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THE POLICE IN A CHANGING SOCIETY

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No one can doubt that the last half century has seen a marked change in the character of our society. In this respect it is comparable with the half century that succeeded the Industrial Revolution. By comparison the 19th century was a period of stability. If we compare our society to-day with the society that existed before 1914, and if we regard the period between the two wars as a plateau at the half-way level, we can see what the change has been. The object of this lecture does not require me to examine the whole of this change which would indeed be a subject for many volumes but to examine it only in so far as it affects the police.

One great change has been the diminution in the respect for authority. I do not propose to examine how that has come about or to offer any opinion as to whether it is a good or a bad thing. Some may say that it follows naturally on the spread of education and that people now exercise the power which education gives them to think things out for themselves and consequently to question what hitherto they have taken for granted. The ordinary man is now not only far better educated than he was, he is also more prosperous; and prosperity makes for independence. Independence is in itself a good thing. But some would say that with individuals as with nations it has in the 20th century come too quickly and that men have learnt to resent control before they have learnt to control themselves.

This new factor does not create problems that are peculiar to the police. It affects all those whose business it is to uphold authority, schoolmasters and parents among others. It has had a significant effect upon industrial discipline. Greater prosperity and fuller employment have weakened the authority of the employer. He cannot now rely as he used to do on the threat of the sack. Managers and foremen have had to learn new techniques of industrial leadership so as to get the results they want. To this extent the remedy is in their own hands.

But in the case of the police the remedy is not in their own hands. It is not part of their function, as it is that of parents and teachers and managers, to exhort and to persuade. That is a duty which they must leave to others to discharge. When it comes to society as a whole the enforcement of discipline on its members and the teaching of them to discipline themselves belong to different organs. In most periods of our history self-discipline has been nurtured by religious teaching. The new thinking which has diminished the power of the churches has not yet evolved anything to put in its place.

This factor reacts upon the police in another way. From the economic point of view as well as from the social the policeman's position is no longer as commanding as it used to be. It has not got quite the social prestige that it used to have; and a secure employment with a pension and other like benefits is to-day the rule instead of the exception. The police now suffer from what seems to be a permanent shortage of man-power.

Next I should note, as a change that has affected the police, the increasing complexity of society. The simplicity of the criminal law has gone. The main task of the police half a century ago was to

protect society against its enemies. Not all criminals were dangerous men who enjoyed crime. I call them the enemies of society because they were men who would not or could not accept the restraints that society places upon the individual. They were men who were against the law.

But now we have a large number of social regulations which have been put upon the police to enforce. Those who break them I shall call "offenders", for in the bulk,—though one must make exceptions for a few very bad cases,—they are not real criminals but generally law-abiding members of society. This change in the function of the police has, I think, profoundly affected their relations with the public. The shepherd and the sheepdog are no longer employed simply to beat off the wolves. The sheep are no longer allowed to graze freely wherever they will. Their grazing is now strictly controlled and those that stray are harried by the sheepdog. The sheepdog is no longer seen simply as the benevolent protector; and some sheep—no doubt the more troublesome ones—begin to have a sneaking sympathy for the wolf.

A fourth change is the increase in serious crime. Again, I am not going to attempt to analyse the causes of the increase and I direct attention only to one aspect of it and that is its change in character. The Great Train Roberry has brought it home to us all that the police are now having to fight organized crime on a scale that is new. These men have done more than reject social obligations; they have declared war on society.

These being the factors of change, what is being done to adapt the work of the police? I have no doubt that in the internal organization of the force a great deal has been and is being done. I am not qualified to comment on that. I can comment only on one aspect and that is the criminal law. But the criminal law, in so far as it affects the work of the police, adapted itself to meet the needs of our present society.

First, I shall suggest a long-term change that I think we might begin at least to think about. We should try to get back to the fundamental idea that the police are a body that exists to deal with real crime, that the duties they are given to do in connection with the enforcement of social regulations are foreign to their nature and that the less they have to deal with them the better. The tendency to heap all law enforcement on to the police as a matter of course is something that should be checked.

For one thing it is a waste of highly-trained man-power when man-power is short. You do not need a man trained in unarmed combat for keeping order in the classroom. Summonses can be served by men who would not be quite up to making arrests. But the more important thing is that the police are continually being brought into disagreement and conflict with fundamentally law-abiding members of the public on whose cooperation they must rely in the fight against real crime. Offences against social discipline should be dealt with in the same way as offences against professional or industrial discipline—by tribunals with powers to fine or suspend or disqualify. It is oppressive to bear down on the offender with the whole weight of the criminal law, to hale him before what he still thinks of as a "police court" and to threaten him with imprisonment. The threat of imprisonment, although statistically very remote for social offences, may seem a grim and terrifying thing when it is hanging over a man's head for weeks and months; and the police as the agents of law enforcement are taken to personify the sense of oppression that it brings.

