WHAT IS THE FUTURE OF ADVOCACY ?

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Advocacy, the raison d'être of the barrister's trade, is dying. Opinions vary as to who dunnit. Some see the profession inevitably swallowed up and lost within the newly-swollen boundaries of the solicitor's trade. Others think that it is the prolific numbers of lawyers that have swamped the profession in recent years.

The actual answer, as I see it, is quite absurd. In the words of the immaculate Desdemona: 'Nobody; I myself'. It was the lawyers themselves who were unwittingly responsible when, in the sixties, they introduced that modern Trojan Horse, the photocopier, into their private chambers. Instantly, there was no longer a compelling reason to pare trial documents down to the really relevant. Reams of potential documents issued forth. That chief organ of practicable advocacy, the short and succinct trial, was almost entirely destroyed. Where even a long trial was once a matter of weeks, the longest now lasts over a year. This is undoubtedly the crux of the matter. Barristers in court (like solicitors outside it) are taking too long about their business. Neither private client nor Crown can realistically afford to go to trial any more. And it follows that if there are no paying clients there is nobody for whom to advocate and thus no legal profession.

I am astonished, nonetheless, that rather than stage a rescue, some of the high deities of the legal profession have thought fit to sound the death knoll for old-school advocacy. Amongst the highest is Lord Woolf. Rather than limiting the proposed reforms to curtailing courtroom time for barristers, the Woolf report appears to attack the fundamentals of the adversarial system itself. In place of independent parties presenting their arguments and evidence to a neutral referee the report proposes the Judge-Manager. This apparently benevolent creature will transform the legal system by telling the parties what to do. Nonetheless, the report's somewhat Dickensian metaphors are darkly suggestive. The New Judge is not entirely unlike a prison warden, and lawyers, captives who have lost their 'sole and unfettered control over the way in which the case proceeds'. Justification for this new judicial stance comes partly from a resonant image of Lord Devlin's; without draconian change, lawyers might find themselves on a bread-and-water diet - not unlike that of some of their more unfortunate clients. Lord Woolf, it seems, has tried the lawyers and found them guilty of killing the proverbial goose.

If advocacy is choking on the inefficiency bone is the only remedy hanging the dog? There is the scent of a parallel mood across the Atlantic. Leading academics in a belligerent, Post-Simpson America appear to believe that adversarialism has had its day. As the trial dragged on, it was no longer Mr Simpson but American justice itself that was on trial. And the verdict was against advocacy. Whether or not the accused had clean hands at the end of the day, his lawyers most certainly did not. "Money talks, client walks" was John Langfield's bitter comment in "Newsweek". If adversarialism has failed the cause of justice, Europe's Inquisitor-judges are logically the only way left to proceed.

The American experience should not be allowed to determine the future of advocacy in this country. Their predicament is perhaps more dire than ours. The Simpson defence found themselves constrained by very little in their efforts to deflect some deeply damning evidence away from their client. British advocates, on the other hand, might thoroughly lack efficiency, but not integrity. Or finesse. In the hands of the Simpson defence, the sword of justice was brandished with all the subtlety of a sledge-hammer. Its use was apparently confined to bludgeoning the jury into submission. I like to think that our advocates are cut from a finer cloth .

> "[We] have been brought up with a sense of almost priestly detachment - our first duty is to the established process of justice, and this is drummed into us by the example as well as the words of our elders. Winning a case is not what it's about: our duty is to struggle for a fair trial within the confines of the system - a system defined by centuries of tradition and mannered politeness. The Americans do not have these advantages and restraints" (Keith Evans).

The tradition of adversarialism in this country has proven itself capable of producing independent and principled warriors in the cause of justice. Their most profound defects are no worse than that they are less than efficient (and perhaps tend not to be overly modest). In making them more efficient, there is no reason why we should have to chain them to the judicial seat. There is a simple solution. The professional Code of Practice should be extended to prevent barristers from wasting the court's time and compliance should be exacting. Barristers should expect to be black-listed by the Bar Council if allegations are proved reasonably correct. Now that Law Society disciplinary hearings are open to the public there ought to be no question but that the barrister's conduct was fairly and honestly assessed. If barristers are thus pressured into tightening up their performance, efficiency must inevitably improve.

Truly independent advocates are the finest guarantees against oppression by the state that a legal system can produce. When citizens of this country are not protected by a bill of rights, reformers should be slow to recommend a European trial system where judges have significant control over both the conduct and outcome of the trial. By wresting "sole and unfettered" control of the trial process from these agents , the scope of natural justice as we know it would be drastically curtailed. The archetypal old-style advocate is a creature worthy of aspiration: the judicial lap-dog which threatens to take its place is not.