Simon Reevell
John Howson
Stanley Brodie

Magistrates Work!

Restoring Local Justice

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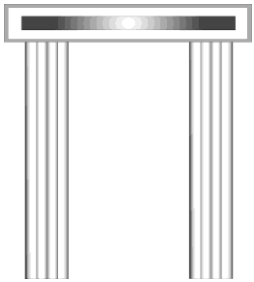

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Introduction
David Howarth

The criminal justice system faces a number of strategic questions about how it should operate. In particular, how far should it strive for uniformity as opposed to being responsive to the differences between individual cases? How far should it draw its legitimacy from professional expertise as opposed to from popular participation? And how far should it look for economies of scale at the expense of local accessibility?

Such questions are relevant for other policy areas; e.g. in health and education, debate continues about the right direction for policy. In health policy, the trends towards personalisation and patient self-management challenge older assumptions about the advantage of uniformity and expert dominance; meanwhile, controversy continues to rage about the relative merits of centralising or decentralising services. In criminal justice policy, however, and in particular policy towards the arrangements for the courts, all recent governments have shared the same approach, of favouring uniformity, professional expertise and economies of scale, an approach that has gone largely unnoticed.

No serious public debate has taken place nor any challenge been made to the easy technocratic assumptions that are driving change. The crisis of local justice, however, as a result of the closure of many magistrates' courts and the increasing use of professional district judges in the place of lay magistrates, provides an opportunity to question these strategic choices. It is time for a debate.

The role of the lay magistracy is central to the debate needed on the future direction of justice policy. The lay magistracy as an institution provides an opportunity for policy to have it both ways on all three questions.

On uniformity as opposed to flexibility, magistrates can bring individual judgment to bear, including knowledge about local circumstances, but at the same time can build up considerable experience of different cases so that they are able to apply the central maxim of fairness under law that like cases should be treated alike. One-off juries or infrequently convened community panels can have their place, but without seeing a flow of cases over an extended period of time and without a commitment to undergo the considerable training that magistrates must complete, there is little chance of that maxim being satisfied. At the same time magistrates provide a lay, participatory element in the criminal justice system, one that professional district judges cannot possibly supply, but without introducing untutored amateurishness or procedural laxity. And on economies of scale as opposed to accessibility, because a lay magistracy cannot work if lay magistrates are expected to put in 100 mile round trips to their courts, maintaining the institution of the magistracy would serve the sensible aim of limiting the degree to which the court system is centralised. If magistrates

cannot reach their courts, how can one expect defendants, victims and witnesses to reach them?

And yet, as these essays illustrate, the lay magistracy, though now little appreciated in government and the benefits little understood, could be restored, along with the special advantages it brings to the criminal justice system.

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I
A Free Society under the Rule of Law
Simon Reevell

The Magistrates' Courts – Cuts, Consolidation and Consequences

Every day the busiest criminal courts in England and Wales offer little, if anything, by way of deterrence to those who are likely to commit the vast majority of offences. The reasons for this are that they are geographically remote and what occurs within the precincts of those courts attracts little, if anything, by way of media coverage. Although they are busy, few people know the detail of their workload, let alone the detail of the vast majority of their caseload. These courts are the magistrates' courts. They deal with something in the region of 95 per cent of criminal cases. The oft-cited overall conviction rate of 98 per cent during the last three years certainly looks impressive but it is worth remembering that it relies on the guilty pleas that are forthcoming from the cases brought here, and as new offences such as the recent knife carrying legislation tend to be restricted to the magistrates' jurisdiction the potential importance of these courts increases (only a cynic would suggest to avoid the cost of trial by jury!)

Unfortunately, over the last twenty years successive governments have also pursued a policy of closure and centralisation of these courts. Although there has been an accompanying pretence that the courts that remain open provide 'local justice', that assertion is based on a definition of local that means no more than 'less far away' and which would be risible in the context of shops, schools, pubs and post offices.

Not very long ago, those who lived in the local community and broke the law within that community were brought before a court that was truly local. Those sitting to dispense justice had local knowledge, not just of the prevalence of offences, but also an understanding of the prevailing social conditions within their area. The court appearance was known about within the community whether or not it featured in the local paper, and most often it did.

The demise of the local newspaper (circulation of more than 450,000 in 2000 was down to less than 200,000 last year) is attributable to the rise of the internet and the onset of electronic media. The lack of court coverage in the printed and electronic editions reflects the demise of the magistrates' court. Two examples illustrate this point.

Imagine someone who lives in Wensleydale in rural North Yorkshire or any of the hundreds of similar rural areas in England and Wales. Should he find himself accused of a criminal offence he will appear before the magistrates in Northallerton. Or at least he will try. The first bus leaves at 9.45am and doesn't arrive until just short of midday meaning that even a 'not before 12' marking wouldn't help and the case would have to

be marked 'not before 2'. It would also have to finish in time for the 3.35pm bus, otherwise it's an overnight stay in Bedale! Perhaps the inconvenience of the accused should not attract too much sympathy or perhaps we should remember the presumption of innocence. We really should remember that no one will hear anything about the case, no lessons to be learned, there will be no deterrent effect and, even if the court comprises a lay bench rather than the increasingly common District Judge, no really local expertise to know if the offence is prevalent within the community that sits 35 miles to the west.

