

# EDITORIAL

## THE MEANINGS OF COMMUNITY JUSTICE

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### Origins of the concept

The *British Journal of Community Justice* aims to encourage debate about the contested meanings of the concept of community justice, with a view to clarifying the issues for policy-makers, practitioners and academics alike. We feel that there is a need for critical debate, because of the widespread confusion and disagreement about both the meaning of the term and the desirability of expanding the domain of community justice. There is also a need for cross-national comparisons to be made, so that appropriate lessons can be learnt.

Although it has only recently come into common usage in the UK, the concept of community justice is not a new one. Since the late 1970s, community justice has been a central idea for those advocating a variety of criminal and civil justice reforms in the USA (Johnson, 1978; Harrington and Merry, 1988). The intellectual origins of the idea in North America appear to lie in the work of Saul Alinsky (1972), whose approach to community empowerment was adapted by the National Association for Community Justice, founded in 1985. In this version, community justice was about promoting neighbourhood-based participation, and encouraging take-up of criminal justice services through outreach and by involving community members (Altschuler, 2001). It emphasised building citizens' capacity to "address conflicts within their own neighborhoods" using lay mediation and eschewing outside professional intervention (Harrington and Merry, 1988: 718).

At around the same time in Europe, Nils Christie's ideas were becoming widely known as a result of his influential article on "conflicts as property" (Christie, 1977). A common theme was that justice had become too professionalised, and that disputes might often be resolved to the greater satisfaction of participants in informal settings. The parties had become remote from criminal justice decision-making because of the bureaucratic 'theft' of their involvement by institutional criminal justice. Informal community justice would allow the parties to recover a lost tradition of negotiated settlement of disputes (Nellis, 2000).

How far this vision of informal dispute resolution was ever a reality is a matter of debate. Some authorities have suggested that the view of the ways in which justice was done among the Navajo or the Maori which has been put about by some advocates of community justice is sentimental and patronising. Daly (2000), for example, argues that the notion of indigenous restorative justice is only of metaphorical or heuristic usefulness,

and that to take such ideas literally romanticises the past and recolonises indigenous justice practices by appropriating them as part of the discourse of restorative justice. According to this view, people looking for arguments in support of restorative justice gained spurious credibility by claiming that informal justice had a pedigree among aboriginal peoples.

Johnstone (2002), citing historian E. P. Thompson, argues that there is good historical evidence for the existence of non-bureaucratic, community law-making and law-enforcement. However, he goes on to question the extent to which these ideas are relevant to modern industrial societies where community does not exist in the same sense as in aboriginal societies. In fact Thompson (1991: 174) also noted that colonialism included the formalisation, co-option and even the invention of customary law. Some have argued that the tendency to sentimentalise the criminal justice of the past is also a characteristic of communitarianism, which hankers after a return to small-town American values, civic virtues and moral consensus (Hughes, 2001), and which sees community justice as a way of achieving this remoralisation.

## **Revival of community justice in the UK**

The concept of community justice has been revived in the UK as part of the current government's version of communitarianism. This envisages a society in which individuals are as aware of their responsibilities as they are of their rights, and the state has a role in shoring up the moral foundations of society (Hughes, 2001). It is based upon an underlying moral authoritarianism, although some have argued that it has radical potential and could in theory be equally 'tough on crime and tough on the causes of crime', to use Tony Blair's phrase. In this context, community justice may be seen as part of a wider move towards "actuarial justice", dealing with people according to the level of risk they pose rather than according to individual need, aggregating and managing individuals according to their assessed levels of risk and allocating resources accordingly (Feeley and Simon, 1994). Alternatively, community justice has been characterised as a way of involving a wider constituency in the administration of justice and encouraging communities to take responsibility for managing disorder (Braithwaite, 2000; Etzioni, 1994). It has also been seen, in the UK and elsewhere, as part of the drift towards managerialism, with increasing emphasis in criminal justice on effectiveness, efficiency and economy, and upon central scrutiny of the process of 'modernisation' (McLaughlin and Muncie, 2000).

