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Author(s): William J. Chambliss
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to which discussions can be oriented. It is also a means of illustrating the existence of parallels between the aspirations of the investigator and those of the policy maker.

On one hand, the policy-maker is a risk-taker who must operate on educated guesses. He seldom has a rational and comprehensive means for relating policy to action, or of anticipating the field of forces which play upon him. An operationalized theory is a means for doing this.

On the other hand, theory is a framework which lends meaning to the research role. Efforts on the part of the investigator to operationalize the experiment, to insure that experimental conditions are met, and to measure its impact, are more easily entertained as important functions. Any intrusion on his part to maintain experimental conditions or train practitioners for the roles they play can be placed in context and judged as relevant or irrelevant. Even the needs of the investigator to insure that the experiment might be replicated at some future date may not differ greatly from those of the action person who, for different reasons, likewise desires a systematic description of the steps involved.

Such an accommodation of theory, research and action roles would have obvious value and operational implications. It runs counter to the traditional expectations of pure science and exceeds the aspirations of applied science. It suggests the need to weigh not only the consequences for both society and sociology of making such a change but of failing to make it.

Sociology is still gathering data at arbitrarily selected points in the total society and as a result may be painting only a partial picture of that which exists. Theoretically conceived research-action programs are one means of expanding the boundaries of that picture. There is likely as much that is generalizable from the social process in action systems as in any other.

A SOCIOLOGICAL ANALYSIS OF THE LAW OF VAGRANCY

WILLIAM J. CHAMBLISS
University of Washington

With the outstanding exception of Jerome Hall's analysis of theft[1] there has been a severe shortage of sociologically relevant analyses of the relationship between particular laws and the social setting in which these laws emerge, are interpreted, and take form. The paucity of such studies is somewhat surprising in view of widespread agreement that such studies are not only desirable but absolutely essential to the development of a mature sociology of law.[2] A fruitful method of establishing the direction and pattern of this mutual influence is to systematically analyze particular legal categories, to observe the changes which take place in the categories and to ex-

For a more complete listing of most of the statutes dealt with in this report the reader is referred to Burn, *The History of the Poor Laws.* Citations of English statutes should be read as follows: 3 Ed. 1. c. 1. refers to the third act of Edward the first, chapter one, etc.

[1] Hall, J., *Theft, Law and Society,* Bobbs-Merrill, 1939. See also, Alfred R. Lindesmith, "Federal Law and Drug Addiction," *Social Problems* Vol. 7, No. 1, 1959, p. 48.

[2] See, for example, Rose, A., "Some Suggestions for Research in the Sociology of Law," *Social Problems* Vol. 9, No. 3, 1962, pp. 281-283, and Geis, G., "Sociology, Criminology, and Criminal Law," *Social Problems* Vol. 7, No. 1, 1959, pp. 40-47.

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explain how these changes are themselves related to and stimulate changes in the society. This paper is an attempt to provide such an analysis of the law of vagrancy in Anglo-American Law.

LEGAL INNOVATION: THE EMERGENCE OF THE LAW OF VAGRANCY IN ENGLAND

There is general agreement among legal scholars that the first full fledged vagrancy statute was passed in England in 1349. As is generally the case with legislative innovations, however, this statute was preceded by earlier laws which established a climate favorable to such change. The most significant forerunner to the 1349 vagrancy statute was in 1274 when it was provided:

> Because that abbies and houses of religion have been overcharged and sore grieved, by the resort of great men and other, so that their goods have not been sufficient for themselves, whereby they have been greatly hindered and impoverished, that they cannot maintain themselves, nor such charity as they have been accustomed to do; it is provided, that none shall come to eat or lodge in any house of religion, or any other's foundation than of his own, at the costs of the house, unless he be required by the governor of the house before his coming hither.[3]

Unlike the vagrancy statutes this statute does not intend to curtail the movement of persons from one place to another, but is solely designed to provide the religious houses with some financial relief from the burden of providing food and shelter to travelers.

