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ARREST WITHOUT WARRANT: EXTENT AND SOCIAL IMPLICATIONS*

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All societies are faced with the problem of the nature of the police function. What are the duties of the police, what is the extent of their power, and what methods exist to insure that the police function is exercised within limits? One major complaint against modern totalitarian states is that not only are legal limitations on the powers of the police vague but, in fact, this power is exercised largely without any legal or moral restraint. Two signs of a well ordered society are the substitution of public remedies for self-help remedies in criminal law and the sharp differentiation of the police from the judicial function. The important advance suggested by the replacement of the *people's peace* with the *king's peace* in Frankish law is that a public trial replaces the principles of revenge and lynch,[1] and one of the prides of democracies is that arrest is not tantamount to a conviction.

In the United States an arrest is the only means whereby a government official may take a person into actual custody.[2] It is the necessary means whereby the criminal is apprehended and the law-breaker seized. Beyond this the average citizen knows little because of his rare contact with "the law." He may vaguely recall a so-called Constitutional restraint on arrest embodied in Amendment IV which only

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[1] MUNROE SMITH, THE DEVELOPMENT OF EUROPEAN LAW (New York: Columbia University Press, 1928) see particularly, 134–146.

[2] In some states a person may be "detained" for questioning in connection with a crime. Also, a juvenile, a person of unsound mind, and a person threatened by mob action, may be taken into "protective custody" in the majority of states.

adds to what may be termed an antiquated view of the powers of the police. As this study will show, even the police officers are little aware of the changes in the law of arrest; while the general public is largely unconcerned with police practice in our own country.

This study was undertaken in order to determine how the law of arrest with particular attention to the use of the warrant has been evolving in relation to the actual practice of the police. This can certainly be regarded as a case study of the larger theoretical problem posed by the juxtaposition of two phrases, "law in the books" and "law in action". The methods involved a search for "the law in the books' which necessitated a study of the statutes and judicial decisions in each state, a preliminary series of interviews of nearby cities and towns, a preliminary questionnaire which was tested for imperfections, a final questionnaire, and a series of interviews by which to check the questionnaire responses.

Seven states—Connecticut, Delaware, New Jersey, New York, Maryland, Massachusetts and Pennsylvania—were selected as the area of study for two reasons. First, they were close to the research center in Bethlehem, Pennsylvania; and second, the first four states were considered as representative of the variations to be found in states where the use of the warrant was governed entirely by statute while the last three states represented those in which the law of arrest was governed primarily by the common law.

Public statistics on a matter of such delicacy as the use of the warrant are largely non-existent; and insofar as they do exist, they are largely misleading.[3] Furthermore, public statistics do not provide the student of politics with adequate data from which to generalize. To discover the actual practice within these states representative samples of cities and towns were made to provide for coverage of fairly rural, small city and metropolitan areas. The data secured in this way was compared with data secured from systematic interviews in seventeen cities including some cities in each of the states covered in the study. What follows is (1) a report on the evolution of the notion "arrest," (2) a statement of the law of arrest "in the books," (3) a report of police responses to oral and written questions respecting their practices, and (4) some general conclusions both with respect to this specific study and for further research in this area.

I. Evolution of the Notion "Arrest"

The word "arrest" comes from the Latin through the French word "arreter" meaning to stop, stay, or restrain, and in the law means technically an actual or constructive seizure or detention of the person under a real or pretended authority with a purpose to take the individual into the custody of the law.[4]

The procedures presently employed in the law of arrest have evolved slowly from numerous substitutions for private war. From primitive times the underlying principle was self-help or self-redress. The injured party took it upon himself to avenge

[3] For an example of the unreliability of public statistics on arrest without a warrant see statements made by a group of advanced law students in *Philadelphia Police Practice and the Law of Arrest*, University of Pennsylvania Law Review, Vol. 1 (June 1953), 1182–1216.

[4] Horace Wilgus, *Arrest Without Warrant*, Michigan Law Review, Vol. 22 (1923–24), 543.

his loss. Following quite literally the adage "an eye for an eye, a tooth for a tooth," he was in essence, his executioner of the law. In this early conception a breach of the peace was a transgression against an individual rather than against a sovereign power of any kind. The very existence of self-help made it clear that the law or the king the day could not adequately deal with persons who had committed wrongs.