The picture is the same in urban West Yorkshire. Whilst the enlarged Huddersfield court is closer to the Dewsbury court it replaced, the 9-mile journey takes 50 minutes by bus in rush hour and an account of the hearing is unlikely to filter back through all the communities in between. Except for the most sensational cases, the 9-mile journey is just as effective as a cloak of anonymity.

That is the effect of consolidation. The figures tell their own story. In 2009, there were magistrates' courts in 330 locations around the country. By the beginning of 2014, this figure had fallen to 240. A policy that through the lowering of the flag and the retreat to consolidated premises sends the message that the rule of law now operates from a select few hubs.

The calls to reverse this trend go back to before the General Election of 2005. At that time Michael Howard spoke in favour of local courts and local justice. The Labour government did not listen, but at the election the electorate did not listen to Mr Howard. By 2010 the process looked complete and the issue resolved. It was then re-opened by the Coalition Government – but not in a good way.

At a time when, of necessity, budgetary considerations overruled almost everything else, a further 93 magistrates' courts were closed. The message was clear, if not actually stated: real local justice was just too expensive. It is difficult to identify anything positive as having flowed from that decision in the context of criminal justice and the rule of law. Perhaps the only point to be made is that the slaughter was such that it is difficult to imagine any court that was in anyway marginal surviving. We are at the minimum sustainable level. Negative consequences are more readily identifiable. Great swathes of rural England are without a visible representation of the rule of law. Urban conurbations that also breed feelings of identity with given areas are the same. For most people the nearest court is a long journey away, near where other people live.

Whilst an obvious remedy is the reversal of the policy how realistic is this? Premises from the various swathes of closures are now offices, flats or demolished. The Crown Prosecution Service is reduced, at least in terms of manpower, magistrates have resigned, District Judges' appointments have been based on there being 93 fewer courts since 2011. Even if the recent closures were based on costings that made no allowance for civic pride or the importance that the proximity of the courts had in telling all

communities that the rule of law is the rule of the courts of law and that that rule is the same for all, wholesale reversal is at best unlikely. But is there an alternative that relies on evolution and, combined with practical measures suggested by John Howson, may show once again that the rule of law has returned to take its place, visibly and locally?

Restoring Local Justice – Community Justice Panels

In recent years, the idea of community justice has been gaining ground. There has also been the sense that some forms of what used to be called criminal behaviour might be dealt with in a less formal way within the community where the offence occurred. The 2012 white paper 'Swift and Sure Justice' advocated Neighbourhood Justice Panels which would allow anti-social behaviour and low level offending to be dealt with, where appropriate, within and by the community. The panels would focus on addressing the needs of the victim and community, at the same time avoiding unnecessary criminalisation. The approach is now being tested in 15 local areas and involves local people dealing with anti-social behaviour (or 'offences' as the same conduct used to be labelled) committed locally, in a manner that reflects their knowledge of the prevalence of the offence and also their understanding of the prevailing social conditions! It would also be cheaper – no overhead for a designated courthouse. Suitable buildings without cells or dock officers could be used because the cases would not carry the possibility of custody. However, there would have to be some sorts of safeguard to ensure the overall legality of what took place. Establishing these safeguards and striking the right balance is the most significant challenge for such panels to play their role.

The proceedings would be less formal than in a court and the panel of local people that makes the relevant decisions would not be legally qualified just as now magistrates need not be. Indeed, there are similarities to the early days of the magistrates and the panels may well evolve into new magistrates' courts.

To a certain extent, the logistics are borrowed from the arrangements that are put in place when, for example, a planning inquiry sits at the local town hall. Welcome to 'Magistrates Lite'. If this idea has legitimacy, it is because of the importance of local justice. For the rule of law to retain legitimacy, it must retain popular support and therefore must be seen to be effective. Involving local people in the implementation of the rule of law has, over centuries, been seen as a means of demonstrating and achieving this.

If these informal tribunals achieve their purpose, they could become popular; the confidence of those directly involved could also grow and so could their demand for greater powers and the ability to take on 'tougher' cases, with perhaps the power to impose a short custodial sentence if a legally qualified assistant advises the panel. While the manner in which the rule of law operates locally is to change, what matters is its restoration. If such community justice projects restore local accountability (and with it he deterrent effect of the publicity surrounding whatever 'conviction' is to be called)

they will go a significant way to addressing the consequences of the closures of the courts that previously fulfilled that function.

As they get busier, they may require a regular venue and perhaps one or two people to help with the administration. And so we come full circle and to the magistrates' courts and their future.

