What does a one nation justice policy look like?

From:
Ministry of Justice and The Rt Hon **Michael Gove MP**
Delivered on:
23 June 2015 (Speaker's notes, may differ from delivered version)
Location:
The Legatum Institute
First published:
23 June 2015

Speech given at the Legatum Institute.

I would like to begin by thanking The Legatum Institute for giving me a platform today.

The Legatum Institute, and its formidable leadership troika of Sian Hansen, Cristina Odone and Anne Applebaum have been inspirational in their commitment to 2 principles close to my heart – principles essential to the argument I want to make today.

They have been brave and consistent champions of the rule of law. The Legatum Institute has done fantastic work showing how establishing the institutions which safeguard the rule of law is the best way to rescue disadvantaged and developing societies from misgovernment and poverty. Sian, Cristina and Anne have also been visionary in helping to establish The Good Right – with my friend Tim Montgomerie. The Good Right is designed to show how conservative politics can be progressive and emancipatory.

Making the case for the rule of law as an institution which safeguards progressive values is my mission. And I am here to talk about how we make the justice system work for everyone in this country.

Yesterday, the Prime Minister set out his vision for a one nation Britain. He explained how this government will extend opportunity across the country. Today, I want to begin to outline – and I stress begin – what a one nation justice policy should look like.

When the country handed us the responsibility of governing just over a month ago, we wanted to make sure every citizen of the United Kingdom felt they were equal partners in one nation.

It is on that basis that the Prime Minister asked me to lead a programme of reform at the Ministry of Justice (MOJ) – to make our justice system work better for victims; to deliver faster and fairer justice for all citizens; to make sure our system of family justice safeguards children, especially those at risk of abuse and neglect, more effectively than ever; to make sure the laws we pass provide protection for the weakest; to make our prisons places of rehabilitation which give those who have made the wrong choices opportunities for redemption; to help offenders when they leave custody to make the right choices and contribute to society; to rescue young offenders, and those who may be on the path to offending, from a life of crime; and to reform our human rights legislation better to protect the fundamental freedoms we all cherish.

But before saying a little more about what I think may need to change, it is critically important that I stress what needs to be protected, preserved and enhanced.

And I should – in particular – express my thanks to my 2 immediate predecessors in this role for the work they have already done to reform our justice system.

Ken Clarke and Chris Grayling introduced changes to family and criminal justice, prisons and probation which have seen the time children wait to be taken into care reduced, crime fall, prisons become better managed and rehabilitation modernised. I am in their debt.

And I am conscious – as they always were – that there is something distinctive about the role of Lord Chancellor, different from other Cabinet posts.

The most important thing I need to defend in this job – at all costs – is not a specific political position – but the rule of law.

The rule of law

The rule of law is the most precious asset of any civilised society. It is the rule of law which protects the weak from the assault of the strong; which safeguards the private property on which all prosperity depends; which makes sure that when those who hold power abuse it, they can be checked; which protects family life and personal relations from coercion and aggression; which underpins the free speech on which all progress – scientific and cultural – depends; and which guarantees the essential liberty that allows us all as individuals to flourish.

In these islands we are fortunate that the rule of law is embedded in our way of life. An Englishman’s word is his bond, his home is his castle and Jack’s as good as his master. The principles that contracts should be honoured, property rights respected and all are equal before the law are customary – the deep fabric of our culture.

And woven into that fabric have been the events in our history when the principles of the rule of law have been asserted by the heroes and heroines who are the makers of our nation.

The sealing of Magna Carta, the calling of the first Parliament by Simon de Montfort, the establishment of habeas corpus, the challenge to the operation of the Star Chamber in early Stuart times, the fight by Parliament against the Crown under Charles the First, the Glorious Revolution, the Bill of Rights, the judgement of Lord Mansfield that affirmed the air of England too pure for any slave to breathe, Catholic Emancipation, the removal of discrimination against Jewish citizens, universal suffrage, the principle of judicial review of the executive – all of these are acts which have contributed to making us who we are – a people bound by rules and guided by precedent who settle issues by debate in Parliament and argument in courts, and who afford equal protection to all and cherish liberty as a birthright. These historic acts are what constitute our nation – they are our constitution. And it is my duty, as Lord Chancellor, to safeguard the principles that underlie that constitution.

The rule of law is so precious, and so powerful, in our eyes because of our history. But it is also a precious, and powerful, asset for a modern nation seeking to maximise its citizens' welfare in a fast-changing world.

