

# Criminal Justice in the new Climate of Financial Austerity

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Three questions provide the focus of this paper which focuses on the prospects for criminal justice in England and Wales in the wake of global economic recession and the consequences of domestic financial restraint. We ask:

1. What effects is the recent economic recession having upon criminal justice in England and Wales?
2. How might the public financing consequences of recession impact upon criminal justice?
3. What might be done to minimize the impacts of recession and public financial restraint on criminal justice?

The first question is, of course, much concerned with the present context; the second with the fiscal and budgetary implications over the next few years of the recent economic downturn, while the third focuses on the possible responses of policy makers and practitioners to the difficult spending choices now confronting them. While the paper is set in a UK context, the issues are almost certainly common to most European and other countries.

## **1. What effects is the recent economic recession having upon criminal justice in England and Wales?**

A widely shared assumption over the past two years or so has been that the economic recession would be likely to fuel an increase in crime and have significant impacts on the workloads of most of the criminal justice agencies. This after all has generally been the experience from previous economic downturns. However, to date at least, the published statistics on recorded crime have not suggested any such significant recessionary effects. Given the potential link between acquisitive crime and personal spending power, rising unemployment might well have been anticipated to lead to an upturn in crimes such as theft and robbery, as was the case in the wake of recession in the early 1990s. To date, this does not seem to have happened in the recent recession, although, as unemployment is set to continue to rise through a period of financial austerity, it may still be too early to draw firm conclusions here. On the other hand, there have been suggestions that the circumstances of this recent recession differ from those of previous ones in that

much progress has been made over the past decade in crime prevention, notably in improving security (e.g. for vehicles and homes), in designing out the opportunities for crime and indeed in increasing police patrolling and presence on the streets. Certainly the most significant element in the year-on-year downward trend in the crime statistics has been reduction in ‘volume crime’ – such as theft from (and of) vehicles, and burglary, and is generally perceived as a consequence of the efforts to make such crime more difficult to commit. Another consideration here is the demographic profile of the population. In this respect, the early 1990s recession happened to occur at a time when the 16-24 year-old cohort (the dominant one for rates of criminality) was at its highest for a long time. But today, that cohort is much smaller and so, even if the rate of criminality is unchanged, in terms of absolute numbers, the impact would be much less.

That said, the overall crime picture (and the recessionary impact) is not entirely clear and there continues to be debate and uncertainty about the accuracy of the available crime statistics, particularly about what they reveal and conceal. For example, the BCS figures exclude crime experienced by young people – which of course forms a significant part of the story; and the figures are affected by the very significant (and uneven) use in recent years by police forces of cautions, fixed penalties and PNDs etc as alternatives to formal prosecution, including for relatively serious matters such as shop-lifting, assault and criminal damage. And most important in this context is the uncertainty about levels of unreported crime, about so-called ‘victimless’ crime and the shift towards new and emerging forms of criminal activity whose impacts are not yet subject to the level of monitoring and recording we associate with more traditional categories of offending.

At the same time, for some agencies, and most notably the courts, uncertainty about the impacts of recession are not of course confined to criminality. There are potential impacts for civil justice work too. Here too, rising unemployment might well be expected to generate an increase in such work, for example, with more debt-related cases and possibly also more matrimonial work (as personal economic difficulties exacerbate domestic tensions). But again, as yet, the available statistics for the recent period

hardly support this expectation – indeed, the recent official statistics reveal slight falls in most categories of case-load (one exception being the increase in social security and child support cases).

But if the effects of recession are not (yet) showing through for the workloads of the key public sector agencies involved in the justice sector – the police, CPS, courts, probation and prison services – impacts are certainly being felt among the voluntary sector organizations, including those directly engaged in criminal justice. For example, leading charities have reported reductions in donation levels and those which rely on investment and business links for their income now have smaller funds for distribution. Indeed, the general fall in profit levels is reported to be affecting corporate donor contributions<sup>2</sup>. Concerns have also been raised, particularly among smaller third sector organizations, about the moves from ‘grant-giving’ to ‘commissioning’ in relation to support services and projects in criminal justice (e.g. by the Ministry of Justice) as indeed in public services more generally. In this context there are fears about the capacity of the smaller organisations to be able to compete in tender competitions with the larger private sector firms (and national charities) and that, in the new climate of austerity, price more than quality is likely to dictate the award of contracts. NACRO, moreover, has reported that many of the offenders with which their organization works are now experiencing very real recessionary effects as they struggle to find suitable employment in a much tighter jobs market and, of course, with the added disadvantage of criminal records to overcome.

