

CHAPTER 1

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Never perhaps has such a key development in British legal history happened so suddenly as the creation of the Ministry of Justice (MOJ) did in 2007.¹ It arrived, *fait accompli*, before a bemused legal community and general public, courtesy of the Royal prerogative under which UK Prime Ministers may configure (or reconfigure) their administrations. This includes creating fresh departments, changing ministerial responsibility and dividing-up duties according to what is expedient. The trigger for the MOJ announcement was the earlier assertion by the then Home Secretary, Dr. John Reid, that the Home Office had become ‘not fit for purpose’.² But its creation was also the logical conclusion of a more gradual process of re-assessment which had been taking place behind the scenes over several years.

The announcement – a major event in itself – was soon followed by a change of Prime Minister. A detectable change of tone accompanied the announcement that the new, incoming Secretary of State for Justice and Lord Chancellor,³ Jack Straw MP, would be entrusted with a review of key aspects of the UK constitution. A Green Paper was issued, *The Governance of Britain*.⁴ The consultation process which this invoked is ongoing and is expected to last over a number of years. The review will examine such matters as accountability, democratic involvement, rights, justice and constitutional affairs. This book is an attempt to place these momentous events into perspective, beginning with a straightforward outline of the MOJ.

DELIVERING JUSTICE

The administration of justice is a key task within any society. Many countries have a special department of government dedicated to this end that draws together a range of justice-related functions. It is often styled ‘Department of Justice’ or ‘Ministry of Justice’. Until 2007, the UK avoided this approach, maybe even priding itself on being different and on the intricacies (even obscurities) of its idiosyncratic

¹ The Ministry of Justice was announced on 9 May 2007.

² Some further background appears in *Chapter 10* and some further detail also appears in a companion volume, *The New Home Office*. The MOJ’s gestation goes back far beyond this as can be seen from Cabinet Office reports. But nothing indicates that it was imminent.

³ The commonly used shorthand description Justice Secretary is used in this handbook unless the context dictates otherwise. For the background to the survival and continuing use of the words Lord Chancellor within the new twin title, see *Chapter 9*.

⁴ Cm 7170.

arrangements.⁵ Proposals for an MOJ were first put forward in the mid-19th century, when they were answered with the argument that the 'old' Lord Chancellor was already a Minister for Justice in everything but name.

From the mid-1990s onwards, the former Lord Chancellor's Department (LCD) and later, from 2003, its replacement, the Department of Constitutional Affairs (DCA) did develop an increasingly enhanced portfolio and in 2005 a number of related changes were enacted in the Constitutional Reform Act of that year, including with regard to the judiciary and the courts as noted in *Chapter 2*. But the real watershed came in 2007 when, simultaneously with a transfer of responsibilities away from the Home Secretary to the new Justice Secretary and the 'splitting up' of the Home Office, a fully-fledged MOJ emerged: one that exists *in fact* as well as *in name* and that, according to its own express aims is principally concerned with:

- protecting the public;
- reducing re-offending; and
- sense in sentencing.⁶

CORE COMPONENTS OF THE MOJ

The work of the MOJ is far more extensive, detailed and in some instances controversial than might appear from the broadly stated and simplistic ends noted at the end of the previous section. Quite naturally, it has an extensive and fundamental constitutional role - that now stands at the centre of reform of democratic engagement, rights and obligations in the UK. The MOJ is expressly committed to openness, transparency and reform. It took over former or lead responsibilities in relation to the:

- Department for Constitutional Affairs (from the DCA itself);
- National Offender Management Service (NOMS) (formerly Home Office);
- Parole Board (formerly Home Office); and
- Office for Criminal Justice Reform (OCJR) (cross-departmental).

As a result, it now draws together various strands of activity under a broad remit that can be described as 'justice matters' and 'constitutional affairs'. These strands include duties and responsibilities in relation to courts, judges and magistrates as well as such diverse undertakings as prisons, probation, law reform, legal aid,

⁵ Proponents of such idiosyncratic arrangements have often if somewhat perversely sought to justify them on the basis that the UK has no *written* constitution: see *Chapter 6*.