We are fortunate in England and Wales that the world, again and again, chooses our courts to resolve its disputes. We are fortunate that the reputation of our independent judiciary, the quality of our barristers and solicitors, the centuries-old respect for due process that characterises our legal system and the total absence of corruption in our courts and tribunals, have all made England and Wales the best place in the world when it comes to resolving matters by law.

As a result of that global leadership we as a nation earn over £20 billion a year from the provision of legal services.

So both as a matter of enlightened economic self-interest, and as a matter of deep democratic principle, it is vital that the institutions which sustain and uphold the rule of law are defended and strengthened.

That means vigilance to make sure the judiciary maintain their independence and their insulation from politics. It requires understanding of the importance of a healthy independent bar, to make sure high quality advocacy. It means awareness of the special virtues of an adversarial criminal justice system, with arguments tested in open court and guilt having to be proven beyond reasonable doubt before an individual's liberty is curtailed.

It also means appreciation of the scrupulous patience, intellectual diligence and culture of excellence which characterises the work of those solicitors and barristers who support commercial endeavour and innovation.

Our position of world leadership in the provision of legal services will only become more important as innovation gathers pace, new patents are developed, new companies are created, new deals are struck, new mergers and acquisitions take place,

new enterprises grow and new opportunities arise. Making sure that we retain that position of global pre-eminence is one of my responsibilities.

But even as we can – collectively – take pride in the fact that our traditions of liberty are generating future prosperity we must also acknowledge that there is a need to do much more. Despite our deserved global reputation for legal services, not every element of our justice system is world-beating.

While those with money can secure the finest legal provision in the world, the reality in our courts for many of our citizens is that the justice system is failing them. Badly.

A dangerous inequality at the heart of our system

There are 2 nations in our justice system at present. On the one hand, the wealthy, international class who can, for example, choose to settle cases in London with the gold standard of British justice. And then everyone else, who has to put up with a creaking, outdated system to see justice done in their own lives. The people who are let down most badly by our justice system are those who must take part in it through no fault or desire of their own: victims and witnesses of crime, and children who have been neglected.

While it is right that we should respect the traditions that underpin our legal system, that help guarantee respect for individual freedom and equality before the law, it is also undeniable that our courts are trapped in antiquated ways of working that leave individuals at the mercy of grotesque inefficiencies and reinforce indefensible inequalities. Her Majesty's Courts and Tribunals Service (HMCTS) is exactly what its name implies – a service, available for public use. And like any other public service, it must be subject to reform, so that we can deliver value-for-money for taxpayers and fair treatment for all citizens.

That is not happening at the moment. I have seen barristers struggle to explain why a young woman who had the courage to press a rape charge should have had to wait nearly 2 years before her case was heard. Reporting these offences in the first place must be a traumatic experience – made worse still by having to relive it in court 2 years later. I have watched as judges question advocates about the most basic procedural preliminaries in what should be straightforward cases and find that no-one in court can provide satisfactory answers. I have heard too many accounts of cases derailed by the late arrival of prisoners, broken video links or missing paperwork. I have seen both prosecution and defence barristers in a case that touched on an individual's most precious rights acknowledge that each had only received the massive bundles in front of them hours before and – through no fault of their own – were very far from being able to make the best case possible.

And thinking of those huge bundles, those snowdrifts of paper held in place by delicate pink ribbons, indeed thinking of the mounds of paper forming palisades around the hard-pressed staff who try to bring some sense and order to the administration of justice, it is impossible not to wonder what century our courts are in. Were Mr Tulkinghorn to step from the pages of Bleak House or Mr Jaggers to be transported from the chapters of Great Expectations into a Crown Court today, they

would find little had changed since Dickens satirised the tortuously slow progress of justice in Victorian times.

It is hardly defensible any more – indeed I cannot think of anyone who would want to defend the protracted series of full-dress court appearances required before really quite straightforward criminal cases are tried.

In our criminal courts barristers, judges, clerks and ushers all must be present – indeed must be physically convened together – for a preliminary hearing – perhaps often delayed – and then a plea and case management hearing – perhaps also further delayed – before the case itself has any chance to be heard. Along the way it is not uncommon that papers or other evidence that should have been served by the Crown Prosecution Service (CPS) will be late, or missing. Interviews may not have been transcribed. Arrangements to call witnesses may be uncertain.

And then when the trial itself is due to begin it is entirely possible that pleas may change at the last minute, witnesses may not turn up, the whole protracted, expensive, bewildering enterprise may end with no justice being done and nothing but confusion seen to be done.