Restorative justice, in particular, is congenial to communitarians because of the new responsibilities it places both upon offenders and upon their communities, and because its "communitarian rationale is constructed by and works within a series of authoritarian populist discourses" (McLaughlin and Muncie, 2000: 183). It encourages active citizenship, multi-agency work, the involvement of community organisations in criminal justice and the taking of personal responsibility by both victims and offenders. These are all identified as characteristics of 'responsibilisation' as defined by Garland (2001). He argues that governments are increasingly recognising that order and conformity are

produced by mainstream social processes and institutions, and not mainly by the criminal justice system. This insight compels the state to abandon attempts to achieve a monopoly on social control, and to acknowledge its "dispersed, pluralistic nature" (Garland, 2001: 126).

Restorative justice can also be much less expensive than existing approaches, facilitating an actuarial approach to criminal justice without necessarily triggering costly retributive interventions in offenders' lives (Braithwaite, 2000). A major weakness is that it does not always take appropriate account of power differentials between offenders and their victims (Hudson, 1998).

### **The meanings of community justice**

Given this wide range of interpretations, it is perhaps not surprising that the term community justice has come to be used in a confusing number of different senses, and the debate about the benefits of such an approach has at times seemed muddled (Nellis, 2000; Altschuler, 2001). New Labour communitarians have done little to clarify this confusion, introducing legislation which has characteristics of both extremes. The Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999 on the one hand involve more community members in the administration of less formal approaches to criminal justice, but on the other hand they draw ever more, younger, and less serious offenders into the clutches of the system, and incarcerate them in greater numbers. Terms like community justice and restorative justice are also sometimes used as if they were interchangeable, adding further to the confusion.

David Faulkner (2001) has helpfully called for greater clarity about the distinctions between a more inclusive approach to criminal justice decision-making, and the implications of increased flexibility and informality for the rights of offenders, victims and other participants.

As he points out, there has been a rapid and confusing series of changes in the criminal and youth justice systems of England and Wales (and similar changes are under discussion in Scotland and Northern Ireland). The introduction of new roles for mentors, referral panel members, mediators and volunteers, and the greater involvement of community organisations such as Victim Support and mediation schemes, have all helped to give meaning to the concept of community justice, making the system more inclusive.

"But 'community justice' could also imply the use of arbitrary or informal (and unaccountable) procedures to target and then humiliate or remove those who are thought to be dangerous, a nuisance or simply do not conform... changes to make the system more 'community-based', 'restorative', 'responsive' or simply more 'flexible', should not be introduced piecemeal into the existing system without serious thought for their implications and consequences" (Faulkner, 2001: 335).

## The politics of community justice

Failure to incorporate appropriate safeguards when devolving criminal justice to a more local level could open the door to vigilantism, or it could lend legitimacy to other disquieting versions of 'community justice' such as paramilitary punishments (Faulkner, 2001). Local justice might also favour the public humiliation of offenders in the name of reassuring their communities that they have been identified and stigmatised (Johnstone, 2002). In some jurisdictions, restorative justice processes have already been used to this end. Braithwaite (1999) gives the example of a young person required to wear in public a T-shirt emblazoned with the words 'I am a thief'.

The community justice movement in the U.S.A. has been characterised by ideological conflict, and the conservative approach "at least to this point, has prevailed over the liberal approach" (Altschuler, 2001: 29). Altschuler (ibid: 29) argues that many of those who have "jumped on the community justice bandwagon" have party political axes to grind, and this is reflected in the reforms implemented at state level in the USA. In Illinois, for example, the discretion to deal with juvenile cases informally has been reduced, the power to fingerprint juveniles has been widened, and periods of custodial detention for young offenders have been increased – all in the name of community justice. There is also growing concern in a number of U.S. states that low-risk offenders are being inappropriately allocated to intensive forms of community supervision and that cultural differences among offenders are not being appropriately taken into account. Some communities are very punitive, although there is evidence from Europe that judges tend to be more retributive than victims (Weitekamp, 2000).