By the thirteenth century in England, self-help was largely replaced by some more definite procedures.[5] The hue and cry was widely used in order to help in the apprehension of criminals, but it still indicated that the law was very weak. Britton stated that the hue and cry was to be utilized for the maintaining of the peace so that "when a felony is committed, everyone be ready to pursue and arrest the felons, according to these statutes of Winchester, with the company of horns and voices from township to township until they are either taken or have been pursued as far as the chief town of the county of franchise."[6] When a person chanced, for instance upon a dead body he was to raise the hue and cry to attract the attention of the people in the community. The neighbors would then turn out with bows, arrows, and knives and the "hue" would be "horned from vill to vill."[7] In cases where the person was overtaken and there were signs that he was responsible for the crime, he would be taken forcibly before a court hastily convened. If the accused resisted capture in any way, a member of the community could legally kill him. However, even if the accused did not resist capture, there existed very little hope that he might obtain an impartial trial. Before the court he could say nothing in self-defense. Usually he was executed by being hanged, beheaded, or precipitated from a cliff by the individual whose goods had been stolen, or in the case of murder, by the next of kin of the dead man. Procedure as such was practically non-existent, for if the person were caught, it was almost a foregone conclusion that he would pay the penalty. The use of the hue and cry is well illustrated by early English statutes. In 1354 a statute of Edward III provided that a hue and cry was to be made after robbers from county to county for the protection of the merchants. This statute is one of the best examples available of the procedures utilized.

> ... that solemn cry be made in all counties, hundreds, markets, fairs, and shall be, so that none by ignorance shall excuse him [self], that every county from henceforth be so kept, that immediately after felonies and robberies [are] done, fresh suit be made from town to town and from county to county, and inquest, if need be, shall also be taken in the towns by him which is sovereign of the

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[5] FREDERICK POLLOCK AND WILLIAM MAITLAND, HISTORY OF ENGLISH LAW, (Cambridge: Cambridge University Press, 1895), 572–576.

[6] FRANCIS NICHOLAS, translator, BRITTON (Washington: John Byrne and Co., 1901), 42. The compilation of the laws attributed to Britton was published in the late thirteenth or early fourteenth centuries. There is no doubt as to the authorship of the treatise, but it is generally accepted as an accurate account of the common law.

In reference to the Statute of Winchester in the above quotation, Britton had in mind part IV of the Statute which provided that if a person was under suspicion by any inhabitant of a community, it was his duty to turn him over to the sheriff. If the suspected person resisted arrest, "hue and cry shall be raised against them, and such as keep the watch shall follow the hue and cry from townships to townships, until the man be taken and delivered as before as said." WILLIAM STUBBS, SELECT CHARTERS (London: Oxford Clarendon Press, 1921) 468.

[7] POLLOCK and MAITLAND, *op.cit.*, 577.

town, and sometimes in two, three, or four counties, in cases where felonies shall be done in the marches of the counties, so that the offender may be attained.[8]

One of the difficulties inherent in the process was the fact that not all of the inhabitants of the hundred[9] would be willing to expend any effort in helping to capture a criminal. Therefore, a principle was developed which held that the inhabitants of a hundred where the crime was committed were liable for damages if they did not raise the hue and cry and capture the criminal within a period of forty days. Also, it was imperative that the neighboring hundreds aid in the apprehension of the criminal. The entire process originated in the days when a criminal taken in the act was considered *ipso facto* an outlaw. The person in such instances was regarded as having placed himself beyond the pale of the law and was not entitled to receive any protection whatsoever. Although this process had its basis in the criminal law, it was also used to punish litigants in civil suits who might produce forged writs. The accused in such cases had no right of appeal and could be hanged or otherwise executed without first bringing an indictment.[10] Usually if a man was caught "with the mainour," that is, with the goods, he was tried without an indictment.[11]

Outlawry was greatly feared primarily because of the fact that when a person so charged was captured he could be executed as soon as it was proved that he was in fact an outlaw.[12] An individual could be outlawed without intentionally committing a crime, or he could be outlawed by a royal officer in a community which was not his actual residence. The life of the outlaw was, to say the least, difficult indeed. The entire community was at war with the culprit who was to be hunted down and slain like a wild beast. He had no rights whatsoever. He could pass nothing on to his heirs.[13] If a person knowingly supported or harbored an outlaw he could be charged with a crime and suffer severe penalties.[14] If a felon refused to give himself up after being

[8] 28 Edward III, Statute 2, c. 11, 2 Statutes at Large (1354).

