The Development of the Massachusetts District Courts, 1821 to 1922

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In early nineteenth century Massachusetts, justices of the peace presided over all lesser civil and criminal matters. Their authority derived from their prominence in the local community. Because they were known and respected, they could settle problems informally through the invocation of tradition and custom. One hundred years later, this highly personal style of jurisprudence was out of favor. The progress of this change was not steady or linear, but was broadly related to larger economic and demographic changes in 19th century American life. The first innovations in judicial structure began in 1821 in the city of Boston and gained momentum as the century progressed. By the early twentieth century a new ideal was firmly in place: only a disinterested, impartial judge who applied uniform rules could best balance the competing claims of litigants. By examining the relevant legislation and legislative history, it becomes clear that the district courts evolved from the justice of the peace courts as part of a larger, more fundamental change in the ideal of justice itself.

In the beginning of the nineteenth century, the "Law" of the Commonwealth was embodied most immediately in the local justices of the peace. At this time, there were three broad levels within the court system: the Supreme Judicial Court, which was then the Commonwealth's general trial court, the Courts of Common Pleas and the Courts of General Sessions of the Peace, both local county courts exercising limited civil and criminal jurisdiction respectively, and finally, at the lowest level, the justices of the peace. By statute, a justice of the peace had criminal jurisdiction over "all assaults and batteries that are not of a high and aggravated nature . . . and all affrayers, rioters, disturbers and breakers of the peace . . . ."[1] Civil jurisdiction of the justices was limited to matters involving less than forty shillings and excluded actions involving title to real property. As their compensation, justices of the peace were paid a fee upon the filing of a complaint, or upon issuance of a warrant or judicial writ.[2] These powers had remained unchanged since the seventeenth century.[3]

Appeals from adverse decisions made by a justice of the peace in criminal cases were to the Court of General Sessions of the Peace, which was organized by county and presided over by several justices of the peace sitting together. This court had broad administrative authority over most town and county affairs, and

criminal jurisdiction over all matters not punishable by loss of life, limb or banishment. Appeals in civil cases were to the Court of Common Pleas.[4] Reminiscent of the English system of country squires, the authority of the justices of the peace was derived more from their position of authority in the community than from their legal knowledge. Experience and thorough knowledge of the local citizenry allowed justices of the peace to settle disputes in a highly personalized fashion. Custom, history, and local standards, rather than intricate pleadings and theoretical doctrines, were the foundations of this discretionary justice.[5]

A justice of the peace could resolve contractual disputes according to principles of personalized fairness because early America was still a "face-to-face" society. The justice knew all participants and they knew him. Moreover, there was broad agreement on larger moral and religious principles. This provided another reason why individual bargains could be subjected to extensive judicial supervision. Thus, the justification for a contract, for example, could be measured by what all agreed to be the "just price" or the inherent justice of the exchange. John Adams summed up the "just price" theory this way: "It is natural and immutable Law that the Buyer ought not to take Advantage of the sellers Necessity, to purchase at too low a Price."[6]

As the nineteenth century progressed, certain factors began to undermine the "just price" standard. Land and mercantile disputes increasingly took place between strangers, that is between people from different communities. Judicial resolutions, therefore, could no longer be so personalized. The rise of extensive new markets, combined with the introduction of foreign goods, also contributed to the erosion of the consensual "just price" standard. In addition, the factual complexity of these new disputes grew enormously, outstripping the ability of many local justices of the peace. In 1836, when Joseph Story wrote his treatise, *Equity Jurisprudence*, he emphasized that the "value of a thing . . . must be in its nature fluctuating, and will depend upon ten thousand circumstances."[7]

The older mode of dispensing justice had worked well as long as communities were small and self-contained. However, as society grew more complex during the nineteenth century, the resolution of legal conflicts began to require a more detached and legalistic style. This style was directly in opposition to the personal informal style of the past. In fact, by the 1820s and 1830s acquaintance with participants and influence in the local area were emerging as precisely the qualities most condemned. " 'In the law' wrote Mr. Justice Johnson, 'no latitude is left for the exercise of feeling.' "[8] A new ideal of judicial deportment was forming: "the image of a man not bound by any ethical or moral consideration, but only by the law."[9] The creation and the development of the district courts was an objective manifestation of this new ideal.