In practice, some of the recently introduced changes are already raising serious questions about the legitimacy of certain approaches to delivering community justice in England and Wales. Restorative justice, for example, has considerable net-widening potential (Johnstone, 2002), which could ultimately lead to a further increase in the number of young offenders sentenced to custody. There is a good deal of uncertainty about the overall intentions of the recent legislation, with some observers seeing the Crime and Disorder Act (1998) as primarily about diversion, and others interpreting it as part of the promised crack-down on youth crime and misbehaviour (Bailey and Williams, 2001). The form of restorative justice implemented by this Act complements rather than replaces conventional criminal justice, and in some respects it is more coercive than the approach it replaced. Reparation Orders, for example, are compulsory where the young offender (but not the victim) is concerned, and there are penalties for breach. The great majority of the victims approached refuse to become directly involved in the process (Dignan, 2001). This is not community justice as most restorative justice proponents understand it (Johnstone, 2002).

Similarly, experiments with more intensive 'community' versions of probation appear to bring probation workers closer together with the police as well as with community members, and ultimately result in even higher rates of incarceration because of the increased emphasis upon enforcement, night patrols, curfews and community surveillance.

While there might be a good deal to be said for probation officers spending more of their time with their clients and in their communities, current managerialist trends pull them strongly in the other direction, back to their desks (Harding, 2000). The community probation projects in North America described by Harding serve as an effective reminder that community justice need not conflict with retributive approaches: community involvement can go hand in hand with increased authoritarianism (Altschuler, 2001).

Faget's research in France suggests that community members who become involved in victim-offender mediation as volunteers, tend to internalise bureaucratic norms and judicial ideology (Faget, 2000). While this might be seen as welcome evidence that community involvement in the justice system promotes 'responsibilisation' (Garland, 1996), it also suggests that the representativeness and accountability of community members involved in the justice system needs monitoring. Faget also found that the tendency to be co-opted was lower where the volunteers could claim advanced technical expertise and organise to form an influential lobby - but this smacks of professionalisation, in some ways the antithesis of community involvement.

Some American commentators hold out more hope for community justice than these examples might suggest. Clear and Karp (1998: 9) refer to its radical potential, arguing that disillusionment with the "adversarial, war-on-crime model" has led to a greater willingness to question how the quality of life might be better served by neighbourhood mediation. By emphasising community concerns and discernible local patterns of crime rather than processing individual delinquents, they argue that locally-based, autonomous, voluntary agencies can enforce informal mechanisms of control, in partnership with statutory agencies. They do concede, however, that this is an ideal which has yet to be realised, and that there are risks arising from the lack of community resources in many of the poorer areas. They therefore advocate targeting investment in the neediest areas, a point also made by Etzioni. He argues that crime can be seen positively, as "an opportunity to activate the social processes" which can lead to reintegration, restoration and healing (1998: 374) if appropriate "community building" (ibid: 375) accompanies the attempt to introduce community justice. One has to question how likely it is, in reality, that resources will be allocated in the redistributive manner required to achieve this vision. This certainly does not appear to have been the effect of the policies of the Labour government in its first term of office (see for example DSS, 2001). There are also unanswered questions and implicit assumptions about how responsible, inclusive communities are to be built.

Martin Wright's (2000) distinction between 'democratic' and 'authoritarian' models may be helpful here. It is more general than Altschuler's reference to 'conservative' and 'liberal' legal reforms, and Wright is using the terms as ideal types rather than as descriptions of the political leanings of particular advocates of specific changes. He argues that authoritarian versions of restorative justice are delivered by a state convinced that it knows best, and as a consequence they lack important safeguards both for victims of crime and for offenders. The democratic model, on the other hand, is operated by the people

directly involved in the conflict, so it is by definition community based. It pays due attention to processes rather than concentrating mainly on outcomes, and it involves respecting the rights of participants. What Wright does not claim is that the democratic model is anywhere currently being implemented in its pure form, although he refers approvingly to the New Zealand system of family group conferences.

