

## Bureaucracy, standardisation and efficiency in the summary criminal justice process

### Introduction

This presentation seeks to discuss some of the processes of governance involved in summary criminal proceedings – namely the regulation of discretionary professional behaviour via bureaucratic processes. I argue that there appears to be increased references to the use of forms in summary criminal proceedings, and that this reflects the government's desire to manage risk by reducing discretionary decision-making practices, and thereby increase efficiency. In order to make that argument, it is necessary to consider the relationship of bureaucracy to both the criminal justice process and neoliberalism. I intend to refer to forms as an example of how an increased focus on value for money has led to further standardisation as a form of governance in one arm of the state.

### Bureaucracy

The development of industrialisation created large-scale workforces whose practices, in order to encourage an increase in the accumulation of capital, needed to be controlled and monitored.<sup>1</sup> Managers were influenced by philosophies which asserted that success could be achieved by those who dedicated themselves to efficient working practices.<sup>2</sup> However, professional cultures involved in the administration of the welfare state resisted external attempts to streamline decision-making practices and redefine their goals while managers attempted to motivate workers to fulfil corporate goals.<sup>3</sup> One management practice is to encourage routine procedures which can be easily monitored. Thus forms, as a particular communicative mode (ordering/ascribing meaning to phenomena and related approaches to discourse),<sup>4</sup> may contribute to the imposition of particular types of management of professional subcultures.

---

<sup>1</sup> Pollitt C, 'The development of management thought' in Hill, Michael (ed), *The Policy Process: A Reader* (Harvester Wheatsheaf 1993).

<sup>2</sup> Pollitt C, 'The development of management thought' in Hill, Michael (ed), *The Policy Process: A Reader* (Harvester Wheatsheaf 1993).

<sup>3</sup> Pollitt C, 'The development of management thought' in Hill, Michael (ed), *The Policy Process: A Reader* (Harvester Wheatsheaf 1993).

<sup>4</sup> Degeling P and Colebatch H, 'Structure and action as constructs in the practice of public administration' in Hill, Michael (ed), *The Policy Process: A Reader* (Harvester Wheatsheaf 1993).

Routinisation means that “responsiveness to ascribed differences among clients...decreases”.<sup>5</sup> So far as criminal justice is concerned, that type of filtering behaviour (made possible by the relative autonomous decision making practices of professionals) can have an impact on outcomes – such as pleas and sentencing in lower courts as found by Sudnow<sup>6</sup> and classification of defendants in certain ways.<sup>7</sup> Tepperman notes that, within the context of courtroom bureaucracy, “standardisation of court procedure is embedded in a court subculture of decision-making that is never explicit or well articulated”.<sup>8</sup> The monitoring of such work therefore requires information exchange via record keeping,<sup>9</sup> which leads to further routinised practices, so “bureaucracies use forms and written records as a technique for observing...behaviour”.<sup>10</sup>

The other significant factor in courtroom bureaucracy is the clerk, who Bottoms and McClean describe as the Liberal Bureaucrat. In this model, the “humane and enlightened clerks to the justices”<sup>11</sup> agree that there is a need for formal procedures which ensure justice is seen to be done, but also require restricted protections so that the system does not become over-burdened and collapse. As Astor notes, clerks are required to manage the business of the magistrates’ courts, most of which operate under considerable degrees of pressure.<sup>12</sup> This means that, while the stated goal of criminal procedure might be understood in terms of ‘justice’, its resources and organisation are dedicated to efficient case processing.<sup>13</sup>

---

<sup>5</sup>Tepperman L, 'The Effect of Court Size on Organization and Procedure' (1973) 10(4) The Canadian review of sociology and anthropology 346; 346

<sup>6</sup> Sudnow D, 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office' (1965) 12(3) Social Problems 255

<sup>7</sup> Sudnow D, 'Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office' (1965) 12(3) Social Problems 255; Carlen P, *Magistrates' Justice* (Martin Robertson 1976); Tepperman L, 'The Effect of Court Size on Organization and Procedure' (1973) 10(4) The Canadian review of sociology and anthropology 346

<sup>8</sup> Tepperman L, 'The Effect of Court Size on Organization and Procedure' (1973) 10(4) The Canadian review of sociology and anthropology 346; 352

<sup>9</sup> Brintnall M, 'Caseloads, Performance, and Street-Level Bureaucracy' (1981) 16 Urban Affairs Review 281.

<sup>10</sup> Brintnall M, 'Caseloads, Performance, and Street-Level Bureaucracy' (1981) 16 Urban Affairs Review 281.; 308

<sup>11</sup> Bottoms A and McClean J *Defendants in the criminal process* (Routledge 1976); 228.