[9] A hundred was a subdivision of a county or a shire with its own court. The majority of English counties were divided into hundreds which were in some counties called wards. HAROLD POTTER, HISTORICAL INTRODUCTION TO ENGLISH LAW, (London: Sweet and Maxwell Ltd., 1943), 82, 83, 89; see also OXFORD DICTIONARY, vol. 5, p. 456.

[10] HENRICI DE BRACTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE, (London: Richard Tattullum, 1569), 414.

[11] Individuals who were captured with the stolen goods on their persons could be summarily executed by a member of the community as provided by early English statutes. WILLIAM BLACKSTONE COMMENTARIES ON THE LAWS OF ENGLAND, vol. 4, (London: A. Stranahan, 1809), 303. Sir Mathew Hale also notes the idea of catching a thief with the goods on his person; see MATHEW HALE, THE HISTORY OF PLEAS OF THE CROWN, Vol. II (Philadelphia: Robert H. Small, 1847), 155–156.

[12] HENRICI DE BRACTON, *op.cit.*, 441.

[13] "But if an outlaw, or one convicted of a felony hold of any other person than the king, then also all his Moneables shall belong to the king; his lands also shall remain in the king's hands during one year, which period being expired, such land shall revert to the right Lord." RICHARD GLANVIL, A TREATISE ON THE LAWS AND CUSTOMS OF THE KINGDOM OF ENGLAND, (London: A. J. Valpy, 1812), 189.

[14] "As to the punishment of outlaws in their lifetime for their felonies, their judgement shall be this, that, since they will not be amenable to the law, they be forjudged from all law, and put out of our peace, and be answerable to all, and none to them, and be judged felons, as shall also those who knowingly receive them or bear them company after their outlawry." BRITTON, *supra*, note 6, 43.

demanded in five successive counties, he was then declared an outlaw which put him outside the king's peace and protection.[15]

The wide use of outlawry during the early period again points out the fact that the law at this time was very weak. Outlawry was the last weapon of the ancient primitive law. The sentence pronounced was that of an entire community which did not have enough policemen to enforce the laws. However, as the state gadually gained power, outlawry lost much of its importance because criminals could be seized and punished by officers of the state. We find, then, at this point that the power of arrest and punishment which were in essence exercised by all the members of the community, gradually became more and more restricted in the hands of fewer individuals. The earliest restriction on the general use of the power came about in 1329 when the sheriffs alone were empowered to put a felon to death. If any other person killed him, the former could be tried and punished in the same manner as if he had killed any other man.[16] Nevertheless, during the period covering roughly the fourteenth, fifteenth, and early sixteenth centuries the ordinary citizen in England had the same power to arrest suspected persons as an official even though he might be acting at his peril.[17] But by the latter part of the sixteenth century private citizens had relinquished their powers of arrest to officials of the government. The practice of arresting persons with a warrant developed out of the hue and cry and reflected a differentiation of public authority from what was previously community action in criminal apprehension. The capacity of a private individual to arrest remained although it was at his peril. In this manner there was a gradual separation of the police function from the primitive "rule of lynch."[18]

However, under the common law the police officer as well as the private citizen could arrest without a warrant in certain specified instances. These common law rules have been summarized well as follows:

Rule 1—Anyone may arrest a person whom he sees in the point of committing or attempting to commit a treason or felony, but there is no power to arrest if the attempt has ceased.

Rule 2—One may arrest another while he is in the act of committing a felony, upon view, or when he is apprised by any of senses that it is being committed in his presence.

Rule 3—If a specific felony has been committed by someone, and of which some other person is suspected on reasonable grounds, then either an officer or a citizen having such reasonable grounds, may arrest the one so suspected, although it turns out the person so arrested is actually innocent.

