

## 2. A Short History of English Vagrancy Laws

*Early English vagrancy laws created a climate unsympathetic to the plight of the poorest and most marginalised persons in society. These laws continue to resonate in the domestic laws of various states around the world. In this chapter the authors examine the origin of vagrancy laws in England and reflect on the extent to which the rationale underlying these laws is appropriate in modern-day constitutional democracies.*

### Introduction

Many nuisance-related offences in Malawi originate from English vagrancy laws. English vagrancy laws were rooted in a variety of motivations and produced a myriad of negative effects for the most marginalised members of English society. In countries such as Malawi, where the majority of the population is poor, the effect on society of incorporating English vagrancy laws into its Penal Code is profound and requires consideration.

The Oxford English Dictionary defines a vagrant as “a person without a settled home or regular work who wanders from place to place and lives by begging”. The history of English vagrancy laws reveals little concern for the actual plight of vagrants, though it may rather suggest various economic and cultural concerns regarding indigent persons and their place in a rapidly-industrialising English society. Sociologists have suggested three main purposes for English vagrancy laws:

- To curtail the mobility of persons and criminalise begging, thereby ensuring the availability of cheap labour to land owners and industrialists whilst limiting the presence of undesirable persons in the cities;
- To reduce the costs incurred by local municipalities and parishes to look after the poor; and
- To prevent property crimes by creating broad crimes providing wide discretion to law enforcement officials.<sup>15</sup>

The development of English vagrancy laws was by no means an objective or democratic exercise. Essentially, vagrancy laws amounted to the exercise of control over a marginalised group in society by a more privileged class, primarily for its own interests and based on

15 W Chambliss “A Sociological Analysis of the Law of Vagrancy” (1960) 12 *Social Problems* 67-77.

its own notions of the bounds of appropriate social behaviour.<sup>16</sup> Indeed, the terminology employed in vagrancy laws and government reports of the period reveals contempt for and disdain towards vagrants. Vagrancy laws over centuries have typically featured a characterisation of targeted individuals as indolent, lazy, worthless, unwilling to work, or as habitual criminals, outcasts or morally depraved individuals.<sup>17</sup> The development of vagrancy laws generally did not consider the rights of individuals to freedom of movement, human dignity, equality, fair labour practices or a presumption of innocence. Early English vagrancy laws reflected these trends and indeed reinforced such attitudes.

This chapter and those succeeding it illustrate the fact that vagrancy laws had been and continue to be used in an arbitrary and discriminatory manner against the poorest and most marginalised members of society.

## The Origin of English Vagrancy Laws

The first official English vagrancy statute, the Statute of Labourers, was passed in the context of feudalism in 1349.<sup>18</sup> The statute made it an offence to give alms to anyone able to work. At the time, a severe labour shortage was created by the plague and the migration of peasants to urban areas in search of improved living conditions.<sup>19</sup> The law was intended to force anyone who was able to work to do so. In 1360, the statute was amended to further curtail the movement of potential labourers.

According to sociologist William Chambliss, “[t]here is little question that these statutes were designed for one express purpose: to force labourers (whether personally free or unfree) to accept employment at a low wage in order to ensure the landowner an adequate supply of labour at a price he could afford to pay.”<sup>20</sup> Chambliss explains that the vagrancy laws were an urgent attempt by lawmakers to reverse a social process that was underway – i.e. “to curtail mobility of labourers in such a way that labour would not become a commodity for which the landowners would have to compete.”<sup>21</sup> Despite their potential significance for the English economy, however, over the next 150 years vagrancy laws were initially amended to increase penalties,<sup>22</sup> but then gradually diminished in importance due to their overall inefficiency.<sup>23</sup>

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16 *Id* 77; L Sebba “The Creation and Evolution of Criminal Law in Colonial and Post-Colonial Societies” (1999) 3 *Crime, Histoire et Sociétés*, at para. 4.

17 P Ranasinghe “Reconceptualising Vagrancy and Reconstructing the Vagrant: A Socio-Legal Analysis of Criminal Law Reform in Canada, 1953-1972” (2010) 48 *Osgoode Hall LJ* 55-94, 60-61.

