

## DIGGING UP THE GRASSROOTS? THE IMPACT OF MARKETISATION AND MANAGERIALISM ON LOCAL JUSTICE, 1997 TO 2013

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### **Abstract**

Since 1997, successive governments have undertaken fundamental reforms to the criminal justice system in England and Wales. Many of the policy reforms enacted during this period have had principles of managerialism and marketisation of criminal justice services at their core, which have at times appeared counter-intuitive to parallel objectives which emphasise 'localism' and efforts to promote community justice. This article identifies the core concepts of local and community justice and examines their inter-relationship and (ir)reconcilability with competing trends of managerialism and marketisation since the election of the Labour Government in 1997. The prospects for local and community justice since the election of the Coalition government in 2010 are considered. The article concludes by arguing that the justice marketisation trend, of which *Transforming Rehabilitation* (MoJ, 2013b) is a prime example, is the continuation of a specific operating model, of which advocates of local justice should undoubtedly be skeptical.

### **Keywords**

local justice; community justice; marketisation; managerialism

## Introduction

There are two separate concepts that we address in this paper: local justice and community justice. Local justice suggests that the decision making power and authority in the justice system should be invested in bodies as close as feasible to local communities. A form of subsidiarity, local justice is associated with the transference of power from central government to more localised structures. Community justice, on the other hand, looks at the application of power locally. In response to claims that the criminal justice system pays insufficient attention to the everyday consequences of crime and disorder, community justice practices and innovations have developed to explicitly include the community in decision making and co-production of services and set the enhancement of local community 'quality of life' as a goal (Karp and Clear 2000). While there has been growing national and international interest in the concept of community justice over the last decade in particular (Berman and Feinblatt, 2005), it is nonetheless a concept which has a long historical tradition in England and Wales, embodied primarily in the existence of the lay magistracy (Darbyshire, 2011).

Evidence suggests that local and community justice ideas are important because, when effectively implemented, substantive forms of local and community justice may, for example, serve to highlight 'the special contribution that can be made by local voluntary agencies in respect of community involvement, innovative practice, skills in "engaging" offenders and care taken to involve service users closely in the design of plans to change their lives' (Maguire, 2012: 490). We contend that, despite objections raised about both concepts (see for example, Newton, 1982; Geddes, 2006), local and community justice can enable an innovative and responsive framework (Stuntz, 2011), *provided that they reside within a broad and stable set of national legal and policy frameworks*. Through a local justice framework, criminal justice practitioners regain discretion and are able to design more balanced, creative, and potentially more effective solutions.

Since 1997, successive governments have undertaken ambitious reforms which have placed an emphasis on 'local justice' and 'community justice' (see for example, Home Office, 2010; Home Office, 2009; Cabinet Office, 2008; 2009; DCLG, 2006; ODPM, 2003). These developments have often been undertaken in parallel with reforms that stress the need for more professional management of public services and ways of introducing quasi-market approaches to justice delivery (Ministry of Justice, 2011; 2010; Cabinet Office, 2010; Corner, 2006). These competing impulses have interacted from the late 1990s and continue to be evident today. We will discuss the inter-relationship of these reform programmes, and the impact of that inter-relationship on both local and community justice. In particular, where local and community justice are undermined (explicitly or implicitly), this has broader implications for the legitimacy of criminal justice interventions and practices, and may impact upon efforts to leverage 'felt' justice into neighbourhoods, as well as in engaging citizens in partnership with police and other agencies to enforce social norms and laws (Lanni, 2005; Lynch, 2011). Analysing whether managerialism and marketisation undermine local and community justice in England and Wales is thus worthy of scrutiny for advocates of local and community justice

## THE LABOUR YEARS, 1997-2010

### **Local and community justice under Labour, 1997-2010**

John Raine has described pre-1997 notions of what a local justice system might resemble as a 'quaint quill pen image of local justice' (Raine, 2000: 19). Yet, after 1997, the concept of local justice was made anew in the Labour administration's approach to criminal justice. This was perhaps most strongly expressed in the passing of the Crime and Disorder Act 1998. The Act, one of the first of the Labour administration, placed legally binding duties on partners to collaborate in Crime and Disorder Reduction Partnerships (CDRPs). The same Act also mandated the co-location of youth workers, probation officers and police officers into multi-agency teams to tackle youth crime through the creation of Youth Offending Teams (YOTs). That trend continued throughout Labour's time in office, with the creation of strategic partnership bodies such as Local Criminal Justice Boards (LCJBs), marking a significant shift move from voluntarism to statutory duty (Sullivan and Skelcher, 2002).