The number of trials that collapse before going ahead – or collapse as they proceed – is huge. Across both magistrates and Crown Courts, almost 1 in 5 trials – 17% – are "ineffective" – meaning the required court hearing does not happen on the day, often due to administrative issues, and needs to be rearranged. Last year, there were more than 33,000 ineffective trials in our criminal courts.

Almost 2 in 5 trials – 37% – are "cracked" – meaning the case concludes unexpectedly without a planned court hearing. Of course, it is often preferable to resolve cases before they reach court – but when guilty pleas are only entered on the day, you have to ask whether the matter could have been resolved sooner, and taken up less time, money and resource.

That leaves less than half of cases – 46% – which are "effective". We must do better.

The people who experience this inefficiency every day are the staff who work in our courts and tribunals and valiantly keep the system working, despite its flaws. Across England and Wales, dedicated court staff cope with those snow drifts of paper, archaic IT systems and cumbersome processes. We would have no justice without them and they feel the frustrations of the current system most keenly and understand the case for reform most powerfully.

The waste and inefficiency inherent in such a system are obvious. But perhaps even more unforgivable is the human cost. It is the poorest in our society who are disproportionately the victims of crime, and who find themselves at the mercy of this creaking and dysfunctional system.

Women who have the bravery to report domestic violence, assault and rape. Our neighbours who live in those parts of our cities scarred by drug abuse, gangs and people trafficking. These are the people who suffer twice – at the hands of criminals and as a result of our current criminal justice system.

A slow system is bad not just for the lawyers, court staff and judiciary who handle these cases, or for victims of crime who have suffered terrible abuse, it is also disruptive – and in some cases life-destroying – for those who are subsequently found not guilty, but only after they have lost months if not years of their lives in legal limbo.

We urgently need to reform our criminal courts. We need to make sure prosecutions are brought more efficiently, unnecessary procedures are stripped out, information is exchanged by e-mail or conference call rather than in a series of hearings and evidence is served in a timely and effective way. Then we can make sure that more time can be spent on ensuring the court hears high quality advocacy rather than excuses for failure.

The case for reform is overwhelming. Which should not surprise us, because it is made most powerfully and clearly by the judiciary themselves.

The Lord Chief Justice and his colleagues who provide leadership to our justice system are all convinced of, and convincing on, the case for reform. They have commissioned work which makes the case for quite radical change. Should anyone doubt the need for dramatic steps, Sir Brian Leveson's report on the need for change in our criminal justice system makes the case compellingly. He argues with great authority and makes a series of wise recommendations. They need to be implemented with all speed.

It is my intention to do everything I can to support the Lord Chief Justice, Sir Brian and his colleagues in their work. Not for the first time in our history, it is our judges who see most clearly what needs to be done to help the vulnerable, the overlooked and the victimised in our society.

Reforming civil justice

But it is not just in the criminal courts that the case for reform is clear, and the judiciary are leading the way. Outside of our criminal courts, millions of individuals every year use our courts to deal with injustice in their everyday lives. Whether challenging unscrupulous landlords; reaching custody arrangements after divorce; agreeing liability of a failed contract; or settling a dispute over intellectual property rights worth everything to the parties involved – our courts matter. Without our civil and family courts, or our tribunal services, our contracts are unenforceable, and individuals left with no recourse when deprived of their rights. But it astonishes businesses and individuals alike that they cannot easily file their case online. And it astounds them that they cannot be asked questions online and in plain English, rather than on paper and in opaque and circumlocutory jargon.

The current system adds to stress at times of need, and restricts access to high quality resolution of disputes by simply being too complex, too bureaucratic and too slow. Across our court and tribunal system we need to challenge whether formal hearings are needed at all in many cases, speed up decision making, give all parties the ability to submit and consider information online, and consider simple issues far more proportionately.

Thanks to pioneering work the judiciary have commissioned from reformers like Professor Richard Susskind, there is now a huge opportunity to take many of these disputes online. Questions which have previously required expensive court time and have often as a result been marked by acrimony, bitterness and depleted family resources can now be resolved more quickly, efficiently and harmoniously.

Sir James Munby, the President of the Family Division, envisages that the complex, sometimes fraught and certainly disorientating process of applying for probate, or dealing with family separation or divorce could be far more quickly and sensitively handled. By using plain English rather than legalese, replacing paper forms with simple questions online, and automating much of the administrative process, many issues could be resolved far more quickly, often without the involvement of administrators or the judiciary.

That would free the time of Sir James and his colleagues for the most vital work of the Family Court – deciding whether it is in the best interests of children, who have suffered neglect or abuse, to remain with their birth families or to be placed in the care of foster or adoptive parents.

