Centre for Criminal Justice Studies, University of Leeds
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Criminal Courts in the 21st Century

Abstracts

Mode of Trial in an Age of Austerity

Steven Cammiss (University of Leicester)

Anxiety over the Crown Court's workload (and the cost of proceedings) is a recurrent feature of criminal justice policy. While the report of the James Committee (Home Office and Lord Chancellor's Office, 1975) could be regarded as the opening salvo in recent debates, the reality is that attempts to restrict the availability of jury trial have a much longer history. Since the James Committee recommended that defendants lose the right to elect jury trial in low value theft cases, directly or indirectly the right to elect Crown Court trial has been under attack. These reforms have consistently met political and public opposition; particularly those directly addressing the defendant's right to elect jury trial.

Given the Coalition Government's austerity programme, supposedly aimed at deficit reduction, it is no surprise that reform of mode of trial remains on the political agenda. However, the proposals in the white paper *Swift and Sure Justice* (Ministry of Justice, 2012) bear all the hallmarks of a political compromise and appear unworkable. The defendant's right to elect has, on the face of it, remained untouched; yet indirect measures have been taken to deny jury trial to defendants.

References:

Home Office and Lord Chancellor's Office (1975) *The Distribution of Criminal Business Between the Crown Court and Magistrates' Courts, Report of the Interdepartmental Committee.* Cmnd. 6323. London: HMSO.

Ministry of Justice (2012) *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System*. London: Ministry of Justice.

A Dangerous Decade? Risk, Rights and the Sentencing of Violent and Sexual Offenders

Gavin Dingwall, De Montfort University, Leicester

Ten years ago a new statutory framework was introduced to sentence 'dangerous' offenders. The provisions contained in the Criminal Justice Act 2003 placed significant restrictions on how sentencers could determine risk and on the options available once 'risk' had been found. Thousands of those convicted of moderately serious violent or sexual offences received indeterminate sentences as a result, placing enormous strain on the prison system and the Parole Board. It also became evident that individual injustice was commonplace. A considerable literature exists

about the background to this framework but this paper concentrates on its amendment and abolition which allowed for the incremental restoration of judicial discretion over the past decade. Three possible drivers will be discussed: (1) Necessity (2) Changing political priorities (3) A possible recognition that incapacitative sentences need to be better targeted.

Magistrates' Courts, Neighbourhood Justice Panels and Out of Court Disposals: Consequences for Defendants' Rights and Summary Justice

Jane Donoghue (University of Sussex)

The substantial increase in the use of out of court disposals has been criticised for eroding due process and procedural safeguards and for undermining the court of first response. In addition, the recent creation of neighbourhood justice panels has been viewed as a further tier of summary justice which impacts upon the lower courts' legitimacy. It has been suggested that neighbourhood justice panels should be linked directly to the magistrates' courts system or to police out of court disposals. This paper reports findings that suggest that there is however, very significant resistance to this from some parts of the magistracy. This tension goes to the heart of broader questions about the changing nature of magistrates' competencies, the role of the lay magistracy, and how this impacts upon the delivery of justice.

Special Measures, Special Influence? Exploring the Impact of Screens, Live Links and Video-Recorded Evidence on Mock Juror Deliberation in Rape Trials

Louise Ellison (University of Leeds) and Vanessa Munro (University of Nottingham)

The criminal justice system in England and Wales has progressively moved towards greater use of screens, live links and video-recorded police statements by adult complainants in rape cases. These special measures are designed to ease the difficulties experienced by vulnerable witnesses in giving trial testimony but critics have worried about their impact on juror decision-making. It has been suggested that their use may prejudice the defence or imbue the complainant's testimony with an undeserved level of credibility. Conversely, others have worried that the absence of the complainant from the courtroom, and the mediating effect of the TV link, may create a distance between her and the jury that will make it less likely that her account will incite sympathy and / or be believed.

In this paper, we present the findings of the first dedicated study in England and Wales exploring the influence of special measures on juror decision-making in cases involving adult rape complainants. 160 volunteer members of the public were recruited and, having observed one of four mini rape trial reconstructions, across which the mode of evidence delivery was varied ((1) no special measures; (2) testimony in court but behind an opaque screen; (3) live testimony provided remotely via a TV link; or (4) pre-recorded police interview as evidence-in-chief followed by live cross-examination remotely via a TV link), were asked to deliberate within jury groups towards a verdict. We will outline the key themes that dominated participants'

discussions and explore the ways, if any, in which the use of special measures by the complainant influenced their approaches and conclusions.

Globalisation, Migration and Bail: a challenge for justice in the 21st Century

Anthea Hucklesby (University of Leeds)

The number of foreign national pre-trial detainees in England and Wales and elsewhere in Europe is significant and increasing. The paper suggests that the treatment of foreign nationals in the remand process is a crisis in the making, raising considerable challenges to justice in the 21st Century. The paper examines available statistics to demonstrate the extent of the problem across Europe before focussing on England and Wales as a case study. It examines how bail law and practice provide considerable structural impediments to the right to bail for this group of defendants and how measures currently used to reduce prison remand populations are largely ineffective in their current form.