## **2. How might the public financing consequences of recession impact upon criminal justice?**

This brings us to the second – but clearly interrelated – issue of the public expenditure consequences of recession and how the reductions in public spending that are now being discussed and decided in the wake of the recent General Election to reduce the national deficit might affect criminal justice. An overriding concern here of course is to protect the positive progress made in recent years in developing better criminal justice services and to maintain focus on reducing offending and reoffending.

One consideration here is that, while the recession may have generated increased work for some agencies (e.g. some of the voluntary organizations), the down-turn happens to have coincided with a period of significantly less workloads of certain others – notably the magistrates’ courts and youth justice services.

Caseloads for Youth Offending Teams (YOTs) are reported to be well below levels of past years, almost certainly as a result of changing policies by the police, which in turn, are probably a consequence of the shift in policing targets away from specific case-load indicators to a single ‘public confidence’ target.

Numbers being sentenced to terms of youth custody (particularly for first-time offences) are now greatly reduced from levels just a few years ago, and there is significant spare capacity in Young Offender Institutions (YOIs) as a result (the up-side of which is that it becomes possible to give more attention to each offender and so be more effective as a result).

Similarly, work in the magistrates’ courts is currently well below average over the past decade (again with youth court work particularly affected by police cautioning practices). The problem, however, is that, at present, there is no certainty about the durability of this state of affairs, which is primarily a consequence of the preferences that police forces have shown in recent times towards the use of ‘out-of-court’ disposals, and which could of course be quickly reversed if public and political sensitivities were to grow about the over-use of cautioning.

### **3. What might be done to minimize the impacts of recession and public financial restraint on criminal justice?**

All that said, with the post-election focus now firmly on reducing public expenditure to cut the deficit, the key issue for criminal justice and the associated agencies is how savings can be made with minimal damage to the quality of service provided and to justice done. And, as already inferred, of particular concern here, is how to ensure that we do not regress on the progress made in recent years in developing the ‘supportive’ and ‘preventative’ elements of criminal justice – for instance, services for victims

of crime and work with offenders to address some of the factors associating with and underlying their offending behaviour (e.g. help in accessing employment, housing, health care). Such work is probably especially vulnerable in an era of public funding cuts (e.g. by government departments, other national public agencies and local authorities).

Budgetary pressures can also of course have longer term positive benefits because they promote challenge to past assumptions and invite new ways of thinking and working - perhaps leading to fundamental reshaping of policy priorities and service delivery practices from which further promising progress may develop. Here three particular policy and practice issues are raised regarding the future of criminal justice in the new climate of financial austerity.

#### *3.1 What of the role of prison in penal policy?*

Given the need for public expenditure reductions, the high costs of imprisonment and the relatively poor impact of prison regimes on offending behaviour, is it perhaps time to review perspectives on the role of prison within the wider framework of penal policy? Might a more decisive switch in sentencing policy be made away from custody and in favour of community-based penalties for all offenders where there are judged to be no risks to ‘public safety and protection’ involved? And might this, in turn, not unlock potential additional resources for community sanctions, particularly more mentoring and supervision of offenders in the community more actively to seek to reduce reoffending? At the same time, might we not look strategically towards ‘localizing’ our use of custody so that all prisoners have the opportunity to sustain personal contact with their families and friends and the vital support systems that these can represent both during sentence and on release. Or, as Dunleavy (2010<sup>3</sup>) has argued, might we not use the opportunities of the digital age to ...*connect prisoners in jails back to their families, past employers, lawyers and health professionals via closely regulated forms of digital communication...to bring down the UK’s currently very high recidivism rate to levels achievable in some other countries ... by ending the isolation of prisoners from all their social networks ... which typically pushes them further*

*towards dependence upon criminal activities to survive when they are released' .?*

### 3.2 *Are we dealing with different cases in the right ways?*

The question of what kinds of offending behaviour should be dealt with by the police, e.g. by cautioning or other out-of-court disposals, or by the magistrates' courts under their summary jurisdiction, or by the Crown Court on indictment, has frequently been discussed over the past decade and more, and, as indicated recent shifts in police policies in this respect have resulted in significant reductions in magistrates' courts' workloads. It is clear that the use of cautioning and the issuing of PNDs etc. by the police as alternatives to court-room justice can save money and time, and perhaps offer benefits to the courts in allowing more opportunity for focus and problem-solving in relation to the more serious cases. On the other hand, such 'pre-court' justice lacks the attributes of transparency and openness to public scrutiny and there is the risk that, over time, and without a clear mandate, more and more cases of greater seriousness become subject to administrative justice principles and without the oversight of the formal judicial system and an independent judiciary. Might this be an opportune time to establish a clearer framework of principles and rules governing what cases should be handled by the police (and in what ways), and what cases, should more appropriately be prosecuted in the courts? And might this help in giving the public greater confidence in criminal justice, with everyone much clearer what is likely to happen in relation to different offences and that there is no post-code lottery to prosecution policy? Might this also prove to be of benefit to the agencies in enabling them to plan and manage their workloads and resource requirements with greater certainty?

