

# “RETRIBUTION IS NO SOLUTION”: Is Community Justice a Viable Alternative?

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## Abstract

*In a period spanning the past 20 years, there has been a “detrimental paradigm shift from ‘penal welfarism’ to ‘penal populism’, the result of which justifies an increase in the use of incarceration” (Bruce, 2010). This dissertation offers an in-depth analysis of Community Justice and the determining factors that entitle it as a viable alternative to the core problems (recidivism, public opinion / risk and economics trepidations) that blight our prison service to date. The findings of which unearth an ambidextrous dichotomy. Exploring ‘the North Liverpool Community Justice Centre’ and cross continental schemes, justice reinvestment coupled with community justice demonstrate a potential solution not without obstacles.*

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## Chapter 1: Introduction

*“The path of non-prison penalties is the rational path for most criminals found guilty of most crimes in order to achieve protection, recompense for the harm done and a solution that might reduce crime in the future”*

(Stern, 1998)

“Over the years, there has been a paradigm shift from Penal Welfarism to ‘Punitive Populism’ in the UK, and a consequence of this has been an increased use of imprisonment” (Bruce, 2010: 5).

In November 2011, the number of offenders in prison reached a record high of 87,945 (Ministry of Justice, 2011a). The prison population in England has seen a persistent and increasingly worrying development since 1995, with current day statistics illustrating a twofold rise (a rise of around 40,000 *See Appendix: Figure 1*). If present trends are maintained as such, it is estimated that by 2013 the prison population will have risen to a level possibly as high as 106,500 (Cornwell, 2009). This unprecedented increase in the number of prisoners gives a cause for concern on many levels, one of which being the burden of cost and maintenance that is placed upon the taxpayer (BBC News, 2010).

Coupled with this issue, 49% of adults are reconvicted within one year of being released, and for those serving sentence of less than 12 months this increases to 59% (Prison Reform Trust, 2011: 21; Travis, 2011; Hughes, 2010) thus creating the toxic mix of consistence that’s all too familiar with the prison system today.

At a practical level it causes major problems for the prison service in accommodating the people concerned in a decent and dignified way. Prison overcrowding has received much valiant address from influential authors within the forum. The ‘crisis’ at hand has been described by Lord Woolf, a former Lord Chief Justice, as a “*cancer*” at the heart of the prison service (Collins, 2010); much similar address has been shown by the Director General of the Prison Service, calling for an end to *our “love affair with custody”* (Parliament, 2004).

The method of this dissertation is a literature-based approach. An array of writings will be examined and explored; from key readings on incarceration, recidivism and economics to, more specifically, a wider range of text surrounding the philosophical notions of Community Justice and Justice Reinvestment (JR).

This literature review is not concerned with the parameters and justifications that surround imprisonment, but quite the opposite. It is concerned with the worrying development and symptoms that retributive justice presents, on a trio of levels (political, economic and social), and whether by means of JR, Community Justice can feature as a solution. Community Justice and the problems surrounding incarceration are very broad by nature, it is thus the reason why I have only considered what I feel to be the key components.

The purpose or aim of this literature review is to investigate whether community justice is a viable alternative to palette of issues faced by the retributive ideal.

Collectively drawing on all variants of crime prevention and justice - Community justice, may, as it appears, have a positive impact upon recidivism even though it has

not traditionally been regarded as an explicitly rehabilitative disposal (McIvor, 2002); yet quite a substantial amount of criticism has formulated surrounding the statistical evidence that amounts its success. Some have argued there is “*no evident effect on rates of reconviction*” (Pease, 2010: 7); whilst others simply say “*it does not offer an effective solution*”

These criticisms have resulted in a penological ‘stand off’ and thus formulating the ultimatum question: Is community justice a viable alternative?

This dissertation will commence with the methodology; it is here that I will deconstruct the components that have supported how I have assembled my investigation.

## Chapter 2: Methodology

### 2.1 Dissertation Influence

My reasons for choosing to study this area have originally stemmed and evolved from previous studies for my Foundation Degree in Criminal Justice.

In order to experience a more practical application of the law, aid my studies and also to gain an insight into judicial sentencing, I spend the previous year attending my local Magistrates Court once a week. It was here that it opened my eyes to the conceptual arguments of Philosophy, Economics and Politics, and their interwoven relationship with the Criminal Justice System. The underlying issue of recidivism became, visually, a notable problem to me within the first few months of attending, whereby I began to recognised familiar faces coming before the court. Identifying this issue from first hand experience, it was natural that it should feature as one key element within my dissertation.

The quotation of ‘Retribution is No Solution’ that my dissertation is entitled with, was taken from a blog of the ‘radical lawyer’ Michael Mansfield. His discussion further influenced my desire to pursue this particular topic of research (*See Mansfield, 2011*).

### 2.2 Research Methods

In order to address the aims of the research as noted in my proposal and with reference to a pre-SWOT (Strength / Weakness / Opportunities / Threats) analysis that I conducted prior my investigation began, I have undertaken a “Design with a multilevel use of approaches” (Creswell, 1995). As particular aspects of the dissertation addressed different areas of interest, it is only correct that my use of methods had been tailored to address each of the individual aims (Brewer & Hunter, 1989).

The research used is predominantly based on a qualitative collection and analysis of literature, documents and data (Guba & Lincoln, 1994) obtained through secondary research. In this approach, I made knowledge-based claims on political-constructivism (Guba & Lincoln, 1982). Greater emphasis had been placed on this method of research upon contextualising, as it was most suited when critically reflecting upon the historical and social background (Walliman, 2005: 115), in addition to the foregoing interactions that had shaped the environment of the research phenomena.

In order to strengthen my findings and add more credibility to my argument, I adopted method of triangulation (Denzin, 1989) within my dissertation.

By converging multiple sources and adopting a mix-method design (Tashakkori & Teddlie, 2003) - which is the process of collecting, analyzing and ‘mixing’ both qualitative and quantitative sets of data - it not only allowed me to acquire a better understanding about the research problem (Creswell, 2002), but also enabled to capture the full trends and details of the situation at hand.

Prompting a greater understanding, a mixed methods design is particularly useful when either the quantitative or qualitative approach by itself is inadequate to best understand the research problem (Creswell, 2009:18). The main strength of adopting both methods is that it adheres to reflection of a competent analysis.

Given the scale of data sets I explored within dissertation, and the time constraints that encompassed the collection, I refrained to adopt anything other than secondary data as my central source of research. In addition, it was simply deemed more appropriate for an undergraduate dissertation.

Described as “... *the use of existing data, collected for the purposes of a prior study, in order to pursue a research interest which is distinct from that of the original work*” (Heaton, 1998). Secondary data analysis draws upon textbooks, journal articles, official statistics, media, internet content, government reports, and reports published by both executive agencies and quasi-autonomous non-governmental organisation (QUANGO), the ingredients of which, allowed for a well-rounded analysis.

I adopted O’Connor’s (1992) two-structured approach for my analysis – the standard approach and the network approach (*See Fox, 1969 for similar analysis of literature: Conceptual vs. Research*). These approaches can be stated as follows:

*“The standard approach uses an inductive method where the reviewer is 'looking backwards' through databases, journals, abstracts and articles and forms a list of potentially pertinent material. The network method is where a recent paper is identified in one or more relevant journals”*

(O’Connor, 1992).

By utilising references listed; those of which are confirmed as useful are traced and further references identified. This was accomplished through a *snowballing* technique.

Academic Journals have been used for both their specialism and currency within my field of study. An additional advantage to using this type of material is that they are often quite narrowly focused e.g. the ideology of reducing recidivism. I accessed two different formats of journals throughout, both Electronic (e-Journals) and Printed (or paper copies). With the revolution of informative technology, accessibility is far greater with e-journals. Utilising Liverpool John Moore’s Athens Database, I was able to obtain a selection of journals at home. The major appeal of this technique of accessing various sources is that it was efficient, effective and quick, enabling me to search thousands of publications in seconds.