It is not surprising that the first movement toward change occurred in Boston. In 1821, legislation established the Boston Police Court and the Justices' Court for Suffolk County. The express purpose of this enactment was "to Regulate the Administration of Justice within the County of Suffolk."[10] Between them, the two new courts encompassed the entire jurisdiction formerly exercised by the justices of the peace and their appellate branch, the Court of General Sessions for Suffolk County. The Police Court had exclusive jurisdiction

over criminal matters, and the Justices' Court had exclusive jurisdiction over civil actions.[11]

In 1821, the local trial courts, which had by then become known as the Circuit Courts of Common Pleas, were unified into a statewide Court of Common Pleas of limited jurisdiction. This court consisted of four judges who sat singly at fixed terms in all counties except Suffolk. (Because of what the statutes describe as "great delays" and "burthensome expenses," Suffolk had already established its own separate Boston Court of Common Pleas for limited civil matters by 1812, and had its own separate criminal court, called the Boston Municipal Court, since 1799.) This court had jurisdiction over all actions and offenses except those over which the Supreme Judicial Court or justices of the peace already had exclusive jurisdiction. Another section of the act abolished the Court of General Sessions for Suffolk County.[12]

The 1821 legislation described the new courts in detail. "Three learned, able and discreet persons" were appointed by the Governor to sit daily in the Police Court to hear criminal matters, and to make themselves available twice a week for civil actions in the Justices' Court. These justices were salaried, and were to receive no other compensation such as that traditionally derived from fees. In addition, a salaried clerk was appointed who was charged with keeping all accounts and records, and who was empowered to appoint assistant clerks should the need arise.

These new courts were, in effect, the institutionalization of the justices of the peace, complete with staff, procedures and an administrative label. These innovations were a complete departure from the old, informal system, since none of the prior acts regulating justices of the peace provided for a salary or allowed for clerks. Nor had legal business been transacted at scheduled hours or in a courthouse, but rather when and where the need arose. Such bureaucratization, as the enabling act implies, had the purpose of promoting greater efficiency in the administration of justice. By providing a salaried clerk, partial decisions would not be rendered, nor impropriety suggested. Assigning the clerk the duty of issuing a warrant or complaint meant that the justice would have had no opportunity to form an opinion by the time he heard the case on its merits.[13]

Allowing justices and clerks to draw a set salary effectively prevented any suggestion that the payment of fees could be used to influence a decision, or that fees could be used to increase income.[14] By integrating the adjudication of lesser crimes and offenses within an administrative structure, rulings on these matters could be supervised and effected with greater regularity and dependability. Thus, in Suffolk County, what appears to be the beginning of our modern three-tier court structure was created fairly early, with the Police Court of Boston and Justices' Court of Suffolk County presiding at the justice of the peace level, the Court of Common Pleas and the Boston Municipal Court exercising limited county-wide jurisdiction, and the Supreme Judicial Court hearing appeals and only the most serious crimes and those damage actions including large sums of money. In short, this early legislation, the first to significantly alter the role of the justices of the peace, was a major step toward the new ideal of an impartial disinterested judge.

Over the next forty years, up until 1860, the process of re-naming justice of the peace courts as police courts was repeated in twenty-three towns.[15] These police courts had a jurisdictional mandate similar to that of the Boston courts. The powers of a police court justice encompassed those of justices of the peace over offenses against the by-laws of his particular town and over civil actions when both parties were residents. In those situations where one party was from other than the immediate locality, the police court justice had concurrent jurisdiction with a justice of the peace. Only four of the twenty-three police courts—Springfield, Charlestown, Roxbury and Lawrence—had salaried judges and an administrative structure similar to the Boston model. Elsewhere, in outlying areas, local needs and demands kept much of the older justice of the peace structure in place, despite the new name. New Bedford's police court, for instance, had jurisdiction to hear all cases involving the regulation and sale of "spirituous liquors," presumably in response to the large population of transient whaling men in that town.[16]

Even in these more provincial courts, however, significant changes can be seen in the establishment of a regulated system of compensation. In the 1830s, police court justices had obtained their remuneration entirely on the fees they received from those filing criminal and civil complaints. By the 1850s, more than half of the justices were turning over their fees to their county treasurer who then paid the justice a set amount. By creating a mechanism whereby a judge was separated from the means of generating income, the ideal of disinterested adjudication could be more effectively realized. On this count, there could be no imputation of partiality.

