

JUST COMMUNITIES – KEEPING CRIME AT BAY ?

by Mike Nash

INTRODUCTION

Even the most cursory reading of recent criminal justice policy statements from the government reveals a near obsession with the concept of ‘community justice’. In effect the government is seeking to re-position criminal justice processes so that they are more reflective of and accountable to the public at large. Yet, a more detailed reading suggests that there are various understandings of community justice and that this increased involvement of the community may be used for purposes over and above those making the headlines. Furthermore, it is possible that these different purposes are at odds with each other. It may well therefore be a case, as with much recent government legislation, of good (long term) intent being hijacked by responses to tabloid campaigns. This article will explore these interpretations of community and the use to which the government may be putting them. The discussion will focus around five understandings of community: as a site of punishment, and as a punishing, tasking, excluding and healing community.

PUNISHMENT IN THE COMMUNITY

For some time now, the term community justice has been a euphemism for community punishment. The discussion has been bound up in attempts to re-brand the probation service as a punishing agency and to give public credence to ‘alternatives to custody’. This is not simply a case of semantics. Governments since the late 1980s have been determined to toughen up on court sentences traditionally supervised and enforced by the probation service in the community. Essentially presented as a move away from help to punishment, the rationale was never quite so clear as this seemingly straightforward philosophical shift. Certainly the early ‘punishing’ Conservative governments of Thatcher and Major appeared to be as interested in saving the financial costs of prison places (to free space for tax cuts) as they were in reducing the size of the prison population for philosophical

reasons. They also managed to cloak their more liberal measures in a mask of punitive rhetoric. The underlying ethos of the 1991 Criminal Justice Act perhaps reflects this intention better than any other legislation enacted at the time. A determination to keep a greater number of offenders out of custody was balanced (and superseded in public information) by a desire to increase punishment for serious offenders and it was this idea that was sold to the public at large. To make the whole package more comfortable for their traditional supporters, the government invented the notion of ‘punishment in the community’ (for discussion of this concept see for example Worrall 1997, Brownlee 1998). Thus the community was to become a *site of* punishment by making community based disposals appear to be as demanding as custody whilst offenders were under supervision. These sentences would therefore be rigorously enforced in accordance with newly established national standards and would be regarded as ‘restrictions on liberty’ for a period of time, in similar fashion to custodial sentences. Thus a graduated scale of restriction would operate in the community and through to custody. As such the notion of an *alternative* to custody receded. A symbolic note was struck with the ending of a professional qualification in social work as pre-requisite for probation practice in the 1990s and its replacement with a more offender-focussed Diploma in Probation Studies in 1998.

The generally punitive tone of community justice did not disappear with the election of the Labour government in 1997. Despite Tony Blair’s claim that he would be tough on crime *and* its causes, it was the former that has made the headlines over the years. Massive regeneration schemes and huge investment in core public services, signalling a considerable long-term effort to reduce the social problems often associated with crime, have not prevented short-term and immediate responses to serious crime problems that have continued a line of repressive and punitive measures. Added to this is the expansion of the crime problem by a surge in criminalising a range of behaviours and activities with over 3,000 new offences created since 1997 (Morris, 2006). Thus we have a dichotomous response that sees carefully considered and researched plans losing out to short-term remedies invoked as a reaction to the latest crisis. It is suggested here that a similar response can be found in the government’s recent plans for community justice. However, before moving on it should be made clear that the notion of punishment *in* the community has not and will not disappear with the re-branding of community justice, and is indeed being strengthened further. In a document aiming to ‘rebalance the criminal justice system’ (Home Office,

2006) the government appears to argue that savage times almost demand a savage response. Although not quite saying this it does argue that the origins of fairness in our system were a reaction to the savagery of Victorian punishments. Now it appears as if that savagery has transferred itself to offenders and we are all at greater risk as a result of giving too many rights to offenders - so *we* must be tougher.

This will result in community disposals being ratcheted further up the punitive scale and, being towed along with this development, will be a probation service once established to ameliorate the worst excesses of Victorian prisons. Proposals in the rebalancing document include provisions for probation officers to impose punishment themselves (within a framework set by the court at the time of sentence) for breaches of community penalties (Home Office 2006: 20) and a requirement that courts *must* impose additional punishment for breaches returned to them, including custody even when the original offence did not warrant it. This latter proposal of course continues what is now an established Labour theme of allowing custody for breaches of provisions where custody was not originally an option (or no new offence has been committed). Custody in this sense is not reflecting crime seriousness but failure to comply. Custody is therefore imposed for a regulatory matter. This rigorous enforcement policy thus becomes a significant driver of a rising prison population (see below).