<sup>12</sup> Astor H, 'The Unrepresented Defendant Revisited: A Consideration of the Role of the Clerk in Magistrates' Courts' (1986) 13(2) Journal of Law and Society 225

<sup>13</sup> Astor H, 'The Unrepresented Defendant Revisited: A Consideration of the Role of the Clerk in Magistrates' Courts' (1986) 13(2) Journal of Law and Society 225

So far as criminal justice is concerned, Jones notes, “what is new is that there is now in the ascendant an ideology which wholly legitimates the pursuit of administratively rational ends over substantive justice goals”.<sup>14</sup> The governments’ concerns about efficiency intensified as they expressed concern that public services were ineffective, and therefore sought to impose intrusive forms of regulation. Thus success is redefined “by creating performance indicators which are not concerned with the reduction of crime but the internal assessment of the performance of the organisation”.<sup>15</sup> Jones argues that auditing has elevated the “achievement of economy, efficiency and effectiveness over principled criminal justice policy”,<sup>16</sup> while Lacey notes that, by focusing on value for money, political debate about what constitutes value in specific circumstances is increasingly ignored.<sup>17</sup> This reflects a change in attitude towards the criminal justice process on the basis that it had previously been accepted that the interests of justice might require a degree of delay, which will increase cost.<sup>18</sup> Garland notes that, amid concerns to cut costs, managerialism has become “all pervasive”<sup>19</sup> and “affects every aspect of criminal justice...performance indicators and management measures have narrowed professional discretion and tightly regulated working practice”.<sup>20</sup> One way in which those working practices are regulated is via the use of forms.

### Data

There is little reference to how forms operate in magistrates’ court proceedings in previous socio-legal studies of summary criminal justice. It is not clear whether this is because the forms did not exist, existed but were not used, were not referred to in open court or their use was not recorded. At least thirteen types<sup>21</sup> of form are now regularly referred to (either implicitly or explicitly) in magistrates’ court in east Kent. Across 183 cases observed, there

---

<sup>14</sup> Jones C, 'Auditing Criminal Justice' (1993) 33 *British Journal of Criminology* 187; 196

<sup>15</sup> Young J, 'Searching for a New Criminology of Everyday Life: A Review of the 'Culture of Control' by David Garland' (2002)(42) *British Journal of Criminology* 228; 238

<sup>16</sup> Jones C, 'Auditing Criminal Justice' (1993) 33 *British Journal of Criminology* 187; 188

<sup>17</sup> Lacey N, 'Government as Manager, Citizen as Consumer: The Case of the Criminal Justice Act 1991' (1994) 57 *Modern Law Review* 534.

<sup>18</sup> Padfield N, *Text and Materials on the Criminal Justice Process* (Oxford University Press 2008)

<sup>19</sup> Garland D, *The Culture of Control: Crime and Social Order in Contemporary Society* (University of Chicago Press 2002); 18

<sup>20</sup> Garland D, *The Culture of Control: Crime and Social Order in Contemporary Society* (University of Chicago Press 2002); 18

<sup>21</sup> Police bail notices, MG5 (police prepare case summary), MG10 (prosecution witness availability), Court bail notice, case management forms, sentencing reasons forms, trial reasons forms, means forms, cracked

were a total of 220 references to forms, the vast majority of which were implied. This suggests that forms are a covert method of regulation in that they are not openly referred to during the proceedings yet they have a bearing on the construction of legal terms and processes. While the forms serve various purposes – some enable the magistrates to make informed decisions, some monitor cost and others manage the conduct of cases through the courts - I want to focus on two types of form – Sentencing Reasons Forms and Case Management Forms.

Sentencing Reasons forms have several roles in the summary proceedings. Whenever the magistrates impose a sentence or adjourn a case for a Pre Sentence Report to be prepared by the Probation Service, they complete a Sentencing Reasons form which sets out what level of sentence they are considering (community order or custodial sentence), and the aggravating or mitigating features. The complete form is then passed to the Probation Service so that the reporting officer can prepare a report in line with the magistrates’ reasoning. The sentencing Bench will use that form, in conjunction with any Pre Sentence Report that has been prepared, to determine the most appropriate sentence. In this context, the underlying rationale could be analysed in several ways. Firstly, simply as an administrative tool to assist a Probation Officer in writing a report. Secondly, the form could be seen as a tool to ensure consistency in decision-making. In that regard, the construction of the sentence is formulated according to predetermined criteria (the form consists of certain boxes that need to be completed) which restrict discretionary decision making. This standardises practices, removes discretion and arguably uses those tactics to increase efficiency and support a general trend of reducing discretionary decision making in the face of increasingly crime control oriented practices aimed at processing a high volume of cases.