The reform programme which the judiciary want to implement is being planned now. We have already committed to invest in the technology which will underpin it. This reform programme could liberate tens of thousands of individuals from injustice and free hundreds of thousands of hours of professional time. Online solutions and telephone and video hearings can make justice easier to access and reduce the need for long – and often multiple – journeys to court. And we can reduce our dependence on an ageing and ailing court estate which costs around one third of the entire Courts and Tribunals budget.

Inevitably, that means looking again at the court estate. It is still the case that many of our courts stand idle for days and weeks on end. Last year over a third of courts and tribunals sat for less than 50% of their available hours (10am – 4pm). At a time when every government department has to find savings it makes more sense to deliver a more efficient court estate than, for example, make further big changes to the legal aid system.

Social justice at the heart of our justice system

Legal aid is a vital element in any fair justice system. There is a responsibility on government to make sure that those in the greatest hardship – at times of real need – are provided with the resources to secure access to justice.

So, I know how controversial the changes we have had to make to legal aid have been. But I also believe that those changes need to be judged fairly. The coalition government sought to make sure legal aid remained available for critically important cases - where people’s life or liberty is at stake, where they face the loss of their home, in cases of domestic violence, or where their children may be taken into care.

And when I came to office I made sure that the changes my predecessor had put in place to guarantee access to legal advice across the country were implemented. I also

made sure that the criminal bar were protected from further cuts so that the high quality advocacy they provide could be supported.

Change was required to save money – no minister in this government can avoid thinking hard about how to deal with the massive deficit. But I am also committed to making sure that we protect access to justice for everyone accused of a crime, and safeguard and improve the quality of the legal advice and advocacy in our criminal courts.

I am particularly keen to make sure that the highest quality advocates are instructed in all cases, and have set in train immediate work to address the problems described in Sir Bill Jeffrey's report on criminal advocacy last year.

And I want to make sure that once these changes to criminal legal aid are in place, we will monitor their effects to make sure that justice and fairness are served.

That is why we will review the impact of these changes both on the quality of advocacy and access to justice and why I am determined to do everything I can to protect and enhance both.

A one nation justice policy requires no less.

But a one nation approach to justice cannot be blind to the fact that while resources are rationed at one end of our justice system rewards are growing at the other end.

The global leadership in legal services I referred to, and took vicarious pride in, at the beginning of my speech has made a large number of organisations, and individuals, in this country very successful.

There is no doubt that in the market for legal expertise, we are reaping the benefits of Britain's huge competitive advantage. But the law is more than a marketplace, it is a community; the legal profession is more than a commercial enterprise, it is a vocation for those who believe in justice being done.

The belief in the rule of law, and the commitment to its traditions, which enables this country to succeed so handsomely in providing legal services is rooted in a fundamental commitment to equality for all before the law. So those who have benefited financially from our legal culture need to invest in its roots.

That is why I believe that more could – and should – be done by the most successful in the legal profession to help protect access to justice for all.

I know that many of the most prestigious chambers at the Bar and many of the top solicitors' firms already contribute to pro bono work and invest in improving access to the profession. Many of our leading law firms have committed to give 25 hours pro bono on average per fee earner each year.

That is welcome, but much more needs to be done.

Last year, according to a survey by the Law Society, 16% of solicitors in commerce and industry provided an hour or more pro bono work. When it comes to investing in access to justice then it is clear to me that it is fairer to ask our most successful legal professionals to contribute a little more rather than taking more in tax from someone on the minimum wage.

I want to work with leaders in the profession to examine what the fairest way forward might be. But I cannot accept that the status quo is defensible.

A refusal to accept that the status quo is acceptable – in our courts, in our prisons, indeed when it comes to our liberties – is the essential characteristic of a one nation justice policy.

In future speeches I hope to outline what we need to do to make sure our prisons work much better, to explain what needs to change in our youth justice system, to explore how we can prevent individuals falling into crime and how we can rescue them from a life of crime. I also want to make clear how we can better protect our rights, not least to freedom of speech and to freedom of association.

What will guide me is what guides our government – a belief in the principles of One Nation – respect for the traditions which make our country liberal, tolerant and resilient – a belief that every citizen has a role to play, views that deserve respect and an essential dignity none should compromise – a belief that opportunity should be more equal, background should be no barrier to success and extremes of wealth and poverty scar us all – and a commitment above all to helping those who have been held back by prejudice, accident or circumstance to achieve the fulfilment and happiness of rewarding work, security at home and flourishing relationships.

Thank you.