Community punishment will not only become tougher but also more visible (which can be considered to be tougher as well but the government prefers to regard this as reducing the fear of crime 'by identifying the previously unknown' (Hill 2005)). For example, what was once called community service (unpaid work performed in the community by offenders), then later community punishment, is re-branded as 'community payback'. The change of terms, from *service to payback* has been accompanied by an increase in the visibility of these work schemes, reflected in a very public logo. Although described as 'one of probation's most successful interventions' there was felt to be a need for change - but what are the changes? Aside from the name change (what is wrong with service?), the re-launched scheme will be much more visible and the community will be involved in the selection of the unpaid work projects via local panels. In many ways this may not be so different to previous practice. At its inception community service required probation staff to engage with a wide variety of community organisations to identify and complete projects. Indeed much of the supervision of offenders

was truly community based as the recipients of the service frequently did the supervising! The use of panels and plaques simply makes this a more visible event. Is this better? The Director of the National Probation Service thinks so, arguing that ‘Communities deciding what offenders do, and seeing them do it, is in no way a soft option. It is, in my opinion, the future of community sentencing’ (Hill (2005). Perhaps the question is, however, does the community actually gain more from this involvement and visibility (and, of course, what is meant by community in this context?), or is the government simply re-working words to make it appear to be tougher on offenders?

THE PUNISHING COMMUNITY

Not only is it likely that sentences served in the community will be much tougher in the future, but also there is a distinct chance that the community itself will become an *agent* of punishment. This may well be achieved by the involvement of victims and other lay members at some of the critical decision-making junctures of criminal justice. How will this sit with the type of community based crime response the government is seeking? For example, it is evident that the government wants to be tougher towards serious offenders at all points of the criminal justice process. It intends that longer sentences will be available (e.g. the new indefinite sentences for public protection in the 2003 Criminal Justice Act) but also that courts use their full sentencing range more frequently. One way of ensuring this may be by sentencers and prosecutors being informed of the views of victims. This will occur through victim personal statements and by enabling prosecutors to speak to victims before trial. There will also be a pilot of “victims’ advocates” schemes in which the relatives of homicide victims might address the court about the impact of the crime on them before sentence is passed (Home Office, 2006:15).

So is the intention here to rebuild public trust in the criminal justice system or is it to ensure that sentences are longer, or that more public protection sentences are passed (already over 1100 passed between April 2005 and July 2006, Home Office, 2006:17)? Understandably these measures aim to bridge a knowledge or confidence gap between courts and the public. But again it must be emphasised that these proposals have arisen out of a response to serious crime problems and it is difficult to see beyond a punitive intent. Therefore it could be argued that the community is being used to ensure that punishment does become tougher and as such acts as the *agent* of punishment. This leads into the next two categories of community, the *tasking* community and the *excluding* community, in essence sub-categories of the *punishing* community.

THE TASKING COMMUNITY

In response to a series of very public criminal justice scandals, the government is intent upon 'Rebalancing the criminal justice system in favour of the law abiding majority' (Home Office, 2006). This process, pursued throughout a splurge of Home Office documents throughout 2006, has determined that community justice will now mean that members of the community, especially victims, should have a much greater say at every stage of the criminal justice process. Now, although a laudable objective, we might again see a slightly different intent behind this development. It appears as if 'the professionals' have not been doing their job properly, in other words they have 'allowed' a series of high profile cases to cause huge embarrassment to a government proud of its law and order policies and one that had effectively stolen the Tory law and order clothes. This has happened, apparently, because these professionals have been overly concerned with the rights of suspects, defendants and offenders and less with those of victimised communities. Community justice in its new form will therefore hold these professionals to account, challenge their decisions and ensure that actual and potential victim perspectives are considered at all decision-making points in the criminal justice process. It will, in other words, *task* the professionals to act more in the community's interest. However, it might be argued that this process goes even further. In one sense it could be said that the community has been recruited to do what the government has failed to do - that is, to force professionals to act in the more punitive way that it has demanded.

The spark for this sudden awakening was a number of cases involving, in particular, serious further offending by those released and on licence from custody (see, for example, Her Majesty's Inspectorate of Probation 2006a and 2006b). At fault were said to be many of those involved at critical decision-making junctures, the probation and prison services, the parole board and the multi agency public protection arrangements (MAPPA). We therefore have both system and people failure. The government has made it clear that, over the years, it has given greater powers to courts and criminal justice practitioners and, to a certain extent these have been hampered by the emphasis on offender rights. This emphasis is not however simply a result of legislation, but also interpretation and application by professionals. It is here that the new notion of community justice will seek to redress the imbalance as seen by the government, and indeed is likely to challenge professional judgement.