For the magistrates themselves, how far can their role be strengthened? Recent proposals to increase courts' sentencing powers from six months to twelve months imprisonment for a single offence have had some support from successive governments, and enable them to take on a significant additional work which, at present, is dealt with by the Crown Court. The Crown Court would then be concerned with only the most serious cases that would comprise significantly less than the 5 per cent of all cases that are sent there at present and lead to lower costs, for cases, judges and Crown Court legal representation. More than likely a series of coincidences, but perhaps someone's plan?

Local communities have been victims of the closure of magistrate's courts. The dispensation of justice locally does matter for many reasons – symbolically and in principle and practice. If the system is to be fair, it must be accessible and transparent. The opportunity to restore local justice through a mixture of some magistrates' courts with additional responsibilities and new community justice panels, evolving as did the magistrates centuries ago, will need safeguards. What matters must be that justice must be available, accessible and done; and it must be seen to be done.

II
Community Justice and Justice in the Community
John Howson

The Magistrates' Courts: Why they matter

In Utopia there would be no need for courts: citizens would accept and keep to all the laws. In other societies laws are broken and offenders must be brought to justice. Most of the breaches of laws are minor in nature; and such petty crimes of society were dealt with for more than 650 years by magistrates' courts led by ordinary citizens. However, in recent years, as the number of laws has grown exponentially and the State, both national and local, has become more pervasive in the life of every citizen, there has been a move away from using the magistrates' courts as arbiters of justice in favour of administrative sanctions handed out by officers of the State; and as society becomes more complex, it is easier to acquire a criminal record with the long-term effects this can have for careers and livelihood. This trend, away from courts and towards administrative justice risks devaluing the separation of powers seen as a cornerstone of the constitution since the time of the Magna Carta 800 years ago.

Recent Policy and its Implications

For the past quarter century, whereas local justice has been unfashionable, local policing has been the cornerstone of policing policy. At the same time, magistrates' courts have been downgraded in favour of administrative justice, whether through the use of police cautions, fixed-penalty fines or a variety of banning orders. In the name of financial probity, courts have been amalgamated with no coherent logic to the strategy, both in rural and urban areas across England and Wales. At the same time, the administration of justice has been taken away from judges at the lower levels and decided by civil servants in Whitehall. The trend has been towards a centralised system of courts backed by an administrative framework for dealing with crimes treated increasingly as an administrative matter that requires no judicial input. The contrast with other policies of localism, such as the emphasis on community policing, could not be more marked

Court closures, a feature of the Labour administration before 2010, when more than 100 courts were closed, continued under the Coalition, which after the 2010 general election proposed closing around one third of the magistrates' courts. The aim was both to cut public expenditure through rationalisation and to 'modernise' the system. Since 2011 over a hundred courts have been closed and today, the Ministry of Justice may seek even further cutbacks. This now means that even the present pattern of courthouses cannot be guaranteed.

One consequence of such closures is that justice has become less accessible for many communities with many local courts disappearing. Indeed the recent trend prompts the

question does the concept of local justice exist anymore in England? Whether rural or urban, the consequences are the same. Residents of Minehead in North Somerset have to travel to Taunton for any court appearance; even in London those living adjacent to the M25 in north Enfield may have an hour's bus journey to the court dealing with any crime committed locally.

Even in our modern technological age this withdrawal of the local administration of justice matters. Many 'petty' crimes – to use the historical phrase – which have an impact upon local communities should be dealt with locally. Just as local policing plays its part in the operation of justice, so too should the next stage in the justice system. Centralisation is fundamentally the wrong approach. The alternatives must therefore be considered if the justice system is to operate effectively.

Offences, Offenders and Local Justice: The system and its framework

All societies recognise that transgressions of the legal code range from major breaches at one end of the scale, to minor or even trivial breaches of the law at the other end. The transgressor and wider society may not always agree where on the scale the offence lies, but generally it is accepted that fewer serious offences are committed than the more minor ones.

Traditionally in England society has separated offences into three groups: summary, indictable (more serious) and 'either way' offences – where the seriousness is determined by the specific nature of the action and the view of the offender as to where they should be tried within the court system.

A new group of offences has emerged over the past quarter century or so. These are those, normally summary offences, dealt with by the police and Crown Prosecution Service rather than by the courts either through cautions, traditional or the recent conditional version, or by fixed penalties. The trend, which largely started with motoring offences and often aimed to reduce court overload, inexorably spread to a wider range of criminal offences beyond merely offences on our roads.

Finally, since 2007 as a result of the Police & Justice Act 2006 the police have been given the right to impose restrictions on the liberty of an individual not charged with any offence but merely under investigation, through the use of police bail. As has been seen in some recent cases, police bail, un-reviewed by a court, can extend for many months before a decision is taken as to whether to prosecute or not, when the investigation is discontinued or the person is formally charged and brought to court. As a result of the concern prompted by the use of bail by police, a public consultation on bail was launched in spring 2014 (see www.college.police.uk/en/docs/Pre_charge_bail_consultation.pdf).

