

A Light on the Lay Magistracy

Trevor Grove illuminates the role of the 30,000 volunteers who preside in magistrates' courts.

There is a unique aspect of the criminal justice system of England and Wales which astounds foreigners and usually comes as a surprise even to our own citizens. This is the key part played by ordinary members of the public in the everyday application of the law, a role which is not confined to jury trials. Everyone knows about juries. Even in jurisdictions where judges or tribunals preside alone, the jury system is admired and often envied.

For nearly eight hundred years the British have sustained the principle that defendants should not be deprived of their liberty (or, until not so long ago, their lives) except with the consent of their peers. What is not so well-known is that only about one per cent of criminal cases in this country culminate in trial by jury (many crown court proceedings, after all, begin and end with a guilty plea). The great bulk of all the rest, over 95 per cent, are dealt with in magistrates' courts.

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Here, too, however, the principle of lay justice prevails – to an extent no other country in the world can or would dare match.

Briefly, the facts are these. There are around 30,000 lay magistrates, more grandly known as Justices of the Peace. They generally sit in threes, usually for half a day a week, and are guided in matters of law by a legal adviser (formerly clerk), who is a qualified lawyer. These JPs hear charges, decide whether defendants are to be remanded on bail or in custody, hold trials and sentence the convicted. They preside in those most delicate of tribunals, the youth and family courts. They consign the gravest matters, such as murder, rape and robbery, to the crown courts for trial by jury. But almost everything else, from drink-driving and shoplifting to sexual harassment and assault, they deal with themselves, acting as both adjudicators and sentencers.

At present, the maximum punishment they can impose is six months in custody. But that is likely to be increased if the recent White Paper's recommendations are implemented, which will mean even more, and more serious, cases staying in the hands of magistrates. These people are all volunteers, drawn from local communities. They have no legal qualification, and are not paid a penny for what they do other than modest allowances. In areas with heavy

case-loads, they are helped out by full-time professionals, sitting alone. These are the district judges, previously known as stipendiary magistrates.

However, there are only some 95 of them scattered across the whole country, which leaves the overwhelming majority of all criminal matters in the hands of Tom, Dick and Harriet, JP.

This is pretty astounding, when you come to think of it. We live in an age of specialisation. Yet here we are relying on amateurs, whether jurymen or justices, to take some of the most important decisions facing any civilised society – decisions that deeply affect the lives of victims as well as offenders, and which can have a profound impact on the whole community. There are those who will think this perverse. But as someone who has twice done jury service and is now a magistrate, I reckon the roots of democracy are a good deal healthier and more tenacious in our criminal courts, where

we don't usually think to look for them, than in many other national institutions, where control is increasingly exercised from the centre outwards and from top down.

This being so, it is regrettable that so much less is known about the magistracy than about the jury system. It is a clear instance of high public participation being undervalued as a result of low public perception. Though Justices of the Peace have been around for as long as juries, they are not a popular part of our civic tradition. There will never be a play or a film called *Three Angry Men*. The public image of magistrates, such as it is, owes less to reality than to comic fictional characters such as Dickens's Mr. Nupkins in *The Pickwick Papers* and P. G. Wodehouse's Sir Gregory Parsloe-Parsloe.

In more recent times, the media never seem able to make up their minds about JPs. One day they are tweedy little Hitlers and county ladies in hats unbendingly dishing out the law. The next they are soft-headed liberals incapable of responding adequately to the righteous anger of the people.

Lately, magistrates have been accused of both remanding too few young muggers in custody and of sending too many people to jail. They are too soft. They are too hard. In fact, they are merely doing their best to follow government-approved guidelines, which demand no quarter for so-called

'bail bandits' on the one hand, yet on the other want to see a reduction in the prison population.

So who are these magistrates, the 30,000 men and women willing to make such fine judgements for no reward and scant public acknowledgement? Once upon a time being a JP carried a certain social cachet and had what H. G. Wells called 'the aura of a minor knighthood'. No longer. People apply to become magistrates for a variety of reasons, but seldom vanity. 'It is an important job, which someone has to do,' they tend to say. Some respond to an advertisement in the press or on local radio.

Many are former jurors, like myself, inspired by their experience to make a more regular contribution to lay justice. It used to be the case that employers and trade unions routinely put up candidates, but that is less true today when notions of civic duty are not so ingrained and the pressures of work are more demanding. Even so, the bench as a whole is a great deal more representative of the community at large than it once was.

Successive Lord Chancellors, notably the present one, have striven to democratise and de-gentrify the magistracy. Today, the ranks of JPs include people from almost every kind of background, occupation and ethnic minority, while the gender divide is close to fifty-fifty – which is a great deal more than can be said of the nation's judges. The selection process is pretty rigorous. Local boards known as advisory committees conduct the interviews. They turn down about three-quarters of those who apply, sometimes because they are unsuitable, more often, perhaps, in the interests of obtaining a socially balanced bench. Those who are chosen must undergo a certain amount of basic training, which will be regularly topped up throughout their magisterial careers. But the aim is very far from turning them into professionals. Magistrates who sit too often are as frowned upon as those who sit too seldom. The idea is to prevent them becoming case-hardened, a condition which might tell against innocent defendants. In fact the average work-load is just over forty half-day sittings a year.

In writing a book about the magistracy based on my own experiences in north London and visits to other parts of the country, I have come to the view that the system works pretty well. JPs strike me on the whole as conscientious, thoughtful folk, whose fair-mindedness may be judged from the fact that only a very small proportion of their decisions, around 4 per cent, are taken to appeal. They are also cheap. In 1999, the expense of 30,000 magistrates was just two-thirds the cost of fewer than a hundred district judges. True, a bench of three laymen is more cumbersome than one consisting of a single professional judge. And critics have a point when they claim that despite the national guidelines, there are sometimes worrying variations in sentencing between different parts of the country.

Nevertheless, in my opinion such imperfections are easily outweighed by the merit of involving ordinary, independent-minded people at the very heart of the judicial process. As Lord Bingham, the Senior Law Lord, put it, the lay magistracy is 'a democratic jewel beyond price'. What it needs is polishing up, so that society can see itself reflected there with greater confidence and clarity.

Trevor Grove's new book, 'The Magistrate's Tale', is published by Bloomsbury (£14.99), as is his earlier 'The Jurymen's Tale' (£7.99)

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even though they are like nasty people, I would still like to try and help them as much as possible...so that he would like become more better and then when he's done that, he might learn a lesson and then he might erm, that person might start to become like us and try and help other people.

Sally struggles valiantly to articulate a difficult thought about what it would be to deal with an offender with whom you had, or might develop, a relationship. Her conclusion could hardly be more different from those occasions when the conversation becomes dominated by the thrill of violent rejection.

Lessons

In a short paper, using only a couple of examples, we can merely scratch the surface of what is a rich, varied and contradictory body of material. The polarities evident in the children's talk, we suggest, are indicative of some endemic tensions in the realm of punishment and its uses in political culture. Considering these through the prism of conversation helps us to observe them close-up and in the process of formation. The abiding tension between rejection and reconciliation sits deep within our language and the 'vocabularies of penal motive' (Melossi, 1993) that it contains. The discourse of rejection is 'marked' by signals of distancing, generalising and anonymising. The will towards reconciliation, conversely, uses markers of affiliation and identification. The tension recalls one suggested long ago by David Hume and taken up more recently by the feminist philosopher Annette Baier (1994) between justice as "a cold, jealous virtue" and sympathy as the capacity of one's psyche to "reverberate to another's fate".

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