

Britain: Law Commission recommends striking out double jeopardy rule

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The Law Commission, the official law reform body for England and Wales, has recommended that the rule against double jeopardy be changed with regard to murder. It says that a fresh trial should be possible if “compelling” new evidence emerges after the defendant is found not guilty. It is likely to become law if Labour is re-elected. The change will be retrospective.

The double jeopardy legal tradition in England and Wales, which has existed since the 12th century, means that you cannot be retried for the same offence. The Law Commission announced the reform in response to one of the tentative recommendations of the government convened Macpherson inquiry into the death of black teenager, Stephen Lawrence, who was killed in April 1993 in a racist attack.

Last year when the Conservative Party proposed ending the double jeopardy rule, Home Office Minister Paul Boateng accused it of pandering to populism and “knee-jerk headline seeking”.

As with all retrogressive policies, politicians and the media have attempted to dress the proposal as a democratic reform. The right wing press, who reacted vehemently to the Macpherson Report's charge of “institutionalised racism” within the police force, has wholeheartedly supported the change.

The liberal *Guardian* newspaper had denounced the proposed change when it was first made. Now it has come out “reluctantly” in favour, claiming it will redress injustices such as that of Stephen Lawrence and “will reinforce public support for the criminal system. That is important,” the newspaper says.

It was in an attempt to placate the deep feelings of injustice and restore confidence in the police and judicial system that the incoming Labour government convened the Macpherson Inquiry in 1997. The

Lawrence case provoked outrage amongst wide layers of the population. Stephen's parents, Neville and Doreen, were forced to take out a private prosecution in 1995, after the Crown Prosecution Service claimed there was insufficient evidence to try the five youth suspected of his murder. But the case was thrown out by the judge without being put to a jury, on the basis that the evidence central to the case was “contaminated and flawed”.

Despite its limited remit, the inquiry confirmed that police had failed to act on eyewitness accounts of Stephen's murder for several days; failed to arrest suspects; failed to secure forensic evidence and reacted with hostility to the Lawrence family. Subsequently, the police had sought to cover up their failings, the inquiry found.

Though the Lawrence case is being used to piggyback the proposed legal amendment, the three suspects who were acquitted of murder could only be retried if there is fresh, reliable and compelling evidence. The new proposed law stipulates that a retrial should not be ordered on the basis of evidence that was available at the time of the original trial, but was ruled inadmissible, which is precisely what happened in the Lawrence case.

Beyond the specifics of the Lawrence murder, what will be defined as “compelling” new evidence enabling an acquittal to be set aside? What will prevent the constant harassment of an individual and retrials until the desired verdict is given?

The two prominent legal professionals in the Lawrence case have come out in opposition to the proposed change. Imran Khan, who brought the private prosecution against Neil Acourt, Gary Dobson and Luke Knight on behalf of the Lawrence family, told the BBC that scrapping double jeopardy in murder cases

would end the principal of innocent until proven guilty. “Imagine a jury sitting in the trial who know a High Court judge has looked at the evidence and has said it is compelling and should lead to conviction.”

Michael Mansfield QC, said: “The facility to be tried twice cannot be accomplished without substantial inroads into the presumption of innocence. There is no way to prevent a second jury from realising that the case it is dealing with is one in which there has previously been an acquittal followed by a high court's decision that there is compelling fresh evidence of guilt. Most importantly, under the new proposals there is a strong inference, or compelling evidence, of complicity. For the first time, it produces a distinct imbalance.

“All those victims of wrongful conviction over the past 25 years, whether because of unreliable science or unreliable confessions, will find this whole prospect quite horrifying.”

The ending of double jeopardy is part and parcel of a string of legal reforms introduced in recent years that have undermined democratic rights. The previous Conservative government abolished the right to silence. The Blair government has drafted new measures intended to abolish the right to choose a jury trial, as well as allowing jurors knowledge of a defendant's past convictions before a verdict is delivered.



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