It appears as if community representatives will be used to ensure that practitioners take into account public views, especially perhaps when there is a risk to the public posed by an offender at time of sentence or point of potential release. For example, new rules will make it a requirement that all new members of the parole board making decisions on serious violent or sexual offenders have direct or indirect experience of being a victim of crime or a strong appreciation of victims' issues (Home Office, 2006:15). The intention here is clearly to introduce a greater understanding of victims' feelings into the delivery of justice, but does being a victim of crime make a person a better judge of offender risk than someone who has worked with offenders for many years? It may well increase knowledge of victims' issues but is this the only purpose of the government's initiatives? It is hard not to draw the conclusion that the alleged disregard shown to victims is being used as a smokescreen for the government's failure to ensure that its agencies effectively assess and manage serious offender risk. Indeed it is also a smokescreen for its failure to better educate the public of how difficult this task is and the impossibility of achieving zero risk. This position is of course alluded to in countless official statements but is usually subsumed beneath headlines promising to improve performance -giving the impression that the unobtainable can be obtained.

THE EXCLUDING COMMUNITY

Part of the strategy behind the government's proposals for community justice is clearly to make it local and immediate. This will, it believes, lead to a lowering of community tension and punitiveness and foster a greater sense of *inclusiveness*. These ideas will be examined in the next section but before doing so, the idea that including the community in decision-making may lead to an *increase in exclusion* will be considered. This switch of outcomes may be determined by the nature or seriousness of the offending subjected to this enhanced community intervention. In other words, much of the government's community justice rhetoric has been concerned with low level, high volume, nuisance crime (Rogers, 2005) but the rebalancing document has appeared as a response to much more serious offending. The climate these initiatives have been launched into therefore may well shape the nature of that community involvement and lead to the tasking and increased punitiveness noted above. These new developments may also directly contradict the intention to build a more inclusive society by increasing opportunities for communities to exclude its undesirables (a moving feast if ever there was one).

For example, if the probation service works *with* the public to inform it about sex offenders located in hostels in their communities, will this make the community more tolerant towards them? This appears unlikely, not least as the government itself has already ordered that sex offenders be removed from hostels located near to schools, in other words in many urban areas (Russell, 2006), again a response to a headline-grabbing case (see for example Savill and Steele, 2006). Therefore the notion that probation officers should work with communities may take on a different meaning when the subject of their collaboration is to be serious offenders. Working with communities here may be much more about a managed process of exclusion rather than reintegration. This in itself represents a significant departure from the traditional values of the probation service and redefines community work. However, this may be what the government has in mind and it may well be the case that community justice in this context is better understood as *community protection* via the *exclusion* of undesirables.

The ‘rebalancing’ document does not shirk from establishing how serious the crime problem has become. It argues that, ‘The frozen certainties of the Cold War have melted into torrents of new challenges, including mass migration, international terrorism and organised crime’ (Home Office, 2006:9). These global developments are set alongside concerns over a diminishing sense of familiarity and safety in the local community. Thus we have the two notions of the community reflecting concerns with local crime and also serious and international crime. Is empowering the community the answer to the second problem? If the public is very anxious and afraid can it be trusted to act in a rational and just manner, especially when it is told that the issue is of such epic proportions? For example, two passengers were removed from a holiday flight from Malaga to Manchester because passengers thought they were ‘apparently acting suspiciously’. These men allegedly alarmed passengers because of their Asian or Middle Eastern appearance, talking in their own language and sitting apart from others (BBC News August 20, 2006). The same report noted David Reynolds, from the British Airline Pilots Association, saying that there were ‘very tight procedures’ in place to ensure only the ‘right sort of people’ boarded flights. ‘Clearly, we can’t have a situation where one passenger decides that another passenger isn’t going to fly’. So is there a risk of similar reactions to many of the serious criminals the government wants dealt with by the additional input from the community? Engaging with the community is a splendid idea but it is not difficult to see

how collective rationalities can quickly disappear as community fears increase. An intention to lower community concerns does not sit easily with how the government has reacted to and conceptualised the problem of serious crime. Even more, as media and politicians inflate the understanding of what is serious crime, it is likely that more offenders and behaviours will become subject to a punitive, excluding approach.