The philosophy that the religious houses were to give alms to the poor and to the sick and feeble was, however, to undergo drastic change in the next fifty years. The result of this changed attitude was the establishment of the first vagrancy statute in 1349 which made it a crime to give alms to any who were unemployed while being of sound mind and body. To wit:

> Because that many valiant beggars, as long as they may live of begging, do refuse to labor, giving themselves to idleness and vice, and sometimes to theft and other abominations; it is ordained, that none, upon pain of imprisonment shall, under the colour of pity or alms, give anything to such which may labour, or presume to favour them towards their desires; so that thereby they may be compelled to labour for their necessary living.

It was further provided by this statute that:

> . . . every man and woman, of what condition he be, free or bond, able in body, and within the age of threescore years, not living in merchandize nor exercising any craft, nor having of his own whereon to live, nor proper land whereon to occupy himself, and not serving any other, if he in convenient service (his estate considered) be required to serve, shall be bounded to serve him which shall him require . . . And if any refuse, he shall on conviction by two true men, . . . be commited to gaol till he find surety to serve.
>
> And if any workman or servant, of what estate or condition he be, retained in any man's service, do depart from the said service without reasonable cause or license, before the term agreed on, he shall have pain of imprisonment.[5]

There was also in this statute the stipulation that the workers should receive a standard wage. In 1351 this statute was strengthened by the stipulation:

> An none shall go out of the town where he dwelled in winter, to serve the summer, if he may serve in the same town.[6]

By 34 Ed 3 (1360) the punishment for these acts became imprisonment for fifteen days and if they "do not justify themselves by the end of that time, to be sent to gaol till they do."

A change in official policy so drastic as this did not, of course, occur simply

[3] 3 Ed. 1. c. 1.

[4] 35 Ed. 1. c. 1.

[5] 23 Ed. 3.

[6] 25 Ed. 3 (1351).

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as a matter of whim. The vagrancy statutes emerged as a result of changes in other parts of the social structure. The prime-mover for this legislative innovation was the Black Death which struck England about 1348. Among the many disastrous consequences this had upon the social structure was the fact that it decimated the labor force. It is estimated that by the time the pestilence had run its course at least fifty per cent of the population of England had died from the plague. This decimation of the labor force would necessitate rather drastic innovations in any society but its impact was heightened in England where, at this time, the economy was highly dependent upon a ready supply of cheap labor.

Even before the pestilence, however, the availability of an adequate supply of cheap labor was becoming a problem for the landowners. The crusades and various wars had made money necessary to the lords and, as a result, the lord frequently agreed to sell the serfs their freedom in order to obtain the needed funds. The serfs, for their part, were desirous of obtaining their freedom (by "fair means" or "foul") because the larger towns which were becoming more industrialized during this period could offer the serf greater personal freedom as well as a higher standard of living. This process is nicely summarized by Bradshaw:

> By the middle of the 14th century the outward uniformity of the manorial system had become in practice considerably varied . . . for the peasant had begun to drift to the towns and it was unlikely that the old village life in its unpleasant aspects should not be resented. Moreover the constant wars against France and Scotland were fought mainly with mercenaries after Henry III's time and most villages contributed to the new armies. The bolder serfs either joined the armies or fled to the towns, and even in the villages the free men who held by villein tenure were as eager to commute their services as the serfs were to escape. Only the amount of 'free' labor available enabled the lord to work his demense in many places.[7]

And he says regarding the effect of the Black Death:

> . . . in 1348 the Black Death reached England and the vast mortality that ensued destroyed that reserve of labour which alone had made the manorial system even nominally possible.[8]

The immediate result of these events was of course no surprise: Wages for the "free" man rose considerably and this increased, on the one hand, the landowners problems and, on the other hand, the plight of the unfree tenant. For although wages increased for the personally free laborers, it of course did not necessarily add to the standard of living of the serf, if anything it made his position worse because the landowner would be hard pressed to pay for the personally free labor which he needed and would thus find it more and more difficult to maintain the standard of living for the serf which he had heretofore supplied. Thus the serf had no alternative but flight if he chose to better his position. Furthermore, flight generally meant both freedom and better conditions since the possibility of work in the new weaving industry was great and the chance of being caught small.[9]

