity, the lack of adequate prosecuting machinery would doubtless entail unsatisfactory consequences of a more serious and far-reaching nature than it now does.

Those who favor the English system stress the fact that in countries which employ prosecuting officials control of the machinery for administering the criminal law has frequently fallen into the hands of political parties and is used by designing politicians to further their own partisan ends. It is pointed out, for example, that recent surveys of criminal justice in the United States have demonstrated the enormous extent to which political factors enter into contemporary law enforcement. Frequently young and inexperienced, usually handicapped by inadequate police assistance, oftentimes poorly paid and politically selected, bent upon attaining personal preferment and professional eminence, the American prosecutor has emerged from these studies as an official caught up in the seething caldron of politics and controlled by the insidious and entangling forces which compass him about. His office, nevertheless, as Professor Raymond Moley has demonstrated, "has come to dominate the entire administration of justice. It has to a great extent supplanted the sheriff, the coroner, the grand jury, the petit jury, and finally, the judge himself. Politics, embodied in the prosecutor, administers the criminal law, for its own objectives and in its own image." Under the English system there are no district attorneys to wield such enormous powers of office. Private prosecution, it is contended, is infinitely superior to any system which makes the liberties of the citizen dependent upon the whims of party managers or of public officials under their domination.

That there is very little, if any, political influence brought to bear on the conduct of cases prosecuted in the English courts is apparent from any serious study of criminal law administration in that country. It involves no element of exaggeration, I think, to say that one of the outstanding characteristics of the English administration of justice is its virtually complete divorcement from the exigencies and strife of party politics. It is altogether possible that the fundamental reason for this lack of political meddling with criminal law enforcement is the system of private prosecution. The English plan has the virtue of being wholly

24 Moley, Politics and Criminal Prosecution 94.
freed from the dangers and difficulties involved in permitting locally selected prosecuting attorneys to exercise within their respective jurisdictions sweeping powers over the life and death of criminal cases.

Moreover, English public prosecution is a national function. The comparatively small number of important or difficult cases prosecuted by governmental authority is conducted by a national civil servant—the director of public prosecutions. It is true that the supervision of the activities of the director is entrusted by law to a party politician—the attorney-general—who is empowered to order him to institute criminal proceedings in a special case or take over a prosecution already begun by a private complainant. In point of fact, however, the control of the attorney-general over the actual conduct of public prosecutions is more nominal than real. In practice the director enjoys a very large measure of independence in determining what cases shall be undertaken by his department. Thus, while the attorney-general, as the chief law officer of the Crown, personally conducts a few of the more important public prosecutions, and, if the occasion demands it, can control the conduct of the director and use the powers of the latter's office to promote partisan ends, it is very unusual for anything of this kind even to be attempted.

Other arguments advanced against all proposals to abolish or modify the English system of private prosecution are that it would entail an immense expenditure of public funds and interfere with existing arrangements for the distribution of patronage in the selection of solicitors and trial counsel to conduct prosecutions instituted by the police. The chief reason, however, why there is little likelihood of any changes in English prosecution is that there is no public demand for such changes. The Englishman is on the whole complacent about the working of his system of criminal law enforcement and is strongly disinclined to change the fundamentals of that system. Private prosecution seems to work, and he is not very much interested in discovering how or

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25. This absence of harassing restrictions, coupled with the disposition on the part of all government offices to defer to the director's judgment in criminal matters, has been one of the chief factors in promoting the efficient administration of the office. For further discussion of this point, see Howard, Criminal Prosecution in England, (1930) 30 Col. L. Rev. 12.

26. For the debates in Parliament on the celebrated Campbell Case see (1924) 177 Parliamentary Debates, 5th series, p. 581 et seq. The conduct of the attorney general (Sir Patrick Hastings, K.C.) with respect to this case was directly responsible for the fall of the first Labor government.
why it works. If, despite an elaborate system of state prosecution, crime is more seductive and prevalent in the United States than in England, why bother about the management of prosecutions at all? The probability that many of America's troubles result from causes which are more fundamental than, and bear but little relation to, the machinery for conducting criminal cases in the courts, concerns him very little. By the same token, the probability that the present superiority of English criminal law administration exists in spite of, and not because of, her lack of prosecuting machinery, gives him little pause.