18 Chambliss *supra* note 15, 68.

19 *Id* 69; F Bradshaw *A Social History of England* 2 ed (1921).

20 Chambliss *supra* note 15, 69.

21 *Id* 70. See for example section 5 of the Elizabethan Poor Law of 1572 which defined as a rogue and vagabond “all common labourers refusing to work for such reasonable wages as is commonly given in such parts”. “The Elizabethan Poor Law (1572)” in A Esdaile (ed) *The Age of Elizabeth (1547-1603)* (1915) 37-40, 38.

22 For example, the Vagabonds and Beggars Act provided that “vagabonds, idle and suspected persons shall be set in stocks for three days and three nights and have none other sustenance but bread and water and then shall be put out of Town.”

23 Chambliss *supra* note 15, 71.

In 1530, dormant vagrancy laws were revived to serve the additional purpose of curtailing criminal activities. New laws sought to punish ambiguously-defined persons, such as “someone who is merely idle and gives no reckoning of how he makes his living”<sup>24</sup> or those considered to be “rogue[s]”<sup>25</sup>. Penalties for such offences were increasingly severe and included having an ear cut off, being whipped until bloody, or even facing the death penalty.<sup>26</sup>

Under these evolving vagrancy statutes, “persons who had committed no serious felony but who were suspected of being capable of doing so could be apprehended”.<sup>27</sup> The ability to make arrests without proof of the actual commission of an offence was a blunt response by lawmakers to the need to protect the interests of emerging industries, which were producing a significant flow of valuable goods throughout England.<sup>28</sup> Sentences were severe and reflected an increased emphasis on imprisonment.

As examined more fully in subsequent chapters, the prohibitions in these early laws were notably similar to those that continue to exist today. For example, section 5 of the 1572 law prohibited idle persons from participating in games of chance or unauthorised begging.<sup>29</sup> Not dissimilarly, many modern laws also seek to regulate these activities, associating them with immoral and unproductive social behaviour. At this stage it suffices to recognise that the earliest vagrancy laws continue to echo in those of the modern day.

Legislators acted in ways that discriminated against the poor with no regard for their human rights. From the 1500s to 1700s, laws provided for various ways of marking paupers (using a “P” applied to the clothes) or branding rogues, vagabonds and slaves (using an “R”, “V” or “S” burnt on the skin with a hot iron).<sup>30</sup> Law enforcement imposed slavery on persistent offenders. During the 1600s, war and famine displaced many persons and led to the enactment of laws allowing parishes to evict from their district strangers potentially requiring assistance from the parish. Essentially, lawmakers were crafting the tools by which law enforcement and private citizens alike were able to trample upon the human rights of the poorest in society.

In 1743, vagrancy offences were extended to new categories of persons, including those collecting money under pretence and “all persons wandering abroad and lodging in ale houses, barns, out-houses or in the open air, not giving good account of themselves”.<sup>31</sup> Offenders were forced into workhouses.

The laws had little effect in reducing the number of vagrants because they did not address the underlying causes of vagrancy. In 1821, a report from the Select Committee on the Existing Laws Relating to Vagrants noted the increasing number of vagrants and observed

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24 For example, the Poor Law Act tried to regulate the manner in which poor, aged and infirm people could receive alms and the ways in which vagabonds and beggars could be punished.

25 Chambliss *supra* note 15, 74.

26 *Id.* 72.

27 *Id.*

28 *Id.*

29 “The Elizabethan Poor Law (1572)” in A Esdaile (ed) *The Age of Elizabeth (1547-1603)* (1915) 37-40, 38.

30 See Chambliss *supra* note 15, 73.

31 Rogues, Vagabonds and other Idle and Disorderly Persons Act of 1744.

that the expense of administering the existing laws was significant.<sup>32</sup> The report further noted that the procedure of sending vagrants back to their municipalities of origin was onerous and ineffective.<sup>33</sup> The Committee recommended that, instead of sending vagrants back home, they should be imprisoned for longer periods to dissuade them from vagrancy.<sup>34</sup>

Several vagrancy laws influenced and even facilitated the development of a culture of police corruption.<sup>35</sup> For example, parishes were required to reward anyone apprehending a beggar. The Committee observed that such provisions promoted bribery between vagrants and constables. Not only were vagrancy laws disserving the indigent population, but featuring in an emerging culture of police corruption, they began to undermine the integrity of the legal system for all English citizens.

