



CRIMINAL JUSTICE REVIEW 1999-2001
Centre for Criminal Justice Studies, University of Leeds
<http://www.leeds.ac.uk/law/ccjs/homepage.htm>

Public Participation in Criminal Justice

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(Note: This paper draws upon a lengthier report 'Public Matters' published by the Institute for Public Policy Research (ISBN 1-86030-146-0), copies are available from the IPPR. This abridged version was first published in the Relational Justice Bulletin (Issue 12, 2002). The author would like to thank Dr Jonathan Burnside for his editorial assistance. The Relational Justice Bulletin is a quarterly publication by the Relationships Foundation, as part of its Relational Justice initiative. For more information contact: The Relationship Foundation, Jubilee House, 3 Hooper Street, Cambridge CB1 2NZ).

The last twenty years in the UK have witnessed a radical transformation in relations between the public and the state with regard to criminal justice policy and practice. There has been an increasing acknowledgement and recognition of the state's own limitations in its capacity to guarantee and maintain public order. In part, this stems from a series of recent crises in the apparatus of criminal justice established over the preceding 200 years or so, in which the role and involvement of the public have been pivotal sources of concern. This article explores the scope for public involvement and participation in an age of increasing 'punitive populism' and, crucially, the form that this might take.

The current limitations of the state stem from a fourfold crisis of effectiveness, efficiency, cost and confidence in the criminal justice process. Firstly, increased recorded crime rates have placed growing pressure upon criminal justice institutions. This has left them unable to respond in a traditional manner, continually looking for novel ways of managing the mass of cases through efficiency gains (e.g. 'fast-track' prosecution). Secondly, there has been a pervasive sense of failure as to the capacity of formal criminal justice systems to meet their own objectives of crime reduction, leading to what Garland has called, a 'crisis of penal modernism' (Garland 2001). Thirdly, traditional modes of crime control place an increasing financial burden upon the public purse. Fourthly, there has been a simultaneous crisis of confidence, with public attitudes towards the criminal justice system (including the police) becoming apparently more critical and less deferential. Given the crucial role that the public plays within criminal justice, as witnesses and victims particularly, a loss of confidence can adversely affect the flow of information between public and criminal justice institutions.

'Leave it to the professionals'

Part of the problem has been that, over the last two centuries, the criminal justice apparatus has placed increasing emphasis on bureaucratisation, rationalisation and professional specialism as the pillars of legitimacy and public confidence. During the same period, public involvement has declined. Recent managerialist and modernising agendas have implied a reduction in lay participation in court processes and an increased reliance on paid and legally qualified professionals. In one way and another, the public was left behind. The result is that the state has assumed a monopolistic and paternalistic approach to the public with regard to crime control and prevention. The underlying message was 'leave it to the professionals'.

Victims, in particular, have been marginalised to the point of constituting the 'forgotten party' in criminal justice, whose own conflicts, according to Nils Christie (1977) have been 'stolen' by professionals and experts. The result is 'an outsourcing approach to crime' (Leadbeater 1996: 1), in which the public have come to expect specialist institutions to solve most problems for them. The same trend, of increasing professionalism at the expense of lay involvement, can still be recognised today. The central practices of participatory democracy at the heart of traditional criminal justice have been the institutions of the jury system and the lay magistracy, both of which share the notion of 'judgement by one's peers'. Yet both are currently under threat.

Partners against crime

Of course, the public is involved in different forms of public participation and involvement at the different stages of criminal justice. They are involved, in different capacities and to varying degrees of satisfaction, as victims, as witnesses, as offenders, as active private citizens (in community safety initiatives), as lay volunteers and as a wide variety of community representatives. There are all sorts of practical barriers to voluntary participation (including not having enough time, conflicts with domestic commitments, difficulties getting employers to grant time off from work commitments, and so on) but perhaps the greatest deterrent is that participation itself is perceived to be tokenistic, pointless or a waste of time. Volunteers need to feel, not only supported and valued, but also that their time commitments are meaningful: that they are affecting change. Instead of seeing participation as an add-on to what the criminal justice system already does, we must ask: what is it that lay people can bring to the workings of criminal justice that is of intrinsic social value and in what way can volunteers themselves benefit?

