



A PASSION FOR JUSTICE

Helena Kennedy QC talks to David Kidd-Hewitt

On the judiciary....

On the whole our judges are very good. They are certainly not corrupt. I actually think that our judges are probably far better than judges in most other places, and I also think they could be better. Advocates do not always make the best judges. I am for opening up the pool from which the judges are drawn. I think many more solicitors should be going onto the bench, and I also think we should be looking at academia as well. The appointment system for judges is still not open enough.

What about the current debate about the role of the judiciary?

What we are seeing in the current debate that's going on about the judiciary and the role of the judiciary vis a vis Parliament - to what extent are they interfering in areas that they shouldn't be interfering in, or to what extent are they actually protecting the citizen against over-powerful representatives of the State? - is a very important and interesting debate for the law. We've suddenly realised that a discourse about rights is actually at the heart of law now.

Might this mean giving the judges too much power?

Sometimes you need to have someone who will adjudicate on issues where citizen's rights are being trampled underfoot. I think our current Home Secretary has been very cavalier with people's rights, and actually very dismissive about the courts and about judges, in a number of areas. It has become clear that we actually do need to have a written Bill of Rights, tailored to British needs, so we could deal with issues here instead of going to the European Court of Human Rights.

On juries....

Juries in my view are the great salvation of the system. Actually bringing in members of the public to bring their experience to bear is a very good way of making sure the law keeps in step with public thinking. What's interesting now is that, after the big miscarriages of justice, a clear decision was made by the senior judiciary that whenever there are question marks about whether a conviction was right or not, almost invariably they will send it back for a re-trial. Basically the judges are saying, all right, let the public decide.

On televising court proceedings....

I started off with the view that anything that informed the public more about the

courts would be a valuable thing. I have changed my mind. They had an experiment in Scotland last year where the BBC went and filmed a number of trials. I did a piece for one of the broadsheets and I interviewed the lawyers and others involved and I saw the trials being filmed and I became seriously alarmed for a number of reasons. One was that it is so distorting. Unless you have 'gavel to gavel' coverage, and you see everything as you would if you were in the public gallery, it has to be edited. And once you have an editing process it absolutely and fundamentally changes the business. If a witness is cross examined about their criminal convictions do you put that out? And is it fair? You may get more and more people saying "I am not going to give evidence. I was in trouble with the police years ago and I have put it behind me and my wife doesn't know." The impact on justice is going to be quite considerable.

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The other thing is that members of the public will start saying "how did the members of the jury reach that verdict? I watched it on the telly and the evidence was clear. They should be finding that defendant guilty". But what, of course, you didn't see was a whole lot of evidence that was actually highly significant to the verdict ... Once you turn it into a media event then I think that justice is at risk. I'm dead agin it. I really feel terribly passionately about not doing it.

On access to the legal profession....

I think it is very tough now for young lawyers, and I sometimes think, golly, would I have been able to do it today? The truth is that it is actually worst in terms of class, although I think that women are still disadvantaged in certain areas, and the hurdles are particularly tough when they start having children...

Is the criminal justice system sensitive to the reality of women's lives?

I would still say no - not sufficiently. I think it is still largely to do with a failure really to appreciate the considerations that apply foremost for women, and it's often about their children. I still feel very strongly that courts should have reports about the impact on children if they send a parent, a primary carer, to prison. There's an issue of children's rights here. A significant part of the female prison population are women who have not paid their television licences and then have not paid the fine. At any one time something like 25% of the female prison population



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are in prison for this offence - just for a week, but costing far more money than the actual licensing would. They are usually women on their own with kids, and the television is basically a life line. The magistrates don't want to have to do it. It's an absolute nonsense. If we were really talking about imprisoning people (only) for offences of violence we would virtually empty the women's prisons overnight.

If you could change just one feature of the criminal justice process, what would it be?

I would want to re-introduce the idea that imprisonment should be avoided at all costs, save for offences of violence. It was so exciting to see the move towards that in the Criminal Justice Act (1991) and then it was abandoned. Now it is about playing to the most punitive primitive feelings of the general public.

Any of us who have ever had any real dealings with the criminal justice system know that sending people to prison does not work. It really doesn't and it's a lie to say that it does. There are certain people who have to be taken out of circulation and we all know who they are, but the majority of people who end up in prisons are not like that.

It's all about disadvantage. It's all about poverty. It's all about sections of society that have so little. And the divide is becoming greater all the time. Those who have are becoming more clinging, because of their fear of losing it.

I am very angry at what's happening in the Home Office just now. I think that the shift that's taking place, whereby both political parties are speaking the language of punishment without thinking through the price we will pay, as a society, for what's happening, is very alarming.

Helena Kennedy QC is a practising barrister and author of 'Eve was Framed' (1992).