When accessing LJMU’s *Athens* and *FindIt* databases - in addition to host of other search engines (Flick, 2009) - I adopted a Boolean (Logical) operator or method for expanding, excluding or joining keywords when conducting my imperative searches - again, increasing the efficiency, effectiveness and speed of searches.

It must be stated that academic journals do experience a lapse in publication speed; it is thus that some may not represent the most current policy or ideas within the forum. Identifying and acting on this issue I adopted predominantly news sources to enable me to fill lapse. The challenge I came across, particularly when using this sources is that although it does fill a gap, it also leaves one (often in the form of unanswered questions). It is only by using primary data that this would significantly be eradicated.

## 2.3 Layout

When I was reviewing literature on the problems and issues that orbit imprisonment, despite sub categorising or breaking them down, I did find myself interweaving within other areas of close relationship e.g. economics bares a close relationship to recidivism and the public opinion that ensues.

Each category makes a link or cross over with each other. However, efforts have been made to focus in on each individual issue.

## 2.4 Terminology

The cross section of literature reviewed for this dissertation has drawn on a vast diversity of writings from a collage of key authors. Emanating from a host of countries, America, Canada, Australia etc., it is important to note and recognise the often difference in language. Terms and semantics often differ; it is thus that efforts have been made to argue points in the light that the author would have desired.

To instil clarity I have chosen to primarily use the term '*paradigm*' as meaning the "*basic set of beliefs that guide actions*" (Lincoln & Guba, 2000; Mertens, 1998). Others have termed these interchangeably as *worldviews* (Guba, 1990: 17), *epistemologies* and *ontologies* (Crotty, 1998) or *broadly conceived research methodologies* (Neuman, 2000).

Retaining the purpose of instilling clarity, much can be similarly said about the word *imprisonment*. For the purposes of this dissertation I will use this word in its pragmatic form, to be incarcerated. Bottomley and Pease (1986: 95) reminds us that the term imprisonment is in fact, equivocal. There are many types of imprisonment which escape the attention of the public as well as criminologists (administering a curfew under a community order is prison of a different kind) (Bottoms *et al.* 2004: 43).

It is with regret that many key features or components that form the foundation to my review have gone unexplored. There are many additional features that make up the compound argument that entitles this dissertation, but for the reason that this is an undergraduate degree, I have been significantly restricted not only on fully examining the problems that bane retribution but also exploring the complete picture. It is with that in mind that my reasons for choosing to analyse, for example recidivism, public opinion / risk and economics as apart of studying the problematic issues which currently face the prison service, is for that reason and that reason alone. These three components formulate the key issues and contemporary problems within imprisonment.

## 2.5 Ethical Issues

Commenting on ethical issues, Gillespie (n.d) states "*Ethics emerge from value conflicts...these conflicts are expressed in many ways: individuals' rights to privacy versus the undesirability of manipulation, openness and replication versus confidentiality, future welfare versus immediate relief, and others*".



In research projects as such there would normally be ethical issues to contend with, however by means of using secondary data, any issues that arose have been filtered out and addressed at the primary preliminary stages of research (Creswell, 2009: 89).

In mist of avoiding any ethical issues, I made the decision to address summary offences opposed to indictable, as I believe it would have been unethical and too controversial otherwise. Issues may have arisen if I did bare focus upon those whom did infact pose a risk to the public.

No further concerns arose.

## Chapter 3: Literature Review

### 3.1 Definition of Community Justice

Community justice can be defined as “*the effort to reweave the fabric of community by forging a partnership between local governmental entities, the private sector, and community*” (National Institute of Justice, 2007). It collectively refers to all variants of crime prevention and justice, whilst offering new ways of thinking.

Drawn from ideas of restorative justice – which Faulkner (2006: 25) detailed as a core component as well as community safety to develop the notion ‘community justice’ – this approach has been termed: ‘the marriage of criminal and social justice’ (Clear, Hamilton and Cadora, 2011: pp. 3 - 4).

Community justice borrows from an eclectic toolbox of ideas and strategies: Community crime prevention (Bennett, 1998), Community policing (Goldstein, 1990), Restorative justice sanctioning systems / initiatives (Bazemore, 1998), and so forth (Clear, Hamilton and Cadora, 2011: 4).

### 3.2 The Penal ‘Zig-Zag’

Paradigm shift from penal welfarism to penal populism has been by no means subtle. With the era of ‘penal welfarism’ coming to a halt in the 70’s, we saw the decline of the so-called ‘rehabilitative ideal’ (Allen, 1981) (which coupled the ‘Empirical’ (Martinson, 1974: 22-54), ‘Resource’ and ‘Ideological’ Crisis (Bottoms *et al*, 2004: xxiii).

Following the collapse of Standstill Policy, there has been a general shift towards ‘Law and Order Ideology’ (Cavadino & Dignan, 2006: 24), pursuing an increasingly harsh and punitive penal policy (*classicist* philosophical view). One may believe that the conservative government of Margaret Thatcher would have been the apotheosis of penal harshness, given Mrs Thatcher’s iconic status of being a law and order thinker (Cavadino and Dignan, 2006: 74).

In recent years the UK has adopted a neo-correctionalist model in the War on Crime. ‘New Punitiveness’ - being very much an international trend - has been on an increasing rise since the 1970’s, emanating a worryingly development in penal harshness of punishment. Despite the Youth Rehabilitation Order being introduced, promoting new forms of punishment and restoration, It is without question that ‘new punitive’ cogs are still at the heart, a driving force within the engine that is our penal system.

It is important not to neglect and forget the foundations that allay the framework to much contemporary penal theory. Michael Foucault’s (1977) book ‘*Discipline and Punish: The Birth of Prisons*’ centralised the notion that ‘*governance of modernizing European societies in eighteenth and nineteenth centuries demanded new forms of power and control*’ (Pratt *et al*, 2005: xii). It is this notion that stemmed much redress from eminent writers such as Cohen (1985), Ignatieff (1981), Garland (1985), and Bottoms (1983), that encapsulated a cycle of revisionary thinking.

Neo-correctionalism retains the objective of correctionalism but uses new subjective levers such as responsabilisation and engagement to address the positivist aspect of the cause of crime. This is done through a hybrid effect that Cavadino (2006: xiii) calls 'Punitive Managerialism'. Yet, it may be argued that combinations of repressive and managerial initiatives have become ever increasingly salient to governments ability to present themselves as effective and electable (Lacey, 2008: 23; Ericson, 2007; Lee, 2007).

### 3.3 Imprisonment: A State of Disrepair?

Retributive punishment has been patronized by major philosophers of modern times, especially Kant and Bradley arguing for punishment: "*the infliction of punishment as a physical evil deserved as a result of moral evil*" (McConville, 2003: 44). Christian minds, incorporating much of the Old Testament, have additionally been coloured by the righteousness when vengeance is being heaped on 'evildoers' (*ibid*, 2003: 45) through the *lex talionis* ('eye for an eye') paradigm (*see* Bianchi, 1984; Zehr, 1985; Johnstone and Van Ness, 2007: 139). Yet, Plato's myth of Gyges' Ring (Jowlett, n.d.), Jesus' caution "*Let him who is without sin cast the first stone*" (John 8:11), and Shakespeare's drama *Measure for Measure* all force us to reflect upon the possible hypocrisy behind our demands that the guilty be held responsible and punished (Murphy, 1979: 92).

Penological developments in the UK and USA have over time, marked the re-emergence of penal sanctions through the collapse of penal welfarism in the 1970s. It is within this period (what one can only describe as that of a period of 'archaic penal enlightenment') that we began to see the development of penal policy in relation to practices, sentencing and crime discourses (Garland, 2001a: 6; 2001b: 14).

