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Havard: The Detection of Secret Homicide

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RECENT BOOKS

THE DETECTION OF SECRET HOMICIDE. By J. D. J. Havard. New York: St. Martin's Press. 1960. Pp. xv, 253. \$8.00.

Observers and critics of the Anglo-American system of criminal law enforcement are justly concerned with the elimination of the possibility that the innocent might be convicted. They ought also be concerned that avoidance of the detection of crime is made as difficult as possible. Criminal homicides are easily concealed in a great many instances,¹ and the defenses against such concealment are few and largely archaic. Dr. Havard's book, Volume XI in the *Cambridge Studies in Criminology*, is a thoughtful historical and practical study of English law which goes far to explain why this is so.

The traditional organ for detecting violent or unexplained death is the coroner, though it would be difficult to devise a less likely instrument to accomplish the purpose than that functionary, as Dr. Havard's historical discussion points up. The original incentive for inquiring into violent homicides was purely financial, in order to extract the *lex murdrorum* fines from the local inhabitants and in order to bring about the often lucrative forfeiture of the instrumentality of death, the deodand. From the Crown's point of view the locally-elected coroner was a useful fiscal representative, and his activities eased the way for the judicial determinations made by the justices in eyre during their rounds. But as the financial returns became less and less, as itinerant justice disappeared and as the other duties of the coroner² withered away or were taken over by justices of the peace, a corresponding decline in the office of coroner set in, and by the early nineteenth century the office was almost defunct. Inquests were rarely held, and autopsies were almost unheard of, no great loss in view of the limited medical knowledge of the day.

Efforts were made by Parliament to restore the investigative function of the coroner in 1751 and 1836, by authorizing fees in inquests "duly held." But approval of all fees was required to be gotten from justices of the peace, who had contributed to the decline from the medieval standing of the coroner and were disinclined to cooperate in the restoration of that office to a place of importance. Consequently, they consistently refused to authorize the payment of inquest fees in any except cases of violent death, which made the inquest a seldom used instrument; the failure to have post-mortem examinations conducted meant that those inquests which were ordered were totally inadequate to expose a multitude of murders by poison or by suffocation. Though infanticide flourished under the stimulus of the

¹ Chapter XI recounts a number of such cases.

² These included facilitating the private prosecution of felony cases, inquests on the property of outlawed felons, supervision of felons abjuring the realm after having fled to sanctuary and overseeing the process of "turning approver," i.e., turning Crown's evidence. See pp. 17-18.

nineteenth century "burial clubs"³ and poisoners for profit operated with relative immunity from official detection, it was not until 1860 that coroners were placed on a salaried basis and not until 1887 that justices of the peace lost their power to control the holding of inquests through denial of fees and costs. And it was not until well into the present century that the policy was laid down that coroners in England should be barristers, solicitors or medical practitioners, and most seem to be part-time appointees in the first two categories.⁴

The second device which facilitates the detection of homicide is the requirement that all deaths and stillbirths be certified as to cause and reported to a central office, and that disposition of bodies by undertakers through embalming or cremation be conditioned on receipt of an official permit. The first English legislative effort in this direction occurred in 1836, with the motivation, however, of compiling birth and death statistics. It was not until 1874 that the attending physician, if any, was required to certify the cause of death, and even then the controls were lax.⁵ Uncertified deaths still continued to be registered in large numbers, since registration or a coroner's order were required before burial could take place, and attending physicians were not present at or before death in a large number of cases. Even under the present act⁶ certificates are required only when there has been an attending physician; other deaths are merely reported to the registrar.

If the coroner system is actually to discover criminal homicides it is necessary that suspicious deaths be reported to the coroner. English law imposes such a duty on only relatively limited classes of persons, and it is doubtful that disposal of a body prior to a coroner's inquest is a crime.⁷ The registrar is required to notify the coroner in certain classes of cases, but there may be a time lag in the process. This has serious consequences if the undertaker has already embalmed the body, for reliable toxicological tests can then no longer be made, and obviously disastrous consequences if the

³ See pp. 51-62. These were societies administered by local barkeeps to insure against burial expenses of children of the insured. The same child might be insured in a number of clubs simultaneously, so that its death would bring an attractive financial return to its parents. Unregulated sale of patent medicines containing morphine derivatives facilitated not only addiction but also the killing of the child for profit. The author narrates several descriptive cases, typical of those which flourished in those counties where justices of the peace refused to authorize fees for inquests.

⁴ Pp. 200-05.

⁵ There was no effective way of preventing a doctor from issuing a certificate without having actually viewed the body or from issuing a certificate for a member of his own family. Pp. 98-104. If the physician believes that the death is suspicious he still is required to issue the certificate. Pp. 104-06.

⁶ Birth & Deaths Registration Act, 1953, 1 & 2 Eliz. 2 c. 20.

⁷ Chapter VI discusses the case authorities. Sections 16 and 17 of the present act require certain persons to notify the registrar of the death, but the information required is insufficient to support an adequate forensic investigation, and in any event the penalty for failure to notify is minimal.

body has been cremated. English law still does not control the former practice, though cremation now requires prior administrative approval.

In short, Dr. Havard makes a convincing case that in England, despite a substantial amount of legislative and administrative effort, coroners too often are unwilling or unqualified to carry out adequate forensic examinations in cases of unexplained death; the system of death and stillbirth registration is inadequate to facilitate the detection of crime because of the lack of a general requirement that suspicious deaths be reported directly to the coroner and the want of prohibitions against preparation of a body for burial until the coroner has determined whether or not a post-mortem examination is necessary.

