

Community rights and rebalancing the system

David Blunkett advises on the way forward for criminal justice.

To say that the Criminal Justice System was the bane of my life when I was Home Secretary would be the understatement of the year! As can be seen from recent events, the interplay of the different elements of the system creates a dynamic which will always have friction – the question is whether that dynamic is constructive or destructive.

But please lay aside immediately the notion that separating out Home Office functions and joining them with those of the Lord Chancellor and Attorney General – into a department of justice and a department of ‘the interior’ would make things better. It would not.

In those parts of Europe where there are the two ministries, there is constant friction, disconnect and contradiction.

The issue is not one of structure – very different and sensible co-ordination – but of deciding what it is we want from the system and how we deliver it.

No minister or ministry under our separation of powers has directive over the judiciary. Nor in terms of carrying out their judicial function should they. However, their non-judicial functions include effectively overseeing the management of the service – and judges are not trained or equipped to do that. Therefore scheduling cases and overseeing ‘cracked’ or cancelled cases is not a function for those whose experience and professional expertise is in judgement and sentencing.

Equally – and I do hope that the Sentencing Guidelines Council we established back in 2004 will help with this – there must be a new understanding of the role of a democratically elected Parliament in determining the type and range of sentences, and the judiciary’s role of passing sentences within that framework.

For instance, the decision that I took to press Parliament to agree that ‘life means life’ for the most horrendous crimes, sprang from a political imperative to win the confidence of the British people and to have a justice system which people could understand and respect. In simple terms, when we abolished the death penalty, quite rightly, we expected that for the most heinous crimes life would literally mean life in prison. It soon stopped meaning that, and Parliament’s intention had to be to put that right – although even now steps are being taken to erode the will of the democratically elected assembly of the country.

Our intention was that by doing this we could

have a sensible debate and deliver effective common-sense sentences for lesser crimes. Improved and more rigorous community sentences would reduce prison sentences for relatively small offences. An increase in the number and length of the smaller sentences are filling our prisons in circumstances where rehabilitation and training is limited and where the massively improved education system has little chance of succeeding with high turnover and what might be described as musical cells. This entails the constant moving of prisoners around the country necessitated by the pressure on the prison estate.

There are two major issues to be addressed if we are going to get a criminal justice system worthy of the 21st century – rather than the throwback to a bygone era which both our system and our prison service reflect. In fact, when we were debating the *Criminal Justice and Sentencing Act* in 2003, constant references were made as though we were living in medieval England. There was great worry about maintaining the rights of those accused of criminality despite the many safeguards put in place in recent years, and a real worry about using modern forensic science – a suspicion of new detection and identification methodology, such as DNA.

Firstly, we need to examine whether our adversarial ‘technical knock out system’, really does serve us well. I don’t mean that we should abandon our history and simply adopt Roman law as practiced across Europe, lock stock and barrel. I don’t believe that, nor am I advocating it. However, anyone who has had anything to do with the system and is honest about it knows that this is not, in England and Wales, a search for the truth. It is a system where a defence lawyer uses every ploy in the book, every trick of requesting every piece of meaningless material from the police, every opportunity to score a technical point and pull to pieces the *process*, not the evidence, in order to get the miscreant off. And our ‘Crown’ Prosecution Service has until very recently been equivocal as to whether it is a neutral force for justice or a representative force on behalf of the beleaguered community. It is this community – ‘the public’ – whose interests have often been seen as secondary to the ‘rights’ of the individual. So when the Prime Minister talks about ‘rebalancing’ the system, he has my wholehearted support. Not in terms of reducing the rights of a defendant to a fair trial but increasing the rights of the community to a fair outcome!

Secondly, we should examine the whole issue of how



we engage the community with 'justice' given that that's what we are seeking. Those who advocate a 'ministry of justice' are often on the side not of 'justice' but of an enhancement of the rights of the individual against the obligations of the state. The obligation to protect the people, to ensure that truth wins through, and ensuring that sentimentality about criminality takes second place to just convictions, fair sentences and, of course, restorative and rehabilitative justice.

But to get this, you do need to have an understanding in the community of what it is all about and to engage them in being part of the solution. That is what the embryo experiments in Liverpool with the concept of Community Justice Centres are attempting to do.

What united the then Lord Chief Justice (Harry Woolf), the Lord Chancellor and myself, was a total commitment to seeing the experiment at Redhook in New York translated into our own justice system here.

For those interested, please access the web site (<http://www.courtinnovation.org/index.cfm?fuseaction=Page.viewPage&pageID=572>) to find the details of a first class example of how liberal thinking can be carried through to rigorous and workable tough love. A system where the judge (and I sat alongside the judge as he dealt with cases) can provide a judgement which is right for the individual and their future, and right for the community.

But it involves the defence being committed to the wellbeing of their client, not simply to getting them 'off'. Getting them into meaningful rehabilitation and treatment. It involves the prosecution not necessarily seeing the best outcome as a prison sentence or even a formal guilty verdict.

Instead, it involves an acceptance by all concerned, including the miscreant, that they will agree to a programme laid down in court, that this will be monitored and that they will repeatedly appear before the judge to explain – as will the equivalent of the probation or youth justice system – how things are going and what's gone wrong. The community will be involved as the judge will report monthly to the local community on sentences, on his or her judgement, and will engage the community in agreeing to be part of the process.

Above all, it involves us, as representatives of the people, being prepared to make an entirely different assessment of beneficial outcome. Instead of counting only convictions as 'hits' which show whether the process is successful, I believe it is successful outcomes in terms of non-reoffending which must be the 'judge and jury' of our system.

Of course, for more serious cases there has to be a different process and everyone accepts that. Repeat offenders who have gone through the system and failed are dealt with in a different way in order to protect the community – the prime concern of any criminal justice system. But in protecting the community we need an entirely different and more meaningful approach. God willing, if we can stop the knock-about, kick-about process of 'pass the blame' we might just replicate in our most difficult urban areas what has been achieved in one of New York's historically most difficult and notorious neighbourhoods.

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