⁶ Ministry of Justice web-site: www.justice.gov.uk

freedom of information and constitutional reform, including, critically, in relation to the last of these, matters touching on the independence of the judiciary (*Chapter 2*) and the separation of powers (*Chapter 6*).

The MOJ's main duties and responsibilities can be summarised in more extended form as follows:⁷

- working 'trilaterally' with the other departments that make up the central government strands of the Criminal Justice System (CJS), chiefly the Home Office and Office of the Attorney General (see later in this chapter under the heading *Partnership and Shared Responsibility*);
- HM Courts Service (HMCS), that now oversees the administration of all of the civil, family and criminal courts in England and Wales (*Chapter 2*);
- support for the judiciary, including:
 - appointments via a Judicial Appointments Commission (JAC);
 - a Judicial Complaints Office (JCO); and
 - a Judicial Communications Office (all noted in *Chapter 2*);
- the Tribunals Service across the whole of the UK (*Chapter 2*);
- the National Offender Management Service (NOMS), responsible for the commissioning of correctional services and their administration through HM Prison Service (HMPS) and the Probation Service (NPS) (*Chapter 3*);
- sponsorship of:
 - various inspectorates (*Chapter 3*);
 - Independent Monitoring Boards (IMBs) (*Chapter 4*);⁸
 - the Parole Board (*Chapter 3*); and
 - the Prisons and Probation Ombudsman (*Chapter 4*)
- legal aid and the more wide-ranging Community Legal Service (CLS), through the Legal Services Commission (LSC) (*Chapter 5*);
- sentencing policy, including sponsorship of:
 - the Sentencing Guidelines Council (SGC); and
 - Sentencing Advisory Panel (SAP) (both *Chapter 7*);
- criminal, civil, family and administrative law (*Chapter 5*);
- sponsorship of the Law Commission (*Chapter 5*);
- hosting the Office for Criminal Justice Reform (OCJR) (*Chapter 8*);
- the Privy Council Secretariat and the Office of the Judicial Committee of the Privy Council (*Chapter 2*); and
- constitutional affairs, including:
 - electoral reform and democratic engagement;
 - civil and human rights;

⁷ Extensive responsibilities and sponsorship arrangements which are less central to the MOJ's main day-to-day duties for the justice system are noted in *Appendix II*.

⁸ Formerly Boards of Visitors, i.e. visitors to prisons: see further in *Chapter 4*.

- freedom of information; and
- the management of UK constitutional arrangements and relationships including with devolved administrations for Wales, Scotland and Northern Ireland and Crown dependencies (all noted in *Chapter 6*).

Following a change of Prime Minister and further restructuring of government departments as part of a fresh administration in July 2007, it emerged that the former Home Office responsibility for youth justice would be shared between the newly-created Department for Children, Schools and Families and the MOJ, including in relation to funding and policy vis-à-vis the Youth Justice Board (YJB) (*Chapter 2*). The YJB has continued to be accountable as a non-departmental body (NDPB) to the MOJ, but aspects of its operation have in practice become a joint matter for the two Secretaries of State. The administration of the youth courts and related sentencing matters in relation to juvenile (or ‘youth’) offenders, i.e. those below the age of 18 years, fall within the remit of the MOJ. There are also related cross-departmental interests such as anti-social behaviour (ASB), social exclusion, social cohesion and child protection (most of these also touching on the MOJ’s responsibilities in relation to the family courts). As with all matters of cross-departmental concern, the role of Cabinet committees is key to any modern-day understanding of the workings of government, including in the context of much of the MOJ’s work the Cabinet Committee on Crime and the Criminal Justice System (CCCCJS) that is mentioned below under the heading *Partnership and Shared Responsibility*. A list of organizations sponsored by the MOJ appears in *Appendix II*.

Bringing together justice-related functions

When the MOJ was being launched, the first Justice Secretary, Lord Falconer, asserted that it would focus on improving the justice system for the public:

The justice system is performing significantly better than in the past, but there is still considerable room for improvement ... By bringing together courts, prisons and probation services we will have a coherent system looking at the whole life of an offender from conviction to punishment to rehabilitation.

