

Summary and Conclusion

In his brilliant essay at the turn of the century, Microcosmographia Academica, Professor Cornford defined the principle of the 'dangerous precedent' in the following terms:

"you should not now do an admittedly right act for fear you, or your equally timid successors, should not have the courage to do right in some future case which, ex hypothesi, is essentially different, but superficially resembles the present one. Every public action which is not customary, either is wrong, or, if it is right, is a dangerous precedent. It follows that nothing should ever be done for the first time.

When evaluating proposals to reform fraud trials, we should beware of following this 'dangerous precedent' line, and also of concentrating on the defects of the alternatives to the exclusion of the defects of the present system. For some countries, such as Singapore and Hong Kong, which do not have jury trial but do have a substantial number of fraud trials, the difficulties may be mainly procedural, though judicial competence presumably is still a relevant concern. In countries which have both 'common jury' trial and Legal Aid, the issues of competence, cost, length, and, perhaps, corruption may be more prominent. It should also be noted that improvements in educational standards (in Nigeria, for instance) may make jury trial more feasible than hitherto. Similarly, reductions in ethnic and tribal conflicts may increase the suitability of jury trial. One should not underestimate the importance of the jury in confirming the popular legitimation of the Rule of Law, even though it is used in only a tiny minority of trials.

Partly for this reason, it is difficult to separate cleanly in practice the rational arguments for any given proposals from the way in which they are likely to be perceived by the general public. With very limited time and zero budget, I have been unable to survey public opinion on any of these proposals, even in England. However, it is possible to make some reasoned estimates. With these in mind, the following recommendations are made for discussion by the Law Ministers.