

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## 1

## The future of the criminal courts

It seems like the twinkling of an eye since I attended my initial lectures as a first-year law student at the University of Leeds. That was forty-eight years ago, in October 1964. Life was a little different from today. Leeds United were then in the old First Division – and in fact only just failed to top the table, beaten by Manchester United on goal difference. The decimalisation of our currency was seven years away. A bus fare into town cost one old penny. The environment was terrible. My digs on the Burley Road were opposite a vinegar works and a tannery. With back-to-back housing, the only place to hang washing was across the street. The linen went grey in the course of the day, a result of the smog which hung across the Aire valley.

I came to the university on a full grant – £300 for the whole year – and managed frugally, with just enough for those priorities when you're eighteen: liquor, and the occasional trip to Elland Road. But I was lucky. Just one in twelve young people went to university, only a tiny handful from backgrounds like mine. On our street on an Essex council estate, my family was the only one whose children went onto higher education. The university seemed very big. It had 6,000 students. It's five times that size today.

The Second World War, and its aftermath, touched everything, defined everything. The Cold War, that existential struggle between the two superpowers, the United States

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## ASPECTS OF LAW REFORM

and the Soviet Union, was at its height. Nikita Khrushchev, the Soviet leader, was ousted in mid-October 1964, on the same night that Harold Wilson narrowly won a general election to return Labour to power after thirteen years in opposition.

The criminal justice system was different, too, and operated in a quite different social and political context. The three tiers of the criminal courts – magistrates, quarter sessions and assizes – would have been easily recognised by citizens from centuries before. There were six categories of offence.<sup>1</sup> The rigid division between solicitor and barrister was in place, the latter having a monopoly of advocacy in the higher courts. The number of lawyers in practice (in any area of law) was low compared with today: 2,500 practising barristers, and 32,000 practising solicitors in England and Wales, a quarter of the number in practice today.<sup>2</sup>

There were just 75,000 police officers in England and Wales – compared with 134,000 today – operating in 158 police forces, some with fewer than one hundred officers.<sup>3</sup> Leeds City had its own force, fiercely independent of the West Riding force lapping at its boundaries. These city (and borough) forces were run by the city council, with the chief

<sup>1</sup> Indictable only, summary only, indictable triable summarily with the defendant's consent, hybrid cases with and without a right to elect for trial by jury, summary cases in certain circumstances triable on indictment: see the 1975 James Committee report.

<sup>2</sup> Figures are from the early 1970s. There were 122,000 solicitors in practice in 2011 and 15,000 barristers in 2010.

<sup>3</sup> Royal Commission Report 1962 and Home Office Statistical Bulletin 09/12.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## THE FUTURE OF THE CRIMINAL COURTS

constable answerable to the chairman of the Watch Committee, one of the most powerful of municipal positions.

Crime was an issue, of course. It always has been, since it represents one extreme of human behaviour. The popular newspapers were filled then, as now, with lurid details of particularly horrible crimes. There were then, as now, periodic moral panics about the behaviour of the young. In the 1950s it had been over 'Teddy Boys' armed with flick-knives, a phenomenon which led to the first of a series of 'knife-crime' initiatives by ministers – this in the 1953 Prevention of Crime Act.<sup>4</sup> In the early 1960s the moral panic became intense, as 'Mods' on scooters and 'Rockers' on motorbikes wrecked seaside towns and battled with police officers for whom the only special riot equipment issued was dustbin lids.

Many similarities, but three significant differences about crime, between then and now.

First, there appeared simply to be less of it. In 1961 the crime figures recorded 107,000 larcenies, 36,000 offences of breaking and entering, 6,000 sex offences (which still included consensual gay sex), and 11,500 offences of violence against the person. The figures then and now are not strictly comparable, because of changes in definitions and reporting and recording practices. But the equivalent figures today show

- 477,200 robberies and motor thefts – up by a factor of 4;
- 489,100 burglaries – up by a factor of 13;

<sup>4</sup> The 1953 Prevention of Crime Act: an Act to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

#### ASPECTS OF LAW REFORM

- 52,200 sexual offences – up by a factor of 9; and
- 747,500 violence against the person offences – up by a stunning factor of 65.<sup>5</sup>

Employment levels, especially for that key group from which most offenders are drawn – unskilled young men – were relatively high. In July 1963, for example, total unemployment was 436,000, just under a sixth of the level today.<sup>6</sup> In the four years that I was a student at Leeds University, I never felt unsafe on the streets at night; security of student dwellings was light; and there were hard and soft drugs around, but their use was very much a minority activity. Their abuse was not the pervasive feature of so much crime, as it is today.