Rule 4—Where a felony has in fact been committed, a peace officer may arrest a person on suspicion at any time after the commission of the act which is supposed to be a felony.

Rule 5—Neither an officer nor a citizen may arrest for a past breach of the peace, unless committed in his presence and followed by immediate and continued pursuit.

Rule 6—Unless there is statutory authority neither an officer nor a citizen may arrest for a mis-

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[15] *Idem.*

[16] WILLIAM HOLDSWORTH, Vol. 3, HISTORY OF ENGLISH LAW (Boston: Little Brown and Co., 1923) 605.

[17] *Ibid.*, p. 600.

[18] For a more extensive discussion of this development and numerous citations to other leading works and cases see JEROME HALL, *Legal and Social Aspects of Arrest Without a Warrant*, HARVARD LAW REVIEW, Vol. 49 (Feb. 1936), 578–590.

TABLE I

SOURCE AND EXTENT OF AUTHORITY TO ARREST WITHOUT WARRANT

State	Source of Authority	Felonies			Misdemeanors		
		In presence of arresting officer	On suspicion after the fact	On suspicion alone	In presence of arresting officer*	On suspicion after the fact†	On suspicion alone
Connecticut	Statute	Yes	Yes	Yes	Yes	Yes	Yes
Delaware	Statute	Yes	Yes	Yes	Yes	No	No
New Jersey	Statute	Yes	Yes	Yes	Yes	No	No
New York	Statute	Yes	Yes	No	Yes	No	No
Maryland	Common law primarily	Yes	Yes	Yes	Yes	Yes	No
Massachusetts	Common law primarily	Yes	Yes	Yes	Yes	No	No
Pennsylvania	Common law primarily	Yes	Yes	Yes	Yes	Yes	No

* The term presence has been expanded by the courts to include hearing as well as seeing.

† Suspicion denotes that state of mind which is caused by reasonable belief that a crime has been committed. Suspicion may be aroused as the result of speedy information from a person, by evidence at the scene of the crime, etc.

> demeanor which does not amount to a breach of the peace even though committed in his presence.[19]

Both those states which rely entirely upon statutory authority for arrest procedure and those which depend largely upon the Common Law depend on these ideas for the legal basis of arrests. The majority of the states have relied strongly on the English common law as presented in summation here for grounds to arrest without a warrant.

II. THE LAW OF ARREST IN "THE BOOKS"

Table I indicates that the common law rules on arrest without a warrant have had a profound influence upon present day arrest procedures in the seven states included in this study.

A perusal of Table I clearly indicates that there is little difference in the law relative to arrest without a warrant in the seven-state area. Furthermore, it appears that reliance on statutory enactment rather than the common law as the basis for arrest procedures is insignificant in terms of actual powers granted. It is true that some state statutes have enlarged the power of police officers and other public officials to arrest without a warrant by permitting such arrests with respect to certain designated misdemeanors which were not considered to be breaches of the peace at common law. Such statutes ordinarily apply to vagrants, vagabonds, motor vehicle law violators, drunkards, and gamblers.

III. QUESTIONNAIRES AND INTERVIEWS

Since it is well known that in many instances the case law and statutory enactments do not necessarily reflect actual practice, a variety of techniques were used

[19] HORACE WILGUS, *supra*, note 1, 4, 673.

TABLE II

CLASSIFICATION OF CITIES AND NUMBERS INCLUDED IN SAMPLE FOR EACH CLASS BY STATES

Class	Population, Range in Thousands	Conn.	Del.	Md.	Mass.	N. J.	N. Y.	Pa.	Total
I	0–2½	5	5	4	4	4	5	4	31
II	2½–8	5	15	7	4	6	5	15	57
III	8–25	5	*	9	8	5	6	5	38
IV	25–100	6	*	5	5	4	6	7	33
V	Above 100	4	1	1	5	5	5	5	26
Total.....		25	21	26	26	24	27	36	185

* No cities in classification.

in order to discover what police practice in fact was. Through an introductory letter sent to police departments policy statements were solicited. On the basis of these and the legal knowledge previously obtained a preliminary questionnaire was constructed. This questionnaire was considerably revised and shortened after a small test mailing and use in a series of personal interviews with police officials and officers on the beat. The final questionnaire, which was based on the results of interviews, a trial run of a preliminary draft, and the statutes and case law, was sent to a sample of communities in each of the seven states.