The current model for summary justice, based on a twin policy of extending the powers of the CPS and police and having fewer larger and more dispersed court centres, has a number of disadvantages. Many courts have disappeared locally with fewer, larger court houses to replace them; meanwhile the operation of the justice system is increasingly under the overall shadow of a large Whitehall Department. Such changes may bring unintended consequences for costs, for effective justice and for the perception of effective justice operating under the rule of law.

As the police and CPS have been given extended powers, the system of local courts for summary justice has withered on the vine. The Ministry of Justice and its predecessor government departments including the former Lord Chancellor's department and even the Home Office when it had responsibility for magistrates' courts have pursued a policy of centralisation into large, and what central government claims to be, cost-effective court houses. These may seem administratively convenient but may not be the most helpful method of dispensing justice for those using the courts – magistrates, the police, witnesses, the legal teams, the defendants and their families.

Traditionally the magistrates were mostly responsible for running their courts before 2003, and the evidence suggests they did so more efficiently than the present arrangements. Attaching the court service to a Ministry responsible for financing the prison system and ensuring sufficient funds exist to keep those sentenced to custody 'off the streets' can present problems especially at times of austerity, given the competing demands. As a result of prioritising the prison budget, court closures and centralisation may reach a point where the summary justice system ceases to function effectively.

The overall cost of the system must remain a central consideration in any policy for the future. No change should be made to the system which increases its running cost without a demonstrable benefit. Yet recent changes transfer some of the cost incurred through centralisation to other users, defendants, witnesses, lawyers, magistrates. It makes justice less accessible to local communities who must, as a result, rely upon press reporting of decisions on the prosecution of local crimes. Additionally, it validates the transfer of judicial decisions from the local justices who are members of a community, to salaried District Judges and their deputies. Professional judges, often part-time, sitting alone, deciding guilt or innocence, should not be a feature of our court system. Guilt or innocence, as has been recognised by statements about the need for a fair trial from Magna Carta to the European Convention on Human Rights, should always be decided by more than one person in our legal system. Unlike in the European inquisitorial system of justice it should not fall to a single person to decide the outcome of an accusatorial process that forms the basis of the British criminal justice system.

Principles and Practice: What principles should guide future policy?

Freedom under the law rests on a number of principles and these should guide future policy.

- *Justice seen to be done*. There is a need for open justice in most adult courts**.** What this may in practice mean should be considered in greater detail in the context both of the higher courts and in relation to criminal courts at all levels. Justice seen to be done can be a powerful deterrent. For some problems such as remoteness, there are some technological solutions – for instance, all courts could be streamed on the internet.

- *Different courts, different roles and a court for all purposes.* The advantages of large centralised courts – and there are some – need to be balanced against the nature and purpose of summary justice in the community. They can generate sufficient business to allow specialist courts to be set up to deal with issues such as domestic violence, drugs, traffic matters, and other offences with a sufficient volume of cases to justify a specialist court. Large urban court houses, such as that in Birmingham or those in parts of London, have been a feature of the magistrates' courts landscape for more than 100 years. But such courts can become remote from communities where crimes take place

- *A courtroom for every community.* England and Wales has lost 100 courts since 2010 with some of the consequences for justice discussed here. Providing greater access to the courts and justice need not be a significant expense if practical, lower cost options are considered.

  If the court is to sit, a courtroom is needed. That courtroom can be a basic committee room, provided there are places to seat the judicial officers, the clerk, and the lawyers for the defence and prosecution, somewhere for the defendant and any witnesses to be located as well as a section set aside for the general public – and any room would do. Generally, it is helpful if space exists for any bench of magistrates to withdraw to deliberate when necessary, although it is perfectly feasible for them to remain in the court and everyone else to leave if there is sufficient space outside. Indeed, this was a regular practice in a court where I first adjudicated as a magistrate.

  For both first appearances and sentencing hearings nothing else and nothing extra for witnesses is needed as they are not present at such hearings and there is no need to keep the different sides apart. However, meeting rooms for lawyers to talk to clients, and for probation officers to interview those sentenced to community-based sentences can be useful and it seems likely that many public building can now provide these facilities as councils have downsized their workforces over recent years.

  The vast majority of defendants that appear in court, whether at first instance, for a trial or for sentencing, do so from the community. Although some may have had restriction placed upon their liberty through conditional bail, most are on unconditional bail. Only a tiny minority of those charged with summary offences

appear in custody, often because they are of 'no fixed abode'. At first instance, and at a sentencing hearing, anyone who walks into a courtroom off the street to surrender their bail does not need a secure courtroom with vast panoply of special arrangements.