The paradigm shift from penal welfarism to 'new punitiveness' or 'punitive populism', as previously discussed, is exemplified by the increased use of imprisonment in the UK and elsewhere, particularly the USA (*See* Scott, 2008: 57). For example, the prison population in the UK has taken an unprecedented, yet persistent and worrying development since 1993, illustrating more than a two-fold rise (*See Appendix*, Figure 1), jumping from 41,600 to a staggering 88, 179, a record high marked in December 2011 (Berman, 2011). Although these figures stir much worry and concern, startling figures of the USA illustrate a more amplified approach to the problem as present in the UK, amounting to an incarceration rate in 2009 of 748 per 100, 000 in contrast to 151 per 100,000 in the UK (*ibid*: 15; *See Appendix*, Figure 2). The rise of 1000 inmates in a period of three weeks in January 2012 brings much hesitation; considering that despite the prison service currently being marked at "*useable operational capacity*" it yet raises many concerns, one of which being the 98 per cent (or 1,721 space) operating margin the prison service is currently working with (Travis, 2012; Anon, 2012). Commenting on this as a whole, Ken Clarke proposes an end to "*a Victorian-style 'bang 'em up' culture ... by tackling the root causes*" (Quinn, 2011), a mere identical proposal to Beccaria's (1764) assertion that: "*It is better to prevent crimes than to punish them...*" Yet it is with criticism, as Pease (2010: 3) notes: "*When one calculates the prison population in relation to the number of crimes recorded, the illusion of harsh sentencing disappears*".

On a practical level, many issues and problems that have stemmed from the over reliance and dependency of imprisonment in the UK— such as chronic overcrowding and thus economic trepidations – have, expressed a concerted mixed message in the search for solutions. An example of this would be the now abandoned, proposal to build the three large and controversial prison complexes. Known as ‘Titans’, these were the basis of a recommendation in a report by Lord Carter of Coles in December 2007 (Carter, 2007; Dyer, 2007). The expression to provide sufficient capacity for the projected increase use of imprisonment was met by a wave of criticism stating it would not address re-offending rates and the fundamental problem of the UK’s over reliance (Grimwood, 2010: 1). It was thus that plans never materialized. However, it remains to be argued that “*the government seems to accept the inevitability of a high and rising prison population and remains committed to building larger prisons*” (House of Commons Justice Committee, 2010: 36). We may consider, on this point, that the rising implications of legal aid and the possible “*Boom in crime*” as a result - as Mulligan (2012) argues in his article - may provide a possible future justification for the latter.

We must not isolate ourselves with imprisonment *per se* and acknowledge that the government has made some rehabilitative and restorative steps; all be the magnitude being somewhat sedate. Following the marked “*uptariffing*” of the Criminal Justice Act 2003 (Grimwood, 2010: 4) the introduction of the Youth Rehabilitation Order (YRO) - which came into force under the Criminal Justice and Immigration Act 2008 as a new generic community sentence – exemplified troublesome amendments, allowing the court to administer a *cocktail* or *concoction* of orders (See Appendix, Figure 3) to acquire the fine balance between punishment and restoration / rehabilitation (whilst incorporating a scaled approach to management (Youth Justice Board, n.d.)).

Cavadino and Dignan (2006: 63), exemplifying in their discussion, conclusively illustrates “*The government has repeatedly changed its mind about whether the prison population should be reduced, contained or expanded, and about how these goals should be achieved*”. This contention seems to portray, what one can only describe as an ‘ever moving – standstill’, which dominates contemporary penal policy.

### 3.3.1 Recidivism

Martinson (1972: pp. 23-25) defines the functional concept of recidivism as an “*institutionalisation process, which interrupts normal occupational and lifestyle processes*”. Whereby removal from society for a period of time – short or long term – produces irreparable personal and social damage (Vass, 1990: 43).

Recidivism is possibly the most demanding issue that the government is attempting to deal with to date. Considering that reconviction rates are “*the only readily accessible measure of reoffending*” (Friendship *et al.* 2004: 10), Criminal justice statistics – as published in September 2011 - illustrate ‘*in the last decade the number of offenders committing 15 or more crimes has nearly doubled, underlining the need for a new approach specifically designed to tackle reoffending*’ (Justice, 2011). Showing much concern, Justice Minister Jonathan Djanogly said: “*...This is further evidence that we need urgent reform to tackle reoffending and so cut crime*” (Whitehead, 2011).

To date, there is an on-going perennial debate about what forms of punishment are most successful in preventing recidivism (e.g. Bottoms, 1983; McMahon, 1992; Maruna, 2002: pp. 159 – 62).

There has been wide spread belief that attempts to address criminality of persistent offenders are unlikely to be met with great success (McGuire, 2000). While studies of criminal careers suggest that offenders eventually desist (Horney et al., 1995; Laub and Sampson, 2003; Forrest and Hay, 2011), efforts to accelerate this process and reduce recidivism rates are “*virtually expected to fail*” (McGuire, 1995; 2000). Much of the Penological pessimism surrounding this (and interventions in general) can be originated to the work of Martinson (1974): with his infamous and irrevocable conclusion that *nothing works*. His study was seen as the definitive proof that corrections are in fact a failure and thus “*a waste of time and money*” (Muncie, 2009: 287). Despite acknowledgements to inefficiency and overall withdrawal from the notion nothing works (see Martinson, 1979), it yet remains semantically present in such approaches as ‘Prison Works’ (See Theresa May in Whitehead, 2010; and, Michael Howard in Flynn, 1998: 43).

Maybe the ideology of prison works is correct; some offenders may not be treatable and simply born criminal (Lombroso *et al*, 2006: 253; Anon, 2010). Nonetheless, it is only more in recent years that a general consensus has evolved whereby now some claim that imprisonment can help reduce recidivism if the ‘correct’ forms of training are undertaken with persistent offenders (Social Exclusion Unit, 2002: pp. 38-39); whilst others state that alternative means of justice are simply more desirable. For example, Alper (1973: vii-viii) summarises, in colourful language that “*dealing with offenders in the community is a superior and more desirable method than locking people up in prison*”.

It is yet, that ‘what works’ in terms of recidivism reduction remains to be the penologist’s stone (Carlen, 2005).

There are many elemental features that are known to contribute to recidivism or reoffending, such as negative life experiences and more conclusively unemployment (Maxwell and Morris, 2001). Employment bears a significant role in contemporary society and can be considered as an “*individual’s link to reality*” (Freud, n.d.), social status (Super, 1976) and often the perceptual lens through which others view us (Niles and Herr, 2001: 3). It is yet that the government remains to be punitively stigmatized by the lack of forethought to such reforms as the Rehabilitation of Offenders Act 1974 (see House of Commons Justice Committee, 2010:pp. 74-75), whereby it currently adds an obstacle for any offender wishing to enter education or work. A press release dated 6<sup>th</sup> March 2012 illustrates the government’s intention of overhauling the employment support prisoners receive upon release: a significant step to say the least, but will it impact on the scale as perpetually desired?

### 3.3.2 Public Opinion, Politics, Media and Risk

*‘The public are sick and tired of a sentencing system that does not make sense’.*

(Home Office, 2002: 86)

Concerned with the increased level of imprisonment in the UK, Bennett (2008) argues that Dangerousness or '*Dangerization*' as he terms it, plays a "*role in how the public perceive the contemporary prison system, how politicians shape it and how professionals operate it*" (*ibid*: 3). A culture of fear, shaped by politicians and the media alike has sparked concern over many years, and consequently altered public perception surrounding prisons and prisoners. Despite public opinion raising the assumption that prison is a place "*Brimming with dangerous people*" (*ibid*: 6), only one-third of the total prison population in 2010/11 are serving determinate sentences over 4 years (Berman, 2011:4).

Questioning the relationship between perceived public opinion and policy-making, David Faulkner (2006: 14) suggests that perceptions of public demand have a strong relationship on policy. Similar connotations have been derived by Jeremy Beecham, agreeing that a "*Fear of fear of crime*" impact political agenda (House of Commons Justice Committee, 2010: 95).