The sample was constructed by classifying cities, towns, boroughs, and villages into five groups on the basis of population.[20] Table II indicates the basis of classification, and the numbers of communities in each state which were included in the state sample. The fivefold classification provided for a cross section of both fairly rural and metropolitan areas. The number of communities in each class was largely determined by two factors, the number of communities of that class in the state and the desirability of having a respectable number in each sample. However, the number of Class V cities was limited in most of the states covered. This type of limitation held for each of the classes in some of the states. Further limitations were introduced in some cases due to failure of many police departments to return the questionnaire. Some of these difficulties were cancelled out by systematic oral interviews in place of the questionnaires which elicited surprisingly similar results to the questionnaires. It is on the basis of these comparable results that the validity of the following statistics can be vouched for, although the number of returns was too low in most cases to justify any sophisticated manipulation.

Before giving the results of the questionnaire, it seems important to note some of the facts gathered by the preliminary techniques. The information gleaned from the "introductory letter" gave the impression that all was well. The state law was being followed, and with some erudition many departments indicated their knowledge of the law of arrests without warrants. From this it was concluded that with some notable exceptions the police have at their disposal ready sources for explaining the law. However, a comparison between these initial letters, interviews, and questionnaires revealed that there was considerable confusion and some ignorance in some

[20] An alternative classification on the basis of legal categories was discarded because of the variety of state laws for municipal incorporation and its inutility for inter-state comparison.

TABLE III

RETURN OF QUESTIONNAIRES BY STATES AND CLASSES OF CITIES

Class	Conn.	Del.	Md.	Mass.	N.J.	N.Y.	Pa.	Total	Per Cent Return
I	2	—	—	2	1	1	—	6	19
II	3	1	2	3	2	1	1	13	23
III	4	*	4	3	3	2	3	19	58
IV	3	*	3	—	—	2	5	13	39
V	2	1	—	2	3	3	2	13	50
Total	14	2	9	10	9	9	11	64	35
Per cent return	56	9	32	38	36	33	34	35	

* No cities in classification.

important matters. These factors undoubtedly contribute to the variety of practice found within state jurisdictions. The state of Connecticut will illustrate the situation. One Class IV city police department stated that "in Connecticut there is no holding charge such as arrest on suspicion. There must be a specific charge;" while another city of the same class responded that "if a person is believed to be guilty of having committed a crime, he sometimes is detained for questioning. They are booked on 'suspicion of'..." Confusion is rife in this state among officers on the question of when officers may arrest without a warrant for misdemeanors. The police of one city explained that "we make arrests on reasonable grounds of crime or felonies being committed." A second city responded that "an officer cannot make an arrest on a misdemeanor on reasonable grounds. The law in Connecticut requires that the offender be taken 'in the act' or upon 'speedy information of others.'" This police chief concluded that "reasonable grounds or reasonable cause is applicable only to felonies." A third city limited their officers in arrests without a warrant for misdemeanors to cases where "the person arrested must have committed or attempted to commit such misdemeanor involving a breach of the peace, and must have so attempted or committed the misdemeanor in his (the officer's) presence." As a matter of fact the latter two cities had policies which were in violation of the law, but the important conclusion here is the large variety of opinion expressed with respect to the legal requirements.[21] Similar variety could be detected in each of the states.

The questionnaire and oral interviews were the most useful devices for securing detailed responses. A copy of the questionnaire was sent to police headquarters in 185 cities and headquarters of the seven state police along with a letter explaining the nature of the study.[22] Table III gives the figures and percentages by states of questionnaires which were returned.

[21] These quotations are from letters, statements on questionnaires, and written answers to specific questions by police officials.

[22] QUESTIONNAIRE ON ARREST—*Directions*: Please check the response which seems best to apply in your specific jurisdiction. Any additional remarks which you might have will be appreciated.