At the same time, Labour emphasised a 'communitarian' response to crime and justice issues (Etzioni, 2001). Community involvement in the delivery of crime control and 'community safety' was viewed as important for increasing public confidence in the criminal justice system and reducing fear of crime (Home Office, 2003; 2006), but it was also seen as a fundamental element in unburdening an overextended criminal justice system and bringing about more effective delivery of crime prevention and control (Hughes and Rowe, 2007). Hence, Labour had sought to embed a crime control discourse in which the citizen was active in the co-production of security (Gilling, 2010). This 'communitarian' commitment was most obviously expressed in its commitment to neighbourhood policing, its creation of a range of interventions aimed at addressing anti-social behaviour (ASB) and a wide range of justice system changes including specialist and community courts, and referral orders for young people. The emphasis on 'neighbourhood policing' in particular was implemented to reassure communities that they were 'safe'. In addition, the emphasis on ASB stemmed directly from Labour's desire to be seen to be on the side of 'hard pressed' communities: the 'debilitating' effects of ASB were identified as likely to be compounded for those residents living in 'high-risk' communities which were already experiencing concentrated multiple deprivation (ODPM, 2003). Within that framework, the administration repeatedly emphasised the fundamental importance of community engagement in both neighbourhood regeneration and crime control (Flint, 2006). The intrinsic value of community participation and involvement in creating sustainable, cohesive and 'safe' neighbourhoods was reiterated in numerous policy documents and guidance which argued that failure to engage communities would make sustainable regeneration and community safety much more difficult to deliver and less likely to produce favourable outcomes (see, e.g., DCLG 2008; DCLG, 2006, ODPM, 2003).

### **Competing reform trends, 1997-2010**

Prime Minister Blair, on his re-election in 2001, told the British people that he understood his re-election to be as 'a mandate for reform...an instruction to deliver' (Barber, 2007: 43). There was renewed emphasis on improving the connection between increases in

investment with changes in the quality of the services provided and the choices available to service users (Mulgan and Albury, 2003). Behind this renewed impulse to deliver was a move toward instituting 'new public management' into public services (Hough, 2007). New public management called for more market-based management techniques, using 'management by objectives, contracting out, competition within government and consumer orientation' (OECD, 2003: 135). This management philosophy positioned 'public sector executives...as leaders of businesses' whose role was to maintain and enhance 'the reputation of their organization as judged by performance indicators set by government' (Moore and Hartley, 2008: 18-19).

The introduction of new public management in criminal justice had a number of important effects. Firstly, there were a set of reforms that aimed to move from what appeared to Whitehall to be fragmented locally based services to coherent, nationally designed ones, which would better 'manage' justice delivery. In 2001, local probation areas were rationalized into 42 areas which were run by nationally appointed and employed Chief Probation Officers (who had previously been employees of local Probation Authorities). The Courts Act 2003 abolished Magistrates' Courts Committees and replaced it with a new agency to manage all courts centrally (Her Majesty's Courts Service). The introduction of the National Offender Management Agency in 2004 placed a regional command and control structure over local prison and probation organizations to drive central reforms. The Government also introduced centrally set targets, with performance frameworks for each agency as well as Public Service Agreements (PSA) which explicitly tied departmental budgets to performance targets. Senior and middle managers in public services were incentivised to focus on achieving quantified, data driven goals. For example, the police were set targets in the National Policing Plan and the new Police Performance Assessment Framework. In addition, there was a desire to ensure consistency and professionalism in criminal justice practice, through the introduction of national standards and increased inspection and quality assurance processes.