Policy-makers have recently come to realise the fundamental role that the public plays in crime control and prevention, in the provision of information as witnesses or victims, through informal social control – as parents, peers, friends and family, kinship and community members – and in giving legitimacy to the system. As a result, citizens are being reconfigured as 'partners against crime' as governments seek to mitigate and reverse the decline of social capital in civil society (Putnam 1995). Successive governments have sought to increase the level and commitment to 'voluntary activity' on the part of the public. For example, currently one of the Home Office's performance targets is of 'substantial progress by 2004 towards one million more people being actively involved in their communities'.

A mixed message

Yet the rhetoric remains ambiguous. Certainly, it has not filtered down to the level of practice, where public participation in criminal justice remains minimal. It is a 'mixed message' that is undermined in practice by contrary messages. Moreover, despite the fact that the majority of the public appears to endorse the notion of individual and collective responsibility for crime control and prevention, as the results of a recent ICM poll commissioned for the IPPR suggest, 'few, if any, feel that this responsibility is easy to fulfil' (Edwards 2001: 8). Many people lack the requisite information and assistance, or feel that they are inadequate and inexperienced. Basic initial training is required to show people that they do have skills that can be put to good use and enhanced.

There are a number of important reasons why public involvement matters and why facilitating public participation is an essential government responsibility. Firstly, public involvement can increase public confidence and assuage public fears. This can be achieved through greater information and by moderating public expectations of what criminal justice can deliver. In particular, it can be a means of addressing misperceptions by explaining sentencing policy through information and education. In this way, greater public involvement in criminal justice could be a check against more punitive Government responses and the growing use of imprisonment. Secondly, public participation may help encourage greater synergy and increase the flow of information from the public. However, a genuine 'partnership' of this kind is a two-way relationship which imposes responsibilities upon the criminal justice system. This includes facilitating (and in some cases protecting) people in exercising and maximising their involvement with the criminal justice process.

A relational dynamic

Thirdly, public participation may strengthen and reaffirm communal bonds and encourages a civic responsibility. Fourthly, it allows those involved to develop a keener understanding of the workings, principles and values of the system. This is important because criminal justice is a highly 'public' process in

the sense that it occurs in the name of the public, but in practice it is something about which the public remains considerably uninformed. Fifthly, it can help to break down inward-looking cultures and ensures a degree of transparency and accountability. Finally, it assures a relational dynamic. It can help ensure that proceedings which may otherwise be dominated by technical, bureaucratic or managerial demands also accord to the emotional and expressive needs of responses to crime and in a similar vein, ensures fairness.

Contrary to popular belief, public involvement does not necessarily reduce costs. Lay volunteers tend to work at a slower pace than do professional counterparts. Just because a system is based on unpaid volunteers (such as the lay magistracy and youth offender panels), this, of itself, does not mean that it is necessarily cheap. There are significant costs associated with providing training, advice and information for volunteers, as well as other supporting infrastructures which are required simply because volunteers are involved. In any case, to couch public participation in terms of 'value for money' maintains a paternalistic relationship between the public and criminal justice institutions and professionals.

'Citizen action' versus 'vigilantism'

Public involvement can take a number of diverse, and sometimes competing, forms. Clearly, the capacity for public participation is greater at the 'front-end' of the system with regard to policing and community safety than it is in relation to forms of punishment, such as imprisonment. One of the difficulties is that public engagement with criminal justice will, by its very nature, have contrasting interests (crime detection as distinct from throughcare, for example).

Public participation is not a self-evident good (recall the stocks and public executions). Strategies aimed at empowering the public with regard to crime have injected ambiguity into the power to define and deploy the legitimate use of force. Most notably, this is apparent in struggles over the distinction between appropriate 'citizen action' and 'vigilantism'. There is a need for government and criminal justice authorities to synchronise private and public provision of security services and active citizenry. The question is whether the state (either local or national) can adapt to this new role as 'power container' without slipping back into pretensions of monopolistic authority.