What do guidelines do? An analysis of the definitive guidelines issued by the Sentencing Council for England and Wales

Neil Hutton (Centre for Law Justice and Society, Strathclyde University)

Sentencing Guidelines have been seen as serving a range of purposes, including bringing law into sentencing, making sentencing practice more consistent, limiting judicial discretion and promoting public confidence in the sentencing of the courts. This paper argues that the main function of sentencing guidelines is to provide a formal and public account of how just sentencing decisions are produced. Guidelines articulate a definition of consistency which is necessarily absent from the individualised approach to sentencing. Any impact on sentencing practice will depend on the detailed design of the guidelines, the breadth of the sentencing ranges, the rules governing departure, the approach taken by the Court of Appeal, whether the guidelines are presumptive or voluntary etc. In practice guidelines may have very modest impact on judicial sentencing practice and should certainly not be understood as an empirically accurate account of judicial decision making.

From suspect to trial: legal protections and police station legal advice

Vicky Kemp (University of Nottingham)

It is a truism that trials commence in the police station because what is said by suspects during the police interview can later influence whether cases are either won or lost in court. Within an adversarial system of justice there are due process safeguards intended to protect the legal rights of those held in custody, including access to free and independent legal advice. From recent studies of police custody, explored in this presentation is the increasing dominance of managerial influences and how these can undermine the legal protections of those detained by the police, and also on the quality of legal-making within the pre-charge process. This includes examining the potential effect of performance targets on relations between the police, the defence and the CPS, as well as on police interrogations and charging decisions. It also includes consideration of how fixed fees, paid for police station legal advice, can have an adverse impact on the quality of such advice. Finally, analysis of a sample of Crown Court cases helps to highlight how poor legal

decisions made in the police station can have a detrimental effect on cases dealt with later on in court.

What are criminal courts for?

Nicky Padfield (University of Cambridge)

This paper will ask some fundamental questions about the role of the criminal courts. It will compare the trials of those arrested for involvement in the riots in London and elsewhere in the summer of 2011 with the trials for rioting which took place in Ely and Littleport in 1816. The paper explores why public justice is important, but also considers other essential ingredients of a "fair trial".

Sentencing Cultures, Consistency and Individualised Justice in Ireland: Embracing Consistency an Aspect of a Just Sentence

Niamh Maguire (Waterford Institute of Technology, Ireland)

It is often claimed that inconsistency in sentencing is widespread in Ireland due to the failure of successive governments to adopt a coherent sentencing policy. Whilst a certain amount of inconsistency is an evitable feature of an individualised system of sentencing, the implicit assumption of such claims is that once a more coherent sentencing framework is adopted inconsistency in sentencing will disappear or at least be considerably reduced. Absent in the debate is any understanding of the role that judicial variability and judicial sentencing cultures play in the production of consistency and inconsistency in sentencing. Drawing on findings from an empirical study on sentencing in Ireland, this paper suggests that while judicial variability interacts with incoherent sentencing frameworks to produce high levels of inconsistency, judicial culture can mitigate this to some extent, especially if consistency is embraced as a goal of a just sentence.

Living with national security disputes in court processes

Clive Walker (University of Leeds)

The 'Closed Material Procedure' embedded in Part II of the Justice and Security Act 2013 has produced prolonged and intense debates. The measure highlights the continuing process of the juridification of security disputes, reflecting both the growing importance and frequency of disputes about security and the unacceptability of categorical exclusion of those disputes from judicial scrutiny (whether by claims to royal prerogatives or to state secrets doctrine). The paper will explain the reason for the acute and ongoing problems presented by national security disputes and will consider the potential accommodations which could be made (not only Closed Material Procedure but also special advocates, judicial activism, and various forms of vetting and redacting) within a framework of justice and respect for rights. The paper will also contemplate the ways in which these debates have already affected, and might further affect in the future, the criminal courts.

Bridging the gaps between judicial review, administrative guidance, and low visibility decision-making in the courts: a case-study of academic impact

Richard Young (University of Bristol)

This paper reflects on the lessons that might be drawn from a twenty-year academic engagement with a single issue: the criteria governing the grant of criminal legal aid in the magistrates' courts. Research projects conducted in 1992 and 2006 (funded by legal services agencies) confirmed that there were significant gaps between the pronouncements of the higher courts concerning the interpretation of these 'Widgery criteria', the guidance issued by state agencies to front-line decision-makers, and the actual decision-making norms of magistrates' court clerks and their administrative staff. An attempt to narrow these gaps through a proposed re-design of the legal aid application form ended in failure, and academic impact appeared to be zero. A subsequent 'out-of-the-blue' invitation from the Legal Services Commission and Her Majesty's Court Service to participate in redrafting the official guidance offered a further opportunity to influence policy and practice. In the event, however, no new guidance was actually issued, and academic impact was thought, once again, to be nil. Then, after four years of silence, a series of enquiries (prompted by the looming REF deadline!) either coincided with, or caused, publication of the new guidance. This closed the gap between judicial review norms and the official guidance but it will require yet further research to assess whether this has served to narrow the gap between those norms and actual decision-making by court staff. The case-study nonetheless illustrates that even during a time of continuing encroachments on defendants' rights it may be possible to achieve progressive reforms through academic research, but that long-term engagement with policy-makers may be required to exploit such serendipitous opportunities as may arise.