Throughout this early period, outside of Boston, police courts were being set up in the larger towns. Despite the re-naming of the courts and the institution of a regulated salary in many courts, the police court justice's powers and duties were still similar to those of the justices of the peace.[17] This situation changed as another series of major alterations in court structure was implemented between 1858 and 1860. The authority of the justice of the peace to hear criminal cases was finally eliminated in 1858. In 1859, the Superior Court was created, replacing what had been known as the Court of Common Pleas. By 1860, the Legislature made its first attempt at comprehensive court reorganization.

The purpose of the 1858 legislation was to upgrade the quality of judges sitting in the lower courts. Even at this point, justices of the peace were still presiding in those towns whose population did not meet the 10,000 inhabitants required for the establishment of a police court. This legislation entirely removed criminal jurisdiction from ordinary justices of the peace and instead vested that jurisdiction in specially designated individuals known as "trial justices" who held their commissions according to good behavior.[18] Also in 1858, the police courts had begun to exercise concurrent jurisdiction over certain criminal offenses within the next highest court, the Court of Common Pleas. These offenses included larcenies where money or property stolen did not exceed $100 in value and were punishable by one year in prison. The trial justices, however, were restricted in their concurrent jurisdiction with the higher court to those larcenies which did not exceed fifty dollars and were punishable by six months in prison.[19] Accordingly, when the Superior Court was estab-

lished in place of the Court of Common Pleas in 1859, the time was right for the state legislature to take a comprehensive look at the police courts and trial justices.

This occurred in 1860, when the first major regulatory act for the police courts and trial justices was adopted.[20] Twenty-two of the then-existing police courts expressly noted in the Act were standardized.[21] The justices were all salaried and were prohibited from receiving any fees. Salaried clerks were provided for all but the most remote police courts and the frequency of court sessions for civil and criminal business was regulated by statute. The interposition of another bureaucratic layer—that of the bonded, salaried clerk—allowed the justice to fulfill a more neutral, purely judicial role.

The expansion of police court jurisdiction to matters formerly heard only by the old Court of Common Pleas now brought the police courts within a larger centralized system. It also meant there would be greater supervision. If part of the new Superior Court's docket was to be diverted to the police courts, the latter's justices had to be seen as impartial. Procedural responsibility was also very important. The 1860 legislation created increasing limitations on a lower court justice's discretionary authority. The enabling acts of the police courts from 1831 to the 1860 legislation contain ever-greater specificity and detail with regard to judicial duties. Whereas the earlier statutes were sparse in language and sparer in direction, later acts became far more complex.[22] By 1860, the legislature was informing justices of their powers in ever more particular situations, becoming lengthy and cross-referential for the first time. The increasing regulation was necessary to delineate the expanding duties of the police court justices, and to ensure compliance with all new procedures.

As a result of the changes in 1858 and 1860, the structure of "the inferior courts" were consolidated into a broad pattern.[23] Police courts served the needs of large towns; they were staffed by full-time, salaried justices who possessed a justice of the peace's entire civil and criminal jurisdiction. Police court judges also exercised, concurrently with the Superior Court, jurisdiction over less serious civil and criminal matters. Trial justices were appointed in towns not large enough to merit police courts. They exercised the same powers as police court justices but with less staffing and regulatory procedure than the police courts. The traditional justices of the peace still existed, but their jurisdiction was limited strictly to civil debt or damage actions involving less than twenty dollars.[24]

Although this system appeared feasible to legislators in 1860, it soon became clear that grave structural problems remained. Yet legislators who looked at the courts during the last third of the 19th century could not achieve consensus on a solution. Consequently, legislative recommendations vacillated between wholesale reform of the lower courts and maintenance of the status quo. Legislators who evaluated the lower court system only seven years later in 1867, condemned it as "incongruous and misshapen." The personal and discretionary nature of justice was identified as the source of the serious problems in the lower courts.