VII

One of the salient features of the English criminal process is its speed. The system of judicial organization and administration in that country is characterized by a flexibility that is well adapted to bring about such a result. For example, under the provisions of the Criminal Justice Act of 1925, justices of the peace or police magistrates before whom any person is charged with an indictable offense, may, instead of committing him for trial at the assizes or quarter sessions to which he would ordinarily be sent, commit him to other or more convenient quarter sessions or assizes, having regard to the time when and the place where these courts are to be held, with a view to expediting the trial or saving expense. This power, however, is not to be exercised unless the committing magistrates are satisfied that the next assizes or quarter sessions to which the defendant would in normal course be committed will not be held within a month; nor must such action be taken where the accused satisfies the justices that he would suffer hardship as a result thereof. Under the same Act, courts of quarter sessions or assizes may, in order to expedite trials and save expense, direct that the trials of cases not disposed of at any sitting of the court shall take place at the assizes or quarter sessions for some other place. It is clear that the effect of these provisions is to relieve congestion in populous centers, where the courts have difficulty in disposing of the cases on their calendars, and thus to make possible an expeditious administration of justice.

The speed with which a case is disposed of varies considerably in the different sections of the country. It depends, in the main, on the arrangements made in the several jurisdictions with

respect to the holding of quarter sessions. No generalization is possible which applies with equal force to city and country. In the metropolis, where quarter sessions are held as often as twice a month throughout the year, and the Central Criminal Court has twelve sittings, the ordinary run of cases is disposed of within a period of from two to three weeks after committal by the police court. In the longer and more difficult cases, however, where considerable testimony has to be presented before the magistrates, preliminary hearings are likely to be adjourned from time to time for as long as a month, and in rare instances, even longer. When once the defendant has been committed, his trial follows without delay. Adjournments of the hearings of pending cases in the metropolitan police courts are due to the immense volume of routine work which devolves upon these courts and the limited time at their disposal to devote to lengthy hearings.

Outside of the metropolis, cases rarely linger in the courts of petty sessions longer than a week, although it is customary at arraignment to remand the case for this length of time at the request of either party. In quarter sessions for the counties and boroughs, which are held at least once a quarter and at such other more frequent intervals as the justices of the counties or the recorders of the boroughs may think fit, or the Crown may direct, cases are tried within one month to three months of the date of committal. It is possible for cases committed for trial at the assizes to wait as long as three months for disposition, but never longer, unless the circumstances are exceptional. It is generally recognized by the judges who preside over these courts and by the counsel who practice before them that the calendar must be cleared each session, unless the interests of justice render an adjournment to the following term imperative. At the assizes, especially where each judge is expected to "clear" the jail, there are seldom more than three or four adjournments in the whole of England. The Court of Criminal Appeal sits about forty days each year; the average time that elapses between the date of conviction and the hearing of the appeal is from four to five weeks.

28Recent delays in hearing important cases have caused considerable criticism and resulted in suggestions that the Home Secretary relieve the situation by appointing additional metropolitan magistrates. See, for example, the editorial in the Times, March 28, 1928. It should be noted, however, that these occasional delays in disposing of important preliminary hearings in the London area are the only instances of their kind in England.

29Private information.
If, as many well-informed administrators, judges and prosecuting officials believe, the element of speed is one of the vital factors in the successful enforcement of the criminal law, it is unquestionably true that the English system of criminal courts, the distinguishing characteristic of which is its flexibility, is admirably suited to bring about such an end. Of even greater importance is the spirit of co-operation that prevails among judges, counsel and administrative officials, and the tradition which seems to obtain throughout England that neither evasions nor subterfuges will be permitted to stand in the way of the prompt disposition of criminal cases at the courts of trial.

VIII

The principal reforms in English criminal procedure during the last half century have been in the direction of simplification. The technicalities of the common law have been discarded in favor of improved and simplified methods. There is very little, if any, of what has been termed the "American sporting theory of justice" in the trial of an English criminal case. Brief reference to only a few outstanding instances will suffice to show the significance of these changes.

The technical requirements which formerly made the framing of the indictment such a difficult and exacting task, and which frequently resulted in a prolix document of obscure meaning, have all been abandoned in favor of simple and understandable rules of pleading. The Indictments Act 1915 provides that every indictment shall contain, and shall be sufficient if it contains, a statement of the specific offense or offenses with which the accused is charged, together with such particulars as may be necessary for giving reasonable information concerning the nature of the charge, and that, notwithstanding any rule of law or practice, an indictment shall not be open to objection in respect of its form or contents if it is framed in accordance with certain rules appended in a schedule to the Act. These rules provide, among other things, that the statement of the offense must be made in ordinary language which shall avoid technical terms in so far as possible, and that in stating the particulars of the offense all the essential elements need not be set out. The Act provides, more-

815 and 6 Geo. V, ch. 90, sec. 3.
over, that where before trial, or at any stage of the trial, it appears to the court that the indictment is defective, the court shall make such order for its amendment as it may think necessary to meet the circumstances of the case, unless having regard to the merits of the case the required amendments cannot be made without manifest injustice.