Many local councils already have rooms they use for hearings, whether for licensing taxis, the sale of alcohol or gambling premises, or for school transport appeals. These rooms could in many cases be adapted for wider use as summary justice courtrooms, especially now that those charged with indictable offences make nothing more than a fleeting appearance in the magistrates' court. If in custody, such appearance could be by video link from a prison or police station to a court. As this may not be ideal, perhaps a small number of more secure courts could be used for those in custody.

The aim would be to locate one summary justice courtroom in every district or unitary council area, with even more where a county is a unitary authority, e.g. Cornwall, to create a minimum of around 350 courtrooms across England and Wales – including for large rural counties, where the county town can be 25 miles (or sometimes more) from the other side of the county in the case of Minehead to Taunton or Henley to Oxford. In many areas there would be sufficient workload for a designated building to be used. The large cities of the Midlands and the north of England are examples, as well as some of the growing towns of the south and east. In less populated areas there might not be a need for multiple courtrooms used for the whole week. Introducing such a system would help restore the courts' presence and allow the courts to operate, so that justice is – and is seen to be – done. Shared buildings would have practical advantages. They would reduce journey times, and allow court hearings to be accommodated to sensible timetables and more readily fit the needs of court users. With fewer cases than ever appearing in court immediately after an offence takes place, it should be possible to prevent the historic bunching of cases where everyone arrives for a 10am start and appearance times become something of a lottery with some defendants and lawyers waiting around all day and then being sent home because their case was not reached.

- *Facilitating Rehabilitation.* A corresponding increase in the number of court centres might encourage more local solicitors. This could be of benefit to the operation of the court system, including e.g. where continuing care is recommended. Large courts with frequent change of defence advocate who know nothing of their client and the community where they live may not be effective in the longer term system and the operation of summary justice. With local government responsible for public health, the mental health problems of some defendants could more effectively be followed up where courts are linked to local government areas. Defence solicitors could recommend diversion to another area where local facilities might be more conducive to rehabilitation than those under

larger courts where the focus on managing justice is constrained by the financial model. If this is true for the adult criminal work of the magistrates' courts it is even more the case for the youth work of these courts. Take the example of a young person in care placed away from their home community and brought before a youth court miles from where they live. The court has no link either to their home community or the one in which they are placed. Local courts might have the benefit of wider local knowledge.

- *Community Justice Panels: responsibility for magistrates' referrals.* Local courts might also help with the development of restorative justice. Community Justice Panels set up to deal with issues such as neighbour disputes and other anti-social behaviour in a locality can only effectively operate at a local level. Simon Reevell suggests that such panels may have features in common with the early days of the magistrates and could well evolve into magistrates. The ability of such panels to take cases referred from local courts might be an option worth exploring.

  Unless, however, there are clear safeguards in place to ensure that those hearing these cases are capable of a judicial function and suitable for the role, their duties should be limited to helping to resolve transgressions of behaviour through a greater use of restorative justice rather than a limited focus on dealing with breaches of the law – and should have a distinct identity. The panels would be helpful for areas that often fall between the criminal and civil branches of the law, and can be of particular concern to ordinary citizens. The most obvious examples are anti-social behaviour, for example noise, littering, graffiti or other similar instances of poor behaviour or neighbour disputes.

- *Returning work to the courts.* Recreating local justice might also allow the return of much licensing work to the courts and away from local authorities that often have to try to balance their administrative functions with legal decisions about the granting of licences. Finally, a network of local courts might convince the police and Crown Prosecution Service not to use 'out of court' disposals. If an offence merits more than a 'telling off' it should be dealt with by an impartial court not by a branch of the prosecution or detection service.

- *Funding the magistrates' courts.* No one disagrees that the law is national in its application. There is therefore a good reason for funding the system nationally. However, such an approach does tend to lead to a top-down methodology and a system that sometimes prizes uniformity ahead of appropriateness. There is also the tendency common in both the public and private sectors for the funding arm to aim to control expenditure. Local courthouses could allow for the return of locally funded justice.

  Given that the model of funding the police through a precept already exists, this might be used as a model for returning summary justice to local funding and

control and serve to reinforce the independence of the courts. The magistrates' courts might be funded through a precept, although in some cases this might need to be topped up with national funding, perhaps using fines and court costs as the first source of extra funding. Or, take the example of public health, which in 2013 was returned to local authorities. Local funding might create a more cost-effective service of court administration that would allow the local authority prosecution service that currently deals with issues such as environmental health, school attendance, and overweight lorries to work more closely with the police leaving the Crown Prosecution Service free to deal with work in the Crown Court and the other 'higher' courts.

The practical arrangements would not be overly complex. For example, the level of legal expertise needed to clerk a summary justice court is rarely beyond the capacity of a competently trained legal mind, despite the plethora of new legislation and criminal offences introduced by successive governments. Indeed, clerking a court need not be a full-time occupation, but the office of Justices' Clerk could be returned to what it used to be, a support for local justice, not a cog in a departmental machine. Whether the loss of a national career structure would be a disadvantage, is open to debate. There might continue to be a need for a national point of contact for judicial officers and their clerks to help resolve those rare matters that are either controversial or cause disagreement between a bench and their clerk.

