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When crimes should be prosecuted

A serious issue is raised by your leader (11 December 1979) on what you call the 'strange and hasty' decision of the police not to prosecute hooligans who attacked and seriously injured Mr Tommy Docherty. In its legislative processes, Parliament spends much time and trouble deciding which acts and omissions should be punishable as crimes, and what the maximum punishments should be. But it does nothing about the equally important question of when crimes should be prosecuted, and when not.

In the 1960s, the Commissioner of Police for the Metropolis adopted a policy of not prosecuting gaming clubs and (at the instance of Mr Raymond Blackburn) was rebuked for doing so by the Court of Appeal. Also in the 1960s, the Southend police adopted a policy of not prosecuting shoplifters and were rebuked for doing so in a House of Lords debate. After the Sexual Offences Act 1967 had decriminalised homosexual acts by adults in England and Wales the prosecuting authorities in Scotland adopted a similar policy, although the law there was unaltered. There continues to be criticism of this policy in Scotland. These examples illustrate the confusion that prevails.

Apart from general prosecution policy, there are many reasons why specific offences are not prosecuted. A prosecution may cause disproportionate harm by fomenting labour unrest, or add to the distress of a victim of crime, or harm an offender who is in poor health or of advanced years. It may be in the interests of justice to spare a criminal who is prepared to turn Queen's evidence, or would not otherwise travel from abroad to testify, or is to be exchanged for hostages. The prosecuting authority may consider an offence technical or obsolete, or for other reasons not worth prosecuting. He cannot in any case prosecute more than a small fraction of offences, because of limitations of manpower and other resources. I suggest the time has come for Parliament to work out detailed principles of enforcement policy and embody them in a Penal Enforcement Act. Obviously this must leave room for discretion, but prosecuting authorities would have the broad guidance they need to satisfy the public interest and produce fairness and consistency. I have made detailed recommendations to this end in evidence submitted to the Royal Commission on Criminal Procedure.¹

¹ *The Times* 29 December 1979.