While the English law recognizes the right to challenge a trial juror, in actual practice such right is virtually never exercised. Even in the most important and vigorously contested trials it rarely takes a longer time to select the jury than the few minutes required by the court clerk to call each juror by name and administer the oath to him separately. Many practitioners with whom I talked said that they had never seen a juror challenged for any reason, either by the prosecution or by the defense. I listened to the trials of scores of indictable offenses at the Central Criminal Court, on circuit and in various quarter sessions, and I never heard one. A judge of the King's Bench Division of the High Court of some ten years experience told me that he remembered hearing only a very few during the whole of his judicial tenure. Herein lies one of the most important differences between English and American trial procedure:

The conduct of English trials—both those taking place in courts of summary jurisdiction and before juries—is distinguished by order, dignity, urbanity and dispatch. Professional standards of conduct are on a higher plane than in the United States. There is very little, if any, attempt on the part of either side to get improper testimony before the jury by suggesting it in the form of questions, virtually no attempts to conceal relevant evidence, no bellowing at witnesses, no judicial scolding, very little wrangling among counsel and relatively few objections to testimony. Speeches to the jury are confined to the issues raised by the evidence. The judge takes an active part in the proceedings, frequently comments on the evidence, and attempts in his summing up to reduce the case to one or more simple issues of fact, centering the attention of the jury upon the essential portions of the evidence that bear upon these issues. When the judge proceeds in this manner, the jury not infrequently infers what he thinks

32 "The business of the judge," writes Sir Herbert Stephen, "besides informing the jury as to the law, is to state for them the questions of fact, arising out of the evidence given, in such terms that the jury will answer them correctly by what seems to them the unaided operation of their own intelligence." See (1926) The Conduct of an English Criminal Trial 30.
it ought to do. In exceptional cases the judge may even go so far as to indicate his opinion as to the guilt or innocence of the accused, but he is usually careful to point out that the jury is free to reach whatever decision it thinks proper.\textsuperscript{33} That it is materially influenced by the judge's opinion is an indubitable fact. It is influenced, however, not because it has been directed what to do by a pontifical dictator, but because it respects the ability of the particular judge, recognizes the dignified and impartial manner in which he has presided at the trial, and is impressed by his cogent and tactful analysis of the facts of the case.\textsuperscript{34}

The English Court of Criminal Appeal was established by the Criminal Appeal Act of 1907.\textsuperscript{35} The Act was a bold experiment which was adopted only after a parliamentary agitation that lasted some three-quarters of a century and was the immediate result of the public furore over the miscarriage of justice in the notorious Beck case. Prior to 1907 there was no right of appeal by a convicted person from a verdict of a jury on the merits of the case, or even on a point of law unless the trial judge saw fit to "state a case" for the opinion of the Court for Crown Cases Reserved.

The Act provides that the Court of Criminal Appeal shall allow an appeal against conviction if it thinks the verdict of the jury should be set aside on the ground that it is unreasonable, or cannot be supported by the evidence, or resulted from a wrong decision on any question of law, or if it thinks that on any ground there was a miscarriage of justice. In all other cases it must dismiss the appeal; and in this connection it is provided that even though the court is of the opinion that the point raised might be decided in favor of the appellant, it may still dismiss the appeal.

\textsuperscript{33}For example, in cases where insanity is interposed as a defense, and where the evidence clearly indicates the prisoner's irresponsibility, it is not uncommon for the court to advise the jury to find a verdict of guilty but insane, which it may do under the law.

\textsuperscript{34}If the judge has conducted the proceedings in such a way as to forfeit the jury's respect, it is very likely to pay but slight heed to his wishes, whether express or implied. I recall several instances where juries refused to be influenced by judicial suggestion and brought in verdicts which were plainly contrary to the court's wishes. In each instance it was apparent that the jury resented the attitude of the court and the manner in which the trial had been conducted. As a rule, however, the judge is scrupulously careful to avoid any appearance of partiality during the trial and makes it plain in his summing up that the jury is free to determine its own verdict.

