EDITORIAL
COMMUNITY COURTS IN THE US AND THE UK

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The origins of the Liverpool experiment

The Community Justice Centre in Liverpool is an important experiment, and it has been discussed previously in this journal (Berman and Mansky, 2005). First announced in 2003, it started work late the following year in a conventional magistrates' court and moved into its own premises in September 2005. Its dedicated judge recently accepted an invitation to lecture on the experiment at Liverpool Law School, and that lecture is drawn upon in what follows (Fletcher, 2006). A similar but in some important ways different experimental 'community' court also opened in November 2005 in Salford, with magistrates rather than a judge in charge, and the two models will be watched with interest by a government intent on encouraging 'problem-solving' approaches to the delivery of justice.

The community justice centre was originally an American concept, and one which has been replicated widely since the establishment of the project which has caught the attention of British politicians, the Red Hook Community Court in New York, which opened after six years of preparation in 2000. Therein lies one important difference between the American initiative and the British one: Red Hook was planned over a period of years, as against the months of planning allowed to the Liverpool centre. Inevitably, this meant that some aspects of the North Liverpool Community Justice Centre took precedence over others. For example, the service to victims and witnesses, in the person of a "full-time victim and witness support worker" (Fletcher, 2006) has only recently been added to the complement of staff and services in Liverpool, and restorative interventions and community mediation (which have been integral to the Red Hook centre) have also waited until other aspects of the Liverpool centre were well-established. There is also some evidence that the establishment and priorities of the Liverpool centre have been driven by the central government departments concerned, rather more than by community demands and partnerships, which are emphasised in most discussions of Red Hook (Berman and Feinblatt, 2005; Berman and Fox, 2005). Indeed, the Liverpool centre is based in a former primary school in a deprived area which is short of other community facilities. Local community groups had expressed interest in taking the buildings over, but the court did so - and the school's swimming pool was demolished as part of the change of use.

Whereas Red Hook is a single, cohesive (albeit divided) neighbourhood in Brooklyn with a population of 11,000 (Lanier, 2005; Berman and Fox, 2005), "North Liverpool" is not an

entity for purposes other than the area of jurisdiction of the NLCJC: it comprises a number of local government wards with a total population of around 80,000 (Hartill, 2005/6). Some American advocates of community justice argue that it operates best at the neighbourhood level (Clear and Karp, 1999). In Liverpool, the strong local culture of not 'grassing' has made it a hard area for the CJC's outreach strategies to penetrate, although the centre's community engagement officer remains upbeat about the task (Brett, 2005). If, as in some working class areas, grassing is defined broadly to include any voluntary contact with the representatives of criminal justice agencies (Yates, forthcoming; Evans et al, 1996), community outreach seems likely to remain an uphill struggle.

Early successes in 'North Liverpool'

Despite these concerns, the North Liverpool Community Justice Centre has had some early successes. The presiding judge, David Fletcher, was appointed in 2005 in a process which involved unprecedented community representation, and set about getting to know the area, making himself known by attending local meetings, and setting up reference groups of local residents to advise him on community problems. He has actively promoted community penalties as the solution to low-level disorder and crime, and has engaged with some offenders over a period of time, following up their progress in the ways pioneered during the implementation of Drug Treatment and Testing Orders in the UK (Turnbull et al, 2000; Woolf, 2002) and problem-solving courts in the US (Berman and Feinblatt, 2005).

The centre has engaged with existing statutory and voluntary agencies to ensure that offenders' needs can mostly be met 'on the spot', including drug and alcohol services, housing, employment and legal advice, and tentative efforts are being made to engage more proactively with suspicious local residents. Given the timescale, these are impressive achievements. Much of the early success appears to have depended upon the judge himself: he is un-stuffy, relatively young, enthusiastic, even charismatic. Significantly, he has avoided making Anti-Social Behaviour Orders, preferring to rely upon community sentences (except in prostitution cases: see CJC 2005). Another factor has undoubtedly been the level of expenditure committed to the experiment by the three government departments involved in promoting it: the centre is extremely well-resourced, although figures are impossible to come by. European funding runs until December 2006, and it will be interesting to see whether or not the interim evaluation due this year will recommend using mainstream funding to guarantee its continuation. The US research suggests that community courts are more costly than conventional courts, but that they make up for this by making considerably less use of custodial remands and prison sentences (Kralstein, 2005). When they do send people to prison for breaching court orders, it is for longer than comparable courts would do, but overall there are still significant financial savings to the state (Berman and Feinblatt, 2005, p. 165).