> In one city, a competent police court is established, in suitable rooms, sustained by a fixed salary, with jurisdiction excluding that of other courts within certain limits, and administering the law impartially, and commanding the respect of the public. Its high office is to deal justly, with no motives of self-interest to prevent it. In the next town, a justice of the peace, selected for no special fitness or qualifications for the discharge of such duties, with like jurisdiction, exercised by him in common with many more in the county, in shop, farmhouse or hotel, holds a nameless court, and, for the measure of justice meted out to the offender, takes his fees, while perhaps a score more in the same town can, with like degree of interest, pass judicially on the civil rights of the citizen. There is no propriety in this wide disparity in exercising the functions of courts—this anomalous arrangement of our inferior courts. All citizens may and should enjoy the protection of tribunals of equal character, dignity and capacity, as far as may be, and equally free from temptations to partiality and injustice.[25]

Among other specific problems identified was that these local justices were not trained in the law: "In their administration of the laws, errors of judgment often committed, which either result in compromising the rights of parties or compelling a resort to the higher courts for relief." Still another criticism was that justices were venal: "The method of compensation by fees is a temptation to partiality, to stir up litigation and multiply prosecutions." To achieve the goal of "an impartial interpretation of the law," lawmakers recommended a uniform system of "district" courts throughout the Commonwealth.[26] It is not surprising that legislators reviewing the lower courts in 1877, found that the practical problems of establishing and funding a court in each and every remote town were extensive. Their conclusion was that "no uniform system of courts of inferior jurisdiction can wisely be adopted for the entire state."[27] They cited disparities in population, variable levels of court business, and costs of supporting each court. Even trial justices, despite their faults, were found by these legislators to have the virtue of being economical: "a comparatively insignificant amount of business . . . may safely be left to the justices of the peace specially designated to by cases, thus saving to the county the expense of salaries and the incidents of a court."[28]

In coming to these conclusions, legislators recognized that the kinds of cases processed by the lower courts were also the ones least amenable to resolution by impartial rules. The lower courts usually considered purely local matters—small claims resolvable by dispute mediation and small crimes payable by fine or brief terms of imprisonment. These cases were difficult to categorize except in the very broadest of terms; they varied greatly from place to place, and therefore they did not lend themselves to the promulgation of uniform procedures.[29]

Lawmakers, considering court reform in 1886, expressed these views: "There is grave doubt whether any one system would be adapted to the needs of communities differing so widely in character and number of population and in the amount of legal business." Yet these same legislators continued to deplore, like

their predecessors, a lower court system which was characterized by its lack of uniformity, and which was staffed by judges who either were not lawyers at all, or who had not relinquished their outside legal practice.[30]

Despite the Legislature's lack of unanimity as to the correct solution, the last third of the nineteenth century and the earliest years of the twentieth was a period of great change for the lower courts. For example, there were clear gains towards uniformity during this period. Use of the recommended name "district" court was applied to all of the forty-two courts newly created after 1869.[31] Additionally, many of the older police courts were consolidated with those from other towns into district courts. For example, in 1869 the police court of Pittsfield was abolished and the district court of Central Berkshire was established in its place. The new district court encompassed the town of Pittsfield and six other contiguous towns.[32] In 1870, two other district courts were established in the Berkshire area. The district courts did not replace an existing police court, but rather incorporated a set of towns in their geographic proximity into a judicial district. The standing justices of these new district courts also exercised those powers accorded to police court judges and excluded the jurisdiction of any trial court justices heretofore presiding in those localities.[33]

The enacting statute described the justice's duties as being in accordance with the same jurisdiction and statutory provisions referring to police courts. The justice was salaried, and a salaried clerk was also appointed for a five year term. All proceedings in this geographical area which had previously taken place before trial justices were to be heard before the justice of this new district court. The unification under one supervisory court of the lower courts in the Central Berkshire area was smoothly effected. Thirty-one district courts were created along the model of Central Berkshire.[34] None of the justices of these new district courts received fees and all had clerks, testifying to the strongly felt need for these reforms as a means of creating a responsible lower court system. In addition, withdrawing power from the courts in remote towns, and centralizing it in the district court justice, served to guard against local irregularities.