Studies on public priorities for the criminal justice system are frequently marked controversial, whereby responses can be tailored and framed to provide the desired answer (*See Appendix*, Figure 4). Nevertheless, research in the Halliday report (2001) found that when asked for an example what sentencing should be, little referred directly to punishment or incapacitation. The general response encapsulates an aim to reduce crime and create safer communities as well as the elements of deterrence and rehabilitation (*ibid*: 96; Halliday, 2001: 8)

Locking up the dangerous or punishing the poor? The emergence of risk management - a fundamental entailed feature of criminal justice – has since brought a fortitude of problems, least of which is the crux that this has given way to risk control (Clear and Cadora, 2001). Constrained by 'what works', probation utilise a method of '*uptariffing*' (Deering, 2011: pp. 90-91) risk in many instances as a '*mechanism to maintain control...over low-risk offenders for whom for the more secure forms of custody are judged too expensive or unnecessary*' (Feeley and Simon, 1992: 421)

Clear and Cadora (2001) suggest that the ascendancy of strategies for 'managing risk' take effect by incarcerating 'dangerous individuals' in a preventative way, However, it is interesting when we review the facts of who is actually imprisoned and their social backgrounds, how different picture begins to emerge (*See Social Exclusion Unit*, 2002).

It can be concluded that risk and dangerousness in particular are very much '*in the eye of the beholder*', it is this line of official rhetoric that has given rise to the concept of 'populist punitiveness' (Worrell and Hoy, 2011: 97) and thus exonerating that, today, '*... prison still fulfils its age-old function of catering for the homeless, the mentally ill, the stranger, the non-compliant poor, the absurd and the excluded*' (Carlen, 2006: 6)

### 3.3.3 Economics: A Cause for Concern?

In our current economic climate, costs, efficiency and effectiveness come under scrutiny within any organisation. The debate surrounding the economics of imprisonment and its sustainability is a perennial one, and has come under much

address from leading academics and politicians a-like. One leading writer, Stern (1998) contends, “*That prisons, a mainstay of punishment, are an anachronistic and probably counterproductive system for dealing with rising crime rates*”.

With the average cost of a prison place topping £39,573 (Ministry of Justice, 2011b: 4), ‘*more than a place at Eton*’ (see Doyle, 2010 and Williams, 2010); an ever-increasing prison population (Ministry of Justice, 2011a) and chronic recidivism rates that illustrate that a dire 60% of short sentenced prisoners reoffend within a year of release (...at a social and economic cost to the country of around £10bn) (Ministry of Justice, 2011c: 20; Robinson and Shapland, 2008: pp. 337-358; BBC News, 2010); Sterns words are as contemporary as they were in 1998. It may be reaffirmed that “*...imprisonment rates make at best only a modest contribution to reducing crime, particularly when judged in the light of their very substantial and human costs*” (Lacey, 2008).

Research into evaluating the relationship between the efficiency or benefits of intervention and cost (termed *Cost-Benefit Analysis* or *CBA*) have been emanated and explored by many writers (Barnett and Escobar, 1987:pp. 387-414; Dhiri and Brand, 1999; Cohen 2000; Welsh and Farrington, 2000: pp. 305-61; Roman and Butts, 2005; Swaray *et al.* 2005:pp. 141-63).

Baring much influence from Aos *et al.* (2001) and Aos, Miller and Drake’s (2006) review to identify what works to reduce crime in the USA, Marsh and Fox (2008: pp. 403-423) explored the estimated costs and benefits of prison in England and Wales. He summarised in his findings that overall, non-custodial sentences were found to produce a net benefit when compared with custodial sentences.

Controversially, Mills (2011: 36) argues that this is in fact a mere misrepresentation when considered in the light that it will impact the prison population, stating it “*does not offer an effective solution ... nor will it address the overall scale and scope of the current demands...*” (*ibid*)

Yet, the issue remains untouched. Juliet Lyon - Director of the Prison Reform Trust - predicts that “*Unless Government can succeed in reserving prison for serious and violent offenders the cost to the taxpayer will rocket in 2012*” (Bond, 2011).

### 3.4 Community Justice: Success or Just Another Concept?

*“Societies with relatively low crime rates tend to be those with strong community relationships”*

(Ormerod, 1977: 88 in Cavadino and Dignan, 2006: 23)

A study carried out by the Joseph Rowntree Foundation, suggests that there has at present been ‘*a decline of community*’ (Joseph Rowntree Foundation, 2009). Statistics from the North Liverpool Community Justice Centre ‘Survey of Local Residents’ (Llewellyn-Thomas and Prior, 2007) portray that 57 – 63% of people asked, feel unsafe to very unsafe after dark in their community (See Appendix, Figure 5) in addition to outlining many ‘big’ and ‘fairly big’ problems, such as drug dealing and intimidating behaviour in their local area (See Appendix, Figure 6).

‘Community justice may, it appears, have a positive impact upon recidivism even though it has not traditionally been regarded as an explicitly rehabilitative disposal’ (McIvor, 2002).

When we look at recidivism between different sanctions, they suggest that while prison sentences and community-based disposals have marginal reoffending rates (an 8% difference, *See Appendix*, Figure 7) offenders that are inclined to serve community justice programmes often have a lower reconviction rate (*See Appendix*, Figure 8) than would be predicted by their criminal history, age and other relevant characteristics (Lloyd *et al.* 1995). An example of this can be illustrated by May (1999) who found that whilst taking into account social factors such as unemployment and drug use, reconviction rates amongst offenders responding to community interventions were better than predicted.

There is some evidence that supports this, whereby it is said that the actual quality of the community service experience for offenders may be associated with reductions in recidivism. Killias *et al.* (2000) found a relationship between the perceived fairness of the sentences offered received and reconviction. Furthermore, McIvor (1992) believes that it is in fact the intrinsic values that community justice instils, lowers reconviction rates among offenders who regard community service to have been worthwhile, with more positive experiences being associated with placements characterised by high levels of contact with the beneficiaries, opportunities to acquire new skills and work that is seen as having some value for the recipients. Rex and Gelsthorpe (2002) produced similar encouraging conclusions.

Requiring offenders to carry out work within the community, isolating them from other volunteers and stigmatising them through conspicuous uniforms is a counterproductive method to convey the message that they have something positive to offer society and their local community. Braithwaite’s (1989) evaluation of integrative shaming brings only ideological images of what one can only describe as the equivalent of some 21<sup>st</sup> cent ‘stocks’. Needless to say the ‘visibility of community punishment’ (Carter, 2003) should still mark its presence.

Taking into account the fact that some of these writing, as previously mentioned, are a decade old and that at present, marginalities appear within the statistical evidence, there has been notable theoretical challenges and criticism within the forum. Pease (2010: 7) argue’s that “*The reconviction figures for both community sentences and custody are almost exactly as would be predicted beforehand. In short, community sentences as currently delivered have no evident effect on rates of reconviction*”. This illustrates that until better community sentence regimes are developed, prison remains an indispensable option in reducing re-offending rates through incapacitation and deterrence (Civitas, 2010). Pragmatically, ‘prison works’.

Much similar address has been made by Helen Mills (2011: 34-36) in her Criminal Justice Matters article entitled *The ‘Alternative to Custody’ Myth*, whereby she concludes that “*Community sentence reform does not offer an effective solution to the ... overall scale and scope of the current demands placed on the criminal justice system*” (*ibid*, 2011: 36).

Prison has a poor record for reducing reoffending - 49% of adults are reconvicted within one year of being released, for those serving sentence of less than 12 months this increases to 59% (Prison Reform Trust, 2011: 21; Travis, 2011; Hughes, 2010).



Despite the raised criticism attached to community justice, there is a consistent trend that community justice is a more sought after alternative. Scotland has successfully implemented and reinvested in this concept of justice; findings from their 07-09 cohorts illustrate that the reconviction rate of offenders who served short-term sentences has fallen to its lowest in 11 years (The Scottish Government, 2011).