As indicated earlier, since the original proposals for community justice were floated in 2005, there has been a significant sea change in the perception of the crime problem. It must be remembered that much of the public pressure behind this document came from high profile and very serious re-offending (murder, rape and sexual abuse of children). Although such offending is clearly likely to have a significant impact upon the local communities in which it occurs, it is not commonly offending of the community in the way in which the new community justice might deal with it. In essence, with cases such as Rice and Hanson and White (HMIP 2006a and b), the government is saying that the agencies have failed to protect the public because they have operated in their own interests or because of an over-concern with the rights of the offender. Thus not only must the systems improve and more information be shared, they must also now include the public at key junctures. But will this really improve public safety?

There is clearly a need to continue to improve information sharing across criminal justice and other public agencies involved in public protection. However, having access to all the information available does not guarantee anything. It is what is done with the information that is crucial. For example, Rice displayed considerable intelligence in his efforts to persuade practitioners of his 'safety' and yes, full information available to everyone at those key decision junctures would have helped considerably. Yet an awareness of human behaviour, of offending behaviour and the means by which people can cover their tracks, was what was needed. At the end of the day, public protection relies a great deal upon professionals' 'people' skills - their 'systems' skills should only support the former. Cranking up the system may be appropriate but ultimately it depends upon the staff working within it and their professional abilities. What will the introduction of the public into aspects of this process achieve? What it may achieve of course is a greater number of people included in the system for longer, thus making the job of the professionals even more difficult.

THE HEALING COMMUNITY

Finally, I come to what has perhaps been the main thrust of Labour initiatives on community justice - a better informed, more involved, more understanding, trustful and less punitive public. The response to justice should more obviously be a community, rather than simply a professional or executive matter. The rebalancing document makes this clear, 'The way to address this is by making justice a community matter where the public is more closely involved in seeing and taking part in the process' (Home Office, 2006:6). These sentiments had been preceded by a view that despite the availability of tough new sentences and their use by the judiciary, the public is apparently unconvinced of government measures. Therefore, rather than ensuring that the public does understand the measures available to the court and their use, it is going to be moved much closer to the points where decisions are actually made and indeed may in fact be in a position to influence those decisions. The community could therefore become more proactive in determining the nature of criminal justice interventions, both in terms of sentence length and the nature of interventions. This may of course work well with the volume crimes that blight neighbourhoods and communities. However, as argued earlier, if applied to more offending at the top end of the scale, the intention may be less obviously restorative or healing and more punitive.

The idea of active community involvement in criminal justice is not a new one and has been present in government policy for a while, with numerous publications endorsing developments in the United States and Australia/New Zealand (examples). A significant player in these proposals has recently been the *Institute for Public Policy Research (IPPR)* and in particular a report prepared by Ben Rogers (2005). However, the sentiments expressed in this paper and in the government's most recent policy statements are somewhat different, although masquerading under the same banner. The IPPR's understanding of community justice appears to be concerned with rebuilding trust and confidence in the criminal justice system so that people are less anxious and afraid. In Rogers' paper there is also a suggestion that 'punitiveness pressures' might be relieved (2005:3). This will be achieved by developments such as local or community courts, a conferencing approach to local conflict, judges as community leaders, criminal justice professionals reflecting the public they serve and so forth. In summary, 'A court, prison and probation service with a more local face, recognised as run by people, not 'bureaucrats', shaped by public values and considered preferences, and designed and managed to put the people first...' (Rogers, 2005:9). There may be a number of

contradictions in this statement, not least the fact that the Labour government has overseen a massive increase in public sector bureaucracy and if the system is at fault for this, the blame to a large extent lies with it.

However, the essential contradiction between the competing understandings of community justice may lie in the intended outcomes of the process. In other words the type of offences and offenders to be dealt with in this way may shape the outcome in quite different directions. Are we about to see a process of 'community justice bifurcation' (Bottoms, 1977), one which differs as a result of crime seriousness? Much of the sentiment expressed in Rogers' (2005) paper is commendable. It suggests for example that a greater visibility for correctional services in high crime areas builds trust and confidence and does not lead to increased punitiveness (2005:11). This of course comes at the end of two decades that have witnessed a massive increase in centralised accountability with constant shifts to national rather than local services and networks. As a probation officer in the 1980s this author worked on the type of high crime estate referred to in much of the recent government documentation. It was a given that probation officers spent a good deal of their time on 'home visits', getting to know families and also local community organisations. This practice lessened not because it was ineffective, but because it did not sit easily with many of the centrally driven targets for probation staff. Indeed, 'community' work such as this only re-appeared in many places when it became a project and could therefore be described as an initiative that met central targets. Building trust and working with people comes at the soft end of the effectiveness spectrum and is difficult to measure, but should not be abandoned because of that.