It was under these conditions that we find the first vagrancy statutes emerging. There is little question but that these statutes were designed for one express purpose: to force laborers (whether personally free or unfree) to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he could afford to pay. Caleb Foote concurs with this interpretation when he notes:

> The anti-migratory policy behind vagrancy legislation began as an essential complement of the wage stabilization legislation which accompanied the break-

[7] Bradshaw, F., *A Social History of England*, p. 54.
[8] *Ibid.*
[9] *Ibid.*, p. 57.

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> up of feudalism and the depopulation caused by the Black Death. By the Statutes of Labourers in 1349-1351, every ablebodied person without other means of support was required to work for wages fixed at the level preceding the Black Death; it was unlawful to accept more, or to refuse an offer to work, or to flee from one county to another to avoid offers of work or to seek higher wages, or go give alms to able-bodied beggars who refused to work.[10]

In short, as Foote says in another place, this was an "attempt to make the vagrancy statutes a substitute for serfdom."[11] This same conclusion is equally apparent from the wording of the statute where it is stated:

> Because great part of the people, and especially of workmen and servants, late died in pestilence; many seeing the necessity of masters, and great scarcity of servants, will not serve without excessive wages, and some rather willing to beg in idleness than by labour to get their living: it is ordained, that every man and woman, of what condition he be, free or bond, able in body and within the age of threescore years, not living in merchandize, (etc.) be required to serve. . .

The innovation in the law, then, was a direct result of the afore-mentioned changes which had occurred in the social setting. In this case these changes were located for the most part in the economic institution of the society. The vagrancy laws were designed to alleviate a condition defined by the lawmakers as undesirable. The solution was to attempt to force a reversal, as it were, of a social process which was well underway; that is, to curtail mobility of laborers in such a way that labor would not become a commodity for which the landowners would have to compete.

Statutory Dormancy: A Legal Vestige. In time, of course, the curtailment of the geographical mobility of laborers was no longer requisite. One might well expect that when the function served by the statute was no longer an important one for the society, the statutes would be eliminated from the law. In fact, this has not occurred. The vagrancy statutes have remained in effect since 1349. Furthermore, as we shall see in some detail later, they were taken over by the colonies and have remained in effect in the United States as well.

The substance of the vagrancy statutes changed very little for some time after the first ones in 1349-1351 although there was a tendency to make punishments more harsh than originally. For example, in 1360 it was provided that violators of the statute should be imprisoned for fifteen days[12] and in 1388 the punishment was to put the offender in the stocks and to keep him there until "he find surety to return to his service."[13] That there was still, at this time, the intention of providing the landowner with labor is apparent from the fact that this statute provides:

> and he or she which use to labour at the plough and cart, or other labour and service of husbandry, till they be of the age of 12 years, from thenceforth shall abide at the same labour without being put to any mistery or handicraft: and any covenant of apprenticeship to the contrary shall be void.[14]

The next alteration in the statutes occurs in 1495 and is restricted to an increase in punishment. Here it is provided that vagrants shall be "set in stocks, there to remain by the space of three days and three nights, and there to have none other sustenance but bread and water; and after the said three days and nights, to be had out and set at large, and then to be commanded to avoid the town."[15]

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[10] Foote, C., "Vagrancy Type Law and Its Administration," *Univ. of Pennsylvania Law Review* (104), 1956, p. 615.
[11] *Ibid.*

[12] 34 Ed. 3 (1360).
[13] 12 R. 2 (1388).
[14] *Ibid.*
[15] 11 H. & C. 2 (1495).