Justice Secretary, Kenny MacAskill SNP states:

*"Offenders released from a custodial sentence of three months or less have a reconviction frequency rate twice as high as those released from a sentence of six months to two years. When you also see, as we do from these statistics, that those released from custody have a reconviction frequency rate that is twice as high as those getting a community service order, it is clearer than ever that locking up low level offenders is not the answer".*

*"We already know that three out of five offenders given a tough community sentence do not re-offend. Prison is and always will be the right place for serious and dangerous offenders, but the Community Payback Order introduced earlier this year gives sheriffs the ability to send low level offenders out into the community to address the underlying reasons for their offending and to pay back through some tough manual labour."*

*(ibid)*

The key it seems, not only to Scotland's success, but making community sentences work, is in fact the commitment of the different agencies and professionals involved. The success is depended on the professionals and agencies sharing a problem-solving approach to tackling crime and doing justice in the community (The Scottish Prison Commission, 2008:34), much of which influence, stems from such schemes as *The Liverpool Community Justice Centre, Redhook Justice Centre and the Midtown Community Court / Solutions* in the Bronx, NY.

*"To achieve a reduction in the overall prison population by cutting short-term custody requires a disproportional change to occur".*

(Herbert, 2010a)

### 3.5 Reinvesting in Community Initiatives (JR)

In order to make a detrimental impact on incarceration rates foremost, Clear (2007) states that programs which focus on individual offenders will only marginally reduce the use of imprisonment, and in order to address the problem of ever rising imprisonment rates, the well-being of *communities* must become the main objective of the criminal justice system.

Justice Reinvestment (JR) is an emerging approach that aims *"break the cycle of recidivism, avert prison expenditures and make communities safer"* (Allen, 2007:pp. 2-9). In a time of financial austerity (Allen, 2011: 617), what better approach can there be, than one which calculates public expenditure on imprisonment in localities with a high concentration of offenders, and diverts a proportion of this expenditure back into those communities to fund initiatives (Schwartz, 2010: 2).

In its simplest form, JR refers to the persuasive proposition that focus's resources on preventing criminality rather than solely on catching, convicting and incarcerating criminals. Adopted and developed from policy reform in the USA, Justice Reinvestment aims to implement, effectively the '*getting tough on the causes of crime*' half of the Labour Party's original statement of the purpose of criminal justice before the 1997 election (House of Commons Justice Committee, 2010: 26).

Recent pilot schemes such as the "payment by results" approach have become move by the coalition to significantly reduce the rate of reoffending by introducing new ways to fund organisations (Nicholson, 2011). Drawing on JR (*see* Herbert, 2010b: 9), "payment by results" was launched in 2011 and piloted in a select number of prisons (e.g. HMP Leeds and Doncaster) (Inwood, 2011). Figures and results have remained salient as such, but concerns have arisen through financing this initiative through social impact bonds (SIBs) (*ibid*).

Yet despite this scheme, "*enormous questions remain over the devolution of powers and responsibilities to local government at a time when their budgets are being hit and considerable skepticism abounds about the so-called Big Society*" (Allen, 2011: 623), which the Conservative Party in particular, views as providing a vibrant alternative to the shrinking state. Questions also stem about the possible practical success of this scheme, as there is reluctance to believe it presents the scope of initiatives or problem-solving core when compared to such schemes already present as: the North Liverpool Community Justice Centre (*see* McKenna, 2007). Maybe the proposed external link will combat this?

The North Liverpool Community Justice Centre represents a unique development in the criminal justice system in England and Wales. With its three foundations – a problem-solving approach, partnership working, and a unique role of the judge, a study carried out by Mair and Millings (both Professors and Lecturer's at LJMU) in February 2011, subjectively exonerated this centre. Despite a lack of data sources to provide a more quantitative base, they stated: "*We would argue that the Centre delivered more effective justice than the traditional court model, although we would find it difficult to provide unequivocal evidence to support this claim apart from the consistent accounts given to us by respondents*" (*ibid*: 98). Success using initiatives as such can be further correlated, not only to *Oregon* (Tucker and Cadora, 2003), *Pennsylvania* (Justice Center, 2012) and *Oklahoma* (Justice Center, 2011) but also to schemes as previously mentions such as *Redhook Justice Centre* and the *Midtown Community Court / Solutions* in the Bronx, NY.

Utilising a mode of sentencing (also *see* Salford Criminal Justice Initiative - Brown and Payne, 2007) that tries to address the problems that led to offending; a much more efficient and supportive approach to victims/witnesses; a Community Payback scheme that has led to praise from residents; a raft of activities for the community as a whole; a general community resource; greater community understanding of the criminal justice process (Mair and Millings, 2011). The North Liverpool Community Justice Centre can be said to embellish some aspects of Allen (2011) several ways to reduce the demand of imprisonment (*See* Appendix, Figure 9).

The localised and flexible nature of community justice and JR means that there are a number of different initiatives and programmes that could be further introduced

throughout the UK. Most of which can be implemented without any legislative change (Allen, 2011: 625).

This concludes the literature review section of the dissertation. I will now continue into Chapter 4 with the discussion.

## Chapter 4: Discussion

The aim of this dissertation was to explore whether community justice was a viable alternative to retribution, or the over emphasis of imprisonment. The methodology selected to allow me to carry out the review was sufficient to draw upon both qualitative and quantitative data thus ensuring a concise yet detailed analysis. The main concepts (the problems, potential solutions and the means of implementation (JR)) that were initially identified were explored and addressed. In this chapter of the dissertation will discuss how the findings from the literature review met the preliminary aims as set out in my proposal.

The literature review has discussed the persistent, yet consistent increases in the prison population in the UK in addition to the core problems such as recidivism, risk and economics. It has reviewed community justice, and critically examined justice reinvestment and current schemes in place.

Overcrowding has given renewed vigour to the debate about whether incarceration is an appropriate response to offending. An important part of this debate is whether prison represents an efficient use of public resources (Marsh, Fox and Hedderman, 2009). It is clear from this review that expenditure is clearly not producing any long-term benefits in communities with high rates of imprisonment, crime, and deprivation.

Attempting to reduce recidivism through community justice, rather than containing and submerging the issue within imprisonment is a consistent view of many writers reviewed. Although some argue that the scope of the problem is far too large to be fully addressed by this method of justice (Helen Mills, 2011; Pease, 2010).

With cuts to many external services (particularly the voluntary sector, as well as public) (See Holt, 2012; Rudd, 2012), it only raises the question whether community justice will under fragmentation as such, be able to live up to the expectation as illustrated by previous developments in the USA. Or, will this be a '*death by a thousand little cuts*'? (Clear, 2007: 117). Many small cracks in a pane of glass will eventually cause it to shatter.

This report has demonstrated that community justice does not require additional funding, as by JR, funds that are being cycled into imprisonment can be recycled and diverted to community-based initiatives.

A number of examples of community justice – both in the UK and USA - have been provided and outlined; with greater focus being placed upon the Liverpool Community Justice Centre. The pilot scheme, 'Payment by Results' - which is currently underway in HMP Leeds and Doncaster - has also been mentioned. Arguably, a significant step towards JR. It is yet that concerns have been raised, most of which circulate around its "*track record...and complexity*" (The Howard League for Penal Reform, 2011: pp.17-20).

Within the last few hours of writing this (as of the 27<sup>th</sup> March 2012), there has been encouraging developments with community interventions and wide spread media talk. Throughout this review I have touched on and implemented a personal view on possible modes of action. Concerned community sentences are too lenient, Ken Clarke's plans utilise the use of electronic tagging using GPS tracking and intensive

punishment orders including curfews and travel bans (BBC News, 2012) terming overall it will be “*cheaper and cut re-offending*” (*ibid*).

In some ways this has countered my argument and discussion throughout.