One of the greatest sources of friction is the administration of the traffic laws. The people who have to administer them are bound to leave a number of grievances in their wake, real or imagined, grievances that get magnified into resentment. It would now be a major operation to disentangle the police completely from activity in even minor breaches of the traffic laws. But is it necessary to identify the police as closely as they are identified with their enforcement? Must they be prosecutors as well as witnesses? The role of the policeman in civil proceedings arising out of motor car accidents is not resented because there is no feeling that he is engaged on one side or the other. He is the impartial witness. Could he not play the same role in a criminal case? The decision whether or not to prosecute, the interviewing of witnesses, the preparation of the case and its conduct in court, all this could be done by men or women who would have no need of the qualifications—the physical qualifications, let alone those of another sort—which the policeman has to have. There would then be no feeling that the police were professionally interested in obtaining a conviction. There would not then be engendered the sort of hostility that arises out of a clash in court. A defendant in a civil case may be very angry with the plaintiff whom he may feel has distorted the case against him and very angry with the plaintiff's counsel who he thinks has cross-examined him

harshly or unfairly. But he is not usually indignant with the independent witness.

Driving after too much to drink is, I think, one of the worst of traffic offences and so I take it deliberately as an illustration. There are drunken drivers who are criminals in every sense of the word. But they are in the small minority. For the ordinary man this law is a stiff law. A man whose ability to drive is impaired through drink commits an offence and under modern conditions ability to drive is impaired if the power to judge distances correctly or the power to react swiftly is impaired. This is a necessary law, but it is a hard one and its stringent enforcement is bound to be disliked. It means that in country districts where a car is a necessity a man must stop short of what in other circumstances makes an innocent and convivial evening. The police rightly take a stern view of the law, while the public continues to think of a drunken driver in the terms of the old law as a man who is so much under the influence of drink that he is incapable of controlling the car at all.

Imprisonment, though heavily threatened, is rarely used—for about two *percent* of those charged. Ninety *percent* at least of offenders against this and other traffic laws could be adequately dealt with by a licensing authority. There is no God-given right to drive a motorcar on the highway any more than there is to navigate a ship on the sea, pilot an aeroplane, keep a public house or put on a theatrical performance. Yet any dangerous or drinking driver can ensure that for him the only licensing authority is the jury. It is not the jury's fault; they are not cut out for the job. Looking at it frankly and not traditionally, have you heard of anything more absurd than that with the road accident rate as it is a man should go on driving on the highway until the point comes when each one of 12 men or women, who will be told nothing about the number of times he may have offended before, are convinced beyond reasonable doubt that he is unsafe? In these cases the machinery of the criminal law is not merely unnecessarily used; it is when used hopelessly ineffective. The police are given the difficult task of trying to enforce it and suffer the discouragement of frequent failure.

Now may I pass to another aspect of the criminal law. I imagine that the shortage of manpower in the police results in reviews being made from time to time of police duties so as to eliminate as far as possible waste of time. Has it ever been considered what alterations might be made in our criminal procedure so as to eliminate waste of time by the public as a whole, but especially by the police? Of course if all criminal procedure is regarded as sacred ritual, that is an end to the matter. A church service cannot be cut in length because of the shortage of parsons. But our civil procedure has been overhauled more than once in my lifetime in the law; and while conceding that nothing is a waste of time which is needed to guard against the danger of an erroneous conviction I think that our criminal procedure would benefit from similar treatment. It is still based upon the archaic notion that everything must be done by word of mouth. Is there any reason why proceedings should not be shortened by means of written admissions? Why is a police officer who has made a plan or taken a photograph always required to produce it in person? These are some of many questions that I should like to see examined and answered.

But the biggest time-waster of all, which makes the others seem puny by comparison, is our procedure for committal for trial. It is of course necessary that there should be some preliminary proceeding by which the circumstances of the crime are investigated before the accused is brought to trial. In the earliest days this was done by the grand jury. Then the task was taken over by magistrates. What they do now as a mere formality, the taking of depositions, was until the early days of the last century, before police forces were organized, a real inquiry; finding out who were the relevant witnesses, and getting down their statements in writing. Now the real work is all done in advance by the police and the proceedings before the "examining justices" as they are still called, are in most cases a tedious and time-wasting ceremonial. The witness is required to repeat his statement, as near as he can remember it, by the laborious process of question and answer. In the case of a police officer or an expert witness much of it consists in reading out his notes at subdictation speed so that they can be copied out in longhand.