## **Community justice and crime prevention**

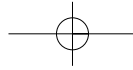
For many people, the term community justice encompasses crime prevention and community safety. Here, too, the 1998 Crime and Disorder Act has changed the shape of the landscape in England and Wales. The government, while acknowledging as previous governments did that crime prevention is not just a matter for official agencies, has nevertheless introduced court orders designed to exclude and stigmatise troublesome people, at the same time as introducing a number of new requirements of local authorities. These included the legal duty to co-operate with other state agencies in preparing and implementing crime and disorder reduction strategies, in consultation with the public. There was a limited emphasis on community involvement, and if anything there has been even less encouragement of it in the years since 1998 (Faulkner, 2001). While the legislation requires statutory agencies to work together, and to consult local communities, it enables community involvement without requiring it. Agencies such as the police have become far more aware, in the UK, of the need to police black and gay communities with consent, and this had increased the emphasis upon consultation with them and other 'hard to reach groups' in the development of Crime and Disorder Partnerships, but this is generally a top-down process. Funding for crime reduction initiatives is dependent upon elaborate bidding procedures and performance indicators which put most community organisations off becoming involved.

Some have argued that the main purpose of this elaborate edifice is symbolic, a legitimating function rather than a practical purpose. As Nellis (2000: 70) put it, "The rising star of crime prevention (even when broadened and reframed as community safety) reflects cracked confidence in formal criminal justice agencies." Existing community safety policies have tended to avoid issues such as gender, race and age as factors influencing how safe people feel, and the extent to which informal, extra-legal social structures may help create feelings of safety. Community safety policies which fail to take account of the lived experience of the people they are aimed at empowering, are likely to fail (Walklate, 2001; Hughes, 2000).

## **What do we mean by community justice?**

What, then, do the writers who have used the phrase mean by community justice? There seems to be common agreement on a number of issues;

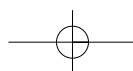
- The use of the term signifies approval of the principle of involving members of the community in some aspect of criminal justice, in a range of capacities such as volunteers, lay sentencers, mentors, supporters of victims or offenders, and mediators.

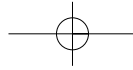


- This is seen as more inclusive than existing approaches, and thus more representative and more likely to be 'owned' by the communities concerned.
- Although a variety of underlying reasons exists for promoting such involvement, advocates of community justice generally agree that the criminal justice system has become overly professionalised, and community involvement is seen as an effective counter to this tendency.
  - Linked to this preference for non-professional involvement in criminal justice, many advocates of community justice see informal dispute resolution as more practical and more satisfying than professionalised approaches. The formal system appropriates conflicts, whereas informal methods can resolve them within the community.
  - Similarly, community justice implies a preference for solutions at the neighbourhood level and a rejection of remote, bureaucratised, statutory agency domination. In this, it has built upon critiques of remote and impersonal styles of policing.
  - Community justice emphasises the potential for crime control to take place 'in the community' rather than in institutional settings, and it draws upon critiques of total institutions, arguments about the dangers of stigma and exclusion, and "a belief in the healing powers of community relations" (Garland, 2001: 123).
  - As well as involving individual community members, community justice is often seen as necessitating enhanced partnerships between the statutory criminal justice agencies and non-governmental organisations such as Victim Support schemes. The notion of partnership is often extended to support closer co-operation between the statutory agencies themselves, beginning with the sharing of information between agencies such as the police, social and probation workers, housing authorities, medical professionals and so on. This clearly has potentially adverse implications for the civil liberties of victims, offenders and community members generally. Partnership also normally involves a requirement that local and national agencies consult their own communities, and this can offer opportunities for a more inclusive approach.
  - For some, such an approach implies a 'mixed economy' of informal controls, sometimes involving residents' organisations, businesses, faith groups and others who would not conventionally have been seen as part of crime control as part of a strategy of 'responsibilisation'.
  - The context within which community justice is developing cannot be ignored and, as discussed above, the current UK context is one of increasing managerialism within criminal justice agencies and of an intensification of surveillance, particularly of the young. Community justice can be grafted onto the existing retributive criminal justice system without influencing it very much. However, in a climate where there is growing disillusionment with the 'war on crime' model, as in the USA, community justice may offer a welcome alternative. Sometimes, a rhetorical appeal to 'lost community' may be used in support of such arguments.