It is now visible to see the government is placing more recognition to the problems I have reviewed throughout this dissertation - particularly in terms of reoffending - and that further steps are now being considered. In some sense, it portrays the early movements towards a ‘community justice ideal’ (Clear and Karp, 2000).

It is with anticipation, if plans go ahead, to see what may result.

## Chapter 5: Conclusion

This dissertation has addressed a selection of issues surrounding retribution and reviewed community justice as a potential solution, which by its fairly undeveloped nature raises many questions and critiques, often surrounding the statistical evidence.

Community justice is a new idea. Although many elements of community justice have a rich heritage in social thought – reparation, community, pragmatic problem solving – the idea of community justice as an expression of criminal justice is barely a decade old. We are in a time of rapid changes in criminal justice, but nobody can know for certain where the changes will lead.

The main findings of the review illustrate that although community justice is a concept with much potential, it is difficult to gauge foremost how successful it actually is. Mair and Millings study highlighted this issue significantly, providing exceptional visual recommendation but yet being unable to prove it. Until a solid base of evidence is acquired, it is only then, that we will be able to fully understand the strengths and weaknesses of this concept.

Many community justice approaches are based on initiatives formally developed in the USA. The major implication as such is cross-cultural dispositions, especially if used as a model (*See Nolan, 2009*). The approach should be tailored to the needs of the community as such, in order to acquire the best response - both on a 'public opinion' and practical basis.

Further research is recommended in relation to the public opinion of community justice and justice reinvestment, if future steps are taken with such approaches.

There are other practical implications that should also be considered. One example would be the generalisation that people from communities experiencing high levels of incarceration are described as being widespread, and not specified to precise areas. To utilise this approach to its maximum capacity, areas that are in need of community justice initiatives should be identified on needs-based scale, on the simple basis: Which communities would benefit the most? In order to address this problem further research must be conducted to correctly identify the various social groups and areas throughout the UK in such need.

There is much need for development and anomalies to be addressed before we can identify a true picture that this approach portrays. Until then, we shall anticipate the results from recent government proposals ('toughening' community sentences) and the 'payment by result' concept.

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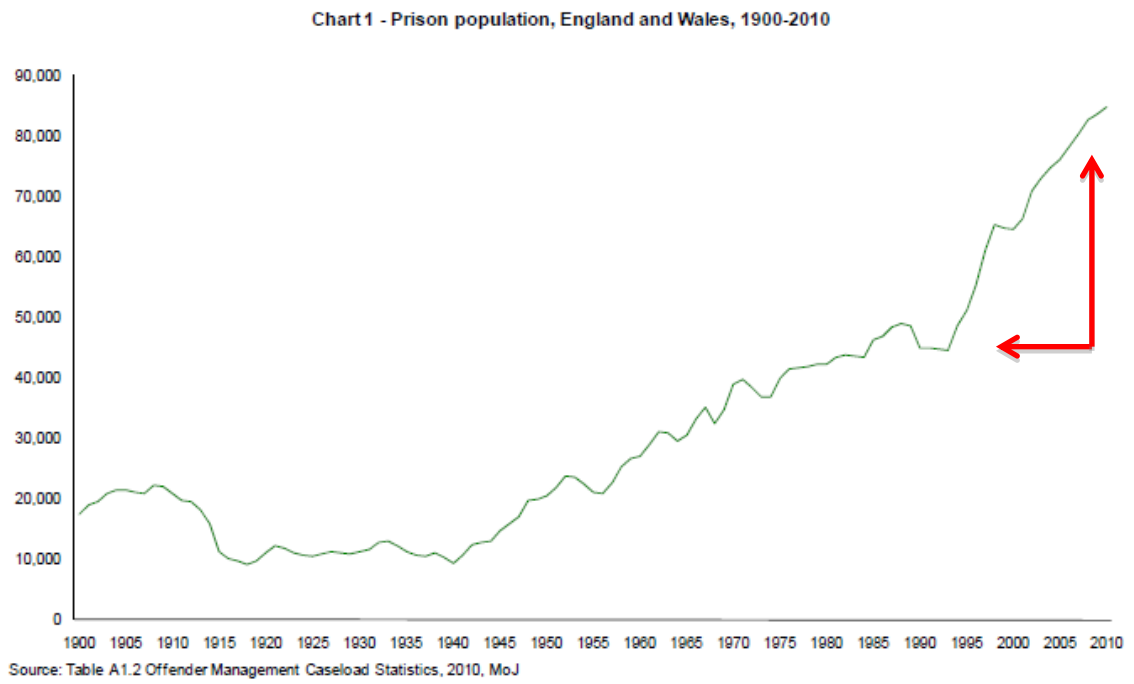
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## Appendices