Furthermore, the Government ring-fenced funds to ensure that its priorities were reflected locally. For example, the Department of Health and the Home Office pooled money for drug treatment and delivered it to local commissioning groups (Drug Action Teams) which were co-terminus with CDRPs. The funding was exclusively reserved to achieve certain outputs such as the creation of the Drug Intervention Programme (DIP). DIP sought to ensure that offenders with associated Class A drug habits received treatment and testing swiftly following arrest. The money itself was handed down to local commissioning groups via the DIP Main Grant, with clear performance goals attached. Finally, Labour's public reform agenda increasingly sought to introduce elements of marketisation (sometimes described as 'contestability'). In 1999, the electronic tagging of offenders was contracted out to 3 private providers. In Lord Carter's review of prisons and probation, he explicitly called for, and the Government endorsed, the idea that one way to drive performance improvement was diversifying the number of providers of services and requiring them to compete for contracts to run services (Carter, 2003).

### **How did local and community justice fare under Labour?**

Due to the at times contradictory impulses of the new public management and marketisation, Labour's support for, and impact on, local and community justice was

mixed. The local nature of the youth justice was bolstered by the creation of a dedicated, local authority based youth justice system. Reforms such as CDRPs and LCJBs brought together existing local partners in their structure while broadly leaving the geographic reach of each local organization the same. In the area of policing and community safety, the shift toward a local policing model recognized that 'policing by consent' could be strengthened by a more community based and locally responsive model of policing. However, in adopting new public management, there was a trend toward centralization to improve professionalisation. The courts and probation service underwent significant centralisation. At the local level, discretion was narrowed, as criminal justice organizations were held accountable to the centre, and the scope for meaningful local justice was constrained by ring-fencing and national performance frameworks. Taken together, the main impact of Labour's reforms was to significantly centralize power at the expense of local decision making. This reduction in the amount of power and discretion placed in local hands had an immediate impact on the ability of the administration to implement its community justice programme. For example, attempts to develop a community justice rationale within the magistrates' courts (both through the introduction of community and problem-solving courts and through attempts to encourage greater community engagement between the courts and local neighbourhoods) were undermined by the centralised formal justice system. This process of centralised administration made it all but impossible for magistrates to introduce new and effective practices into their own courts. As a result, top down central government bureaucracy stifled innovation and experimentation at a local level, making it more difficult for courts to implement community justice oriented practices.

The impact of the Government's community justice initiatives was not only limited by the impact of managerialism, however. Research also found significant concern amongst some magistrates about what impact increased levels of engagement with the community would have upon judicial independence. These concerns from magistrates, coupled with a lack of formal judicial training on community engagement, meant that there were very few, if any, substantive links between magistrates/district judges and some communities (Donoghue, 2012). Empirical findings also suggested that the creation of partnerships with the community through informal mechanisms (individual relationships, communication with residents) were also extremely limited (Donoghue, 2012). The impact of managerialism and the skepticism that the judiciary and other professionals had about the value of a community-based justice system meant that Labour's attempts were heavily circumscribed. Consequently, it has been suggested that some community justice initiatives were more akin to a tokenistic, 'tick-box' approach to community justice, whereby the introduction of 'tools' to involve local residents in the justice process was used to provide legitimacy to new supposedly community justice-oriented initiatives (Jarvis *et al.*, 2011). To be clear, there was not a committed attempt (by politicians, practitioners or court professionals) to undermine community justice efforts: Labour policy on justice was a set of mixed messages.

## THE COALITION YEARS, 2010 to present

### **Local and community justice under the Coalition**

In 2008, Sir Michael Lyons concluded in his inquiry into local government, ‘...the Government’s approach has involved taking a number of directive and interventionist steps towards local government. There has been more detailed engagement in local policy decisions...the use of inspections and targets has been expanded substantially’ (Lyons, 2007: 41). That critique of the Labour years resonated with both Conservatives and Liberals. Indeed, one clear point of agreement between Liberal and Conservative coalition negotiators following the General Election in May 2010 was a similar attitude to public services reform. Following their election in 2010, the commitment of the Coalition to re-introduce localism in a criminal justice setting has been marked. Following commitments in both the Conservative and Liberal Democrat manifestos to make the police more accountable, the Government passed the Police Reform and Social Responsibility Act 2011. This Act introduced, for the first time, a structure for local policing that included an element of democratic accountability, with the introduction of Police and Crime Commissioners. Their subsequent election, albeit on a turnout that was low (Electoral Commission, 2012) in November 2012 demonstrated the Coalition’s intention to decentralize power locally.