At the turn of the century, several other significant changes were enacted. Trial justices were appointed for a term of years, rather than good behavior.[35] Legislators reasoned that "the incompetency of [a] magistrate was borne heavily upon the localities within [his] jurisdiction . . . and the Legislature not infrequently has been asked to abolish existing courts and to establish new ones in their stead, in order to get rid of unsatisfactory magistrates."[36] By the same legislation, the powers of justices of the peace were further curtailed. Unless designated as a trial justice, a justice of the peace no longer had the power to hear even minor civil cases. In addition, unless he was a court clerk, a justice of the peace could no longer receive complaints or issue warrants.[37] The effect of these provisions taken together was to further professionalize those existing trial justices and to squeeze out any remaining justices of the peace presiding without authority.

Meanwhile, as the traditional basis of the old system was moving steadily toward greater administrative centralization, the substantive power of the lower courts was also being redefined. For example, over the late nineteenth and early

twentieth centuries, the civil jurisdiction of the lower courts was significantly enlarged.[38] Yet at the same time, the grant of jurisdiction over juvenile matters and the naturalization of new immigrants, indicated that the district courts were still considered "the courts of the people."[39] In 1920, the first Small Claims Court was established.[40] The creation of this new court, which diverted lesser civil matters from the district and police courts, also emphasized the redefined, changeable nature of the latter courts. "Small claims" had been precisely the kind of matters handled by the old-fashioned justices of the peace. By the 1920s, there had come to be no place for either the old-fashioned justice of the peace or the small claimant in the emerging modern district court system.

A unified district court system began to emerge through legislation of the early 1920s. This was fifty years after the first recommendation for a uniform state-wide lower court system, and one hundred years after the establishment of the Boston Police and Justices courts. Legislation in 1920 abolished the thirteen "police" courts still remaining, and they were renamed "district" courts. The justices of the peace, by contrast, were considered as "notaries" and "commissioners" capable only of administering oaths.[41] Other important reforms enacted in 1922 included an appellate division which provided for the rehearing of matters of law arising in civil cases, and an administrative committee of the district courts which was established to visit the district courts, to recommend new procedures, and to formulate court rules.[42] As we have seen, reform of the lower courts was not a new idea. However, what had become widely acknowledged was that the inefficiencies of the lower courts were adversely affecting the larger court system. According to legislators, the specific purpose of these early twentieth century reforms was "to Relieve the Congested Conditions of Dockets in the Supreme Judicial Court and Superior Courts."[43]

While the goal of "making [the district courts] more responsible and important tribunals," had often been heard during the preceding fifty years, legislators of the 1920s spoke with a new tone of brisk pragmatism. They firmly believed that continual supervision, coupled with adherence to specific and uniform rules, would enhance the reputation and quality of the lower courts. Brushing aside the inconsistencies and hesitations of the past, legislators confidently asserted that the lower courts were now to be regarded "as a business institution, to give the people seeking their aid the rights which facts entitle them to, and that with a minimum of time and money."[44]

In conclusion, the nineteenth and early twentieth centuries were times of great change for the lower courts. The traditional Massachusetts justices of the peace had settled disputes informally by invoking their personal authority and local custom. The development of the district courts from the justices of the peace can be viewed as the creation of a judicial structure which would best promote the new ideal of a disinterested and impartial judge.

NOTES

1. Massachusetts Acts and Resolves of 1783, chapter 42. Citations to acts will hereinafter be cited by year and chapter.

2. 1783 chapter 42. See also 1783 chap. 42, 1797 chap. 21, 1807 chap. 122, and 1836 chap. 85.

3. Kaufman, Mass. Trial DeNovo, honors thesis, Harvard College, 1975.

4. See Alan J. Dimond, *A Short History of the Massachusetts Courts* (1975), pp. 12-13; see also *Report of the Committee on Juries of Six to the Chief Justice of the District Court Department* (January 1984), section I; and Davis, *A Short History of the Judiciary of Massachusetts* (1900).

5. Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (1979), p. 186.

6. Ibid., p. 166.

7. Ibid., p. 184.

8. Perry Miller, *The Life of the Mind in America: From the Revolution to the Civil War* (1965), p. 120.

9. Maxwell Bloomfield, *American Lawyers in a Changing Society* (1976), p. 34.

10. 1821 chap. 109.

