Criminal Justice (Mode of Trial) Bill

When I hear the word "culture", Herr Goering is supposed to have said, I reach for my gun (actually it was Hanns Johst).[1] English people have the same gut reaction at any threat to jury trial. Such is posed by the Criminal Justice (Mode of Trial) Bill, given a second reading in the Lords on December 2.

Historically a jury was defined as a body of laymen summoned and sworn (*jurati*) to ascertain, under the guidance of a judge, the truth as to questions of fact. The basic question has always been, and indeed still is, how to discover the truth. Ordeal by water or fire, based on Christian belief or superstition, was used as the test until its banning by the Fourth Lateran Council in 1215. In that same year Magna Carta pointed the future way with its reference to *judicium parium* or trial by one's peers. Here peers means equals not lords. As we are all equal now that denotes anyone at all (and anyone at all, from the age of eighteen upwards, is what one may expect to find in a current English jury box).

The effect of the Bill is to take away the right of the accused to choose between summary trial and trial on indictment (that is before a jury) in the case of offences triable either way. Instead, the court will decide. Why do this? There are suggestions that it is to save money or speed up the processes of justice and reduce delay. I rather think it arises out of prosecutorial pique. Too many unmeritorious defendants are playing the system in the hope of getting out of well-merited punishment. Often they have previous convictions, and are therefore damned from the start in some eyes. The hard-bitten authorities who manage our criminal justice system have no belief at all in the notion that an old lag might turn over a new leaf. Hence the following curious statement by the Attorney General, Lord Williams of Mostyn, on moving the second reading of the Bill: "Is it right that someone, let us say, who has ten previous convictions for shoplifting a jelly or a banana from Tesco is automatically entitled to the right to trial by jury?"[2] No one seriously believes that is really the key question.

Lord Williams introduced a lighter note, derived from his days as a barrister on the Wales and Chester circuit. "A number of us", he said, "have spent many happy hours at the Bar defending people - they always seemed to be farmers - who were charged with breathalyser offences". On that circuit, he added, provided your client was not an English speaker it was quite normal to secure an acquittal. Drawing in the LibDems, he said "I am glad to see that my noble friend Lord Carlile nods and smiles at these memories". No doubt he was recalling Milton in *L'Allegro*-

> Haste thee Nymph, and bring with thee
> Jest and youthful jollity,
> Quips and cranks, and wanton wiles,
> Nods, and becks, and wreathéd smiles.

On behalf of the Conservatives, Lord Cope of Berkeley (who as plain John Cope interviewed me long ago when I was being put on the party's list of approved parliamentary candidates) made some shrewd points. He said that financial savings will be illusory in view of the appeal process proposed. "The other thing which is likely to prove illusory is the idea that the Bill will speed up the process of justice. When the proposal for magistrates alone to decide the

[1] *Schlageter* (1933), Act 1, Scene 1.
[2] HL Deb. 2 December 1999, col. 923.

trial venue was put forward in 1993 by the Royal Commission, and again in the Narey report on delays in the system in early 1997, the present Home Secretary said he thought the reduction in delay would prove illusory." Now he is in office Mr Straw, who held a tutorial for their Lordships immediately before the second reading, has conveniently changed his mind.

Giving fair rotation, I end with the LibDem view, expressed in the second reading debate by Lord Thomas of Gresford. These worthies are against "the wonderful new reform which is now being put forward". Slightly more interesting than this puny salvo was the glimpse of his youth vouchsafed by Lord Thomas, who has been a Crown Court recorder for 25 years. "My father was a policeman. I was born in a police house. I spent the first five years of my life living in a police station, after which it became a magistrates' court. . . . In my teenage years I used to leave school at one o'clock and go to the police station to eat my dinner in the police canteen. So I imbibed the 'canteen culture' of the police force with my sausage and mash." To which one can only add "Ah! Happy days!".

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