Moreover, the Government acted to remove performance targets and ring-fencing of funds. Public Service Agreements were replaced by more limited departmental business plans. The previous performance system for local authorities, Local Area Agreements, was scrapped in 2010 (DCLG, 2010). The police, previously judged on their ability to increase public confidence in policing, now broker performance agreements locally with their Police and Crime Commissioner. In the area of ring fencing, the Pooled Treatment Budget, specific funding for the Drugs Intervention Programme and other local authority ring fencing, has been removed.

While these changes have indicated an interest in localising justice, the Coalition has committed little energy to bolstering community justice. While its Public Service Reform paper of 2011 (Cabinet Office, 2011: 3) outlined a commitment to public services that gave ‘citizens greater choice and control; genuine information on outcomes; and a stronger role for their communities’ in the justice space, this has primarily revolved around perfunctory measures, such the opening up of data to the public and the requirement for the police to hold regular ‘beat’ meetings.

### **Competing reform trends, 2010-current**

The Coalition trend toward enhancing local justice (as a reaction to managerialism) nonetheless competes with their emphasis on encouraging marketisation in justice services, widening and deepening a trend set by the Labour Government. In their paper, *Transforming Rehabilitation - A Strategy for Reform*, the Government committed itself to ensuring that ‘The majority of community-based offender services will be subject to competition’ (MoJ, 2013a: 10). At the time of writing, new providers are discussing bids for probation contract package areas. Prime providers will secure contracts for these packages and receive payment based on both a service fee and a performance payment

based on the results they deliver in reducing re-offending. The contract is or will be set at a national level, and the contract periods proposed are seven years long. A total of 21 contract package areas are proposed, contrasting with the 35 probation trusts currently in existence. In addition, there has been high level discussion that the administration of the courts could be moved outside direct public service provision (though the Justice Secretary has written that 'No replacement organisation for HMCTS would be contemplated unless it was a body operated solely in the public interest' (MoJ, 2013b)). In the provision of prison, Ministers have outlined plans to contract out all but core custodial functions at all public sector prisons with the aim of saving £450m over 6 years (MoJ, 2012).

### **How has local and community justice fared under the Coalition?**

It is clear that the Coalition, in some of its local justice reforms, has sought to undo elements of Labour's managerial tendencies. While the election, and certain practices, of Police and Crime Commissioners has been met with considerable ridicule and hostility in the media, it has marked a substantial shift in how the police are held accountable, replacing local police authorities, long criticized for being undemocratic and hidden from public view, with elected politicians. Police and Crime Commissioners, one year into the job, have shown a degree of power in changing the way their local forces operate. Two Chief Constables either resigned or did not re-apply for their jobs and one was only reinstated after redress to the courts. At the same time, they have become increasingly vocal about the development of national policy with regard to their own local plans, with 27 signing a letter of objection to the Ministry of Justice regarding the contracting of electronic monitoring at national level (Daily Express, 2013). Similarly, the Merseyside PCC made pointed criticism of the Court Service's decision to close the North Liverpool Community Justice Centre (Kennedy, 2013).

The impacts of its decisions to reduce Labour's performance monitoring and ring-fencing culture are harder to judge. It is certainly true that, in some areas, the removal of ring fenced crime and justice funds and the concentration of them in local authority and PCC hands has already shown that local decision makers can make more creative efforts to reduce demand, as is being attempted in Manchester's Transforming Justice initiative (AGMA, 2013). However, the removal of *central* performance targets, for example, has not meant that new public management has gone— local commissioners continue to set quantitative goals for services and the Government's Departmental Business Plans are not dissimilar to the previous performance regimes. Courts remain centralised, which a recent report suggests has allowed 'unnecessary court closures, the disempowerment of magistrates, the disappearance of the justices' clerk as a powerful local figure, courts become distanced from local government, reduced local accountability and low morale among court staff' (Gibbs, 2013: 4).