11. Appeals were taken to the Court of Common Pleas for the County of Suffolk, which by then incorporated the older court of General Sessions for Suffolk County, as well as the Boston Court of Common Pleas. See 1821 chap. 109, sections 8 and 11, and 1830 chap. 112.

12. 1821 chap. 79; 1812 chap. 173; 1799 chap. 81; and 1821 chap. 109, section 11.

13. These conclusions are reached by extrapolating from the abundant legislative history of the later 19th and early 20th centuries. See also *Report of Commission on Trial Justice System* (January 1917), Senate Document No. 347, page 6.

14. "The trial justice, having no clerk, must give an *ex parte* hearing to the complainant. This is a bad practice which should be avoided if possible" (Ibid., p. 9).

15. This general pattern existed until the middle of the 19th century, with police courts springing up in the busy commercial areas of Salem (1831 c. 70), Lowell (1833 c. 64), New Bedford (1834 c. 33), Taunton (1834 c. 97), Worcester (1848 c. 32, §24) and Lynn (1849 c. 86). Between 1850 and 1860, seventeen more police courts were created throughout the Commonwealth. In a tremendous burst, the town of Pittsfield (1850 c. 310), Springfield (1850 c. 58), Fall River (1852 c. 304), Roxbury (1854 c. 249), Milford

(1854 c. 6), Plymouth (1854 c. 312), Haverhill (1854 c. 34), Cambridge (1854 c. 335), Adams (1854 c. 277), Blackstone (1854 c. 72), Chelsea (1855 c. 26), Chicopee (1855 c. 463), Lawrence (1855 c. 270), Lee (1855 c. 312), Williamstown (1855 c. 82), Framingham (1857 c. 112), and Gloucester (1858 c. 136) established their own local police courts.

16. 1834 chap. 33.

17. While considered in the same generic category as the other police courts throughout the Commonwealth, the Boston police court had a consistently higher jurisdictional ceiling.

18. 1858 chap. 138; 1860 G.S. chap. 120.

19. 1858 chap. 45.

20. 1860 G.S. chap. 116. In criminal cases, they shared jurisdiction with both the higher court and the justices of the peace over those suits where the debt of damages involved was between twenty and one hundred dollars.

21. Adams, Boston, Cambridge, Chelsea, Chicopee, Fall River, Gloucester, Haverhill, Lawrence, Lee, Lowell, Lynn, Milford, New Bedford, Newburyport, Pittsfield, Roxbury, Salem, Springfield, Taunton, Williamstown, and Worcester.

22. For illustration, compare the early police court statutes with 1860 G.S. chap. 116 through 120.

23. Report of the Joint Special Committee of the Legislature of 1886, Appointed to Consider What Changes are Necessary in the Judicial System of the Commonwealth (Senate Document No. 10, December 1886), p. 1.

24. 1860 G.S. chap. 120.

25. Report of the Joint Special Legislative Committee (submitting House Bill 432, "An Act Establishing District Courts in the Several Counties of the Commonwealth," (May 1867), p. 2.

26. Ibid., pp. 2-3.

27. Report of the Commission to Inquire into the Expediency of Revising the Judicial System of the State, Senate Document No. 50 (December 1877), p. 7.

28. Ibid., p. 11.

29. Ibid.

30. Report of the Joint Committee (1886), pp. 6-10.

31. See Appendix A.

32. 1869 chap. 416.

33. 1870 chaps. 201-202.

34. See Appendix B.

35. 1902 R.L. chap. 161.

36. 1886 Senate Document No. 10, p. 9.

37. 1902 R.L. chap. 161.

38. Concurrent civil jurisdiction rose from $300 in 1870 to $1,000, then to $3,000 in 1922. See 1870 chap. 202, 1921 G.L. chap. 218, and 1922 chap. 532.

39. 1890 chap. 309; 1906 chap. 413; 1905 chap. 340; and 1886 Senate Document 10, p. 7.

40. Frank W. Grinnell, "The Development of the District Courts in Massachusetts," 18 *Mass. Law Quarterly* (August 1933), p. 32.

41. 1920 chap. 430.

42. 1922 chap. 532; see also Second Report of the Judicature Commission (January 1921), p. 33.

43. Ibid.

44. Second Report of the Judicature Commission, p. 1, reprinted in part in Grinnell, p. 33.