In addition, there are a number of limits to the potential scope of public participation. Public participation is limited by practical difficulties as well as by the potential unintended consequences of participation. For one thing, it is becoming harder to attract lay volunteers. Given the time demands of training, the travel demands (which may require lay people travelling across a county – particularly with the closure of local police stations, courthouses etc) and the difficulties for those in employment of matching voluntary work with their careers, whilst those unemployed may jeopardise their chances of obtaining a job.

Limits to participation

There is not always an unambiguous correspondence between volunteering and representativeness. As a consequence, representatives may poorly represent the diverse publics from which they are drawn, and may be perceived by others to be unrepresentative and, therefore, less legitimate. In addition, lay people drawn into criminal justice may become 'professionalised' and lose the very qualities which made them valuable in the first place. Also, there tends to be an inverse relationship between activity and need. Participation in local crime prevention activities is highest (and success most likely) among people who are moderately concerned about crime but where crime levels are low. High levels of fear of crime can become incapacitating.

Moreover, there are limits to what citizens can accomplish through institutions of civil society alone as well as knock-on consequences (through crime displacement) of private or collective activity for others. One person's (or community's) security may adversely impact upon that of others. Furthermore, we need to be as aware of dangers of 'unsocial capital' as the advantages of 'social capital'. Also, criminal justice, by its nature, is coercive, hence, absolutist notions of voluntariness are unhelpful. In addition, there will be situations – given the nature of the offence or the relationship between the parties – in which participation is undesirable and safety issues may be a particular consideration. Finally, the involvement of lay people within the processes of justice necessitates that due concern is given to any conflict of interests that lay people may bring to their participation, particularly where they are cast in a decision-making role.

Rethinking public participation

Rethinking public participation means moving the debate on from seeing public participation in criminal justice as merely a question of how lay people can act as (cheap) adjuncts to the current justice system. Instead, we need to move on to the point where we begin to rethink the nature and purpose of criminal justice itself and the role of public participation therein. In the quest to professionalise and bureaucratise justice we have tended to lose sight of the important deliberative framework of justice and the involvement of the public in that deliberative process. It is this framework which needs to be revived and within which the public should be accorded a greater participatory role.

We need to develop a language which speaks of active citizenship, community participation in public life, and the stimulation of ethical values as necessary ingredients in a more socially just public polity. But such a language would not see these as the antithesis, or instead, of 'public' provision. Rather, the state has a fundamental role in seeking to empower and enable individuals, groups and communities to realise their potential and to integrate them within a wider social frame. But in rethinking the role and value of public participation in criminal justice and the precise terms upon which such participation should be organised, we must tread a careful path between two recently fashionable tendencies: the managerialisation of public services and the communitarian appeals to local justice.

Limits of community

On the one hand, there is the managerialist obsession with speed, cost reductions, performance measurement and efficiency gains, which in the field of criminal justice has often led to a move away from 'local justice' – understood as local people contributing to the handling of cases in their own local area – and a professionalisation in which lay members of the public have less involvement. On the other hand, there is the communitarian lobby which calls for communities to take control of their own policing, crime control and dispute processing: the 'policing by communities rather than the policing of communities', such that 'the more viable communities are, the less the need for policing' (Etzioni 1995: ix-x). Despite decades of research to the contrary, this implies, rather simplistically, that more 'community' equals less crime.

The problem with the managerialist impulse is that it allows little space for the human, expressive and emotive aspects of criminal justice. As a consequence, it rides rough-shod over questions of party involvement, fairness, legitimacy and public confidence. It prioritises organisationally defined outputs over social outcomes. By contrast, the communitarian urge over-exaggerates the role that communities can play in responses to, and preventing, crime. It over-idealises as unproblematic the nature of communities' moral orders. 'An assertion of "community" identity at a local level can be beautifully conciliatory, socially nuanced, and constructive but it can also be parochial, intolerant, oppressive, and unjust' (Crawford 1997: 294). Appeals to 'community justice' often fail to address the relations that connect local institutions to the wider civil society of which the locality is a part or the manner in which local justice may impact upon neighbouring areas. The role of community as a force for social cohesion is limited by the current reality of geographic inequality, the spatial concentration of wealth and poverty and increased social polarisation.