- *An end to official justice and a return to judicial outcomes*. The development of out of court justice has come at a time when the acquisition of a criminal record has never been more threatening to the life chances and career opportunities of an individual. It places immense power in the hands of those that detect and prosecute crime on behalf of the State and as such it threatens the essential separation of power which has been acknowledged as being important since the time of Magna Carta 800 years ago. As suggested earlier, the return of local justice could see the decline in the use of 'out of court' disposals that can afflict a person's entire career. Indeed, local courts might be allowed the power to recognise a rehabilitated citizen by 'wiping the record clean' so long as no further offences were committed if a future government is not willing to alter the Rehabilitation of Offenders Act.

Conclusion

Petty crimes are usually committed by those who live in communities on these communities and their inhabitants. Where possible, the community should be involved in dealing with such lawbreakers. Returning the magistrates' courts to our communities and reversing the trend towards making them mini-crown courts would both help to empower more local communities and provide a focus for the operations of minor legal matters more locally than at present. Not only would this be to the benefit of those living in such communities, but it might ensure more cost-effective justice without the

need to transfer costs from the State on to the individual, whether witness, defendant, lawyer or judicial officer. In the name of justice, the unnecessary centralisation of our legal system in the guise of cost-cutting must be reversed.

III
Magna Carta, Magistrates and Legal Aid
Stanley Brodie

On the 15th June 2015 the nation will celebrate the sealing of the Great Charter by King John at Runnymede on the same date in 1215, 800 years ago. There will be many fine speeches from statesmen and public figures using the occasion to extol the benefits and influence of Magna Carta; to reaffirm its place in the constitutional evolution of the United Kingdom; and to reassert the fundamental rights and liberties of Englishmen said to be derived from it. The Prime Minister has already made reference to Magna Carta as a source of British values. Other democratic countries around the world regard Magna Carta as the foundation stone of their constitutions.

Among the rights and liberties provided under or evolved from the Charter, are the rights to liberty and not to be unlawfully detained (*habeas corpus)*; and the rights of access to justice and to a fair trial before an independent court, including equality before the law. (It is interesting to note that the need for a fair trial was reflected in the 9th of the Ten Commandments – "*Thou shall not bear false witness"*.) Magna Carta provides that justice will be neither delayed nor denied. Hence the well-known aphorism: justice delayed is justice denied.

While panegyrics to Magna Carta can be expected to flow throughout the United Kingdom and the Commonwealth during 2015, including (one may assume) moving oratory from the Lord Chancellor and the Lord Chief Justice, the Ministry of Justice appears to be engaging in policies and actions inconsistent with the principles embodied in the Charter, and certain to undermine the fundamental rights it is supposed to protect. So while the great and the good may pay deferential lip service to Magna Carta, the civil servants in the Ministry of Justice have been, and will be, pursuing policies likely to diminish it and undermine fundamental rights. The reality will not match the rhetoric.

An example of that kind of mismatch between rhetoric and reality is provided by what has happened to the magistrates and their courts' system. A paradigm of voluntary public service are the Magistrates of England and Wales, and the high quality of justice they dispense. Justices of the Peace have been part of the national culture for centuries. They now number approximately 28,000. They give their services free and voluntarily, receiving only reimbursement for their expenses. The quality of their justice is undoubted; they enjoy the respect and confidence of the communities they serve. Sir Robin Auld in his 2001 Report said this:

> No country in the world relies on lay magistrates as we do … to administer the bulk of criminal justice … magistrates' courts deal with 95 per cent of all prosecuted crime. Lay magistrates … handle 91 per cent of that work …

Prior to 2005 magistrates were completely autonomous and independent, subject only to supervision from the Lord Chancellor's department and, of course, subject to appeal. They managed and administered their courts, were responsible for their buildings and had complete control of their system. The annual cost to the nation of their administration of the magistrates' courts was about £330m. That included 430 local courts disposing of two million criminal cases annually; 95 per cent of all cases coming before the criminal courts. The magistrates' courts system was far larger than, and dwarfed, the remainder of the Criminal Justice System.

One might have thought that leaving that excellent, well-functioning system alone, would have been wise and sensible. But that was not to be. In the early years of this new century, the Labour Government became engulfed in what the *Daily Telegraph* has described as bureaucratic frenzy, a product of which was the Courts Act 2003. It came into force in 2005. Administration and control of the magistrates' courts and every aspect of them were removed from the magistrates; and in their place was imposed a bureaucratic structure requiring some thousands of new civil service jobs. It was big government wresting control from local organisations.