Case Management forms equally have both administrative and legal roles in magistrates’ court processes. Case Management forms require the parties to state the matters that are in dispute, the witness requirements (and reasons why witnesses are required), any further evidence to be served and any legal argument that is envisaged. As such, they require the parties to narrow the contested issues at trial so that court time can be used in the most efficient manner. This has the effect of focusing the Crown Prosecutor’s time and resources

---

and ineffective trial forms, interpreter’s timesheets, legal aid applications, form certifying committal procedures, TIC schedules.

only on those matters that are disputed.<sup>22</sup> The way that the forms are structured provides “frameworks for guided response”<sup>23</sup> such as tick box responses for particular questions. One tick box relates to whether an alternative or limited plea is acceptable. Plea negotiations in magistrates’ courts assist the management of large caseloads which subordinate the defendant’s needs to managerial practices.<sup>24</sup> Thus the form becomes a way of demonstrating that the parties are acting in an efficient, co-operative manner.

### The relationship between forms and bureaucracy

In considering the roles of frequently referred to forms, one can detect a move towards both standardised procedures and regulating the construction of criminal justice. As Riles notes, “documents are paradigmatic artefacts of modern knowledge practices”.<sup>25</sup> Demands for standardised procedures can be associated with a perceived increase in the volume of court business, although Carlen had noted, forty years ago, that the volume of cases being processed through magistrates’ courts means that the proceedings require strict management and thus “the ideal of adversary justice is subjugated to an organisational efficiency”.<sup>26</sup> Packer’s crime control model<sup>27</sup> associates volume processing with effective case disposal at whatever cost. However, it is possible to link increased reliance on, and reference to, forms with Bottoms and McClean’s liberal bureaucratic model, which requires procedures that ensure justice is seen to be done (it is recorded on the form) but also require volume processing so that the system does not become over burdened. Indeed, documents are vital technologies of bureaucratic structures,<sup>28</sup> as keeping records (manifested in the use of forms in this scenario) becomes a method “of social control made potent by a number of special characteristics of the file – its legitimacy or authority, its permanence, its transferability, its facelessness”.<sup>29</sup> Such practices result in standardisation, and “standardisation produces new legal regimes through routinization of work and

---

<sup>22</sup> *DPP –v- Chorley Justices and Andrew Forrest* [2006] EWHC 1795; *Malcolm-v- DPP* (2007) EWHC 363 (Admin)

<sup>23</sup> Brenneis D, 'Reforming Promise' in Riles, Annelise (ed), *Documents. Artefacts of Modern Knowledge* (University of Michigan Press 2006); 49

<sup>24</sup> Mulcahy A, 'The justifications of `justice': legal practitioners' accounts of negotiated case settlements in magistrates' courts' (1994; 1994) 34(4) Br J Criminol 411.

<sup>25</sup> Riles A (ed), *Documents. Artefacts of Modern Knowledge* (University of Michigan Press 2006); 2

<sup>26</sup> Carlen P, *Magistrates' Justice* (Martin Robertson 1976); 20

<sup>27</sup> Packer H, *The Limits of Criminal Sanction* (Oxford University Press 1968).

<sup>28</sup> Weber M, 'Bureaucracy' in *On Charisma and Institution Building* (Chicago University Press 1968).

<sup>29</sup> Riles A (ed), *Documents. Artefacts of Modern Knowledge* (University of Michigan Press 2006); 9

professional roles".<sup>30</sup> Demands for increasingly professional, consistent decision making suggest that magistrates should be given greater guidance in decision making,<sup>31</sup> and such guidance could manifest in the use of standard forms which direct decision making in structured formats. Management techniques are often designed to avoid complacency and resulting inertia, but it is questionable whether the completion of standard documents in fact creates complacency in terms of standard answers, and thereby subordinates due process considerations to demands for efficiency.

### Concluding remarks

It seems therefore that forms are being used in attempts to standardise practices and routinise the behaviour of professionals in a setting which is subject to increased levels of representation and greater demands for efficiency in light of concerns about publicly funded services.

---

<sup>30</sup> Riles A, *Collateral Knowledge. Legal Reasoning in the Global Financial Markets* (University of Chicago Press 2011); 58

<sup>31</sup> Davies M, 'A new training initiative for the lay magistracy in England and Wales - a further step towards professionalisation?' (2005) 12(1) *International Journal of the Legal Profession* 93