A. *On what occasions may an officer arrest?*

When he has in his possession a warrant calling for the arrest of an individual charged with a crime

As a standard by which to measure responses, members of the project provided a proper and legal answer to the questionnaire for each state. The "correct" answers were made on the basis of the statutes, case law, opinions of attorneys general and in some doubtful cases on the judgement of competent counsel. The next step was to compare results of the questionnaire with the "law in the books." The purpose of this was to find to what degree the responses were in accord with the law. The results of this comparison are found in Table IV.

Comparisons of practices between large and small cities, rural and urban areas, within and between the several states were not justified because of the percent of returns in some classes of cities in every state and for some states as a whole. Dependence on the data secured should also be conditioned by virtue of the fact that a number of cities which have poor police practice responded to the questionnaire not in terms of their actual practice but in terms of what their practice should be if they were abiding by the law.

When he knows that a warrant has been issued in his state for an arrest, but the warrant is not in his possession

When he receives a teletype message that a warrant exists for a specific person

When he receives a telephone message that a warrant exists for a specific person

In some circumstances an arrest may be made without authority of a warrant.

B. *On what occasions may an officer arrest without a warrant for a felony?* (high misdemeanor—N.J.?)

When the felony is committed in view of the officer

When the felony is attempted in view of the officer

When the officer receives speedy information from A that B has committed a felony

When the officer knows for a fact that a felony has been committed and has reasonable cause for believing that B has committed it

When the officer knows for a fact that a felony has been committed and receives from A the speedy information that B committed it

When the officer has reasonable cause for believing that B has committed a felony, although not in his presence

When in fresh pursuit of suspect across city, county, or township (hundred in Delaware) boundary

C. *On what occasions may an officer arrest without a warrant for a misdemeanor?*

When the misdemeanor is committed in view of the officer

When the misdemeanor is attempted in view of the officer

When he receives speedy information from A that B has committed a misdemeanor

When he knows for a fact that a misdemeanor has been committed, and has reasonable cause for believing that B has committed it

When he knows for a fact that a misdemeanor has been committed and he receives speedy information from A that B has committed it

When he has reasonable cause for believing that B has committed a misdemeanor although not in his presence

When in fresh pursuit of suspect across city, county, or township (hundred in Delaware) boundary

When in fresh pursuit across state boundary

When the misdemeanor takes place in the presence of an officer on Sunday, or at night

When he has reasonable cause to believe, either from personal opinion or speedy information, that a misdemeanor has taken place on Sunday, or at night

When he arrives at the scene of a misdemeanor immediately after it has been committed, but evidence, facts, and persons involved in the misdemeanor leave no doubt as to the guilty party

D. *Is arrest the only means of detention?*

( ) Yes; ( ) No (If *no*, please specify below.)

TABLE IV

RESPONSES TO QUESTIONNAIRE NOT IN ACCORDANCE WITH LAW BY PERCENTAGE

Classification	I	II	III	IV	V	State Average
Connecticut	40	40	39	20	17	31
Delaware	†	87	‡	‡	0	43
New Jersey	40	43	21	*	13	21
New York	13	20	30	7	9	15
Maryland	†	33	21	29	*	24
Massachusetts	20	20	28	*	10	19
Pennsylvania	*	33	3	20	17	24
Class average—percent	27	36	26	20	12	24

* No answer received for this classification.

† Very small communities of Delaware and Maryland are policed by state police who have local enforcement responsibilities.

‡ Delaware has no cities in classes III and IV.

Bearing in mind the probability that in many cases questionnaires were returned with the view of making things look legally good, it is therefore a matter of great surprise that the responses were not in accord with the law 24 percent of the time. Out of 960 responses a total of 230 were not in accord with what the legal norm stated.

However, these responses do not all represent violations of the law. In some instances they represent stricter policies by local police authorities which are substantially within the law. In many cases the responses represent what the officer thought the law ought to be while in other instances ignorance of the law and observation of actual illegal practices account for specific answers. The figures of Table V indicate that 9 percent or 89 out of 960 responses were in direct violation of the law.