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The tendency to increase the severity of punishment during this period seems to be the result of a general tendency to make finer distinctions in the criminal law. During this period the vagrancy statutes appear to have been fairly inconsequential in either their effect as a control mechanism or as a generally enforced statute.[16] The processes of social change in the culture generally and the trend away from serfdom and into a "free" economy obviated the utility of these statutes. The result was not unexpected. The judiciary did not apply the law and the legislators did not take it upon themselves to change the law. In short, we have here a period of dormancy in which the statute is neither applied nor altered significantly.

A Shift in Focal Concern

Following the squelching of the Peasant's Revolt in 1381, the services of the serfs to the lord " . . . tended to become less and less exacted, although in certain forms they lingered on till the seventeenth century . . . By the sixteenth century few knew that there were any bondmen in England . . . and in 1575 Queen Elizabeth listened to the prayers of almost the last serfs in England . . . and granted them manumission."[17]

In view of this change we would expect corresponding changes in the vagrancy laws. Beginning with the lessening of punishment in the statute of 1503 we find these changes. However, instead of remaining dormant (or becoming more so) or being negated altogether, the vagrancy statutes experienced a shift in focal concern. With this shift the statutes served a new and equally important function for the social order of England. The first statute which indicates this change was in 1530. In this statute (22 H.8.c. 12 1530) it was stated:

> If any person, being whole and mighty in body, and able to labour, be taken in begging, or be vagrant and can give no reckoning how he lawfully gets his living; . . . and all other idle persons going about, some of them using divers and subtle crafty and unlawful games and plays, and some of them feigning themselves to have knowledge of . . . crafty sciences . . . shall be punished as provided.

What is most significant about this statute is the shift from an earlier concern with laborers to a concern with *criminal* activities. To be sure, the stipulation of persons "being whole and mighty in body, and able to labour, be taken in begging, or be vagrant" sounds very much like the concerns of the earlier statutes. Some important differences are apparent however when the rest of the statute includes those who ". . . can give no reckoning how he lawfully gets his living"; "some of them using divers subtil and unlawful games and plays." This is the first statute which specifically focuses upon these kinds of criteria for adjudging someone a vagrant.

It is significant that in this statute the severity of punishment is increased so as to be greater not only than provided by the 1503 statute but the punishment is more severe than that which had been provided by *any* of the pre-1503 statutes as well. For someone who is merely idle and gives no reckoning of how he makes his living the offender shall be:

> . . . had to the next market town, or other place where they [the constables] shall think most convenient, and there to be tied to the end of a cart naked, and to be beaten with whips throughout the same market town or other place, till his body be bloody by reason of such whipping.[18]

[16] As evidenced for this note the expectation that " . . . the common gaols of every shire are likely to be greatly pestered with more numbers of prisoners than heretofore . . . " when the statutes were changed by the statute of 14 Ed. c. 5 (1571).

[17] Bradshaw, *op. cit.*, p. 61.

[18] 22 H. 8. c. 12 (1530).

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But, for those who use "divers and subtil crafty and unlawful games and plays," etc., the punishment is " . . . whipping at two days together in manner aforesaid."[19] For the second offense, such persons are:

> . . . scourged two days, and the third day to be put upon the pillory from nine of the clock till eleven before noon of the same day and to have one of his ears cut off.[20]

And if he offend the third time " . . . to have like punishment with whipping, standing on the pillory and to have his other ear cut off."

This statute (1) makes a distinction between types of offenders and applies the more severe punishment to those who are clearly engaged in "criminal" activities, (2) mentions a specific concern with categories of "unlawful" behavior, and (3) applies a type of punishment (cutting off the ear) which is generally reserved for offenders who are defined as likely to be a fairly serious criminal.

Only five years later we find for the first time that the punishment of death is applied to the crime of vagrancy. We also note a change in terminology in the statute:

> and if any ruffians . . . after having been once apprehended . . . shall wander, loiter, or idle use themselves and play the vagabonds . . . shall be eftfoons not only whipped again, but shall have the gristle of his right ear clean cut off. And if he shall again offend, he shall be committed to gaol till the next sessions; and being there convicted upon indictment, he shall have judgment to suffer pains and execution of death, as a felon, as an enemy of the commonwealth.[21]

It is significant that the statute now makes persons who repeat the crime of vagrancy a felon. During this period then, the focal concern of the vagrancy statutes becomes a concern for the control of felons and is no longer primarily concerned with the movement of laborers.

