Whither Local Justice?

John Raine reviews the transformation of the magistrates' courts.

In the past two decades the magistrates of England and Wales have been undergoing a relentless transformation and modernisation process. Some twenty years ago the magistrates' courts still operated much as they had done some twenty years and more before. But the managerial reforms of the 1980s and 1990s, and more recently the 'modernisation' reforms of the current government, have consigned the quaint quill-pen image of local justice to the past and left us with a new framework for the dispensation of lower court justice and for its associated administration. This following the closure of most of the smaller courthouses, the establishment of justices' chief executives, amalgamation of magistrates' courts committees to create co-terminosity with police areas, the appointment of more stipendiary magistrates, increased delegation of judicial administrative powers to clerks, and much more besides (Raine, 2000).

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Modernisation and Magistrates' Courts

All this modernisation has undoubtedly produced many benefits for the magistrates' courts and has ensured that they have changed with the times, which is important given that public confidence depends on their being seen to meet contemporary expectations. But undoubtedly much has been lost along the way in terms of what this particular institution - the magistrates' court - has traditionally represented.

What has happened in this short period of just twenty years or so in the name of efficiency and effectiveness has been more than simply a change in the organisational structure of magistrates' courts. It has arguably also amounted to a change in the nature of the justice being dispensed. In this respect a three-stage transformation of magistrates' courts has taken place; from their traditional 'local justice' roots (understood in terms of local magistrates - lay members of the community - dealing with the cases arising in their own local areas) through a rationalised form of 'lay justice' (in which the tradition of lay magistrates has been maintained, but with justices working on larger divisional areas and with courts now sitting in the main towns only) to 'lower court justice' (where professional stipendiary magistrates are now playing an increasingly significant part, by working in parallel with their lay counterparts).

These successive transformations have undoubtedly narrowed the distinction between the Crown Court and the magistrates' courts (the higher and lower courts). Indeed, it would be no surprise if the next focus of efficiency-driven reforms involves initiatives to bring the two tiers together under one set of city-centre courthouse roofs, creating all the advantages of the 'one-stop-shop' but in the process further blurring the distinctions between higher and lower court justice.

Most at stake is the lay magistracy, the future of which has long been a subject of debate and speculation, but which is now under pressure as never before. Increasingly the institution is viewed as the last remaining symbol of the unmodernised court and as the key obstacle to further reform. Is this fair? Is the lay magistracy an anachronism? Or does it still represent something important in terms of the nature of justice dispensed and as the best form of democracy within the judicial branch?

The future of the lay system

Despite repeated assurances from successive Lord Chancellors that the lay magistracy is highly valued and is to remain a cornerstone of the justice system a crisis seems to be looming. And it is not simply the result of government's desire to appoint more stipendiary magistrates (or the recent announcement that liquor licensing responsibilities are to be transferred away from magistrates' courts). Recruitment of sufficient new lay members has being growing more difficult in many areas for some time, and has been aggravated by the increased time demands of training and the closure of many local courthouses (which has meant people having to sit outside their local areas, which is generally less appealing). The real problem is that service on the bench today has become less and less of an option for most people. Those with careers risk damaging their promotion prospects if they are to be away from work for a day a fortnight or more for court duties. Many of the larger public service employers, which had been traditionally supportive of public service on the bench, are now privatised. Their staffs are working under more pressure and boards are generally less enthusiastic. Those who are unemployed fear judicial appointment would jeopardise their chances of obtaining a job. No doubt such circumstances underlay the recent decision of the Lord Chancellor to raise the maximum age for appointment to allow recruitment of the cadre of those

taking early retirement. But this, of course, only aggravates attainment of that other objective underpinning magisterial recruitment - ensuring a socially balanced bench.

It is also significant that an increasing number of magistrates' clerks - traditionally the most loyal servants of the lay magistracy - have come to express their doubts (if not scepticism) about the value of the lay system. As well as seeking the appointment of more stipendiary magistrates, particularly to handle longer and more complex cases, they have also been fairly successful themselves in seeking from the Home Office more of the powers to act as single justices. This has been unpopular in the Magistrates' Association but the fact is that today court clerks routinely conduct a number of important pre-trial proceedings and determine many matters that in the past were widely regarded as the responsibility of magistrates.

For the moment, the lay magistracy continues to fulfil a very significant function in criminal justice and still deals with the vast majority of criminal cases, and many family and other matters besides. But a further potential problem ahead lies in the growing recognition that, even though the system is based on unpaid volunteers, it is far from cheap. It is possibly no cheaper than a professionalised judiciary, when account is taken of the costs of training, the fact that three lay magistrates are required for each courtroom, the costs of providing a legally-qualified clerk to advise each panel, the slower pace at which they tend to work, and the less quantifiable, but nevertheless not insignificant other infrastructure of support that is required simply because they are volunteers.

Two reports expected later this year may have a significant bearing on the future of the lay magistracy. First is the report of a research project commissioned by the Home Office and Lord Chancellor's Department on the relative cost-effectiveness of lay and stipendiary magistrates which could well dispel a few myths about the economy of a system based on volunteers. Second is the report of the Auld Review of Criminal Justice, due later this year, which is also expected to have something significant to say about the lay or stipendiary magistrate question.

Outright abolition of the lay system seems unlikely. But continuation of the marginalisation trend seems probable. One scenario is that the jurisdiction of lay magistrates will in future be confined to the most petty and straightforward categories of case, leaving more of the caseload for professional magistrates. Another is that they will be assigned the role of 'wingers' in court (sitting to the left and right of a presiding professional lower court judge). This, critics argue, is what the newly enacted Human Rights Act will ultimately require (i.e. a professionally-qualified chair person being regarded as a pre-condition to a fair trial). But is this what is best? Or is it simply what is happening by default? The danger is that, without fuller debate soon, we risk witnessing this institution steadily and irretrievably withering. And there is a certain irony in the fact that this seems to be happening at a time when, in other public policy settings, there is more talk than ever before about democratic renewal, participation and active citizenship. In the haste to modernise, might we be at risk of 'throwing the baby out with the bath-water'?

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Reference

Raine J W (2000) *Modernising Courts or Courting Modernisation?* Inaugural Lecture, University of Birmingham.