*English Criminal Law: Time For A Dose of Democracy?*

*The basis of the English criminal law is to protect property. An illustration of this fundamental principle of English jurisprudence was enshrined most notoriously in the Black Act of the eighteenth century which was introduced in an atmosphere of considerable social disquiet by the ruling classes in order to quell the unrest directed at the chattels and property of the ruling classes and which was perceived at that time as a challenge to the then social order.*

*The draconian legislation which was introduced by the government of the day targeted in the region of 50 criminal offences with excessive punishments aimed at eliminating the social unrest and the maintenance of the rule of the landed classes. Whilst the provisions were repealed early in the nineteenth century after a considerable period of campaigning to reform the statutory provisions, the approach adopted by the government of the day can be seen reflected thereafter throughout history as governments of whatever political persuasion have used the penal sanctions of the English criminal law to control and coerce society when it was deemed necessary to preserve the rights of the property owning classes.*

*It could be argued that the present day approach has developed into a desire to protect the intellectual property of the body corporate or the State against any intrusion or infraction. The rights of the individual when raised or identified are viewed as being either subservient to the greater economic good or the national public interest.*

*Now whilst that brief resume above maybe of some interest to legal historians and jurists, it should not be presumed that this view of the development of penal policy is not without merit and worth in the present day when one considers the day to day practice of the criminal justice system and how it should be effectively reformed. What is outlined above concerning the historic guiding jurisprudential principles of English criminal law demonstrates in effect what is still wrong with our current criminal justice system in that the rights of the complainant's or victims, witnesses and defendant's are being ignored or inadequately dealt with within the existing statutory framework. The importance of the individual - whether as a witness, victim or also indeed as the defendant - have either been abrogated or circumvented in a headlong dash by successive governments to attempt to increase the detection of crime, the number of prosecutions brought and to increase the conviction rates at all costs. The evidential safeguards built up over many hundreds of years have slowly been eroded by various statutory attempts to improve and make more efficient our system of justice.*

*In those circumstances and in light of the concerted attempts by governments to make the promotion of law and order a fundamental aspect of their political manifestos, why have ordinary citizens lost confidence in the justice system?*

*It seems to be that members of the public seem now more isolated and disenchanted not only with how the law is enforced but also how it operates and dispenses justice. I would argue that protecting the rights of an individual and respecting their self worth within the system is fundamental in beginning to restore confidence and belief in our system. The rights of property should and must be clearly superseded by the rights of the individual in the 21st Century. In that context, the proposed consultations on the approach to be adopted towards victims and witnesses should be welcomed as a first positive step towards readjusting the balance in the criminal justice system away from the protection of property in all its forms and the modern day trend of promoting efficiency at all costs, and towards a more rights based approach.*

*The rights of the individual whether they be a victim, a witness or a defendant should be understood and respected by the government of the day, the courts and the members of the justice system who operate within it. There should be a move away from the "us and them" approach and allow for consideration of a different approach to solving the growing belief amongst the public that the justice system is not reflecting the needs of the people that it should seek to serve and that it has become removed from modern day society.*

*The Black Act was, as stated above, eventually repealed but its ethos and hubris based approach has lasted long in English jurisprudential and judicial thought. There is a growing public mood for the opening up of the courts and the justice system, to allow people to be heard and their views put forward and to be considered. The democratisation of the justice system in this way allows it not simply to be "rebranded" but for it be "reinvented" so that society not only understands how it operates but also believes in its fairness and how it is deployed.*

*The challenge ahead is to ensure that the democratisation of the justice system is managed effectively to represent and reflect the balance of all views of the people involved in the system, not just lawyers, the judiciary and the police but the victims, witnesses and defendants who have the day to day contact with the system and who constitute the people it's intended to serve. Only when their understanding and trust is regained, can it be said that the project to reform our system has been achieved.*

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