These statutory changes were a direct response to changes taking place in England's social structure during this period. We have already pointed out that feudalism was decaying rapidly. Concomitant with the breakup of feudalism was an increased emphasis upon commerce and industry. The commercial emphasis in England at the turn of the sixteenth century is of particular importance in the development of vagrancy laws. With commercialism came considerable traffic bearing valuable items. Where there were 169 important merchants in the middle of the fourteenth century there were 3,000 merchants engaged in foreign trade alone at the beginning of the sixteenth century.[22] England became highly dependent upon commerce for its economic support. Italians conducted a great deal of the commerce of England during this early period and were held in low repute by the populace. As a result, they were subject to attacks by citizens and, more important, were frequently robbed of their goods while transporting them. "The general insecurity of the times made any transportation hazardous. The special risks to which the alien merchant was subjected gave rise to the royal practice of issuing formally executed covenants of safe conduct through the realm."[23]

Such a situation not only called for the enforcement of existing laws but also called for the creation of new laws which would facilitate the control of persons preying upon merchants transporting goods. The vagrancy statutes were revived in order to fulfill just such a purpose. Persons who had committed no serious felony but who were suspected of being capable of doing so could be apprehended and incapacitated through the application of va-

19 *Ibid.*
20 *Ibid.*
21 27 H. 8. c. 25 (1535).

22 Hall, *op. cit.,* p. 21.
23 *Ibid.,* p. 23.

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grancy laws once these laws were refocused so as to include " . . . any ruffians . . . [who] shall wander, loiter, or idle use themselves and play the vagabonds . . . "[24]

The new focal concern is continued in 1 Ed. 6. c. 3 (1547) and in fact is made more general so as to include:

> Whoever man or woman, being not lame, impotent, or so aged or diseased that he or she cannot work, not having whereon to live, shall be lurking in any house, or loitering or idle wandering by the highway side, or in streets, cities, towns, or villages, not applying themselves to some honest labour, and so continuing for three days; or running away from their work; every such person shall be taken for a vagabond. And... upon conviction of two witnesses . . . the same loiterer (shall) be marked with a hot iron in the breast with the letter V, and adjudged him to the person bringing him, to be his slave for two years . . .

Should the vagabond run away, upon conviction, he was to be branded by a hot iron with the letter S on the forehead and to be thenceforth declared a slave forever. And in 1571 there is modification of the punishment to be inflicted, whereby the offender is to be "branded on the chest with the letter V" (for vagabond). And, if he is convicted the second time, the brand is to be made on the forehead. It is worth noting here that this method of punishment, which first appeared in 1530 and is repeated here with somewhat more force, is also an indication of a change in the type of person to whom the law is intended to apply. For it is likely that nothing so permanent as branding would be applied to someone who was wandering but looking for work, or at worst merely idle and not particularly dangerous *per se*. On the other hand, it could well be applied to someone who was likely to be engaged in other criminal activities in connection with being "vagrant."

By 1571 in the statute of 14 El. C. 5 the shift in focal concern is fully developed:

> All rogues, vagabonds, and sturdy beggars shall . . . be committed to the common gaol . . . he shall be grievously whipped, and burnt thro' the gristle of the right ear with a hot iron of the compass of an inch about; . . . And for the second offense, he shall be adjudged a felon, unless some person will take him for two years in to his service. And for the third offense, he shall be adjudged guilty of felony without benefit of clergy.

And there is included a long list of persons who fall within the statute: "proctors, procurators, idle persons going about using subtil, crafty and unlawful games or plays; and some of them feigning themselves to have knowledge of . . . absurd sciences . . . and all fencers, bearwards, common players in interludes, and minstrels . . . all juglers, pedlars, tinkers, petty chapmen . . . and all counterfeiters of licenses, passports and users of the same." The major significance of this statute is that it includes all the previously defined offenders and adds some more. Significantly, those added are more clearly criminal types, counterfeiters, for example. It is also significant that there is the following qualification of this statute: "Provided also, that this act shall not extend to cookers, or harvest folks, that travel for harvest work, corn or hay."