As will be seen in *Chapter 2*, it was one aspect of this ‘bringing together’ that caused a level of controversy, what sections of the media called an ‘outcry’ from judges and magistrates. On his own first day in office following the change of premiership and its accompanying Cabinet re-shuffle,⁹ Jack Straw, the incoming Justice Secretary, declared that his own ‘first priority’ was the protection of the independence of the judiciary as enshrined in the Constitutional Reform Act 2005. On another more positive note, there has for some years been a great deal of work

⁹ Gordon Brown replaced Tony Blair as Prime Minister on 27 June 2007.

towards what has sometimes been dubbed the 'seamless' or 'end-to-end' sentence; one with inherent integrity and a consistent pattern, within which a sentence plan or contract with an offender and work inside prison is coordinated with that which takes place in the community once he or she is released back into it.

One recurrent past difficulty in the field of criminal justice is that resources may often have been diverted away from less expensive and – as many people would claim – equally effective community-based approaches to crime and punishment¹⁰ by a combination of the high cost of prison places, an unprecedented rise in the size of the prisoner population and the constraints placed on constructive work by prison overcrowding (*Chapter 3*). A coherent system in which planning, budgeting and resources are more closely linked and better understood at all stages of decision-making ought to lead to improvements in this critical area.

PARTNERSHIP, SHARED TASKS AND OBJECTIVES

As noted under *Core Components of the MOJ* above, the MOJ is part of a trilateral arrangement – or 'special relationship' – with the Home Office and Office of the Attorney General, whereby common objectives can be pursued. This involves what is sometimes called 'interdependence', i.e. each component part of the system has and pursues its own duties, responsibilities and objectives, but their achievement depends on the co-operation of others and the interests of all of these components have to be taken into account so far as broad strategies and ways of achieving them are concerned. There are inevitable inter-departmental implications, both for operational practice and with regard to priorities for public expenditure. Perhaps the most notably overlapping concerns are those affecting the reduction of crime and the prevention of re-offending, which feature prominently as key aims across a number of departments and services. A similar approach is sometimes required towards the sponsoring of Bills in Parliament; as where the Home Office and MOJ share responsibility, especially with regard to public safety or emergency legislation (as noted in the next section). The role of the Justice Secretary is a new one as described in *Chapter 9*, but it is useful to record here that it was expressly stated when the MOJ was being formed that he or she:

works with the Home Secretary, the Attorney General and other Ministers to ensure flexible and effective responses to different types of crime, from anti-social behaviour to serious and organized criminality ... All three departments will work closely and collaboratively. ... The departments have a special relationship [and] policy considerations are shared early and often between departments as policy is developed.

The CCCCJS (above) was established in 2007 and is chaired by the Prime Minister. The Justice Secretary, Home Secretary and Attorney General all sit on the CCCCJS.

¹⁰ If not more effective. The alternative to custody debate goes back to the early-1980s.

It goes without saying that any special relationship or cross-departmental involvement must be balanced with competing priorities and acknowledge constitutional sensitivities, especially in the case of the Justice Secretary with regard to protecting the independence of the judiciary (see, further, *Chapter 2*).

Areas of shared responsibility

Since the creation of the MOJ, the MOJ and not, as previously, the Home Office, has lead responsibility for criminal law. But by convention arrangements exist within Government whereby the Home Office, in liaison with the MOJ, can seek to fast-track such legislation where, e.g. there is a need to do so in order to confront terrorism or other pressing threats to public safety. Similarly, the Home Office has indicated that it expects to be to the fore or to oversee Bills in relation to police procedures, such as those concerning powers of arrest, to search people or property, and of arrest and detention.¹¹ One statement by the Home Office on its web-site¹² asserts that it retains the ability to 'quickly propose and implement' new criminal offences in an effort to pursue shared crime reduction strategies and to satisfy the operational requirements of the police or security services. If issues relate both to police procedures and the criminal law – such as the admissibility of evidence obtained by an investigating police officer during an interview with a suspect – it is usually envisaged that there will be joint oversight of Bills by the Home Office and MOJ, using longstanding mechanisms for collective agreement and the opportunities provided by the new CCCCJS (above),¹³ the National Criminal Justice Board and the OCJR. Summing up partnership at this level, the former Justice Secretary, Lord Falconer noted that:

Prior to the [MOJ] ... government arrangements meant that the vast bulk of expenditure on justice issues was [by] the Home Office, with courts and prosecutors in two very much smaller outposts. Now the MOJ has responsibility for much of the policy which affects what goes on in the courts, and the work of many of the delivery agencies. The MOJ must work closely with the other agencies and departments ... most notably the new slimmed down Home Office itself and the police, the Attorney General and prosecutors, and social service departments who connect closely with the Family Justice System ... In the area of criminal justice, the National Criminal Justice Board will be vital to this ... Supported effectively by the Office for Criminal Justice Reform, the NCJB has, in a pragmatic and focused way, driven change in the CJS because of the way it has produced unity amongst the deliverers. We need to see that process developed. We do not want too much bureaucracy. We do want to see better outcomes.

¹¹ As detailed in statutes such as the Police and Criminal Evidence Act 1984 (PACE), Criminal Justice Act 2003 and Serious and Organized Crime and Police Act 2005.

¹² www.homeoffice.gov.uk

¹³ Some pronouncements refer to this as a device for reaching 'formal and final agreement'.

In a move that makes for further clarity and appropriateness, sentencing policy¹⁴ also falls to the MOJ. Here, the MOJ leads a collective process (including via the CCCCS) to determine whether legislation, offences and changes to the existing sentencing framework accord with the Government's broader criminal justice, sentencing and penal policies. As noted in *Chapter 7*, the Justice Secretary has been invested with certain rights, responsibilities and tasks in relation to the Sentencing Guidelines Council (SGC), Sentencing Advisory Panel (SAP) and related research where these were formerly carried out by the Home Secretary.

Partnerships across the wider justice system and beyond

Partnership, 'working together', or 'multi-agency working' have been a regular feature of public affairs since the 1980s and with increasing, modern-day moves in the direction of community or democratic involvement. With the restructuring, renaming and readjusting of various government departments under Prime Minister Gordon Brown, many new contexts have arisen in which liaison and communication between the MOJ and other central government departments has become essential.¹⁵ Not least amongst these are developments and communication in relation to youth justice where, as indicated earlier in this chapter, responsibility is now shared with the new Department for Children, Schools and Families. But many other partnerships also serve to facilitate modern-day justice processes and underpin their day-to-day operation. By way of example, there are countless voluntary sector organizations that provide services to the courts and the two arms of NOMS, to witnesses, and to victims of crime. Some are of a charitable nature, others offshoots of the private sector or campaigning or reform groups. They range from alcohol, drug treatment and gambling projects to refuges for women suffering as a result of domestic violence and support groups for prisoners or secondary victims of crime (the families of those directly affected by it). These groups are sometimes described as part of 'the wider justice family' and even if not involved in the day-to-day provision of services, are frequently consulted about their interests. The democratic, inclusionary stance of the new MOJ suggests that more could be heard of objectives such as 'community re-awakening'.

A NEW APPROACH TO DOING JUSTICE

The broad direction and ethos of the MOJ can be discerned from its flagship publications which were issued when it was launched. The first of these, *Justice: A New Approach*,¹⁶ sets out the aims and objectives of the MOJ and contains various

¹⁴ In the broader, more general, of the two senses of sentencing policy noted in *Chapter 7*.

¹⁵ A communications and liaison task seemingly enhanced by the existence of the CCCCS mentioned in this section and similar cross-government committees.

¹⁶ Ministry of Justice (2007).

promises and undertakings – akin to what, in business parlance, might be described as a ‘mission statement’. The MOJ asserts that it will:

- reduce re-offending and protect the public: by ensuring that the punishment fits the crime; through ensuring that violent and dangerous offenders remain in prison for as long as they remain dangerous; by breaking the cycle of re-offending through increased use of effective community penalties and rehabilitation, by bringing more offenders to justice and enforcing the orders of the court (see, especially, *Chapters 2 and 3*);
- promote justice: by ensuring fair, effective and proportionate ways of resolving disputes, for fighting crime, reducing re-offending and tackling anti-social behaviour; by ensuring that respect for the rule of law underpins our society, our courts and our institutions (*Chapter 6*);
- provide access to justice for all: by making help and advice and financial support available at the point of need and at the earliest stage, especially for the most vulnerable (*Chapter 5*); by helping people to find their own solutions wherever possible, but where court intervention is necessary, by ensuring that court processes are simpler and more transparent (*Chapters 2 and 6*);
- increase confidence in the justice system: by improving understanding of justice; by giving communities a greater role in the delivery of justice; by making the justice system more effective, accessible and accountable; by providing greater support for people going through the system and by encouraging diversity (*Chapter 8*);
- uphold people’s human, information and democratic rights: by improving understanding of rights; by demonstrating that rights are not just for lawyers or minority groups but for everyone; by ensuring government departments and public authorities apply the Human Rights Act 1998 with common sense, balancing the rights of individuals with the needs of wider society; by ensuring that government and public authorities adopt a culture of openness through the Freedom of Information Act (*Chapter 6*); and
- safeguard and modernise our constitution: by ensuring that it is fit for today’s society (again *Chapter 6*).

Promoting justice

Central to its overarching aims, the MOJ also makes the ‘super-promise’ that it will promote justice, which it views as important if ‘we are to provide and protect a fundamental constitutional right of effective access to an impartial court or tribunal ... the right to a fair trial, appropriate punishment and deterrence of offenders, payment of debts, liability following accidents, and responsibilities towards children on parental separation’. These are described by the MOJ as core functions

of the State itself, the justice system being just one mechanism via which society sets boundaries, including those of acceptable behaviour, of right and wrong:

It casts the shadow of the law. The knowledge and existence of an effective and accessible justice system ensures ... that most rights or contracts are fulfilled and obligations to others respected without the need for legal action or intervention from the State. And it ensures that, when these boundaries are breached, there is a means by which the citizen and the State can seek redress and then see it delivered.

Justice for minorities has been recognised as an important issue for the last 25 years, with concerns relating to law enforcement, sentencing, penal treatment and the ethnic composition of the judiciary and public service. Overall responsibility for race issues was transferred from the Home Office to the Department for Communities and Local Government in 2005, but justice for members of minorities will always be a central tenet of the MOJ. There is also a Cabinet Office and Home Office-led Respect Agenda¹⁷ and there has been much talk of 'community cohesion', 'multiculturalism', or 'restoring British values'.¹⁸ According to the MOJ, the values that it seeks to uphold should be a matter of pride:

We should be proud of living in a modern, thriving, liberal democracy. The success, prosperity and stability of the United Kingdom rest on the principles of justice and respect for the rule of law being deeply ingrained in our society and in our values. An efficient and effective justice system is essential to the peaceful and effective functioning of society and the economy ...

This placing of MOJ responsibilities in a wider, more dynamic context than simply the provision of courts, prisons and probation resources is in line with other facets of the MOJ, including its role in relation to constitutional and democratic engagement, fairness and equality, signalling that 'we must be relentless in making sure that the most marginalised, vulnerable and disadvantaged in society are treated with fairness'. These and other equally vital matters where the MOJ connects to wider societal objectives are touched upon in subsequent chapters.

Increasing public confidence and other intentions of the MOJ

The MOJ also represents a move to increase confidence in the justice system: 'No matter where people come into contact with the justice system, it is vital that the system inspires confidence'. Hence also in this regard, a key priority of the MOJ is 'to ensure that the public see that the delivery of justice is fair, open, accessible and accountable'. The aim is to achieve this by 'ensuring [among other things] that the system delivers outcomes for the public, not the professionals' and that it puts the needs and expectations of the public, especially victims and witnesses 'at the heart of everything [it] does'.

¹⁷ That has also featured as a priority of Prime Ministers: see www.number-10.gov.uk

¹⁸ Britishness is discussed in *Chapter 6 of The New Home Office*.