Red Hook's development was influenced by the concept of therapeutic jurisprudence (Wexler and Winick, 1996), a notion unlikely, on the face of it, to be very congenial to our current political masters in the UK, although it perhaps links with communitarian

aspirations for criminal justice, and it commands significant support in the USA. The advocates of therapeutic jurisprudence argue that the law is a social force with the potential for therapeutic or anti-therapeutic impacts on the people caught up in it (whether in criminal, divorce or mental health cases). The implications for the behaviour of judges include the possibility of seeing the law as a helping profession: judges are believed to have the potential to promote cognitive change in defendants, and to facilitate what the Americans call 'treatment adherence' by the ways in which they deal with individuals. This is facilitated by a judge's continuous involvement with a case, a process for which the NLCJC is ideally suited. Judge Fletcher is able to deal with the same defendants each time they appear, and (for example) to remind them of what was said last time they were in court. The therapeutic potential of judicial treatment of criminal defendants also depends upon how judges treat people, and limited observation of Judge Fletcher's work suggests that he takes considerable care to explain his decisions and their implications, and treats defendants with respect. Whatever one might think of the theory of therapeutic jurisprudence, it is difficult to dispute the potential benefits of a judge being more aware of social factors than judges typically are in the UK, or indeed of a judge taking an interest in the impact of his decisions upon the individuals concerned. The NLCJC remains strongly focused upon individual criminal defendants, however: the quality of life in its area has to do with wider issues of poverty, poor housing, unemployment and so on, and while a community court could address some of these issues, it does not appear to do so to any significant extent as yet in Liverpool. There are, however, precedents for this kind of judicial activism in the USA.

The other influence which has propelled community courts up the US criminal justice agenda is 'broken windows' theory, the commonsense but unproven idea that dealing decisively with minor nuisance offences and dilapidation is essential to improving demoralised communities. On this Leena Kurki has written:

> "The broken windows theory has influenced community prosecution and community court approaches that emphasize attacking nuisance or quality-of-life crimes. The question remains, whether dispersing, arresting, and punishing homeless, drunk, poor, mentally ill, or loitering people is the right response to the social conditions of poverty, substance abuse, homelessness, and general apathy that are related to crime and deterioration of American inner-city neighbourhoods… there is no evidence that targeting quality-of-life crimes is the way to boost neighbourhood revitalization" (Kurki, 2000, pp. 248, 289).

In the absence of persuasive research, the relevance of 'broken windows theory' and its close associate, zero tolerance, to the courts in run-down, poor areas of the UK remains a matter of opinion.

Concerns about community courts

The American literature highlights a number of concerns about community courts in terms of civil liberties. They may widen the net of social control, criminalising anti-social behaviour which would otherwise have been unlikely to command official attention. They can also neglect due process, involving possibly unrepresentative spokespersons for the local community at the expense of defendants' rights. Conversely, they are sometimes "expert-driven" (Lanni, 2005, p. 380), falling into the very trap they are supposed to avoid, replacing magistrates with case conferences of professionals. Such case discussions need not involve a defence lawyer in all cases, although excluding them is clearly bad practice (Berman and Feinblatt, 2005). Some community courts have been located in mixed communities at the instigation of local businesses, and the main beneficiaries have been white, middle-class residents (Kurki, 2000). Some of these concerns are more relevant than others in the context of the Liverpool experiment.

The then Lord Chief Justice and a number of civil servants and politicians visited the Red Hook Community Justice Center in the period prior to the establishment of the NLCJC, and it is reasonable to assume that some of the pitfalls of American experimentation with community justice were taken into account in designing the Liverpool and Salford pilot projects. In some respects, it is too early to tell whether mistakes made in New York have been repeated in England, but there is evidence that some of them have been avoided. Due process concerns seem to be unjustified: indeed, the involvement of a judge in dealing with minor "quality of life" offences should offer additional safeguards, and most defendants are legally represented not only when they first appear in court but also at review hearings. Further down the road, there may be concerns arising from an unduly cosy relationship between a single judge and his team, but this is not an issue which has been raised to date.

As for widening the net of social control, this is perhaps inherent in a project which is designed both to improve community confidence in the justice system and to reduce anti-social behaviour in a poor, run-down area. Community reference groups identify social problems which the criminal justice system can only ever partially address, such as prostitution and drug misuse, and the court responds in ways which are not normally open to conventional courts. This involves an element of net-widening, almost by definition. The question is whether this is a price the local community is prepared to pay for the promised (and arguably largely unwanted) benefits – and whether these benefits actually materialise. Opinion surveys in the areas served by the courts may throw some light on this.

The tension between community involvement and being "expert-driven" does appear problematic in Liverpool. As elsewhere,

> "Although the community court model is billed as a reform that enhances popular participation, in reality the problem-solving judge and expert social service personnel retain control over most aspects of the criminal justice process" (Lanni, 2005, p. 383)

However, in Liverpool the team of 'experts' includes representatives of a number of voluntary agencies such as Victim Support and a drugs agency. The judge certainly remains in charge of sentencing, but receives the input of reference groups of local residents, including young people. The role of the judge is perhaps symptomatic of a top-down approach (New Statesman, 2003), but the Salford experiment led by magistrates offers an interesting comparator. The problem-solving meetings with which the judge begins each day have substantially reduced the requirement for pre-sentence reports, which means that informal discussions replace written reports. This might be problematic in some cases, but it has speeded up the sentencing process and freed probation officers and youth justice workers to spend more time with their clients. It is an innovation which should be carefully monitored, because it would be all too easy to argue for a reduction of the use of written reports in normal courts on the back of the experiment, and defendants' rights would suffer.