That the changes in this statute were seen as significant is indicated by the following statement which appears in the statute:

> And whereas by reason of this act, the common gaols of every shire are like to be greatly pestered with more number of prisoners than heretofore hath been, for that the said vagabonds and other lewd persons before recited shall upon their apprehension be committed to the said gaols; it is enacted . . . [25]

[24] 27 H. 8. c. 25 (1535).

[25] 14 Ed. c. 5. (1571).

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And a provision is made for giving more money for maintaining the gaols. This seems to add credence to the notion that this statute was seen as being significantly more general than those previously.

It is also of importance to note that this is the first time the term *rogue* has been used to refer to persons included in the vagrancy statutes. It seems, *a priori,* that a "rogue" is a different social type than is a "vagrant" or a "vagabond"; the latter terms implying something more equivalent to the idea of a "tramp" whereas the former (rogue) seems to imply a more disorderly and potentially dangerous person.

The emphasis upon the criminalistic aspect of vagrants continues in Chapter 17 of the same statute:

> Whereas divers *licentious* persons wander up and down in all parts of the realm, to countenance their *wicked behavior;* and do continually assemble themselves armed in the highways, and elsewhere in troops, *to the great terror* of her majesty's true subjects, *the impeachment of her laws,* and the disturbance of the peace and tranquility of the realm; and whereas many outrages are daily committed by these dissolute persons, and more are likely to ensue if speedy remedy be not provided. (Italics added)

With minor variations (*e.g.,* offering a reward for the capture of a vagrant) the statutes remain essentially of this nature until 1743. In 1743 there was once more an expansion of the types of persons included such that "all persons going about as patent gatherers, or gatherers of alms, under pretense of loss by fire or other casualty; or going about as collectors for prisons, gaols, or hospitals; all persons playing of betting at any unlawful games; and all persons who run away and leave their wives or children . . . all persons wandering abroad, and lodging in alehouses, barns, outhouses, or in the open air, not giving good account of themselves," were types of offenders added to those already included.

By 1743 the vagrancy statutes had apparently been sufficiently reconstructed by the shifts of concern so as to be once more a useful instrument in the creation of social solidarity. This function has apparently continued down to the present day in England and the changes from 1743 to the present have been all in the direction of clarifying or expanding the categories covered but little has been introduced to change either the meaning or the impact of this branch of the law.

We can summarize this shift in focal concern by quoting from Halsbury. He has noted that in the vagrancy statutes:

> " . . . elaborate provision is made for the relief and incidental control of destitute wayfarers. These latter, however, form but a small portion of the offenders aimed at by what are known as the Vagrancy Laws, . . . many offenders who are in no ordinary sense of the word vagrants, have been brought under the laws relating to vagrancy, and the great number of the offenses coming within the operation of these laws have little or no relation to the subject of poor relief, but are more properly directed towards the prevention of crime, the preservation of good order, and the promotion of social economy."[26]

Before leaving this section it is perhaps pertinent to make a qualifying remark. We have emphasized throughout this section how the vagrancy statutes underwent a shift in focal concern as the social setting changed. The shift in focal concern is not meant to imply that the later focus of the statutes represents a completely new law. It will be recalled that even in the first vagrancy statute there was reference to those who "do refuse labor, giving themselves to idleness and vice and sometimes to theft and other abominations." Thus the possibility of criminal ac-

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[26] Earl of Halsbury, *The Laws of England,* Butterworth & Co., Bell Yard, Temple Bar, 1912, pp. 606-607.