The impact of marketisation is even less clear, in part, because those reforms are still a work in progress. However, the particular model of marketisation suggested in the *Transforming Rehabilitation* proposals does, as previously noted, place decision making firmly at the national level, even if Police and Crime Commissioners are being given more of a consultative role than previously envisaged. The move to 21 contract package areas is a significant centralization. Moreover, marketisation of probation and prison is likely to

reduce the prospects that a single crime and justice budget can be pooled locally, restricting the scope for locally-driven decision making. There is also disquiet, expressed in responses to the consultation on the proposals, that, once contracts are signed, the flexibility in the contract period will be minimal, with local justice actors having little direct ways of influencing changes in service design or delivery. These worries are founded upon the experience of one area of justice which is wholly privatized— electronic monitoring contracts— and which bears similarities to the new reforms being proposed. Studies of that model have suggested it has been a ‘sclerotic, centrally controlled, top down system that has enriched two or three large suppliers, that lacks the innovation and flexibility of international comparators and that fails to demonstrate either that it is value for money or that it does anything to reduce offending’ (Geoghegan, 2012: 7).

## CONCLUSION

It is clear that, over the course of the last 16 years, local and community justice have wrestled for space with, and sometimes against, the competing trends of new public management and marketisation. Administrations’ attitudes to local and community justice have been complicated by competing desires to drive performance improvement either from the centre or through ‘open’ market-incentivised public services. While real gains were made by Labour in emphasizing multi-agency collaboration, a number of institutions, especially the court service, underwent significant processes of centralization. These moves meant that Labour’s community justice efforts were undermined.

With regard to the prospects for local and community justice under the Coalition, it is clear that the introduction of Police and Crime Commissioners has made a fundamental shift in the way the police are held accountable and, for those with an interest in local justice, has ensured that decision making for policing not only stays local but has, for the first time, a significant community input via the ballot box. However, their market-based reforms in the justice space are worthy of scrutiny because they appear to be the continuation of a specific operating model of which localists should be skeptical. Sidestepping whether there are savings or greater impacts on outcomes accrued from the introduction of these proposed market-like reforms, local and community justice advocates must ask whether the trade-offs posed by them are ones that citizens should be willing to accept. With no explicit commitment to local or community justice, the evidence to date does not suggest that marketisation is likely to inspire engagement and user-centred service design. Local justice advocates in particular should be cautious about how the nationally set, market model will ‘lock in’ service designs for multi-year contract periods. Without substantial amendment, the prospects for greater local discretion and decision making power within a more marketised justice system look mixed.

Despite these trends at a Government level, there are a number of reports which seek to argue for a justice system orientated around local and community justice. In their publication *Power Down*, Policy Exchange highlight a number of ways in which Police and Crime Commissioners could be strengthened to ‘increasingly assume a role similar to that of a “Minister for the local criminal justice system” – with the political power to set the agenda, hold agencies within his/her purview to account for performance and enact

reforms to ensure a more efficient and effective system at the local level' (Chambers, 2013: 4). The report by Transform Justice on the future of magistrates' courts proposes a number of new, re-localised models for court administration (Gibbs, 2013). The Magistrates Association also sets out a number of practical steps it believes the magistracy and the government can take to make them 'the foundation of the community-focused justice system' (MA, 2011: 6).

But there are also interesting comparative models of justice which suggest other ways in which justice can evolve. The authors are due to embark upon an examination of comparative international models of local justice, which will be the subject of a paper in 2014. By developing fresh and comparative perspectives on local justice, we aim to demonstrate that there are substantive alternatives to the recent developments in the criminal justice domain, where local and community justice were often set in opposition to other competing trends. There appears to us a gap within UK policy making in the investigation, understanding and analysis of comparative and alternative models of local and community justice, many of which may hold more sustainable, innovative and democratic visions of our justice system. We tentatively hypothesize that such an understanding may provide a richer set of local justice models which can inform reform in England and Wales.

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