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## Comments

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### COURT REFORM IN ENGLAND

A reading of the Beeching report<sup>1</sup> suggests that the English court reform which entered into force on 1 January 1972 was the result of purely domestic considerations. The members of the Commission make no reference to the civil law countries which Great Britain will join in an important economic and political regional arrangement. Yet even a cursory examination of the effects of the reform on the administration of justice in England and Wales suggests that English courts now resemble more closely their counterparts in Western Europe.

It should be stated at the outset that the new organization of English courts is by no means the result of the 1971 Act alone. The Act crowned the work of various legislative measures which have brought gradual change for a period of well over a century, including the Judicature Acts 1873-75, the Interpretation Act 1889, the Supreme Court of Judicature (Consolidation) Act 1925, the Administration of Justice Act 1933, the County Courts Act 1934, the Criminal Appeal Act 1966 and the Criminal Law Act 1967. The reform culminates a prolonged process of response to social change affecting the legal structure in England. Its effect was to divorce the organization of the courts from tradition and history in order to achieve efficiency and to adapt the courts to new tasks and duties which they must meet in new social and economic conditions.

While the earlier acts, including the 1966 Criminal Appeal Act, modernized the structure of the Supreme Court of Judicature, the 1971 Act extended modern court structure to the intermediate level, creating the new Crown Court, and provided for the regular administration of justice in civil matters by the High Court in England and Wales, outside the Royal Courts in London.

In historical perspective the piecemeal reforms of administration of justice may be roughly described as doing to English justice what the French Revolution and modernization of the legal system did to the administration of justice in France and in due course to the rest of Europe. Principal shared features of the judicial systems of the major Western European countries may be described as follows: There are four levels of courts. Original jurisdiction belongs to the two lower levels, with courts of appeal and supreme courts having exclusive (or almost exclusive) appellate jurisdiction. In France

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1. Royal Commission on Assizes and Quarter Sessions 1966-69, Cmnd 4153.

judges of the *Cour d'Appel* provide presiding judges and the tribunal for the *Cour d'Assize*. Courts on all four levels (in Italy, Germany, France and The Netherlands) share criminal and civil jurisdiction. The exception is France where the *Tribunal d'Instance* (the lowest in the hierarchy of French courts manned by the professional judiciary) exclusively handles less important civil cases, while minor criminal infractions (*contraventions*) are dealt with by justices of the peace (*tribunaux de simple police*). More serious criminal and civil cases are handled by the next major court (*Tribunal de Grande Instance*), which also (one per departmental administrative unit) serves as an administrative base for the *Cour d'Assize*, which tries major crimes with the participation of a jury. The *Tribunal de Grande Instance* also decides appeals from the decisions of the lower courts in criminal and civil matters, thus constituting the most important link in the administration of criminal and civil justice: It handles the most important civil and criminal cases, and in its appellate role controls and supervises the work of the lower courts in both fields.

This pattern prevails in most of Western Europe. In Germany the vital role belongs to the *Landesgericht*, in the Netherlands to the General Court, and in Italy to the Civil and Criminal Tribunals (*Tribunali Civili e Penali*). Before the Bolshevik Revolution the middle level of courts played a similar role in Russia and in all the countries which after World War II have adopted the Soviet form of government.<sup>2</sup>

Two other important features common to most civil law countries are worthy of mention. One is the professionalism of judicial personnel. Court reform in Europe was largely motivated by a distrust of lay judges. The magistrature includes judges on all levels of the administration of justice. The judiciary, although part of the legal profession, constitutes a separate and large class of civil servants, and a separate career. Recruitment of personnel from other branches of the legal profession is permitted only for administrative courts. Despite of distinctions in rank, level of experience and years of service at various court levels, members of the judiciary make their careers independently of appointment to courts of different levels, thus providing a somewhat more even distribution of judicial talent and expertise. As do all lawyers, judges have a university education. The second major civil law feature is an even territorial distribution of courts and judicial personnel, taking into account the volume of business in the courts, concentration of population, and intensification of commercial activity.

The 1971 Act brought the English Court structure closer to the European pattern. It abolished Assizes and Quarter Sessions and replaced them with the Crown Court, a middle level court of criminal jurisdiction analogous to similar European courts. In addition to criminal jurisdiction in all indictable offenses, the Crown Court in-

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2. After World War II their native administration of justice was replaced by a judiciary modeled after the Soviet example.

herited from the Quarter Sessions appeal functions from the decisions of the Magistrates Courts, including—incidentally—some civil and quasi civil matters (affiliation proceedings and certain proceedings under Children and Young Persons Act 1933; cf. generally Magistrates Courts Act 1952).

The meaning of the reform was demonstrated by the territorial arrangement for the location of new courts and the assignment of jurisdictional responsibilities to the High Court judges in civil cases. England and Wales were divided into six circuits, equipped with a local organization for the disposal of judicial business, consisting of two presiding judges and a circuit administrator.

Criminal cases in the jurisdiction of Crown Courts are handled by two tiers of judges, Circuit and High Court. The former try cases formerly handled by Quarter Sessions, while the latter are responsible for cases previously within the jurisdiction of the High Court and Assizes. In London, the Central Criminal Court became the Crown Court. As a result of this aspect of the reform, the High Court shed its responsibilities in the area of criminal justice, retaining its functions as a major court for civil matters.

Some confusion results from the fact that upper level judges in the Crown Courts still retain the name of High Court Judges. But clearly their title is merely a title of rank, indicating their place in the judicial hierarchy, antecedents of service, and their degree of specialization. Certainly, High Court judges in the Crown Courts have little in common with the High Court of London, which is a major court for civil cases.