Observers have described English vagrancy laws as eclectic, seeking to deal with a range of concerns (labour, crime, popular morality, entertainment, religion and public health) through prosecution of the offences of idleness, disorderly conduct, or status as a rogue or vagabond.<sup>36</sup> English vagrancy laws responded to social problems and concerns through a combination of punishment and welfare – i.e. by allowing some categories of persons to beg and by promulgating a wide range of laws regulating poor relief.<sup>37</sup> It is no surprise, then, that vagrancy laws throughout history, both in England and elsewhere, are part of a dynamic process of social attitudes and change. In many developed states, for example, changes in vagrancy laws and the repeal or narrower application of some laws have coincided with increased acceptance of socio-economic rights such as the right to social welfare.

## The Vagrancy Act of 1824

The Vagrancy Act of 1824 (the 1824 Act) was enacted “for the more effectual suppression of vagrancy and punishment of idle and disorderly persons” in England. The Vagrancy Act repealed all previous statutes on the subject, amended the definitions of idle and disorderly persons, rogues and vagabonds and set out powers to search persons and premises.

The 1824 Act retained many of the traditional vagrancy offences whilst including new categories, such as offences of a kind that only “professional” criminals might commit (e.g. loitering with intent to commit an arrestable offence) and offences against public decency and morality (e.g. offensive behaviour by prostitutes and indecent exposure). Repeat offenders were deemed incorrigible rogues and could be whipped and incarcerated.<sup>38</sup>

The English Home Office in 1974 remarked that the 1824 Act had reduced the penalties related to these offences but “it was nonetheless basically a repressive measure.”<sup>39</sup> For some of the offences in the 1824 Act the option of imprisonment was removed in 1982. It was only recently that the Criminal Justice Act, 44 of 2003, removed the possibility of

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32 House of Commons *Report from the Select Committee on the Existing Laws Relating to Vagrants* (1821).

33 *Id* 4.

34 *Id* 5.

35 *Id* (“The abuses tolerated and the frauds practised under these laws have been unquestionably proved by the evidence which has been taken before your Committee, and are in fact but too general and notorious”).

36 Ranasinghe *supra* note 17, 59.

37 *Id* 66 (“Poor relief was to be provided alongside the threat of punishment to ensure that only those deemed ‘deserving’ were relieved”).

38 The offence of being an incorrigible rogue was repealed in Britain by the Criminal Justice Act 44 of 2003.

39 English Home Office *Working Party on Vagrancy and Street Offences Working Paper* (1974) at paras. 4 and 13.

imprisonment for the remaining offences relating to being an idle and disorderly person or rogue and vagabond in Britain.

### **Examples of Offences in the Original Vagrancy Act of 1824**

#### ***Idle and disorderly persons (section 3):***

- Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner (removed from Vagrancy Act in 1989);
- Every person wandering abroad, or placing himself or herself in any public place, street, highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do (option of imprisonment for this offence removed in 1982);
- Every person who in any public place solicits for immoral purposes (added to Vagrancy Act in 1898 and finally repealed from sexual offences legislation by the Sexual Offences Act, 42 of 2003).

#### ***Rogues and vagabonds (section 4):***

- Every person playing or betting in any street, road, highway or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance (repealed in 1948);
- Every person wilfully, openly, lewdly and obscenely exposing his person in any street, road or public highway, or in view thereof, or in any place of public resort, with intent to insult any female (repealed in 2003);
- Every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms (repealed);
- Every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence (option of imprisonment removed in 1982);
- Every suspected person or reputed thief, frequenting any river, canal ... or any street, highway or avenue leading thereto, or any place of public resort, with intent to commit a felony (repealed in 1981);
- Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, not having any visible means of subsistence and not giving a good account of himself or herself (reference to "visible means of subsistence" removed in 1935, option of imprisonment removed in 1982);
- Every person being found in or upon any dwelling house, warehouse, coach-house, stable or outhouse or in any enclosed yard, garden or area, for any unlawful purpose.