One indicator that there was 'less crime' was the prison population – 30,000 in England and Wales in 1962, compared with 85,000 and rising in 2012.<sup>7</sup>

I said that there 'appeared' to be less crime. Overall, there almost certainly was. But many crimes went unreported, or, if reported, unrecorded, and never investigated. The participants in pub fights, the men who routinely assaulted their wives, those who caused mayhem to their neighbours, abused vulnerable young women (and men) – all were generally ignored by the police and the system. Calling the police could be difficult enough. On my estate there was one telephone for

<sup>5</sup> Recorded crime figures for year to June 2012.

<sup>6</sup> 2.53 million: Office for National Statistics, Labour Market Statistics, October 2012.

<sup>7</sup> Ministry of Justice, monthly prison population statistics July, August, September 2012.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## THE FUTURE OF THE CRIMINAL COURTS

about a thousand people – in a box, typically with a queue outside. There were no offences relating to racism or homophobia, but gay sex, between consenting adults, remained a criminal offence.

The police and the courts were regarded, in general, as tough, not soft. There were no CCTV cameras, no iPhones with cameras and voice recorders. It was unwise to get involved in an altercation with the police. If you did, you could easily end up down a back alley, where you'd be 'taught a lesson', or charged; and when you got to court the magistrates would likely believe the officers, and not you, and add to your punishment for arguing with them, and the court.

The consequence of these two factors, of less crime, and greater public confidence in the system, was the third difference: that crime was nothing like the political hot potato it has become over the last twenty-five years. Yes, the manifestos did talk about the 'crime wave' – to quote from the Conservatives' 1966 manifesto, but 'law and order' was not the high-profile issue it was to become.

However, behind what now appears to have been a tranquil and ordered period, all was far from well. The police had done brilliantly to convey the impression, through the new media of television with series like *Dixon of Dock Green*, of a service replete with intelligence, sensitivity and high ethical standards. The propaganda masked a much uglier reality, of a police service which, especially in London and the other big cities, was endemically corrupt, and in which inducements and violence towards suspects were a substitute for proper forensic skills.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## ASPECTS OF LAW REFORM

When I became Home Secretary in 1997, a very senior police officer sought to justify these practices of the past by claiming that it was 'noble cause corruption' – which led to effective law enforcement and relative peace on the streets. But even that was untrue. This 'noble cause corruption' meant that some gangs, of whom the Richardsons and Krays were only the most notorious, had some immunity from the police to operate as they wished; while those out of favour with the police or, to be more precise, not providing the police with favours, were dealt with harshly, or on occasions convicted of crimes which they had not committed. ('Fitted up' was the term.)

There was in those days no separate system for investigating complaints against the police. Occasionally, the Home Office and the Inspectorate felt compelled to move against some more egregious cases of abuse. But the leadership of the police was in general of a low quality, something compounded by an inability to recruit and retain bright people. When I became Home Secretary, the Chief Inspector of Constabulary told me that, in the two decades between 1945 and 1965, there had been fewer graduates recruited to the police than there had been years.

As Shadow Home Secretary in the mid 1990s, I toured Britain's police stations to gain a feel for the issues which were likely to land on my desk if I was lucky enough to take on the real job. At one police station in the East Midlands the Chief Superintendent told me how much he lamented that the 'Ways and Means Act' had been repealed. Bemused, I replied that I'd never ever come across this Act when I was studying law in the 1960s, or in practice at the Bar in the early 1970s.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## THE FUTURE OF THE CRIMINAL COURTS

What was the Act's date, what were its provisions, I asked? I was greeted with a condescending grin – and then an explanation that this was an Act that appeared in no law books – it was 'simply what we used to do'.

This senior police officer was not exaggerating. It is extraordinary to remind ourselves that until the passage of the Police and Criminal Evidence Act 1984,<sup>8</sup> there was – apart from habeas corpus – no statutory code to regulate the most fundamental of police powers, the arrest and detention of suspects. The only guidance was the non-statutory Judges' Rules. They were not the only powers of the state that were beyond the law. The tapping of telephones and other methods of intrusive surveillance, and the operation, indeed the very existence, of our intelligence and security agencies were out-with any statute.

Behind all this lay a comfortable, not to say a complacent, assumption that we were the nation that had so cherished and nurtured individual liberties – what we now call 'human rights' – that while we could codify and impose these on other nations, there was no need to do so for ourselves. Our natural decency, combined with a high-quality judiciary, skilled advocates and the democracy of the jury, would suffice. Thus it was British jurists who had largely drafted the European Convention on Human Rights, but the British political establishment (Labour included) resisted any idea that these rights needed to be incorporated into British law.