In April 2003 Sir Hayden Phillips, the then Permanent Secretary to the Lord Chancellor, described in an interview with *The Times* the expansion of his Department. It would increase in number after the takeover of the magistrates' courts to 25,000 at an annual cost of £3bn. Sir Hayden's estimate of 25,000 civil servants was accurate; that became the number employed within the Courts system, as confirmed in the Resource Accounts for the Ministry of Justice for the years 2008/2009. As at March 31st 2005, the number of civil servants employed in the Courts Service was 8,487; and of public employees supporting the magistrates' courts system approximately 8,000. Thus the combined total at takeover date was 16,000 or thereabouts. It follows that the increase in the number of employed and pensioned civil servants consequent upon the takeover of the magistrates' courts system would seem to have been 8,000-9,000.

It is not easy to arrive at an accurate, precise figure for the cost of the additional bureaucracy required to administer the magistrates' court system as the accounts for the Courts Service and the Resource Accounts are unhelpful. But one can make a fair assessment from the figures revealed. Without going into detailed calculations (which the author has done), it is estimated that the additional costs to the nation annually for the unnecessary bureaucracy put in place to administer the magistrates' courts system would seem to be in the region of £1.5bn.

The matter does not end there. In September 2009 the Prime Minister Gordon Brown finally admitted that public spending cuts would be necessary. On the 18th September 2009 *The Times* published a letter from the author in which it was pointed out that restoring the autonomy and independence of the magistrates, and cutting out the

unwelcome bureaucracy with which they had been burdened, would be constitutionally sound and save the nation a great deal of money.

The Ministry of Justice was obliged, like other government departments, to make cuts: so what spending cuts and savings did the Ministry of Justice propose? Under the disingenuous banner: 'Court Reform Delivering Better Justice' the Ministry in December 2010 announced the closure of 93 magistrates' courts and 49 County Courts in England and Wales. It was, of course, policy which was being developed under Labour. Clearly, closure of so many operating courts would diminish access to justice, not improve it. Longer and more expensive journeys for litigants, magistrates, and other services are some of the difficulties created.

These are not merely irritating inconveniences. The closure of so many operating courts in the interest of so-called efficiency, seriously diminishes access to justice, and risks miscarriages of justice. If, instead of being able to attend at a convenient local court, a defendant, for example, in a criminal trial may have to travel many miles at significant expense which cannot be afforded, (e.g. travel costs, time off work and other expenses), the defendant may decide it is simply not worth fighting the case. One may get litigants pleading guilty to avoid the inconvenience and costs of attending a distant court. The same impediment would apply to victims and witnesses, who may seek to avoid attendance at court for the same reasons. So no fair trial, no proper advice from a lawyer, and potential miscarriages of justice. That would result in a denial of justice.

The Ministry is wasting an enormous amount of money in employing civil servants to perform management functions the magistrates are willing to do voluntarily and without payment; yet to make spending cuts it is prepared to sacrifice or put at risk the fundamental rights to access to justice and a fair trial.

It only remains to add that all these facts are known to the Lord Chancellor and the Higher Judiciary. Do these policies and actions of the Ministry of Justice match with the principles of Magna Carta? The author would suggest not. To make matters worse the Ministry presents its policy, not as a reduction in access to justice which it is, but as a reform which should be welcomed as being a modern, efficient justice system 'with victims and witnesses at its centre'.

Another mismatch between the fundamental rights affirmed in Magna Carta and reality arises from the Government's proposals on legal aid.

Fundamental rights to liberty, access to justice and a fair trial are most at risk in the criminal courts. That is where 'human rights' are most in need of protection. Custodial sentences are likely to follow conviction in very many cases. Miscarriages of justice can, therefore, have disastrous consequences: innocent defendants have spent years in prison. The independent criminal bar provides the majority of the

defence representation in criminal cases; so the protection of defendants from loss of their fundamental rights and liberties lies in the skill, learning and experience of criminal barristers. The independent criminal bar is almost entirely publicly funded by way of legal aid; and for that reason it is not as well rewarded as other areas of practice at the English Bar. The Ministry of Justice has in recent years savagely cut criminal legal aid; and now is proposing even more cuts, subjecting the criminal bar to serious strain and hardship. The Ministry is aiming to save by these proposed cuts no more than £215m. The Chairman of the Bar Council has recently stated:

> Across England and Wales, criminal barristers, who work hard in the public interest, will be dismayed and demoralised. Regrettably, many skilled and experienced advocates are likely to have to leave criminal practice altogether. The quality of justice will suffer as a result and the harm done may well be irreparable.

Thus the future of the criminal bar may be seriously at risk. Talented young barristers are avoiding criminal practice, preferring other more rewarding careers elsewhere.

In a debate in the House of Lords in April 1989 the former Lord Chancellor, Lord Hailsham, stated that 'the independence of the Judiciary depends more upon the independence and integrity of the legal profession than upon any other single factor'.