## Promoting the debate

The questions raised in this editorial in many respects provide the rationale for this new journal. The search for understanding and clarity in the community justice field has important consequences for policy and practice. This journal has been inspired by a desire





to take part in that debate and in the spirit of community justice itself to be inclusive and wide ranging. We welcome contributions across the many fields of work identified in the themes above. We hope that in the pages of this journal some synthesis of ideas and concepts will eventually emerge. In the meantime we want to enable the key questions to be asked and debated.

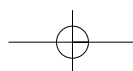
In this spirit there are six key contributions to the first issue. **Hazel Kemshall and Mike Maguire** offer an analysis of the Multi-Agency Public Protection panels (MAPPPs) and their limited potential for community inclusion. At the sharp end of crime control strategies dealing with high risk sex offenders and developing in the context of populist demands from Sarah's Law, the article places the development of such panels alongside the basic tenets of community justice and raises some key cautionary tales.

Kemshall and Maguire thus seek to engage with one of the challenges of modern criminal policy making to find a synergy between impulses to define practices which seek to protect society whilst engendering solutions which support rehabilitation and inclusion. These three themes are at the core of **Sue Raikes's** article which draws heavily on recent experiences within community safety and Crime and Disorder Partnerships and argues that three key policy elements – protection; rehabilitation and inclusion work at their best when developed integratively.

**Sandra Walklate** explores current themes in victim policy and the potential links to debates in community justice. The article raises challenging issues about the relationship of victim-centred work operating in a system not always tolerant of crime. This raises a fundamental question of for whom might victim-centred policies be of benefit? What kind of communities and therefore community justice are envisioned by a policy commitment to victim-centeredness?

The article by **Sarah Jarvis** reflects on her recent experience of completing the Diploma in Probation Studies, a joint degree and NVQ competence-based professional award for work as a probation officer. It provides a fascinating insight into the tensions between the vocational and the academic whilst offering a positive vision of the kind of reflective practitioner which many see as essential for effective practice in the community justice sector of which the probation service is a key part.

The changes within the probation service have been far-reaching in recent years. The growth of a centrally driven national probation service responding to government demands has created a modernisation process which has impacted both on the organisational structure and the priorities for service delivery. This has coincided with the development of an evidence-based culture which has produced interesting possibilities for effective rehabilitative work with offenders. **Mark Oldfield** provides a trenchant critique of these two strands and offers some straws in the wind for the future focus for the work of the service.





The final contribution comes from within the youth justice field and explores the development of restorative justice ideas in the context of recent research. The article focuses in particular on the unrealised potential for victim participation in such schemes. **Guy Masters**, drawing on an international literature, provides some questions about how far restorative principles can be developed within the youth justice system, whose needs are served by these developments and suggests ineffective practices rather than victim reluctance to participate are currently inhibiting a deeper victim engagement.

These six contributions span the range of targets for community justice. They offer us a first glimpse of some of the dilemmas and formative practices which will structure the field of community justice and its relationship to crime and victim policy at youth and adult levels in both the statutory, voluntary and multi agency context.

We hope you enjoy this first issue.

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