## Conclusion

The Vagrancy Act of 1824 has lost much of its power in Britain over the years as its various provisions were repealed or narrowed in line with changing notions of fairness and justice. In a number of states where the English Vagrancy Act provisions have been incorporated into domestic law, there has also been movement toward either abolishing vagrancy provisions entirely or ensuring that offences specifically relate to a suspect's activities rather than his or her status.

The Canadian Criminal Code, for example, removed some offences during the 1950s from their classification of "idle and disorderly" and inserted them elsewhere in the criminal code, seeking to address and ameliorate the stigma of being accused and/or convicted of a vagrancy crime. Offences were also redrawn to require criminal intent.<sup>40</sup> In 1970 when considering vagrancy provisions in Canada, the Royal Commission on the Status of Women noted: "The criminal law in Canada is built upon a nineteenth century philosophy of the role of punishment in the control of anti-social behaviour. Behaviour that was considered a threat to society in the nineteenth century and accordingly subjected to the criminal law and its sanctions is not necessarily, in the mid-twentieth century, the kind of behaviour that should be subject to criminal sanctions."<sup>41</sup> Furthermore, in 1972 Canada repealed the provisions which prohibited begging in a public place, wandering abroad without an apparent means of support and not giving a good account of his or her presence, and being a common prostitute who is found in a public place and does not give good account of herself. These repeals were premised on five factors: that vagrants were no longer seen as a threat to the social or moral order of the nation; that there was a need to make the criminal law more modern, compassionate and remedial; that the law was unevenly applied between different classes of persons; that criminal law was seen as too punitive a measure to rely on; and that the provisions were too vague for the purpose of criminal law.<sup>42</sup>

United States courts have further held that the state "may not make it an offence to be idle, indigent, or homeless in public places."<sup>43</sup> These amendments and conceptual shifts reflect the recognition that the original vagrancy laws are archaic and anachronistic. Furthermore, the changes to and repeal of vagrancy laws reflect in part different cultures' evolving views on indigence, dignity, and respect for human rights.

Kimber wrote an interesting article documenting the policing of vagrants in New South Wales in the early 1900s which sets out some of the history of vagrancy laws and their application in British colonies.<sup>44</sup> She points out that by-laws were often applied hypocritically and inconsistently - "...the attractiveness of vagrancy provisions in smaller localities lay less in their ability to maintain social order, and more in their ability to provide a convenient legal mechanism to remove, exclude, brand and punish those deemed offensive"<sup>45</sup>:

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40 *Id* 68.

41 Ranasinghe, *supra* note 17, 85 (quoting Royal Commission on the Status of Women *Report of the Royal Commission on the Status of Women in Canada* (1970).

42 *Id* 87-88.

43 *Jones v City of Los Angeles* 444 F.3d 1118, 1137 (9th Cir. 2006), vacated on other grounds in *Jones v City of Los Angeles* 505 F.3d 1006, 1006 (9th Cir. 2007).

44 J Kimber (2010) "A Nuisance to the Community': Policing the Vagrant Woman" *Journal of Australian Studies* 2010 34(3): 275-293.

45 *Id* 279.

*Those deemed not to fit the dominant moral codes were reminded on a daily basis that their existence in the town was not tolerated. The ideology of localism provided a panacea for some of the problems associated with poverty: new, non-local offenders were either goaled or told that 'their sort wasn't wanted'. When faced with their 'own problems', this localism worked to disassociate 'offenders' from others by a constant commentary reported in the newspapers which scorned 'deviant' behaviour and by persistent harassment by police when they became too visible. These moral frameworks, in both their application and in consequent resistance to them, highlight the narrowness of localism, the 'tyranny' of closed societies and the power embedded in mechanisms of social control.<sup>46</sup>*

It is in this context that we should also consider the manner in which the English Vagrancy Act provisions found their way into many Penal Codes in Africa. Having moved from colonialism to independent democratic states, countries like Malawi might well want reconsider whether these vagrancy laws should continue to have any currency.

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46 *Id* 281.