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tivities resulting from persons who refuse to labor was recognized even in the earliest statute. The fact remains, however, that the major emphasis in this statute and in the statutes which followed the first one was always upon the "refusal to labor" or "begging." The "criminalistic" aspect of such persons was relatively unimportant. Later, as we have shown, the criminalistic potential becomes of paramount importance. The thread runs back to the earliest statute but the reason for the statutes' existence as well as the focal concern of the statutes is quite different in 1743 than it was in 1349.

Vagrancy Laws in the United States

In general, the vagrancy laws of England, as they stood in the middle eighteenth century, were simply adopted by the states. There were some exceptions to this general trend. For example, Maryland restricted the application of vagrancy laws to "free" Negroes. In addition, for *all* states the vagrancy laws were even more explicitly concerned with the control of criminals and undesirables than had been the case in England. New York, for example, explicitly defines prostitutes as being a category of vagrants during this period. These exceptions do not, however, change the general picture significantly and it is quite appropriate to consider the U. S. vagrancy laws as following from England's of the middle eighteenth century with relatively minor changes. The control of criminals and undesirables was the *raison de etre* of the vagrancy laws in the U. S. This is as true today as it was in 1750. As Caleb Foote's analysis of the application of vagrancy statutes in the Philadelphia court shows, these laws are presently applied indiscriminately to persons considered a "nuisance." Foote suggests that " . . . the chief significance of this branch of the criminal law lies in its quantitative impact and administrative usefulness."[27] Thus it appears that in America the trend begun in England in the sixteenth, seventeenth and eighteenth centuries has been carried to its logical extreme and the laws are now used principally as a mechanism for "clearing the streets" of the derelicts who inhabit the "skid roads" and "Bowerys" of our large urban areas.

Since the 1800's there has been an abundant source of prospects to which the vagrancy laws have been applied. These have been primarily those persons deemed by the police and the courts to be either actively involved in criminal activities or at least peripherally involved. In this context, then, the statutes have changed very little. The functions served by the statutes in England of the late eighteenth century are still being served today in both England and the United States. The locale has changed somewhat and it appears that the present day application of vagrancy statutes is focused upon the arrest and confinement of the "down and outers" who inhabit certain sections of our larger cities but the impact has remained constant. The lack of change in the vagrancy statutes, then, can be seen as a reflection of the society's perception of a continuing need to control some of its "suspicious" or "undesirable" members.[28]

A word of caution is in order lest we leave the impression that this administrative purpose is the sole function of vagrancy laws in the U.S. today. Although it is our contention that this is generally true it is worth remembering that during certain periods

[27] Foote, *op. cit.*, p. 613. Also see in this connection, Irwin Deutscher, "The Petty Offender," *Federal Probation*, XIX, June, 1955.

[28] It is on this point that the vagrancy statutes have been subject to criticism. See for example, Lacey, Forrest W., "Vagrancy and Other Crimes of Personal Condition," *Harvard Law Review* (66), p. 1203.

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of our recent history, and to some extent today, these laws have also been used to control the movement of workers. This was particularly the case during the depression years and California is of course infamous for its use of vagrancy laws to restrict the admission of migrants from other states.[29] The vagrancy statutes, because of their history, still contain germs within them which make such effects possible. Their main purpose, however, is clearly no longer the control of laborers but rather the control of the undesirable, the criminal and the "nuisance."

DISCUSSION

The foregoing analysis of the vagrancy laws has demonstrated that these laws were a legislative innovation which reflected the socially perceived necessity of providing an abundance of cheap labor to landowners during a period when serfdom was breaking down and when the pool of available labor was depleted. With the eventual breakup of feudalism the need for such laws eventually disappeared and the increased dependence of the economy upon industry and commerce rendered the former use of the vagrancy statutes unnecessary. As a result, for a substantial period the vagrancy statutes were dormant, undergoing only minor changes and, presumably, being applied infrequently. Finally, the vagrancy laws were subjected to considerable alteration through a shift in the focal concern of the statutes. Whereas in their inception the laws focused upon the "idle" and "those refusing to labor" after the turn of the sixteenth century and emphasis came to be upon "rogues," "vagabonds," and others who were suspected of being engaged in criminal activities. During this period the focus was particularly upon "roadmen" who preyed upon citizens who transported goods from one place to another. The increased importance of commerce to England during this period made it necessary that some protection be given persons engaged in this enterprise and the vagrancy statutes provided one source for such protection by re-focusing the acts to be included under these statutes.