**Figure 1.** (Berman, 2011: 2)



**Figure 2.** (Berman, 2011: 15)

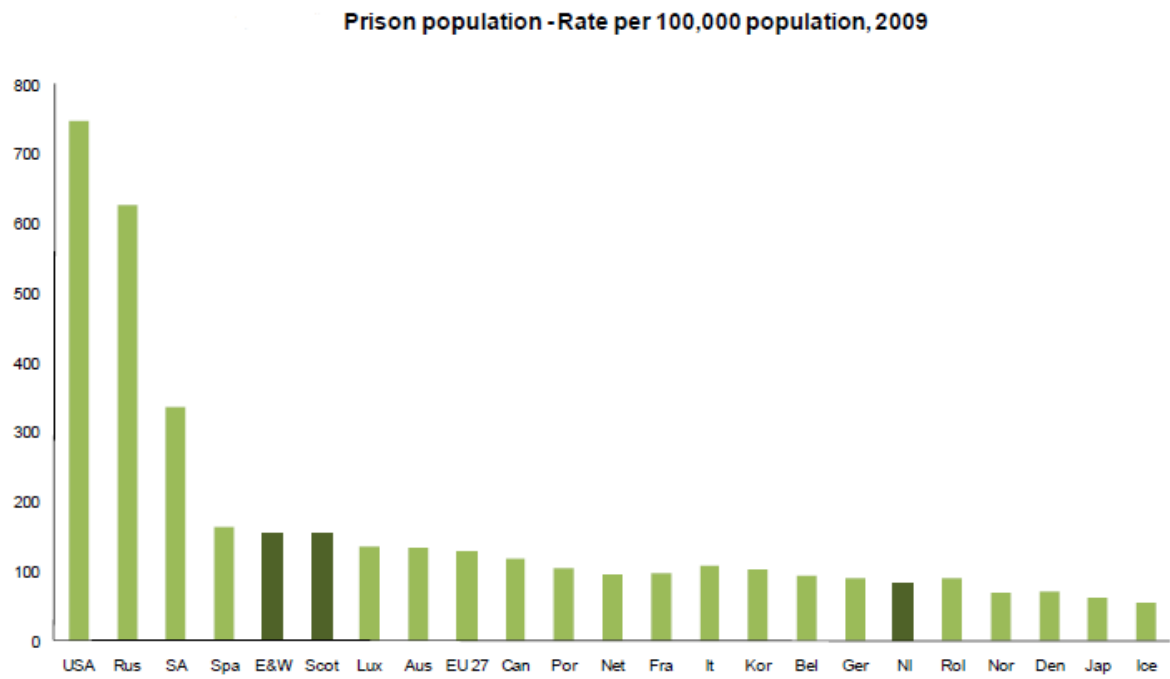
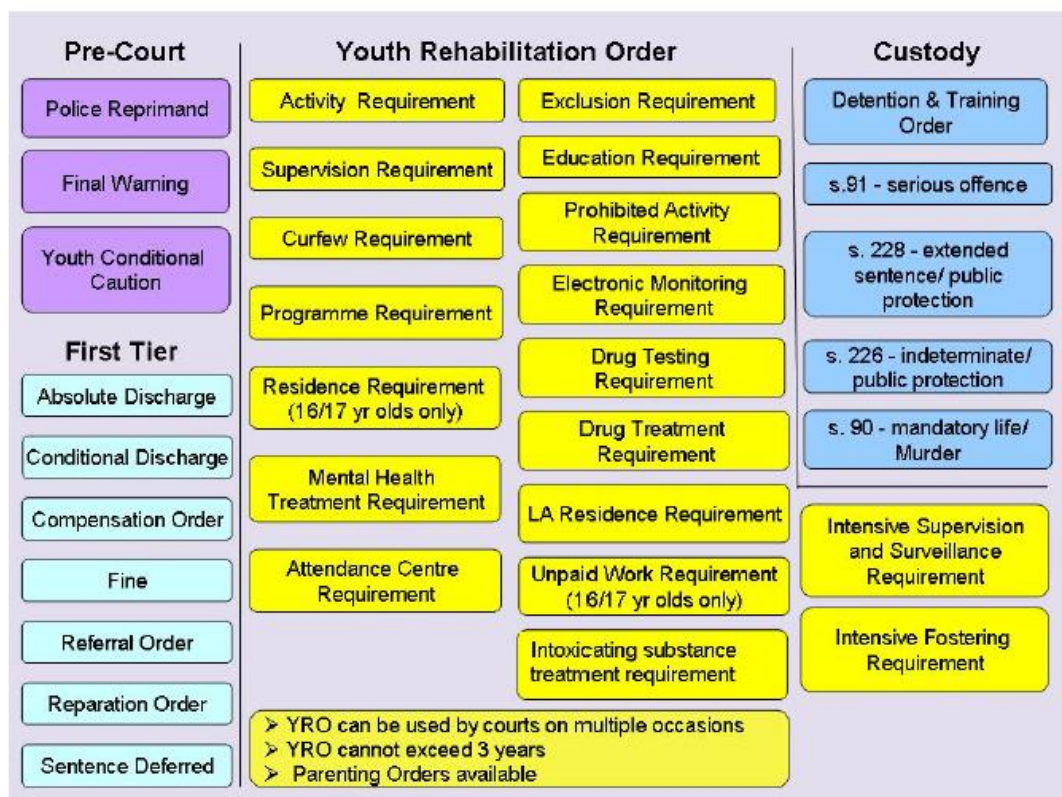
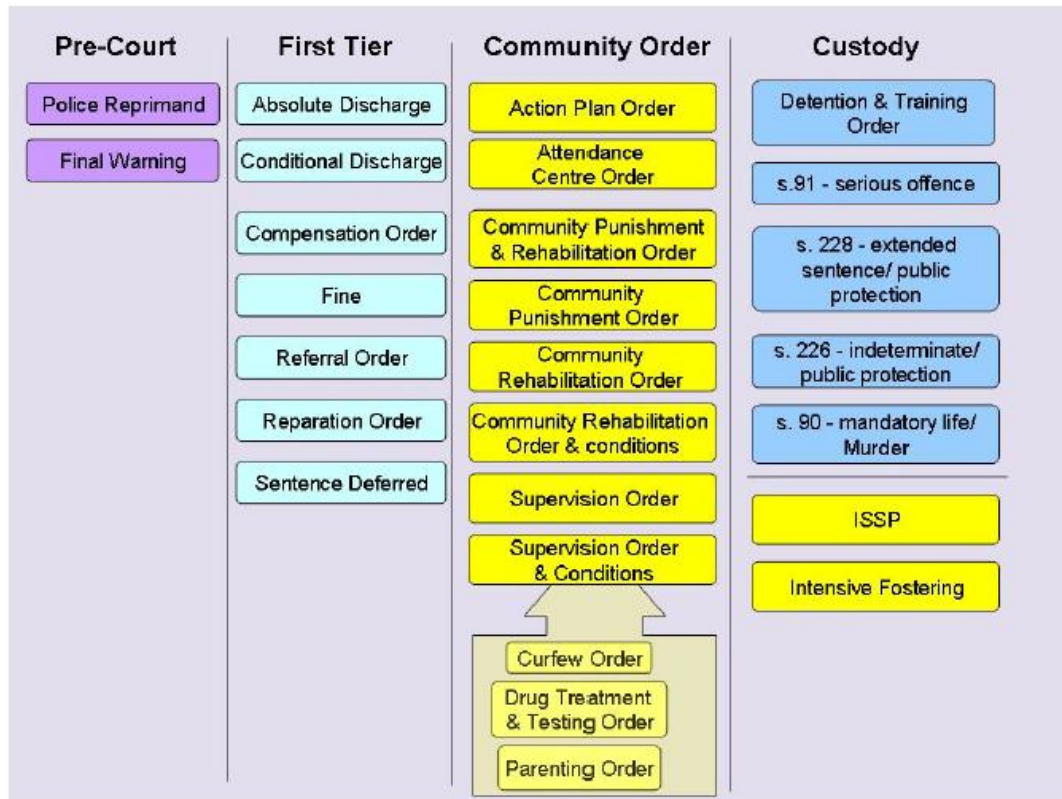


Figure 3. (Breger and Patel, 2008)

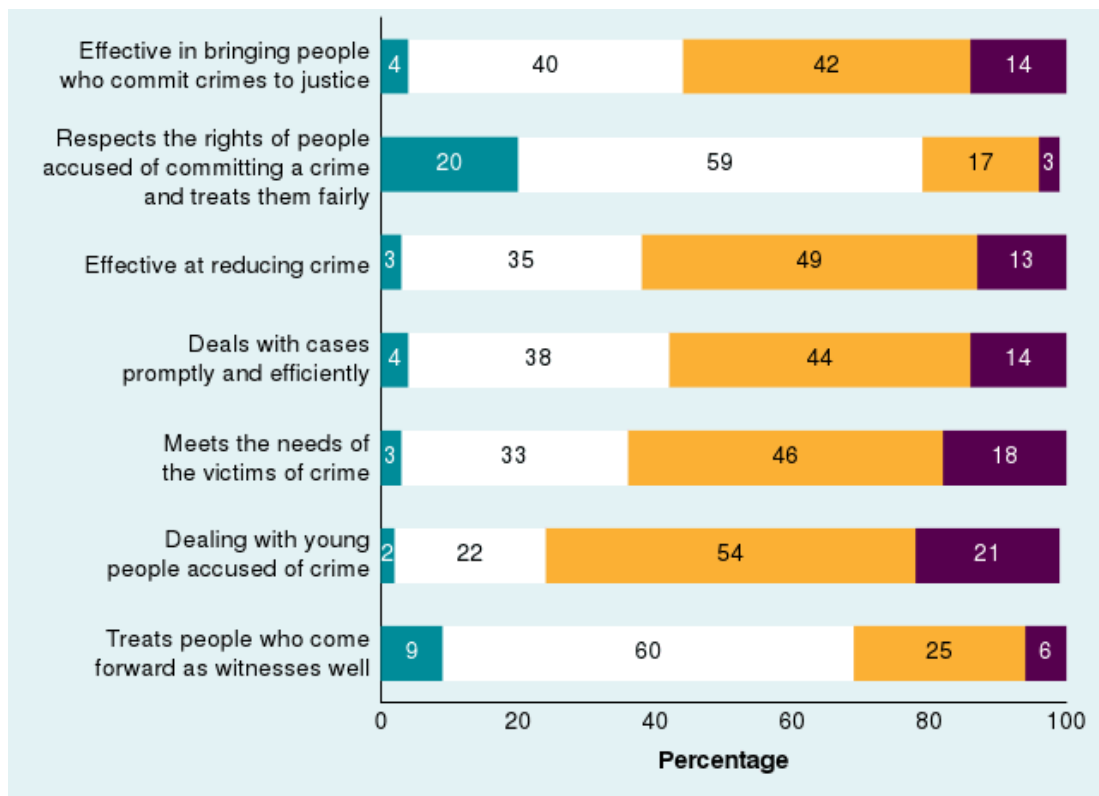
## The Criminal Justice and Immigration Act