It has long been argued by certain criminologists that the CJS is, at least in part, driven by vested interests and the prospect of personal gain or advancement through earnings, profit, promotion, expansion of 'miniature empires' and so on and the same could be said for other aspects of the justice industry.¹⁹ From the first of the two points noted above, this is just one area that the MOJ seeks to tackle as part of its efforts towards making sure that the justice system connects with communities. There is also the question of ensuring that professionals and practitioners connect to the communities that they serve as noted by the then Justice Secretary, Lord Falconer, just before he left office:

I have the utmost belief in the quality, the integrity and the ability of the courts, and in those who work in them, from the judges onwards: they are all committed to working day after day to deliver justice ... But they know that courts can, and do, appear remote, that people believe the courts don't understand their problems and have no adequate comprehension of some of the issues faced by the communities they are there to serve ... We want the community to view the courts as being effective and relevant to the solution of the problems of crime and anti-social behaviour they face, as well as for family or civil disputes, but we recognise the courts cannot solve these problems alone ... In terms of criminal justice particularly, there is a sense that courts are removed, attitudinally and physically, from the problems faced by communities, and that the courts do not properly appreciate the nature of or the harm caused by some of the crime and anti-social behaviour they are there to help combat ... The MOJ will make the system more open, with the necessary safeguards to protect the vulnerable, and through balancing the rights of the individual with the interests of the community.

Other declared intentions of the MOJ include (paraphrased):

- transforming the public's experience of justice;
- increasing the transparency of the courts (and other bodies);
- increasing the visibility of justice;
- supporting victims and witnesses through the *Witness Charter* and the *Code of Practice for Victims of Crime* (see further *Chapter 8*); and
- increasing confidence through efficient administration and by 'modernising the delivery' of services.

Leadership

Another significant feature of the MOJ stems from its declared intention to grasp the opportunity that arises from new ways of doing things and to capitalise on leadership arrangements via what, in an analogous context, has been described as 'a Government of all the talents':²⁰

¹⁹ See, e.g. *Crime Control as Industry: Towards Gulags, Western Style* (2000), Christie N, Taylor and Francis Ltd. This connection is that of the author of this book, not the MOJ itself.

²⁰ Prime Minister Gordon Brown as a prelude to announcing his first Cabinet in 2007.

We have made real progress in many areas in improving ... justice and penal outcomes. The renewal that comes from new leadership allows us to press these improvements much further. According to the *British Crime Survey*, crime is down by 35 per cent and re-offending levels are falling with reductions in adult and youth re-offending levels of around two per cent since 2000. The chances of being a victim of crime are at the lowest for more than 25 years. More offences than ever before are being brought to justice – more than 1.3 million in 2006. During 2005 over two million civil cases and 380,000 family applications were made. There are more than 20,000 new prison places with plans to build 8,000 more by 2012. Legal aid funding of more than £2.1 billion a year is providing some of the most vulnerable in society with access to justice. We must continue to address the issues, firstly, of ensuring we have enough prison places for those whom the courts wish to send to prison; secondly, of ensuring that the courts are sending the right people to prison for the right periods; thirdly, of giving the public the confidence that community penalties are effective; and fourthly, ensuring that the best providers of prisons and of interventions to tackle re-offending are encouraged to come forward. We will follow the MOJ's first announcement on penal policy, by coming forward in the near future with further proposals for making the court – civil, criminal and family – work better for the public.

A SNAPSHOT OF RESOURCES AND COSTS

At the time when the MOJ was launched the total number of people employed by it was some 77,000 of whom 49,000 belonged to HM Prison Service (HMPS). Court staff comprised a further 20,000 people and there was an MOJ headquarters staff of 4,000. Other agencies, such as, e.g. the Tribunals Service and Public Guardianship Office account for about 4,000 people. Additionally there are some 21,000 National Probation Service (NPS) staff. In terms of what the MOJ terms 'front line delivery' there are, e.g. 595 court houses (comprising 90 Crown Court centres; 360 magistrates' courts; and 226 county courts), 21 central government tribunals, 139 prison establishments and 42 local probation areas. The total opening MOJ budget was £8.9 billion,²¹ made up of various inherited budgets and including:

- £4.7 billion from the NOMS budget;
- £2 billion from the legal aid budget;
- £1 billion from the HMCS budget;
- £0.3 billion from the Tribunals Service budget;
- £0.9 billion from other budgets relating to areas of MOJ responsibility.

In addition, the MOJ capital budget for 2007-2008 was:

- NOMS: approximately £500m;
- existing investment within the former DCA of £330m.