The real key to the new court structure is found in the Act's provisions on court centers (twenty-three outside London) where the Crown Court will sit with its High Court judges. Sittings of the High Court as the major English court for civil matters are also held in these centers, thus providing for a full equivalent of the French *Tribunal de Grande Instance* (including *Court d'Assize*), the German *Landesgericht* and the Italian *Tribunali Civili e Penali*. Courts active in the center handle appeals from lower courts (civil and criminal) as well as major civil and criminal cases, from which appeal lies to the Criminal and Civil Divisions of the Court of Appeal in London. High Court sittings in court centers and Crown Courts lack a common organizational form. However, their work is subject to the administrative control of the Circuits which, from the administrative point of view, constitute an adequate substitute for the more cohesive organization of Western European courts.

As conceived in the 1971 Act, the Crown Court Bench still consists of disparate elements, a hangover from the system from which the Crown Courts originated and clearly a drawback in the organization of this key institution in the administration of justice. The Court consists of two classes of judges: Circuit judges, equal in rank with the County Court Bench and made up mostly from the members of that Bench, and part-time appointments (recorders). However, on the Lord Chancellor's request, any Circuit Court judge or re-

order sitting in the Crown Court may sit as High Court Judge to assist in civil trials. This is combined with the requirement that every judge of the Court of Appeal or the High Court, and every recorder, be capable to sit as a judge for any County Court district.

The general effect of these measures is the creation of a Bench which, despite differences in rank and title of its members, is able to serve anywhere in England and Wales, although the High Court remains a London-based court. Although the 1971 Courts Act has made no change in this connection, the role of the jury in the administration of Justice in England differs but little from the procedures followed in major European countries, where it has been almost exclusively restricted to criminal trials. The Judicature Acts 1873-75, by fusing the administration of law and equity, adopted Chancery procedure in most civil cases. Trial was by judge alone. Another practice established by the Judicature Acts was regularized by the Administration of Justice Act 1933: jury trials were provided for cases of fraud, libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage, unless the court decides that owing to the nature of evidence (examination of documents, scientific expertise) the use of a jury would not be indicated. Exceptions are defended divorce and probate cases, where either party may apply for a jury. Since juries are obligatory only in cases which in most civil law countries fall within the criminal law, most civil actions are tried before a professional judge alone. Since the establishment of the Crown Court only the most serious felonies come before a jury and a High Court judge, while minor crimes are tried by a Circuit judge alone.

The creation of the new system of territorial courts at the middle level was combined with an administrative reform. The Lord Chancellor was given powers comparable to those of the minister of justice in the civil law countries, combined with the administrative responsibilities usually exercised by the presidents (chief justices) of the Courts of Appeal.

Finally, a breach was made in the system separating barristers from solicitors, by affording solicitors access to the Bench and Bar, thus bringing the English legal profession closer to the European model. Almost simultaneously France has reorganized its legal profession by abolishing the institution of *avoué*, a branch of the legal profession greatly resembling the English solicitor, and creating a single class of *avocats*, who now perform functions which in England belong to the solicitor and barrister groups.<sup>3</sup> There are still substantial differences between the *avocat* in France and the legal profession in England: All French lawyers, whatever their line of professional activity, are university trained; and the English legal profession supplies the members of the bench. So although the effects of the Courts Act 1971 are far less sweeping than the French legislation, the

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3. See *Journal Officiel* 5 Jan. 1972, p. 131. See also discussion by Grementieri and Golden, Jr., *supra* pp. 676-77.

Act does constitute a first step in drawing solicitors into court work. They are given a partial right of audience, and are included in the legal talent pool from which judicial personnel may be recruited. Formerly—with few local exceptions where qualified barristers were not available—solicitors were denied the right of audience in Quarter Sessions and Assizes, and could plead only in the County Courts. Under the 1971 Act, the Lord Chancellor has the right to authorize solicitors to appear in cases tried in the Crown Courts.

Initially the Circuit Bench shall consist of persons who held County Court judgeships or who were full term judges of the Central Criminal Court in London. Also eligible are barristers of ten years' standing and recorders of five years' standing. Recorders may be appointed from barristers or solicitors of ten years' standing. Thus solicitors have become eligible for elevation to circuit judgeships through the vehicle of a five-year apprenticeship as a recorder.

These reforms, coming on the eve of British entry into the Common Market, reorganized the British court system according to principles greatly resembling the court organization in the civil law countries. There is still a great gap between two levels of judiciary, the High Court and Court of Appeal judges who can perform judicial functions on all levels of the administration of justice, and the Circuit Court judges who only exceptionally can preside over courts trying cases within High Court's jurisdiction. However, the Crown Court and judicial centers provide a meeting ground for the Circuit and the High Court judges, and an opportunity to establish judicial *esprit de corps* for all classes of judges. Should university education be given a greater role in the training of the legal profession in the future, there would indeed be no reason to distinguish between solicitors and barristers in determining aptitude, temperament and preparation for judicial office.<sup>4</sup>

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4. For additional information on the Courts Act see Borrie, "The Courts Act 1971-I and II," 121 *New L.J.* 474-76, 505-506 (1971); Huebner, "The Courts Act 1971 An Outline of the New System," 121 *New L.J.* 1136-38, 1161-62 (1971), 122 *New L.J.* 4-5 (1972); Cretney, "Courts Act 1971-I and II," 115 *Sol. J.* 715-17, 732-33 (1971).

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