Dr. Havard does not treat extensively other legal systems,⁸ and thus the American reader is left to his own initiative to determine how far similar conditions exist in the United States. He may readily determine that in a great many jurisdictions in the United States the situation is less satisfactory even than that prevailing in nineteenth century England.⁹ The coroner often remains an inherited vestigial organ of county government. In a number of states he probably is not and does not have to be a licensed medical practitioner, and rarely does he have to be a qualified pathologist. Even the coroner who is a medical doctor probably considers his coroner's duties an adjunct only to his busy medical practice, a task to be performed only when absolutely necessary and in as perfunctory a fashion as possible.¹⁰ There is usually no requirement that the coroner be notified of the fact of suspicious or violent death. He may not be required by law to hold an inquest even in those cases of violent or suspicious death of which he learns. Burial permits may be required from local health departments or the like, but undertakers may be free to prepare a body for burial or even to cremate it before the inquest without any prior approval from law enforcement officials, which may well frustrate the subsequent inquest. Inquests rarely elicit and perpetuate expert medical testimony, in part because coroners may only seldom take the initiative in ordering a post-mortem examination to be performed, but also because very often autopsies are permitted by law only in cases where death has occurred under suspicious

⁸ Chapter XIII makes some effort to survey American developments, though primarily on the basis of secondary authorities.

⁹ Summaries of state law and practice are compiled in NATIONAL MUNICIPAL LEAGUE, CORONERS IN 1953: A SYMPOSIUM OF LEGAL BASES AND ACTUAL PRACTICES (3d ed. 1955).

¹⁰ The report on Louisiana in CORONERS, *supra* note 9, indicates that qualified medical practitioners cannot be found to run for office, even though only doctors are eligible to hold the office. A good illustration of perfunctory performance of duty occurred in Michigan a few years ago. The body of a training camp inmate was found partially decomposed in a septic tank, the 250-pound cover of which was in place. A length of electrician's wire was fastened at one end to the body and at the other to a cement block. The report of the coroner, a medical doctor, indicated death by suicide. The autopsy showed death caused by stab wounds. Only the initiative of the local police made possible the discovery of the fact that murder had been committed.

circumstances and the specific physiological cause of death is not known. If these conditions are not met, the county, the physician or the hospital on whose premises the autopsy has been conducted may well be civilly responsible to relatives of the decedent.¹¹ Exhumations may also require complicated preliminary proceedings for approval, though fortunately the problem in this country is not complicated by the necessity of obtaining approval from church authorities in order to exhume bodies buried in church cemeteries.¹²

Occasionally legislative efforts have been made to salvage the coroner system as a useful agency in forensic crime detection. The coroner may be required to determine the cause of death if it has occurred through violence, suicide or under suspicious circumstances.¹³ Inquest practice may be modified to provide for performance of expert examinations, preservation of physical evidence and compulsory attendance at the inquest by the prosecuting or district attorney. But only a few states have taken steps to replace the coroner system by a system of medical examiners.¹⁴ A refreshing example is that of Michigan. Under the Michigan statute medical examiners must be licensed physicians.¹⁵ They are required to examine the bodies of decedents who have met their deaths in a wide variety of circumstances,¹⁶ and a statutory duty is created on the part of doctors, hospital personnel and other persons having knowledge of such deaths to notify the medical examiner of that fact.¹⁷ No undertaker may move a body, prepare it for burial or shipment or cremate it without prior approval in writing from the examiner.¹⁸ The examiner is authorized to conduct autopsies, preserve his findings in writing, and to preserve any parts of the body as long as necessary if this is believed to be of assistance in the detection of crime.¹⁹ He is required to testify on behalf of the state in any matter resulting from the investigation.²⁰ While problems remain even under such a system,²¹ reform at least to this degree ought to be imperative anywhere

¹¹ *Brown v. Broome County*, 8 N.Y.2d 330, 170 N.E.2d 666 (1960); *Crenshaw v. O'Connell*, 235 Mo. App. 1085, 150 S.W.2d 489 (1941); *Darcy v. Presbyterian Hospital*, 202 N.Y. 259, 95 N.E. 695 (1911).

¹² Pp. 213-14.

¹³ E.g., CAL. GOV'T CODE § 27491; MO. REV. STAT. §§ 58.180, 58.260 (1959); N.Y. CODE OF CRIM. PROC. § 773.

¹⁴ See the discussion in COMMITTEE ON A MODEL STATE MEDICO-LEGAL INVESTIGATIVE SYSTEM, A MODEL MEDICO-LEGAL INVESTIGATIVE SYSTEM 19-40 (2d ed. 1954).

¹⁵ MICH. COMP. LAWS § 52.201 (Supp. 1956).

¹⁶ MICH. COMP. LAWS § 52.202 (Supp. 1956). The examination must be made where death was by violence, or unexpected, or without medical attendance up to a time 36 hours before the death unless the attending physician if any is able accurately to determine the cause of death, or resulted from an abortion or was of an inmate in a county or city jail.

¹⁷ MICH. COMP. LAWS § 52.203 (Supp. 1956).

¹⁸ MICH. COMP. LAWS §§ 52.204, 52.210 (Supp. 1956).

¹⁹ MICH. COMP. LAWS § 52.205 (Supp. 1956).

²⁰ MICH. COMP. LAWS § 52.212 (Supp. 1956).

²¹ The system comes into effect only when voters of a county approve at an election regularly held. The medical examiner need not be a pathologist. There is no central agency charged with coordinating and supervising medical examiner activities.

in the United States.²² While Dr. Havard's book is authoritative only on the English situation, the same evils and undesirable practices which he has described there exist in this country as well, usually in a more aggravated form. Perhaps its circulation in the United States will encourage abolition or improvement of the coroner system here as well as in England.

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²²The National Conference of Commissioners on Uniform State Laws has approved a Model Post-Mortem Examinations Act. 1954 HANDBOOK 196-202. Another suggested statute is found in the Committee report, *supra* note 14, at 13-18.