<sup>8</sup> First introduced in November 1982. Received Royal Assent 31 October 1984. For the most part came into force 1 January 1986.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## ASPECTS OF LAW REFORM

Some change to our criminal justice system began in the late 1960s and 1970s. This included the introduction of majority verdicts (10–2) in jury trials, the reorganisation of the courts into two – magistrates' courts and Crown courts – in 1971, and the creation of the current classification of offences – indictable only, summary only, and 'either way' – under the 1977 Criminal Law Act.

But it took the emergence of a series of major scandals about the operation of the system in the early and mid 1970s, including the notorious Maxwell Confait case,<sup>9</sup> for the Prime Minister of the day, James Callaghan, to establish in 1978 a major Royal Commission on Criminal Procedure.<sup>10</sup> That reported in 1981 and led in turn to two major pieces of legislation, still on the statute book (though amended since): the Police and Criminal Evidence Act 1984 (PACE) and the Prosecution of Offenders Act 1985, which established the Crown Prosecution Service.

Curiously, PACE was the subject of intense party political controversy when the Bill was first introduced, with Labour eccentrically pledging that it would 'repeal [this] Bill [*sic*] because it infringes the rights and freedoms of the

<sup>9</sup> In 1972 Maxwell Confait, a male prostitute, was found dead following a fire. Three boys with learning difficulties were convicted variously of murder, manslaughter and arson. All three convictions were eventually quashed by the Court of Appeal. The case gave rise to serious questions about police procedures and how suspects were treated, especially children and those with learning difficulties.

<sup>10</sup> The Royal Commission on Criminal Procedure was established in February 1978 under the chairmanship of Professor Sir Cyril Philips. It issued its report in January 1981.



Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## THE FUTURE OF THE CRIMINAL COURTS

individuals'.<sup>11</sup> The fact that we did oppose the Bill (which had fallen with the 1983 general election, and had to be reintroduced after the election) reflects an almost eternal verity about reform of the criminal law and its procedure – that whenever even modest proposals are made, they meet very powerful resistance from those claiming that rights are being eroded, and (almost) that the end of civilisation may be nigh. Labour's problem in opposition, which continued until Tony Blair became our leader in 1994, was that it was too ready to act as the mouthpiece for pressure groups, rather than making its own decisions about what was in the public's interests.

The sound and fury notwithstanding, in most cases once the legislation has been passed the public has been able to see the reforms for what they are – sensible and measured – and the very same pressure groups who have been making their extravagant predictions abandon their campaign and move on to the next thing. Thus it was with majority verdicts, with the modification to the right of silence and other rules of evidence, with changes to the double-jeopardy rules, with judge-only trials where there has been jury nobbling, and much else. Sometimes, however, the opposition, especially in the House of Lords, is such as to kill a measure altogether.

That happened, as I discuss below, with the Mode of Trial Bill for which I was responsible as Home Secretary, and with provisions for judge-only trials in serious fraud cases.

I noted three differences in crime between the Britain of my law student days and the Britain of today. There are, in

<sup>11</sup> 1983 Labour Party manifesto.

Cambridge University Press

978-1-107-04302-2 - Aspects of Law Reform: An Insider's Perspective

Jack Straw

Excerpt

[More information](#)

## ASPECTS OF LAW REFORM

addition, two major sets of changes which have fundamentally affected the environment in which the criminal justice system works.

The first is the effect of the technological revolution on the prevention and investigation of crime. The development of more and more sophisticated forensic techniques for matching DNA is the obvious example. It was this which led to the conviction in January 2012 of two of the suspects in the Stephen Lawrence case, although that could not have happened but for the modification of the once-hallowed rule of *ne bis in idem* – no one should be tried twice for the same offence. Call data – information about the origin and destination of voice and data traffic – is another example. CCTV is a third. It has had obvious utility in criminal trials but has impacted on the accountability of the police, too. Its fitting in custody suites, and police vans, has made these safer places for all concerned.

One of my jobs as Home Secretary was to act as the final appeal body for serious police discipline cases (not a role I thought was appropriate for a minister – I introduced legislation to change it). An early case that landed on my desk concerned a police inspector who had been accused of acting improperly in handling a female prisoner. The CCTV images confirmed this, graphically. The inspector had evidently always acted in this way – it was only when CCTV had been installed (of which he appeared unaware) that incontrovertible evidence against him became available.

The second important change has been the Human Rights Act 1998 (HRA). Its prospect led directly to the major reform and upgrading of investigatory powers by the state,