Comparing the results of this analysis with the findings of Hall's study of theft we see a good deal of correspondence. Of major importance is the fact that both analyses demonstrate the truth of Hall's assertion that "The functioning of courts is significantly related to concomitant cultural needs, and this applies to the law of procedure as well as to substantive law."[30]

Our analysis of the vagrancy laws also indicates that when changed social conditions create a perceived need for legal changes that these alterations will be effected through the revision and refocusing of existing statutes. This process was demonstrated in Hall's analysis of theft as well as in our analysis of vagrancy. In the case of vagrancy, the laws were dormant when the focal concern of the laws was shifted so as to provide control over potential criminals. In the case of theft the laws were re-interpreted (interestingly, by the courts and not by the legislature) so as to include persons who were transporting goods for a merchant but who absconded with the contents of the packages transported.

It also seems probable that when the social conditions change and previously useful laws are no longer useful there will be long periods when these laws will remain dormant. It is less likely that they will be officially negated. During this period of dormancy it is the judiciary which has principal responsibility for *not* applying the statutes. It is possible that one finds statutes being negated only when the judiciary stubbornly applies laws which

[29] Edwards *vs* California. 314 S: 160 (1941).

[30] Hall, *op. cit.,* p. XII.

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do not have substantial public support. An example of such laws in contemporary times would be the "Blue Laws." Most states still have laws prohibiting the sale of retail goods on Sunday yet these laws are rarely applied. The laws are very likely to remain but to be dormant unless a recalcitrant judge or a vocal minority of the population insist that the laws be applied. When this happens we can anticipate that the statutes will be negated.[31] Should there arise a perceived need to curtail retail selling under some special circumstances, then it is likely that these laws will undergo a shift in focal concern much like the shift which characterized the vagrancy laws. Lacking such application the laws will simply remain dormant except for rare instances where they will be negated.

This analysis of the vagrancy statutes (and Hall's analysis of theft as well) has demonstrated the importance of "vested interest" groups in the emergence and/or alteration of laws. The vagrancy laws emerged in order to provide the powerful landowners with a ready supply of cheap labor. When this was no longer seen as necessary and particularly when the landowners were no longer dependent upon cheap labor nor were they a powerful interest group in the society the laws became dormant. Finally a new interest group emerged and was seen as being of great importance to the society and the laws were then altered so as to afford some protection to this group. These findings are thus in agreement with Weber's contention that "status groups" determine the content of the law.[32] The findings are inconsistent, on the other hand, with the perception of the law as simply a reflection of "public opinion" as is sometimes found in the literature.[33] We should be cautious in concluding, however, that either of these positions are necessarily correct. The careful analysis of other laws, and especially of laws which do not focus so specifically upon the "criminal," are necessary before this question can be finally answered.

In conclusion, it is hoped that future analyses of changes within the legal structure will be able to benefit from this study by virtue of (1) the data provided and (2) the utilization of a set of concepts (innovation, dormancy, concern and negation) which have proved useful in the analysis of the vagrancy law. Such analyses should provide us with more substantial grounds for rejecting or accepting as generally valid the description of some of the processes which appear to characterize changes in the legal system.

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[31] Negation, in this instance, is most likely to come about by the repeal of the statute. More generally, however, negation may occur in several ways including the declaration of a statute as unconstitutional. This later mechanism has been used even for laws which have been "on the books" for long periods of time. Repeal is probably the most common, although not the only, procedure by which a law is negated.

[32] M. Rheinstein, *Max Weber on Law in Economy and Society,* Harvard University Press, 1954.

[33] Friedman, N., *Law in a Changing Society,* Berkeley and Los Angeles: University of California Press, 1959.

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