\textsuperscript{35}7 Edw. VII, ch. 23.
if it considers that "no substantial miscarriage of justice has actually occurred."

If the court allows the appeal, it can quash the conviction and direct a judgment of acquittal to be entered. It may affirm the sentence passed, or substitute another sentence in a case where the appellant, though not properly convicted on one count of an indictment, has been properly convicted on some other count. Where the defendant was improperly convicted of one offense and the jury could, under the indictment, have found him guilty of some other offense, and it appears to the court that the jury, on their finding, must have been satisfied that the evidence proved him guilty of that other offense, the court can substitute for the verdict found by the jury a judgment of guilty of that other offense and pass sentence accordingly, provided the sentence is not of greater severity. The prisoner can appeal against the sentence imposed upon him by the trial court, but only upon obtaining leave from the Court of Criminal Appeal, and only if the sentence is not one fixed by law. If the court thinks the sentence was too severe, it can shorten it. But it is also empowered, if it sees fit, to inflict a more severe penalty.

Appeals or applications for leave to appeal must be filed within ten days of the date of conviction, unless the time is extended by the Court of Criminal Appeal; and there is no power to extend the time for appeal in cases of conviction involving sentence of death. The average time that elapses between the appeal, or the application for leave to appeal, and the hearing of the appeal by the court is from four to five weeks. During the interim the prisoner cannot obtain a certificate of reasonable doubt or be admitted to bail; he remains in prison. There is no delay in printing long records and briefs on appeal, as in the United States; the English appeal consists merely in the transcription of the stenographic records and documents of the trial. Most opinions of the court are very short—rarely more than two or three typewritten pages in length—and are customarily rendered orally by the presiding judge immediately at the conclusion of the arguments of counsel.

No feature of the English administration of justice throws into relief more clearly the fundamental differences between the juristic institutions of that country and those of our own than the conduct of criminal appeals. Speed of determination, brevity of opinion, paucity of judicial rhetoric, concentration on the main
issues of the fairness and legality of the defendant's trial and the reasonableness of the jury's verdict—these are the salient characteristics of the work of the Court of Criminal Appeal.

IX

The criminal jury is an obsolescent institution in the country of its origin. There is no fact which is more apparent from any contemporary investigation of English criminal justice. During the year 1926, for example, 69,695 defendants charged with indictable offenses—about ninety per cent of the total number—were dealt with in courts of summary jurisdiction, leaving only 7,924 to be committed for jury trial at assizes and quarter sessions. The legislative tendency to enlarge the competence of courts of summary jurisdiction—tribunals presided over by professional police court magistrates in London and some of the larger cities and by benches composed of lay justices of the peace in the majority of the counties and boroughs—is perhaps the most significant tendency in English criminal law administration in recent years.

The Criminal Justice Act 1925, which provided a new and enlarged schedule of indictable offenses triable summarily and simplified the method of procedure, was in part an attempt to effectuate a speedier and less technical administration of justice and in part a recognition by Parliament of the effectiveness with which courts of summary jurisdiction had dealt with a large body of offenses created during the period of war emergency—offenses of the type which a half-century ago would doubtless have been reserved for jury trial.

The English people are not unmindful of their debt to the jury trial. It served in the past not only to combat the exercise of arbitrary power by a despotic executive, but to mitigate the rigors of one of the most barbarous penal codes in history. Yet

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37 I have discussed this topic in considerable detail in an article entitled The Rise of Summary Jurisdiction in English Criminal Law Administration which will appear in a forthcoming issue of the California Law Review.
88 15 & 16 Geo. V, ch. 86.
89 For a short comparison of the process of summary jurisdiction of indictable offenses, as developed in England, with the American waiver of jury trial in felony cases see Howard, Trial by Jury, (1929) Century Magazine 683 et seq.
40 For a discussion of this subject see Phillipson, Three Criminal Law Reformers. See also Atkinson, Jeremy Bentham, His Life and Work, and
gratitude for its historic services has not prevented the passage of legislation sanctioning a gradual but none the less certain encroachment upon its province. The apparent success of summary jurisdiction in that country demonstrates that governmental devices fashioned to serve the political and social requirements of a distant past ought to be reconsidered and evaluated in the light of modern conditions and the tested needs of the present. The antiquity of an institution is no adequate proof of its utility.

Davidson, Political Thought in England—The Utilitarians from Bentham to J. S. Mill.