

Tyrants in Whitehall

by Flora Page

'The object of any tyrant in Whitehall would be to overthrow or diminish trial by jury; for no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives.' (Lord Devlin, *Trial by Jury* (1956))

The right to elect for trial by jury is under threat. By next summer the government wants to have passed a new act which will make the magistrates' decision on mode of trial final. The proposed changes are justified as a means of cutting cost and delay. There has also been some rhetoric about countering manipulative criminals who play the system in order to gain time. However, these arguments have been shown to be unsubstantiated (see Lee Bridges' article, 'Jack Straw's juryless courts', *The Guardian*, 25 November 1999). The statistics which justify the proposals are outdated due to procedural changes and the passage of seven years. If the government is serious about cutting the cost of criminal justice, it should focus its attention on the National Audit Office's recent report 'Criminal Justice: Working Together' (1 December 1999) which has found that over £20 million could be saved each year if there were greater co-operation between the Crown Prosecution Service, the police, the courts and other public bodies.

Given the weakness of the stated justifications, there must be an ulterior motivation. In opposition Mr Straw was against the current proposals, which date back to recommendations made in the 1993 Runciman Report (by the Royal Commission on Criminal Justice). They were taken up again by the Narey Report in February 1997. When Michael Howard sought to act on those recommendations, Jack Straw spoke out against them. His change of mind since coming to office has not been explained, other than in the discredited terms set out above. (For a more detailed history of the proposals see 'New Labour's attack on trial by jury' by Wolchover & Heaton-Armstrong, *New Law Journal*, 30 October 1998, 1613.)

subject the prosecution evidence to the rigorous testing that it receives in the Crown Court. The relatively high acquittal rate in the Crown Court is due to judges as much as juries. Roughly half the acquittals are ordered or directed by the judge, because the evidence put by the CPS presents no case to answer or cannot possibly result in a safe conviction. (See the Royal Commission on Criminal Justice's report on 'cracked trials'). By contrast, magistrates' courts dispense summary justice. Convictions are frequently secured on sub-standard prosecution evidence.

on the internet

www.guardianunlimited.co.uk/Archive/Article/0,4273,3934420,00.html

The website for Lee Bridges' article, 'Jack Straw's juryless courts', published in *The Guardian*, 25 November 1999.

Second, and more importantly, the conviction rates should not be an issue: in this country, if a person is accused of a crime of a subjectively serious nature, we do not consider justice to have been done unless that person has been given an opportunity to be tried by his or her peers. Trial by jury is the counter-balance in the unequal fight between ruler and subject. So, as Lord Devlin said in 1956, to seek to diminish the role of trial by jury is the act of a tyrant. Lord Blackstone first made this point in the 18th century. Jack Straw may also be interested in his views on cost and delay:

'The liberties of England cannot but subsist so long as this palladium [the jury] remains sacred and inviolate, not only from all open attacks (which none will be so hardy as to make), but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue and courts of conscience. And however convenient these may appear at first, (as doubtless all arbitrary powers, well executed, are the most convenient) yet let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon the sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread, to the utter disuse of juries in questions of the most momentous concern.'

In *The Observer* on 28 November, Jack Straw's response to the accusation that he is showing tyrannical tendencies was to liken his efforts to Mussolini's attempt to get the trains to run on time. Hopefully this was intended to be a joke. 

on the internet

<http://www.trialbyjury.co.uk>

A website set up by Flora Page to campaign against the government's plans to curb jury trials.

Perhaps the higher conviction rates achieved in the magistrates' courts have proved attractive to Mr Straw. As a minister who is continually striving to be 'tough on crime', he would have cause to despair at the entrenched inadequacy of the police and the Crown Prosecution Service. It may be that the right to trial by jury is a victim of the government's desperate 'fight against crime', but, if so, it would not be possible to openly express such a motivation, because it is fundamentally unjust.

First, the magistrates' courts are more likely to convict for the very same reason that they are cheap and quick: they do not

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