Deliberative justice

An alternative to both the technocratic and managerialist notions of bureaucratic justice, on the one hand, and communitarian inspired notions of community justice as parochial and local forms of control, on the other hand, might be a version of deliberative justice. 'Deliberative' justice occurs where people 'deliberate' over the consequences of crimes and how to deal with them and try to prevent their recurrence (Braithwaite 1998). The form of deliberative justice I have in mind is one in which public participation is contained within a framework which accords to standards of procedural fairness and human rights.

Deliberate justice encourages public discussion and emphasises reasoning, debate, communication and normative appeals, offering proposals for how best to solve problems or meet legitimate needs. Deliberation opens up opportunities for changing conditions of injustice and promoting justice. Within this should be embodied elements of both procedural and substantive justice. We need to maximise the opportunities for participation while constructing minimal, yet critical, limitations on the nature and form of participation.

As an element of democratic renewal, public participation in criminal justice implies representation. All of the public cannot (nor will they necessarily want to) participate all of the time. Certain members of the public – through their participation in criminal justice – will need to act as representatives of public interests. As such, they need to be authorised and held to account. This suggests further anticipatory and

retrospective discussion as to public participation and representation. Participation should not stand as an opposite to representation but one should require and imply the other. Without citizen participation, the connection between representative and constituents is most liable to break down – potentially turning the representative into a detached élite.

Certainly, there is a need for professionals and procedures to contain and regulate aspects of public participation by mitigating power differentials between the parties, challenging arbitrary outcomes, rendering procedures open, accountable and contestable under the rule of law. However, it is not clear that this cannot occur in interest-based and party-centred negotiations as distinct from rights-based and lawyer-centred proceedings.

Untamed justice

Formal legal rights and due process should act as bounding mechanisms that empower and constitutionalise informal processes. For example, the notion of proportionality – with regard to the relationship between the harm done and the agreed outcome – has a role to play as a principle in deliberative justice. This does not suggest that all outcomes will be the same for the same offence, but that there are accepted boundaries as to both minimum and excessive outcomes. What is not being argued for is the replacement of criminal justice by an untamed form of community justice – as some commentators advocate (Clear and Karp 1999; Nellis 2000) – but that the two be held in a complementary, dynamic tension such as to enhance a form of deliberative justice: reducing but not eradicating the specialist professional management of crime.

'Relational' and 'restorative' justice can be described as forms of 'deliberative' justice. 'Deliberative' justice is facilitated where there are existing relations of care and trust and where a commitment to collective problem-solving is apparent. However, there will be circumstances in which deliberation cannot even begin and individuals who refuse to engage in deliberative processes for a variety of reasons. In these instances, a greater emphasis upon the professional management of cases and problem-solving will be required. Moreover, the role of criminal justice in solving problems remains severely limited. Hence, synergy with other policy arenas – education, health, employment, housing and so on – more able to deliver solutions is paramount. The challenge, here, for criminal justice agencies, local authorities and other relevant organisations is to dissolve the internal compartmentalisation of problems, to connect and collaborate with other – private, public and voluntary sector – organisations and to 'join-up' services around harm reduction.

Communal morality

To sum up, much more can be done to encourage greater public participation in criminal justice and this has the potential to reverse the vicious circle of punitiveness in recent policy-making. As well as considering public participation as an add-on to existing criminal justice institutions, in which the public supplements organisational practices, we need to re-examine the role of the public at the heart of criminal justice. There is considerable scope for criminal justice to be a more deliberative process which, in drawing upon public participation, strengthens active responsibility and fosters a more civic public polity.

However, at the same time as maximising the opportunities for public participation, we also need to set minimal, yet critical, limitations on the form of that participation. We need a socially inclusive process – particularly with regard to traditionally neglected and suppressed groups – to protect against majoritarian rule and safeguard vulnerable minorities from the coercive and oppressive power of communal morality. We also need procedural mechanisms – particularly with regard to conflict negotiation and communication – to check power differentials and guarantee a minimum respect for the different parties involved. In this way, we can envision a form of public participation that is fair and just, which acts as a check upon state power, but which also maximises its democratic and civic potential.

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