

## Cameras in court: justice's loss or gain?

Against the backdrop of the Leveson Inquiry and the litany of journalistic abuse set out by David Sherborne, it may seem somewhat strange that we are debating whether to give our media still greater influence over one of the key pillars of our constitution. With the broadcasting of court proceedings, the media circus, some say, will truly descend: Sky Sports will aggressively advertise the "Big Fight Night: undefeated prosecutor and stubborn defendant go head-to-head", Paddy Power will offer live odds on the first tricolon and proper judicial process will be upstaged by sound-bite punch and Judge Judy. However, even the more considered arguments against the use of cameras do not succeed in convincing that any coverage would be wholly to justice's detriment any more than those in favour of cameras do in convincing that there should be unfettered broadcasting within the court.

The question really to be addressed is how the televising of proceedings might affect justice in the narrow sense - that is the outcome of individual cases - on the one hand, and the interests of justice in the broader sense - concerning public confidence, awareness and understanding and the standard and practical operations of the judiciary - on the other. Appropriately managed, cameras in the courtroom can certainly have a positive impact on the latter. The trick is not to damage the former in the process.

The benefits to the broader conception of justice are clear regarding the judiciary, its practices and the public's attitude to them. Intelligibility, predictability, discoverability: notable characteristics of a legal system consistent with a formal conception of the rule of law could surely be better satisfied by responsible broadcasting of court proceedings. Lord Neuberger was also quite correct in stating during a lecture in March that central to a commitment to the rule of law is the principle 'that justice is done in public – that what goes on in court and what the courts decide is open to scrutiny'. The responsible televising of court proceedings could thus be a force for education, accountability and legal consistency, perhaps ensuring not only that litigants are more aware of their position and prospects but also that less court time is wasted as a result. Moreover, a further benefit may be evidence of greater diversity within the ranks of the

judiciary themselves. The Bar has often been thought of as something of a phallocracy, with the Bar Council's figures from December 2008 (indicating that almost 70 per cent of barristers are men) doing little to dispel the idea that the profession is still dominated by the likes of Harrovian Clive Reader from BBC One's *Silk*.

The real difficulty, however, is *how* to televise, such that the benefits to the broader conception of justice can still be enjoyed without damaging the chances of the narrow conception, the just outcome. What renders the relationship particularly problematic is the uncomfortable question which plagues democratic societies: to what extent can the people be trusted? Can elements of the populace be trusted not to intimidate participants in a case? Can jurors and witnesses be trusted to avoid the coverage of their cases and so ensure that their judgment or recollections remain unclouded? Can communities be trusted to look soberly at a case and, in criminal proceedings, to accept that 'not guilty' means that the formerly-accused is no more a criminal than any one of them? If we cannot be sure of our answers to such questions – and proposals to televise trials do raise them – we must adopt a cautious approach. Article 6 of the European Convention on Human Rights states that 'everyone is entitled to a fair and public hearing'. The 'public' element is to provide against judicial abuse; it is not to allow publicity to the extent that fairness is compromised. In the end, in the interest of litigants, broadcasting of court proceedings can only be permitted so far as the outcome of a case is not affected by it.

In 1941 Hugo Black, Supreme Court Justice in the United States, highlighted the clash between the First and Sixth Amendments to the US Constitution: 'free speech and fair trials are two of the most cherished policies of our civilization,' he wrote, 'and it would be a trying task to choose between them'. The question of cameras in court cuts to the heart of this clash. The appropriate balance to be struck lies in broadcasting appellate proceedings, thus maintaining the *status quo* for cases at first instance, where evidence may be given by witnesses and where jurors may be involved. It is this balance that is advantageous to the broad conception of justice as well as protecting the integrity of the verdict. The current proposal by the Justice Secretary for the concluding remarks of the

judge at first instance to be broadcast is not prejudicial to the interests of justice. There must be concern, though, at the prospect of cameras venturing any further into trials at first instance and, consequently, if court cameras are going to be an educative force, offering a more holistic account of proceedings, it is from the appeal courts that they must operate. However, to all the limitations to broadcasting that have been set out, one notable exception should be added: except for in exceptional circumstances concerning national security, proceedings of judicial review should also be broadcast. Such a policy would not only underline the accountability of publicly-funded bodies, but would also be instructive in highlighting the nature of the British constitution and the critical relationship between the judiciary and the executive.

Unlike former US Justice David Souter, I do not imagine that ‘the day you see a camera come into our courtroom’ you will see it ‘roll over my dead body’. I merely hope it will roll over proceedings that are representative of the judicial process, not prejudicial to the outcome of an appropriate verdict and conducive to good judicial practice and public understanding of it. If that be the case, justice only stands to gain.

Edward Granger  
City University  
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