I have previously commented on the government's 'joined-up' initiatives (Nash, 2006, 2004, 1999), as have others such as Kemshall and Maguire (2001) and Mawby and Worrall (2004). One of my concerns has been that in the rush to improve communication and information sharing, agency distinctiveness is being squeezed. For some while it seems as if the government has indeed supported the creation of a criminal justice system in which its component agencies have begun to share targets and perhaps, more significantly, culture and values. Into this mix now will be added 'the public voice'. Much has been made of research in the documents cited in this paper that suggest that a better-informed public is less punitive towards offenders. This may well be true. But, as indicated above, the present policy initiatives are a reaction to *serious* crime and the public has been extremely unforgiving and intolerant to date on this issue.

In a climate of fear and insecurity, serious and dangerous offenders are demonised as being beyond redemption - they are not wanted in *communities*; rather they need to be *permanently excluded*. So what will community involvement add to public protection? It could be suggested that the public is being used to whip the agencies into shape - to make them more risk averse, controlling and punitive in intent. This can be contrasted from the IPPR understanding of a more informed and involved public becoming less punitive in its views.

Thus there appears to be a tension in the government's drive to redefine community justice in that it is encouraging that community to be both *inclusive* and *exclusive* in the same breath. Equally it plans to rebuild trust between communities and the criminal justice system whilst doing little to ameliorate the mistrust that has arisen out of the international situation, or even within communities over serious (but rare) criminals. Police and probation staff are caught in the middle of these competing demands. Police are encouraged to become more community oriented whilst experiencing significant centrist tendencies in order to combat serious and organised crime. Probation officers are encouraged to get back into communities whilst becoming a national organisation and joining with the prison service. In all of this, community involvement over what might be termed 'regular' crime is shaped by national responses to 'irregular' serious and dangerous offending. Has then the notion of a community of belonging, maturely dealing with its own problems, been hijacked into one that is used to enforce central government measures that so far, in its opinion, have not been delivered by the practitioners of criminal justice?

SUMMARY

As with a good deal of recent government legislation, there appears to be two layers to its policies. Many of its underlying intentions are extremely positive. The plan to involve the community much more in managing its own crime problems is sound and one that is increasingly supported by research indicating that it works. Rebuilding and reinvigorating communities is a popular idea but, as with too many other Labour policies, may be one that is hijacked by the latest tabloid headlines. Community involvement, it has been argued here, is potentially a means of keeping professionals who are regarded as not doing their job as they should by the government, in check. The government has responded to high profile public protection failures by arguing that professionals have been overly concerned with offenders' rights and less interested in the public's right to protection. There may be an element of truth in this, but it must be said that practitioners only work with what they have and this is what successive governments have largely given to them.

If the government does push through some of its community initiatives it may well reduce the amount of volume, nuisance level crime suffered by communities. In so doing it may free agencies such as police and probation services to focus on serious and high-risk offenders and work towards reducing the occurrence of serious further offending. But the problem remains that the government tends to run with the tabloids and as a result somewhat inflate lower level crime into more serious categories. For example a huge number of offenders are processed as potential MAPPA cases and, even if downgraded, have still consumed huge resources. A more punitive tone set for the courts results in longer sentences and a tougher approach to enforcement ensures a steady flow of offenders returned to custody. A recent report from Her Majesty's Inspectorate of Prisons (2005) suggests that recalls to prison had increased 350% between 2000-1 and 2004-5. Only 25% of these recalls had been for a further offence whilst 30% were for being out of touch with supervisors. Recalls now constitute 11% of the prison population, whilst over 7000 offenders were imprisoned for breaching community orders. So will the community be more forgiving of re-offenders in its midst, or will it demand that rigorous enforcement patterns continue and thereby stoke up problems elsewhere in the system? How long before the government feels the need to invoke another early release plan to relieve prison overcrowding, with the consequent damage this would do to its law and order reputation?

This paper has argued that there are competing notions of community in recent government legislation. Whilst much is positive there is a risk that encouraging the *punitive community* may well be the outcome. The title suggests that there are various layers of understanding where community justice is concerned. Undoubtedly the government would argue that its plans will extend justice further into the community and make it much more relevant to the public. If its plans come to fruition this may well be true. However there is a strong hint that community involvement has another purpose and, if this aspect develops, we may well find ourselves leaving behind justice as many people understand it - without necessarily any significant improvement to what we already have.

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