²¹ All figures are approximate and subject to ongoing refinement.

THE CASE FOR A MINISTRY OF JUSTICE

In his seminal work *Crime, State and Citizen: A Field Full of Folk*,²² under the heading 'A Department of Justice', David Faulkner points out that suggestions for reform by the creation of a Department of Justice or a Ministry of Justice have been put forward from time-to-time over many years. He notes, e.g. that eminent commentators such as Sir Leon Radzinowicz and Roger Hood recalled 'the protracted debate that took place between 1845 and 1874, with the conclusion that the Lord Chancellor was already the Minister of Justice and no change was needed'. Faulkner also points to other key historical MOJ-related reference points, occasions and events (summarised):

- a revival of interest in the topic that took place in the context of the reconstruction of government following the First World War;
- the idea of an MOJ being a recommendation of Lord Haldane's Committee on the machinery of government;²³
- the Labour Party first committing itself to an MOJ in its manifesto for the general election of 1992;
- the Institute of Public Policy Research including such a ministry in proposals in its 2003 paper, *A Written Constitution for the United Kingdom*; and
- the fact that various people and respected bodies from Diana Woodhouse to JUSTICE²⁴ drew attention to the desirability of an MOJ in evidence to the Royal Commission on the House of Lords.

Given this history of debate, reflection and tentative ideas, few people may have anticipated that an MOJ would arise virtually overnight, in 2007, having been flagged up as a future possibility by a Cabinet committee some months earlier, and without further public debate or wider consultation. Indeed, e.g. in the mid-1980s and indicative of the sensitivities involved, when many court-related matters still lay in the hands of the Home Office, there was a minor political and constitutional hiccup over the less far-reaching issue of who should fund and in broad terms oversee magistrates' courts, then mainly resourced by the Home Office, a residue from the days when they were known as 'police courts'. The backlash was a chain of events that led first to the creation of the DCA and, subsequently, certain other key changes of a directly constitutional nature. It also led to pragmatic solutions such as the eventual introduction of a now unified and re-styled HM Courts Service (*Chapter 2*).

²² *Crime State and Citizen* (2nd. edn. 2006), Waterside Press.

²³ Together with an independent commission on judicial appointments. A Judicial Appointments Commission (JAC) was eventually established in 2005: *Chapter 2*.

²⁴ A leading UK-based legal and human rights organization: www.justice.org.uk

Highlighting the arguments

Here then lay the seeds of what many judges, lawyers and commentators might have considered to be a logical progression – discussion leading to the creation of an MOJ. As part of that debate David Faulkner points to some of the main issues as follows:²⁵

Arguments for a Department of Justice are of different kinds and would produce different results. The first is one of efficiency: the present division of functions between the Home Secretary, the Lord Chancellor and the Attorney General leads to lack of co-ordination and inefficiency, and the three offices should be combined in a single department. Such a department would have a single system for its information technology, and a structure which would allow for a single Minister and a single chief executive to direct the whole of the Criminal Justice System. This argument may look attractive from a managerial perspective, but it does not stand up to close examination. There are already suggestions that the Home Office is too large, and its work too sensitive, complex and unpredictable, for a single Minister, or a single permanent secretary, to give it the attention it needs. Adding more Ministers or a second permanent secretary would only increase the problems of communication and co-ordination which this argument seeks to resolve. More seriously, it would combine functions and responsibilities which ought in a liberal democracy to be separated as a matter of principle. Maintaining justice and the control of crime and disorder are separate functions, and the first should never be subordinated to, or seen as an instrument for achieving, the second.

Such tentative and informed views are by no means unique. Even more than a year after the creation of the MOJ, many of the underlying issues implicit in the above passage remain to be resolved, not least those affecting the judiciary (*Chapter 2*). Hopefully, in its zeal to move the UK forwards – and maybe driven by the conviction that history may have little to offer, or that experts can serve to complicate matters or inhibit progress – the Government has not left important considerations or the need for lasting values out of the balance sheet. Many points relating to such issues surfaced at the time of the creation of the MOJ and some have been or are in the process of being resolved. Others remain contentious as will be seen in later chapters.

²⁵ *Crime, State and Citizen*, *ibid*, p. 340.