### Youth Sentence Structure

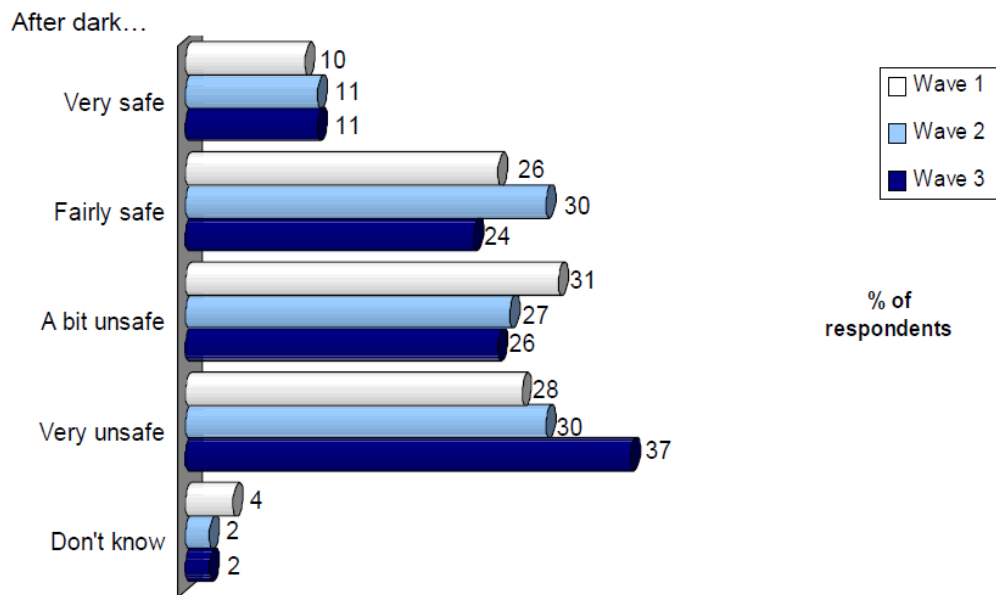


**Figure 4.** (Smith, 2010: 6)

Confidence in Criminal Justice System Responses, 2007/8, England and Wales



**Figure 5.** (Llewellyn-Thomas. and Prior, 2007: 40)



Question 4: How safe do you feel walking alone in your neighbourhood after dark? Would you say you feel...

Base: All respondents (W1=1407, W2=524, W3=541)



**Figure 6.** (Llewellyn-Thomas. and Prior, 2007: 35)

Respondents stating a 'very big' or 'fairly big' problem  
**Waves 1 to**

	<b>Wave 1</b>	<b>Wave 2</b>	<b>Wave 3</b>	<b>Diff W1 - 3</b>
	(1407)	(524)	(541)	
	%	%	%	%
Lack of activities for young people	74	69	73	-1
Groups of young people hanging around on the street	74	71	68	-6*
Gangs and gang related crime	50	53	57	+7*
Vandalism, graffiti or other deliberate damage to property	58	56	57	-1
Fly tipping and litter	51	50	56	+5*
Drug Dealing	52	55	55	+3
Abusive or intimidating behaviour by people who have been drinking	40	44	40	0
Verbally abusive behaviour in the streets	43	41	40	-3
Abusive or intimidating behaviour by people who have been using drugs	41	41	37	-4
Noisy neighbours	22	22	18	-4

Figure 7. (Ministry of Justice, 2011c: 20)

**Proven re-offending rates of matched pairs of offenders where one sentencing type is an immediate custodial sentence in England and Wales by gender, 2005<sup>1</sup> to 2008**

England and Wales	Number of matched pairs of offenders and re-offending rates (%)														
	Males						Females						PSM analysis all offenders 2008 only		
	2005	2006	2007	2008	2005	2006	2007	2008	2005	2006	2007	2008	Full dataset PSM analysis	Additional randomly generated factor	High/low probability courts
Matched pairs	2,391	3,618	3,986	5,264	166	218	287	372	2,557	3,836	4,273	5,636	37,983	37,960	1,431
Immediate custody (less than 12 months)	50.2%	54.5%	56.6%	58.9%	53.6%	55.0%	65.2%	65.6%	50.4%	54.5%	57.2%	59.4%	57.7%	57.5%	46.8%
Community orders	44.2%	48.6%	49.8%	50.6%	41.6%	49.1%	51.9%	57.3%	44.0%	48.6%	50.0%	51.1%	52.1%	53.1%	43.7%
Difference (percentage points)	6.0	5.9	6.8	8.3	12.0	6.0	13.2	8.3	6.4	5.9	7.2	8.3	5.6	4.4	3.1
Matched pairs	343	1,595	2,002	2,549	22	85	108	118	365	1,680	2,110	2,667	27,663	27,500	915
Immediate custody (less than 12 months)	34.7%	42.1%	45.8%	47.6%	*	50.6%	36.1%	43.2%	34.5%	42.6%	45.3%	47.4%	52.4%	50.8%	43.0%
Suspended sentence orders	31.5%	37.7%	38.9%	38.8%	*	44.7%	34.3%	34.7%	30.7%	38.0%	38.7%	38.6%	43.8%	44.8%	41.6%
Difference (percentage points)	3.2	4.5	6.8	8.8	*	5.9	1.9	8.5	3.8	4.5	6.6	8.8	8.6	6.0	1.3
Matched pairs	491	425	463	617	6	8	3	15	497	433	466	632	9,285	9,276	32
Immediate custody (1 year or more but less than 2 years)	30.5%	32.7%	35.4%	40.7%	*	*	*	*	30.2%	32.8%	35.4%	40.0%	39.4%	39.7%	*
Immediate custody (less than 12 months)	40.7%	35.5%	42.1%	45.1%	*	*	*	*	40.4%	35.3%	42.1%	44.5%	50.0%	47.1%	*
Difference (percentage points)	-10.2	-2.8	-6.7	-4.4	*	*	*	*	-10.3	-2.5	-6.7	-4.4	-10.6	-7.4	*
Matched pairs	359	378	330	428	10	9	3	1	369	387	333	429	-	-	-
Immediate custody (2 years or more but less than 4 years)	32.6%	31.5%	33.0%	35.7%	*	*	*	*	31.7%	31.0%	32.7%	35.7%	-	-	-
Immediate custody (1 year or more but less than 2 years)	35.4%	36.5%	36.7%	43.0%	*	*	*	*	34.4%	35.7%	36.3%	42.9%	-	-	-
Difference (percentage points)	-2.8	-5.0	-3.6	-7.2	*	*	*	*	-2.7	-4.7	-3.6	-7.2	-	-	-

<sup>1</sup> Community orders and suspended sentence orders were introduced in the Criminal Justice Act 2003 and came into force from April 2005.

\* Italic means less than or equal to 50 offenders - treat the data with caution. Includes offenders with no recorded gender.

\* Data based on 10 or fewer offenders are removed as they make the data unreliable for interpretation.

*Figure 8.* (Ministry of Justice, 2010: 18)

**Published reconviction rates for under twelve month custodial sentences, community orders and suspended sentence orders for England and Wales, first quarter 2008**

Disposal type	Number of offenders	One year reconviction rate	Average number of previous offences
Custody (under 12M)	10,251	61.1%	39.3
Community Orders (COs)	27,504	36.8%	17.5

*Figure 9.* (Allen, 2011:pp. 623 - 625)

Robert Allen: Seven ways to reduce the demand for imprisonment

1. Increasing diversions from prosecution.
2. Reducing the numbers remanded to custody for want of a place to live.
3. Enabling more prisoners to be released on home detention curfew (HDC).
4. Reducing demand would be to bring down the number of offenders given short prison sentences.
5. Achieving effective replacements for short sentences requires the development of a more effective response to those who do not comply with their community sentences.
6. Greater dividends would be provided if such supervision led to reductions in the numbers of prisoners recalled for breaching parole.
7. Enhancing arrangements in the community and improving opportunities in prison.