Again the large percentage of answers indicating violation of the law is more sig-

TABLE V

RESPONSES TO QUESTIONNAIRE IN VIOLATION OF LAW BY PERCENTAGE

Classification	I	II	III	IV	V	State Average
Connecticut	8	8	16	8	8	11
Delaware	†	0	0	‡	0	0
New Jersey	40	16	12	*	16	16
New York	16	25	27	8	8	13
Maryland	†	0	5	0	*	9
Massachusetts	0	9	2	4	4	4
Pennsylvania	*	33	0	4	0	4
Class average—percent	11	10	8	4	6	9

* No answer received for this classification.

† Very small communities of Delaware and Maryland are policed by state police who have local enforcement responsibilities.

‡ Delaware has no cities in classes III and IV.

nificant than any itemized breakdown of these statistics according to classes of cities or states.

IV. Some General Conclusions and Suggestions for Further Study

There is no doubt that in many instances arrest without a warrant is both necessary and desirable in the interest of effective law enforcement which will give the community maximum protection. The preference for arresting without a warrant on the part of modern-day police is certainly understandable. The criminal moves fast; the police must move faster. Nevertheless, it is essential also in a well ordered society that the suspect be proceeded against within the framework of certain duly constituted safeguards for it may be true that "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."[23]

The large percentage of answers indicating non-accordance with the law and violation of it noted in Tables IV and V plus the fact that a number of interviews revealed that blank warrants signed by magistrates were widely used suggests that the warrant provides little protection from false arrest in state practice. This study indicates that the warrant has little significance in actual police practice outside of the psychic value for the police themselves. Many police officers "feel better" about arresting a person if a warrant is used even if it is a blank one signed by the dozen each week by the local magistrate. This fact can be accounted for in part by ingrained traditions which are still followed in form although perhaps meaningless in content and to the desire of police officers to avoid suits for false arrest. The small number of cases for false arrest, however, suggests that this private remedy is seldom used to seek redress by the private citizen.

States which have statutes governing the use of warrants in arrest seem to have a higher percentage of answers indicating violation of the law (12 percent) than common law states (6 percent). This is in spite of the fact that both common law and statutory states do not differ substantially in the number of answers which vary from the legal norm (25 percent and 23 percent respectively). This particular conclusion defies explanation.

The trend of responses in both Tables IV and V suggests that the larger the community the closer the compliance with the law. This may be explained, in part, by the greater training of police officers in larger communities although we would not presume to say that the larger the city the more law abiding it is. The alternative to regulation by law in each state would be regulation by police professional ethics but again, the high percentage of violations indicated suggests that police professional ethics have not developed far enough to make this feasible.

The use of questionnaires to discover police practice is of only most limited value. It is difficult to obtain results from rural areas. Table III indicates a return of 19 and 23 percent for class I and II communities, and in such instances there are many motives for providing inaccurate information. It may be that the questionnaires were submitted to the "wrong" individuals. Perhaps future research should be directed toward obtaining answers from prisoners and others who have been directly

[23] Justice Brandeis dissenting in Olmstead v United States, 277 U. S. 438, 480 (1928).

involved in police arrest procedures and who have been illegally held.[24] Perhaps more accurate information might be obtained but the obstacles to an extensive study of this type are obvious. Or it may be that a greater contribution could be made in further studies by attempting to determine the status of public opinion relative to arrests without warrant in order to arrive at laws which would find acceptance in practice. This would involve the construction of a scale to measure related practices such as that used by Beyle and Parratt in measuring the severity of the third degree.[25] Such studies would be useful to committees such as the one found in Philadelphia made up of lawyers, law school faculty members, representatives of the district attorney's office and a member of the Civil Liberties Union which is currently working with the police commissioner in redrafting the city's arrest code.

Of course, further research is needed in a number of other states. Such research should be directed toward discovering the actual practice of police officers in these areas for the very few studies now available and found primarily in the law journals are concerned almost exclusively with an exposition of the statutory and case law on the subject in a particular state. Also, more precise generalizations would be possible with additional data from a more varied number of states

[24] Dr. Spencer D. Parratt of Syracuse University has suggested to the authors that this might prove fruitful in future research.

[25] HERMAN C. BEYLE AND SPENCER D. PARRATT, *Measuring the Severity of the Third Degree*, JOURNAL CRIM. L. AND CRIMINOL., Vol. 24 (1933–34), 485–503.