It is fair to point out in many courts the quill pen is falling into disuse. Methods now vary from the dictating machine in the most affluent jurisdictions to an antiquated and clacking typewriter in the more poverty-stricken places. Proceedings always take hours; and sometimes days and weeks during which witnesses, always including two or three police officers, brought from all over the country may be kept hanging about. Moreover there are cases—sexual cases in particular—in which the giving of evidence in public is a trying ordeal for a

witness. Something has recently been done to spare a child the double ordeal. But what good purpose is served by embarrassing a woman who has been a victim of a sexual assault by making her describe in public twice over exactly what happened to her?

What emerges at the end of the ceremonial is a bundle of statements which could just as easily have been handed over to the defence at the beginning. In the rare cases where it is contended that there is no case fit for trial, the point could be determined by a Judge or magistrate on this written material. So could any question of bail, where the strength of the case is not usually the deciding factor.

If anyone thinks that this alteration to the law would result in any injustice to an accused, let him ask himself if he knows of a single case of injustice thereby caused in Scotland, where there have never been committal proceedings at all. In England on the other hand, because of committal proceedings, we are faced with the danger that injustice may be caused to the accused by the preliminary publication of the prosecution's case against him—including perhaps evidence that may be rejected at the trial. That is a question that has been actively debated for the last seven years without any satisfactory solution being found for it.

Now let me consider a matter that goes right to the heart of the criminal law, that is, the degree of protection which is given to the accused. This protection is not part of any logical pattern. The object of a trial is of course to strike a fair balance between the parties, but no one has ever attempted to strike the balance between prosecution and defence on any sort of scientific principle. The many safeguards which the accused now enjoys have grown up haphazardly, nearly all of them in the last 150 years. They grew up in a system in which before their birth all the advantages had been on the side of the prosecution. Many of them constituted the judicial response to the savagery of the criminal law which Parliament was slow to alter. Hanging was the penalty prescribed for every felony. The Judges were determined to make sure that no man should hang on a bare probability and so they insisted on proof beyond reasonable doubt. Until after 1800, both sides came into court ignorant of the other's case. All that the defence knew was to be found in the indictment, which at first he was allowed to look at only and then eventually was provided with a copy. The Judges gradually forced the prosecution to disclose their case in advance but, perhaps because they were looking for ways of diminishing the power of the prosecution and looking only for that, they never made any similar requirement of the defence. The Judges' Rules grew up towards the end of the period, but they originated at a time when the prisoner was not allowed to give evidence and when it was comparatively rare for him to have any legal advice or representation. Has not the time come when we should take a new look at our criminal procedure in the light of modern conditions and see whether as a whole it is really designed to achieve the great double objective of freeing the innocent and punishing the guilty?

The accused is given two fundamental safeguards. The first is trial by jury. It is a great protection to the man in the dock that the prosecution must convince 12 of his fellow-citizens of his guilt before he can be punished. There can be no doubt that if the prosecution had only to convince a Judge or a bench of Judges there would be fewer acquittals. I shall not argue about whether trial by jury is superior to trial by Judge; there are points to be made on both sides. Much depends on the quality of the Judges and that can vary from century to century. The supreme importance of the jury is that it is the ultimate guarantee of liberty. It ensures that no man can be imprisoned through the apparatus of the State or upon the decision of what we have come to call the Establishment but only by the verdict of his fellows. In the interests of a strict enforcement of the law we have permitted some encroachment on that principle. We should permit no more. It is not as if we could be assured of any infallible system of justice which would inevitably convict all the guilty and acquit all the innocent. This being so, I should not support the substitution of lawyers' justice for popular justice simply because it might result in the acquittal of a smaller number of those who are probably guilty.

That brings me straight to the second fundamental safeguard which also I should not like to see altered. Why do I talk of those who are "probably guilty" being acquitted? Because that is the inevitable result of the principle that requires guilt to be proved beyond a reasonable doubt. In the civil courts as between plaintiff and defendant the issue depends on the balance of probabilities. Sometimes the balance may be a comparatively slender one—60 to 40 or even 51 to 49. To convict a man because the scales are tilted against him would under ordinary conditions be to run too great a risk of the innocent being punished. So we

require that guilt must be proved beyond reasonable doubt. But that very fact means that a substantial number of people who are probably guilty must go free. I would not have this altered because I do not see any alternative that would not too gravely imperil the innocent.