Victims of crime and community courts

Another concern arising from the US experience is that community courts may have the unforeseen consequence of making victims of crime feel that they "have responsibilities", in that

> "their goal is to recover their capacity to fully function in the community. Recovery begins when the victim articulates the losses, intangible as well as tangible, and estimates the resources, financial and otherwise, needed to restore the losses" (Clear and Karp, 2000, p. 23).

The authors appear to anticipate that victims will become part of a network of mutual obligations – not a commitment many victims are likely to be willing to make under current circumstances. There is a danger that victims may be placed under new obligations that they are reluctant to commit themselves to, for good reasons. There is an unusually high rate of not guilty pleas in the area covered by the NLCJC, partly because of witness intimidation (Williams, 2005, p. 50). There is also some doubt about the extent to which the NLCJC has fulfilled the promise of its initial publicity in terms of making new services available to victims and witnesses, although a small number of specialist victim support staff, appointed early in 2006, may help to remedy this deficit.

A brave experiment

The government could certainly not be accused of having located the NLCJC in an area where middle-class residents would be most likely to benefit: it is in Kirkdale, and it covers a part of Liverpool with whole terraces of boarded-up housing, blighted by the local football club's expansion plans and by the activities of entrepreneurs buying up property in anticipation of better times but leaving it derelict. Its territory covers some of the poorest electoral wards in the country. It is also a high-crime area. If the intention was to undertake the experiment in a challenging area, it was a good decision. However, one of the redeeming features of the area is its comparative wealth of community organisations,

making the servicing of the court somewhat easier than it might have been elsewhere, and 25 volunteers have been trained as mentors (Fletcher, 2006).

Judge Fletcher, in his recent lecture, bemoaned the complexities involved in a project which is being evaluated by three different government departments. It is unfortunate that little of this evaluative work has yet seen the light of day – but the forthcoming publication of a cost-benefit analysis will go some way towards remedying this omission. One of the problems with community courts in the USA is that they have not been extensively evaluated, and much of the literature has a rather evangelical tone (see for example Berman and Feinblatt, 2005 or Clear and Karp, 2000). Until objective research evidence becomes available, it is as well to remain sceptical about some of the claims being made for community courts. Nevertheless, the experiment is a brave one and an interesting one.

Also in this issue

This issue of the journal illustrates both the diversity of community justice and the liveliness of current debates about it. It also has a strongly international feel.

John Owen and Santi Owen discuss the ways in which 'domestic' violence has been dealt with over the centuries, and they argue that its criminalisation has inadvertently replicated the "theft of conflicts" (Christie, 1977) bemoaned by advocates of restorative justice. By making 'domestic' violence a crime against the state rather than against the moral norms of the community, we have missed opportunities to shame the perpetrators and to protect the injured parties. The authors enliven their argument by discussing the custom of 'rough music', giving an example of an abuser being publicly humiliated by his neighbours as a sign of communal disapproval and solidarity, and they go on to suggest that perhaps we need to find equivalent methods of shaming violators of such shared norms. The example comes from early modern England, and the authors compare it with current practice in Australia.

Shadd Maruna, in his article on the resettlement of prisoners, also draws upon restorative justice theory and calls for greater community involvement. He points out that the current collective forgetting of prisoners while they are away is unsustainable, and that the advent of the National Offender Management Service (NOMS) and the notion of the "seamless sentence" may offer an opportunity to make a fresh start in thinking about prisoner resettlement and rehabilitation. Community involvement and reparation offer constructive and active approaches to prisoner reintegration. Drawing upon recent experience in Northern Ireland and the US, he makes a strong argument for change.

Wendy Fitzgibbon and Roger Green also touch upon the changes envisaged with the advent of NOMS. Their paper may at first sight seem more parochial than the others, concentrating as it does on the completion (or non-completion) of the offender assessment tool, eOASys, in one English probation area. However, their small research project has major implications for practice in probation and related agencies. It shows how

poor assessment makes evidence-based practice all but impossible, and how actuarial risk assessment is in danger of falling at the first hurdle due to time and other pressures upon front-line staff. In particular, mentally vulnerable probation clients are ill-served by the constant turn-over of supervisory staff which is becoming so common, and their needs are unlikely to be met if the information held about them is never synthesised by supervising staff. Perhaps the one heartening aspect of this study is that it emphasises once again the importance of consistency and of the building of meaningful human relationships to successful supervision. Recent events suggest that this will require substantially increased resources, and that the move towards actuarial risk assessment may have led to a mistaken reduction in emphasis upon constructive relationships between probation workers and offenders.

Julian Buchanan's article also focuses upon community supervision of offenders, taking a radical look at the assumptions underlying much drug treatment. He argues, with evidence, that prohibition itself causes major social harms. The link between drug misuse and crime is a complex one, and although there are obvious causal links in some cases, it is dangerous to ignore this complexity. Medical approaches to drug misuse conventionally ignore the social causes, and policy has followed this dominant discourse, to the detriment of more sophisticated approaches to rehabilitation (or, as Buchanan argues, in many cases to the 'habilitation' of people who have never had the experience of inclusion).

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