

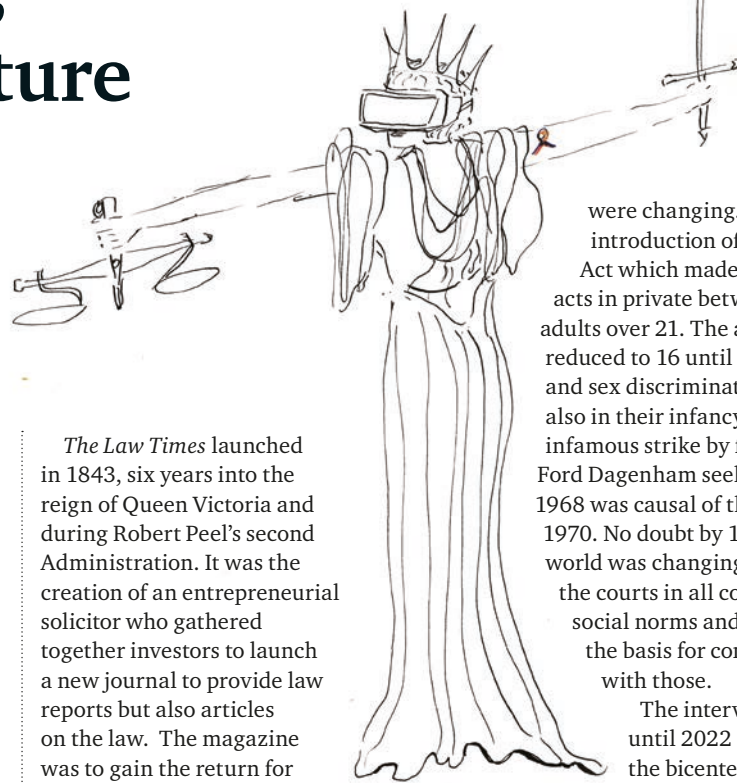
# Justice: past, present & future

**David Greene** on why 200 years of history dictates that we must be ever watchful of threats to the rule of law, human rights, equality & an equal justice process

George III recently dead; George IV in the middle of a short and, for him, unhealthy reign, the Tories under Lord Liverpool enjoying a long spell in government, 1822 saw the birth of *The Law Journal*, the predecessor to *NLJ*. The purpose was to provide reports of court proceedings joining the rather haphazard picture of various reports of the justice process. Reporting of court decisions had a long history back to the Anglo-Norman Reports through to the *Nominate Reports* of the 16th century to *Cokes Reports* and his *Institutes* often suggested as the foundation of the common law but remained piecemeal until 1865. Even in 1822 little light was shone on the workings of the courts. Indeed, there had been some criticism of Blackstone's *Commentaries* (first published in the late 18th century and still being used some 100 years later) as a covert attempt to codify the law in contradiction to the common law.

Blackstone, reflecting Whig philosophy, painted a picture that the then current political settlement represented the optimal state of rational and just government. The principles of the rule of law were long established but this was a law that banned trades unions, discriminated against Catholics, suspended habeas corpus, maintained medieval methods of execution, and following the Peterloo Massacre and Cato Street Conspiracy, readily banned free speech and the right to protest.

But the publication of *The Law Journal* witnessed a changing world: Great Britain was enjoying a long period of peace with Europe after the Napoleonic Wars, maintaining its international campaign against slavery, in stark contrast to France and the US, led domestically by the courts establishing slavery as contrary to the common law. Constitutional reform was in the offing with the 1832 Great Reform Act and the subsequent mass movement of the Chartists. The right to unionise was being slowly recognised and the penal laws reformed.



*The Law Times* launched in 1843, six years into the reign of Queen Victoria and during Robert Peel's second Administration. It was the creation of an entrepreneurial solicitor who gathered together investors to launch a new journal to provide law reports but also articles on the law. The magazine was to gain the return for investors from advertising aimed at a 'magnificent and, perhaps, unprecedented list of subscribers' paying 9d a week (see p21). *The Economist* was also founded in 1843 and in that year Charles Dickens published *A Christmas Carol*. While hints of modern regulation of the workplace started to be introduced the potato blight in Ireland was in full flow leading to the deaths of over a million.

Over a hundred years later, in 1965, the two periodicals morphed into the *New Law Journal* under the ownership of Butterworths. Two World Wars and social developments had, of course, utterly changed Britain. It had then a modernising government under the leadership of Harold Wilson, marking the end of the post War period.

The rule of law, human rights, equality and an equal justice process had, at least, a much firmer base with the European Convention for Human Rights and the greater recognition of citizen rights by Parliament and the courts but there remained many signs of former times. Capital punishment for murder was only suspended in 1965 but not until 1971 in Northern Ireland.

It was only finally abolished here in 1969. Racial tensions with increasing Caribbean and Asian immigration encouraged by the government led to the Race Relations Act 1965. While welcome it failed to address both employment and accommodation where discrimination was marked. Those areas had to wait

until the 1968 Act. Similarly attitudes towards sexual orientation were changing. 1966 saw the introduction of the Sexual Offences Act which made lawful homosexual acts in private between consenting adults over 21. The age limit was not reduced to 16 until 2001. Equal pay and sex discrimination laws were also in their infancy at the time. The infamous strike by female workers at Ford Dagenham seeking equal pay in 1968 was causal of the first Equal Pay Act 1970. No doubt by 1965 the post-war world was changing as legislation and the courts in all countries faced new social norms and shifts in establishing the basis for confronting and dealing with those.

The intervening years until 2022 as *NLJ* celebrates the bicentenary have seen consolidation in many of those themes but of course this is ever changing and some might say that we are going backwards in the government's attitude towards human rights and the rule of law. Is the rule of law any safer than it was in 1822, 1843 or 1965? Some may suggest not. Governments generally seek to accrue to themselves powers to make decisions and put them into effect. We saw that with this government in *Miller (No 1)* ([2017] UKSC 5) and more so in *Miller (No 2)* ([2019] UKSC 41) with the government unlawfully seeking to avoid the elected house. In the pandemic the government swiftly took upon itself sweeping powers of coercion with little Parliamentary scrutiny.

With less Parliamentary scrutiny the citizens' rights of challenge in the courts becomes more important. The government has, however, sought to curtail their powers in judicial review. The government also seeks to pin back human rights and the voice of opposition.

We are all safe in our beds and human rights and the rule of law may be tucked up safely with us, but the natural accrual of power is always a threat and 200 years of history dictate that we must be ever watchful. History and current events show how quickly the descent to authoritarianism can happen and where that leads.

**NLJ**

**David Greene**, *NLJ* consultant editor, senior partner, head of group action litigation at Edwin Coe ([www.edwincoe.com](http://www.edwincoe.com)).