But if these fundamentals are secured, how much further do we have to go? We should then have a system under which no man could be convicted unless 12 men and women, taken at random from the community, are unanimously convinced that there is no reasonable doubt about his guilt. Ought we to go further and try to devise a system that makes it humanly impossible for any innocent man ever to be convicted? If we must face the fact that for the protection of the innocent a large number of guilty must go free, we must also face the fact that for the preservation of law and order an innocent man may occasionally be convicted. I know it is a terrible thing if by a mistake an innocent man is imprisoned. But terrible things happen in this world. The misfortune of such a man would be no greater than that of a man who through the mistake of another is maimed for life. The only argument for the abolition of capital punishment that has always seemed to me, so far as it went, to be unanswerable is the argument that a conviction might be mistaken. For such a mistake can never be put right and for death there is no compensation.

If in addition to the requirement that guilt must be proved beyond reasonable doubt, there is some further test that could be devised to diminish the chance of an innocent man being convicted without increasing the number of probably guilty who are acquitted, it would be well worth examination. But I doubt if the few examples—as many as time permits—that I shall now consider would pass such a test.

First, there is the rule that an accused's bad character may not ordinarily be mentioned. This rule is not rooted in the English common law. It was one of those that grew up in the 19th century. Where, as in the United States, the common law was transplanted before the growth, it is not generally observed. In England the principle is to treat bad character as generally irrelevant and to allow evidence of it only in exceptional circumstances. This seems to me to be fundamentally wrong. Outside a law court one of the first things that anybody would want to know about a man before he believed him guilty of a serious offence would be what sort of man he was—whether he had done the same sort of thing before and whether he was the sort of person whose reputation showed that he could be believed. This rule surely ought to be the other way round, *viz* that character is something that is always relevant but that evidence of bad character should be excluded where the relevance is slight and the effect mainly prejudicial.

A jury is more likely to be prejudiced than a Judge, or at any rate is less well trained in excluding prejudice from its calculations. It is therefore a necessary protection for an accused and one that goes with jury trial that there should be rules excluding what is mainly prejudicial. But under our present rules we carry this to fantastic lengths. Suppose, for example, the issue is one of identity and the prisoner says that he was not at the scene of the crime on the Wednesday when it was committed. Where was he, it will be asked. Suppose he says that he was in Liverpool where he went on the Monday. Suppose the prosecution knows that that must be untrue because he only came out of prison on the Tuesday. Can they put that to him? No, because it would reveal that he was a person of bad character. This is ridiculous.

Then let us consider the prisoner's right to keep silent. I should maintain as fundamental the rule that the prosecution must prove its case without the assistance of the prisoner. If the prosecution was allowed to bring a case on suspicion only and to base their chances of conviction on the hope that they would get something out of the prisoner in cross-examination, it could lead far too easily to injustice. But if the prisoner keeps silent when there is obviously something for him to explain—whether at the time of arrest or at the time of trial—and where an innocent man would be likely to speak, I do not see why silence should not be commented upon and used strongly against him.

Then there is the contrast between the prosecution's duty to put all its cards on the table and the defence's right to keep theirs face down. It seems now to be accepted as a sort of honourable tradition that the prosecution must be ready to meet any case which the defence puts up and that it would lose face if it asked for an adjournment. Sometimes it is a gamble with time. If the prosecution first hears an alibi when the prisoner goes into the box on Monday morning it may be quite impossible to check it before the conclusion of the trial. But if he is unlucky and finishes his evidence in chief on Friday afternoon the police can work overtime on Saturday and Sunday and he may find himself faced with a devastating cross-examination on the Monday morning.

One other point I should like to touch on and that is the definition of police powers in relation in particular to the powers of arrest, search and detention. It is quite extraordinary that in a country which prides itself on individual liberty these should be so obscure and ill-defined. It is useless to complain of policemen overstepping the mark if it takes a day's research to find out where the mark is. Where powers are necessary the police should have them; and they should not have to rely upon the willingness of the law-abiding to submit voluntarily. The phrase "would you care to?", as a preliminary to a question, must be taught at Bramshill with the same assiduity as the schoolboy learns the French *"est-ce-que"*.

Reform of the law is not a subject that is usually attractive to governments. Whatever his political allegiance may be, a lawyer must give great credit to the present government for tackling seriously the reform of the civil law. I hope that it may be able to turn its attention with equal seriousness to the criminal law. Reform there is a social rather than a legal matter. It has become an urgent social necessity that time-wasting procedures and traditional ideas which impede the conviction of the guilty should be swept away.