In much the same context, there is the further question of the appropriate division of case-handling responsibility between the magistrates' court and the Crown Court. Here too there would be public finance implications to be considered, as well as issues of judicial capacity and public legitimacy, but particularly at a time of public expenditure reductions, and with significant spare capacity currently in the magistrates' courts, it may be

opportune to consider the scope for increasing the sentencing powers available to the magistracy to deal with more serious cases, as this could both save money and provide some relief to the Crown Court. And it may perhaps also be opportune again to review the circumstances and categories of case defined as 'indictable' and therefore for which the right to elect jury trial would apply.

### 3.3 *How appropriate is the institutional 'landscape' of criminal justice?*

Particularly over the past decade the institutional and inter-organisational landscape of, and around, criminal justice has been significantly reformed – most would agree, for good reasons, and with many positive outcomes. But this landscape is now also quite complex, with more layers in the hierarchy and more bodies with shared (overlapping?) responsibilities and different accountabilities. A key component of such complexity is to be found at the interface with local government, for example, in relation to anti-social behaviour and community safety work.

For at least the past decade all the emphasis has been on 'partnerships' as the means to join up and integrate for better public service delivery, and of course it has been the spawning of such partnerships that has contributed much to institutional complexity in the contemporary public sector, perhaps nowhere more obviously than in criminal justice and the associated domains of community safety and crime reduction work. And in a compelling analysis of public services, Dunleavy (2010, p 14) argues that '*... the 'organic' nature of different partnerships, and their variability from one area to another, also add to difficulties in attributing policies organisationally and understanding how they might be changed, not only for citizens but also for public sector decision-makers themselves ... Add in the extensive role of contractors ... and it is far from clear that a decade of partnering has done much to qualify as 'disintermediating' public services ...*'<sup>4</sup>.

Particularly in and around the local government sector, the language, principles and lessons of the 'Total Place' pilots are now having a profound effect on thinking and practice, and there is much interest



in developing more integrated public service budgeting between organizations, through financial pooling and alignment arrangements, in pursuit of shared outcomes and particularly in an era of financial austerity. How might this resonate in criminal justice? How might the potential benefits (including cost savings) and disadvantages balance out, for example, in relation to closer budgetary alignment between the courts and the agencies which work in close association, notably offender management, ‘problem-solving’ support services and work with victims of crime? While there is the constitutional imperative to respect and protect the independence of the judiciary, is this necessarily compromised by closer relationships between the courts and the various supporting and sentence management functions?

Some organisational changes have already been made in response to financial pressures (for example, Her Majesty’s Courts Service has streamlined its regional and area structure recently), and other possible responses are being examined in the light of projected expenditure reductions (for example, the debate about police force areas may be returning to the agenda). But more fundamental organisational questions now also merit debate, including perhaps about the value of a regional level (e.g. as applies in HMCS and in NOMS but not in the police). And we should perhaps give deeper consideration to the more general point about the different levels at which service co-ordination takes place in criminal justice – for instance at police-force area level by non-statutory LCJBs yet at a more local level for crime and disorder. In short, what is the scope for Dunleavy’s notion of ‘disintermediation’ in the criminal justice landscape?

## NOTES

- <sup>1</sup> This paper is based on a report prepared for the Criminal Justice Council for England and Wales in March 2010. The author is grateful for the contributions of Gillian Guy (Chief Executive of Victim Support); Mike Thomas (Chair of the Association of Youth Offending Teams); and Nick Watson (President of the Justices’ Clerks’ Society) in preparing the paper.
- <sup>2</sup> Reported in a note prepared for the Criminal Justice Council by Jackie Worrall, from NACRO in December 2009.
- <sup>3</sup> Dunleavy, P. (2010) *The Future of Joined- up Public Services*, page 30, 2020 Public Services Trust/ESRC.
- <sup>4</sup> Dunleavy (2010) uses the term ‘disintermediation’ to refer to ‘... the stripping out or slimming down or simplification of intermediaries in the process of delivering public services. See *The Future of Public Services*, 2020 Public Services Trust.