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INDIVIDUALISM v. LAW.*

Law is the arbitrary boundary between individual liberty and collective control. Above the law, making and repealing it, is public opinion. In a democracy the principle of equality is the basis of this opinion, but with power as a central idea, its practical result is inequality, that tends to magnify the power of the individual and minify the restraining functions of the government. From this has come a false sentimentality that has hindered the enforcement of law in the United States.

Taking homicides, for example, we may consider the following tables as bases:

Nation.	Population.	Homicides.	
		Annum.	Million.
England and Wales	32,000,000	322	10.15
France	38,000,000	526	14.22
Belgium	6,000,000	94	16.00
¹ German Empire	53,000,000	249	4.85
² United States	76,000,000	9881	129.5

* This paper was read by Mr. Justice Thompson before the International Congress of Arts and Sciences, at St. Louis, Mo., September 23, 1904.

¹ Furnished by the several Embassies of United States, except for Canada, England, and Wales, which were furnished me by the respective Premiers.

² Press clippings, probably embracing some assaults to murder. Chicago *Tribune* gives 46,478 homicides in five years ending with 1901; the *World's Almanac* 7386 arrests for homicide during 1890.

HOMICIDES IN UNITED STATES.			
Geographic Divisions.	Per cent. Pop. Foreign-born.	Per Annum.	Per 50,000 Population.
* New England	25	250	2.34
Middle Atlantic	20	1688	4.30
Central	15	2843	4.99
Southern	2	3914	11.15
Pacific	18	1191	14.71

To discover the causes of this variation in the frequency of homicides is difficult. We may say it is not a question of climate, for, while the Germans and Belgians are neighbors, with similar climatic influences, the rate of the latter is three times that of the former. The high rates in Rhode Island, South Dakota, Montana, Wyoming, Idaho, Washington, and Oregon, and the varying rates in the other geographical divisions of the states, support this conclusion.

The French and Belgians are from Gaelic stock, and speak the same language, but their varying rates indicate that homicides do not depend on national characteristics. A like observation may be made of the German states, where the rate varies from four to twelve to the million.

Is it a question of racial differences? Texas, with a population of 2,500,000 whites and 625,000 negroes, has about the same number of homicides as Alabama, Louisiana, and South Carolina, with 2,688,371 whites and 2,760,432 negroes; while in Nevada, with only 134 negroes and 1352 Chinese in a population of 42,335, the homicides are 39, the highest rate in the United States. That of Maryland, having four times as many whites as colored, is as great as Louisiana, where the races are nearly equal. It is noteworthy that the negro at the South does not kill the white man, nor the white man the negro, so often as the negro kills the negro.

The Pacific states, with four per centum of population colored (96,522 Indians, 88,000 Mongolians, and 16,500 negroes), have a much higher rate than the Southern, with thirty-eight per centum negroes. The two geographic divisions having the most foreign-born show the lowest rate of homicides.

* Press clippings, probably embracing some assaults to murder. *Chicago Tribune* gives 46,478 homicides in five years ending with 1901; the *World's Almanac* 7386 arrests for homicide during 1890.

This varying ratio does not depend on density of population. In Germany, with 252 inhabitants to the square mile, there is but one homicide to 828 square miles; while in Belgium there are seven homicides to that same area, with but 554 inhabitants to the square mile. In our country one-tenth of the homicides are committed in Texas, where there are 11 persons to the square mile; but the rate is higher in Arizona, Nevada, and Montana, with only one to the square mile. New York, with seven and a quarter millions of people (two millions foreign-born), has a lower rate than Georgia, with one-third that population. In Nevada there is one homicide to each 1086 of population, but in Vermont one to each 58,300. The New England States, with a population of 5,611,851, have 259 homicides annually, while California, with only 1,500,000 people, has 422.

It appears not to be a matter of illiteracy, for California, Colorado, and Nevada are lower in illiteracy and higher in homicides than Alabama, Louisiana, and Mississippi; while Virginia is higher in illiteracy and lower in homicides than Delaware and Maryland. Massachusetts and Connecticut have fewer illiterates and more homicides than Vermont, and Rhode Island fewer illiterates and a higher rate of homicide than Kentucky, Georgia, Tennessee, or the Carolinas.

That our government is new is no explanation. The census, our most reliable guide, shows that for this country as a whole crime is increasing out of proportion to population.

Year.	Prisoners.	Ratio of Population.
1850	6,737	I in 3443
1860	19,086	I in 1647
1870	32,901	I in 1171
1880	58,609	I in 855
1890	82,329	I in 757
1900	Not collected.	

And the rate of homicide in the United States is higher than in Canada, with a population of five millions, where there are only fifteen indictments annually for this offence.

Nor is the high rate of homicide in the United States due to our democratic government, for in England, where in-

dividual liberty is, perhaps, greater, they have fewer homicides; while under the democratic institutions of some of the Spanish-American Republics is an utter disregard for the existing form of government.

Care should be taken to distinguish political method from form of government. The curse of paying political debt with little regard to real worth has its effect. And just here, it will be well to remember, in considering the low rates in Germany and England, the reference of the Right Honorable James Bryce to their splendid civil service, and his admission that "that of Germany was the most perfect in the world."⁴

The fault is not inherent in our common law and jury system, for under a like system crime is suppressed in Europe and Canada in a way we seem not to understand. The highest European rate in our table is in Belgium, where every death penalty since 1863 has been commuted to life imprisonment; and the lowest is in Canada, where seven-eighths of those tried for murder were sentenced to death.

It is axiomatic that the general beliefs of every people determine their trend of ideas, create a sense of duty, and become the source of their inspiring faith.

It will also be conceded that in New England questions affecting human conduct in its varied relations are more exactly determined and fixed in the minds of the people than in the Pacific States, where there is one homicide to 4500, while in the former section the rate is one to 21,800.

How much of liberty, then, is found in true administration!

From these data and my experience in presiding over the administration of the criminal law, I reach the following conclusions:

First—Variations in the enforcement of law are not so much due to climate, race, density of population, illiteracy, form of government, length of governmental experience, as to a varying leniency in the spirit of its administration.

⁴ Address by Right Hon. James Bryce delivered before the International Congress of Arts and Sciences, September 22, 1904.

Second—This varying toleration of crime is largely the result of an *impatience for individual power*, born of unlimited opportunities, causing men to disregard their duties to the social compact.

Third—Beneath it all is a moral unrest, a process of adjustment in individual conceptions of, and cravings for, absolute truth, not yet so crystallized in the aggregate of individual souls as to become the fixed ideals of the people.

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