I have indicated several points at which the criminal law and its administration affect the relationship between the police and the public. There is another factor to be mentioned which has nothing to do with criminal administration, unless perhaps it can be partly explained, though hardly excused, by a sense of frustration that has grown up in the police because of the feeling that in law the odds are always against them. A series of incidents over the last few years, some of them very grave indeed, have made the public suspicious of police integrity. The reputation of the police still stands high. It has not been injured at the core but undoubtedly the skin has been severely bruised. Any degree of suspicion is dangerous because it feeds on the natural fear of arbitrary power.

May I draw a comparison which at first sight may seem to you to be quite fanciful but which I believe has an essential validity, a comparison between the power of the police and the power of the press? The sources of the two powers are diametrically opposite. The source of the police power is the need for authority and the fear is that it may be used despotically. The source of the press power is the need for freedom and the fear is that it may be used licentiously. The law seeks to control the power of arrest and detention but its abuse by an irresponsible policeman is terrifying to contemplate. The power to print is controlled by the law of libel; but the abuse of power, even within the law, by an irresponsible pressman could hurt the individual more cruelly than bodily punishment and could do grave damage to the national interest. For these two very different reasons it is easy to create hostility to the police and to the press, twin hostilities that have the same root, the fear of the abuse of power. They thrive on incidents which are too easily taken as symptomatic of a general disease rather than of a local sore. Fear of power is an emotional instinct. It is unreasoning emotion that damns the police (or the press) as a whole for the misconduct of a fraction of their number. Fear prompts the question, very difficult to answer satisfactorily: "If this sort of thing can happen once, how can we be sure that it is not happening all the time?"

I believe that there is only one satisfactory answer to that question. From what I have read, it is not an answer that will at first hearing commend itself to you. Nevertheless, I shall make bold to give it in the hope that you may consider it further. The answer is the unlimited reception of all complaints and their consideration by a body on which the public is represented. It is the only way of washing out of the public mind the suspicion that somewhere things are wrong. The most painstaking investigations by the police themselves will never do that.

There can be no body of men in the world which enjoys having its workings subjected to outside examination. Why in the case of the police do I think it necessary? All professions nowadays have machinery for investigating complaints against their members; but most, like barristers, solicitors and doctors, do it by a domestic tribunal. But the police—and the press too—are more than professions. Abuse of a professional privilege by a doctor or a lawyer cannot be compared with the abuse of power.

It is not necessary to hand over the whole duty of inquiry to an outside body. Here again may I make a last comparison with the press and invite you to consider the experiment that is there being tried. The Press Council consists of 80 *percent* pressmen and 20 *percent* laymen. No journalist can fear that his actions will be reviewed by a body which does not understand the nature of his work or, it may be, the difficulties and temptations which he has to surmount. If the lay element was to act as a *bloc*, which in fact it never does, it could affect

the result only if there was a serious division of professional opinion. But the presence of the lay element in the council is the public's guarantee, not only that its viewpoint is presented and considered but also that the processes of inquiry employed and the general pattern of results are subjected to independent scrutiny. The public knows that it is inconceivable that men of independence would continue to participate in proceedings conducted on a narrow or professional basis. It eliminates the suspicion, I am not calling it a well-founded suspicion, that doesn't matter, it is the fact that it is there, that dirty linen may remain unwashed.

Will not there be, you may ask, bagfuls of complaints by cranks and mischief-makers and people whose nature it is to complain about everything? Certainly there will be. You might as well ask:—"If I catch cold, will there be running at the nose?" It is one of the things you have to put up with. An independent element can be much more drastic in dealing with such complaints than the police themselves can afford to be. Just because they could be accused of a one-sided attitude, the police may feel bound to investigate all such complaints meticulously. The public will accept a procedure which throws out insubstantial complaints if they are vetted independently, not otherwise.

Do you sometimes ask yourself, those of you who know that you are giving of your best for incommensurate rewards, whether it is all worth while? The British people are hard taskmasters. They have from the earliest times had a love of freedom which has expressed itself in an intolerance of tyranny and at the same time a desire for order and good government which they know is unobtainable without respect for the law. Respect is the word. One must not expect them to be affectionate to those whose duty it is to enforce the law. I know that a grudging respect is a poor return for the sort of service the police are asked to give. Yet it is because the British have learnt to measure out stingily their grants of authority, so that it is just enough and no more, that they have, perhaps more successfully than any other nation, held the balance between order and freedom. The police power oscillates uncomfortably at the point of balance and this is what gives every policeman an exacting task. But the British way of life depends to a great extent on the way in which he discharges it.