In a lecture given by Antonin Scalia, a Justice of the Supreme Court of the United States on the 25th July 2000, he said:

> In the United States, counsel are referred to as officers of the court. Until I became a judge, I did not fully appreciate how apt that description was. An inquisitorial system can function with good judges and poor lawyers; an adversary system cannot. Particularly at the trial stage – though often at the appellate stage as well – justice will not be done unless knowledgeable counsel place before the court the facts and the points of law essential to the outcome.

There can be no doubt that the proposed cuts to legal aid will have a direct impact on the future of the independent criminal bar and, most importantly, on the quality of those practitioners who continue to practise at it. The criminal courts will increasingly be deprived of the expertise required to enable them to function properly. It follows that fundamental rights may not be adequately protected: trials may not be fair, liberty may be unlawfully lost, there will be miscarriages of justice. The criminal legal system will be seriously undermined.

The Justice Secretary (Lord Chancellor) has recently stated in a press release:

> As everybody knows this Government is dealing with an unprecedented financial challenge and I have no choice but to look for the savings I have to make *across*

> *the full range of the Ministry of Justice's work.* I cannot exempt legal aid from this… (emphasis added).

He could, of course, make massive savings 'across the full range of the Ministry's work' by restoring the independence and autonomy of the magistrates; and thereby save well over £1bn annually by the removal of many thousands of unnecessary civil servants. The Ministry of Justice knows this. Apparently it prefers to ring fence and protect their employment, rather than finance properly the independent criminal bar, keep courts open, and protect the fundamental rights and liberties of Englishmen. How does that fit with the expected rhetoric in appreciation of Magna Carta, its principles and the rule of law?

Appendix – A Magistrate's View

The Proposals: How Would They Work?

Summary justice, available to people locally through the magistrates' courts, has been recognised as a strength in the English legal system. How, therefore can the continuity of local justice be ensured at a time of court closures and spending cuts?

Simon Reevell sees potential in the local panels currently being piloted, with minimal infrastructure to deal with 'petty' offences. Given that the picture is more complex, safeguards, as he recognises, would be needed. Sentencing for 'petty' offences ranges widely depending on the offender's antecedents, while presenting the offence is not the most significant factor for adapting the justice system and nor is the system static.

Take sentencing policy and the example of shoplifting (e.g. stealing a sandwich from a supermarket, cost £2.80) which could have many outcomes. For a first time offender, a fine or conditional discharge is likely. For someone with a long history of shoplifting, perhaps known to fund a drug habit, the decision is probably between prison and specialist community intervention. If the offender already has a suspended prison sentence, even for an unrelated matter, or has recently been released from prison, then prison is likely (though under different procedures). Reevell rightly warns that such panels should be subject to the same rules and disciplines as the magistrates, to whom the power to imprison is also available outside of sentencing (for example, where bail is refused or where there has been an instance of contempt of court or breach of a court order). However, it cannot always be predicted when these matters arise and need to be dealt with – sometimes court disorder for example requires an immediate response.

The question Reevell raises is therefore acute. As things stand, a local panel sitting informally without court infrastructure could not deal with these matters safely. Indeed for such local panels to get the right cases there would need to be a prior screening of all such cases. This would add cost, delay, and could perhaps even be open to challenge on the basis that it gives an indication of the defendant's background prior to a determination of guilt.

John Howson highlights the arrangements needed to provide, in today's circumstances, for a full court infrastructure. His proposals aim to maximise local justice. He suggests local panels could deliver restorative justice as a substantive sentence, the plea or conviction having been obtained in the full court. Indeed, already similar referrals operate in the youth court and enable restorative justice and other constructive disposals.

Both Howson and Stanley Brodie highlight a key structural problem: the operation of the justice system nationally matters, but current policy to maintain it fails to take adequate account of the features which make for a more 'local' service. Howson therefore proposes a local precept which could promote the availability of local justice, engage the public, maximise the use of court resources and consolidate the local court's business.

Subject to the caveats above and from the perspective of the magistrates' bench, these proposals indicate how local justice could still be a feature of our court system, even with funding constraints.

Edna Murphy, serving magistrate

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The closure of the magistrates' courts, which began under Labour, has continued under the Coalition. Damage to the effective operation of our justice system at a local level is grave: to put it mildly, access to justice has been threatened.

The co-authors of *Magistrates Work! Restoring Local Justice* explain the consequences and consider how the damaging vacuum left by court closures can be overcome. Simon Reevell MP, a barrister, considers how local justice panels might over time evolve to meet local need, warning that the disciplines of the magistracy should also apply. Professor John Howson suggests practical ways of using existing funds and council chambers to house a more local magistracy. Stanley Brodie QC urges the Secretary of State to follow his own instincts and tackle the overblown bureaucracy that diverts hard cash from the front line provision of justice, especially the magistrates' courts.

Not only could the proposals here help reverse the consequences of recent cuts, but they would do so with little or no extra cost to the public purse. In this way justice would not merely be done, but be seen to be done, with local citizens able to access local courts.

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