

Social Justice and Criminal Justice: an *Ideas Wales* Policy Discussion Paper

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1. Introduction:

The subject of social and criminal justice is vast and complex. As such it has not been possible to cover every aspect of it in this paper. As criminologists we would, however, wish to remind readers that the subject not only includes the young person who turns to crime because of limited legitimate opportunity structures in the locality, but also the well-educated and wealthy: those who make decisions in boardrooms that result in health and safety policies in the workplace being put under strain or perhaps even risk major environmental damage to distant communities in developing countries. The crimes of the powerful - which include fraud, pension pillaging and corporate manslaughter - still tend to receive less media coverage than the hooded folk devil on the social housing estate. Whilst it is important that we do not excuse or over-sentimentalise the perpetrators of crime and disorder in poor neighbourhoods, as democratic socialists it is imperative we do not lose sight of the often greater harms caused by those committed to the unscrupulous pursuit of profit at any cost. At a time when it is considered impolite to wage class war in an election campaign, it is sobering to be reminded how very much social class and income distribution still matter: in terms of life expectancy, life chances, education, health and, indeed, whether one is likely to receive a criminal record or an OBE. It should be understood that to experience long-term poverty in a low-income, high-crime neighbourhood is to experience a slow but deadly violence. The perpetrator, however, remains anonymous, unaccountable and unapprehended.

The powers of the Welsh Assembly Government are, of course, limited with regard to some of the afore-mentioned issues. Nevertheless, its commitment to the principles of equality of outcome and universalism in the provision of public services is commendable. Given this commitment, the focus of this paper will address how criminal justice agencies in Wales can be aligned more closely with the social justice agenda of the Welsh Assembly Government.

2. Background:

2 (a): Social Justice:

The social justice agenda in Wales is wide-ranging, reaching into almost all areas of Welsh Assembly Government work. It represents the essence of a distinctive political philosophy for government policy in Wales and highlights some differences of approach between Cardiff and London. Whilst it is important not to exaggerate these differences, it should be noted that Welsh Assembly Government's approach has been more focused on the principles of equality and inclusiveness than has that of Westminster.

Section 120 of the Government of Wales Act 1999 requires the National Assembly to ensure that its functions are exercised with due regard to 'equality of opportunity for all people'. The legal requirements within the Welsh context are wider than in most other parts of the

United Kingdom; equality guarantees extend into all possible contexts including, language, religion and even social justice. Equality in Wales is also regarded as an active principle; it is not simply a question of ensuring non-discrimination by treating everybody the same. It is more positive, actively ensuring that people can access services equally. This pro-active approach is illustrated in the Welsh language provision and permeates all aspects of the Welsh government's work. It is against this background that Welsh Labour in government frames its current policies with reference to a commitment to progressive universalism (Davies and Williams, 2009).

The second principle, inclusiveness, was an important feature in the debates that preceded the establishment of the Assembly and has been subsequently operationalised in the institution's short history of existence. Initially, when the concept of devolution was under consideration, some within the Welsh Labour movement were antagonistic towards the project. Support for the policy was elicited partly by depicting devolution as a means through which inclusive government could be delivered, thus unifying diverse elements within Welsh society in a common institution that was sensitive to social, political and cultural differences (Davies, 1992, 1996, 1997, 1999; Hain, 1999; Wales Labour Party, 1996; White Paper, 1997; National Assembly Advisory Group, 1998). Moving beyond political opportunism towards an admittedly fragile cross-party consensus was a considerable achievement for Welsh Labour, the other pro-devolution parties and a multitude of organisations from civil society. That painstaking process of negotiation and compromise undoubtedly helped to establish the foundations upon which the Assembly was eventually constructed. Since the Assembly's inception, inclusiveness has gained in importance within the Welsh Assembly Government and this has resulted in a greater sense of accessibility, equality (Chaney and Fevre, 2001, 2004), representativeness, transparency, participation and accountability within the institution of the Assembly. The fact that Welsh Labour has governed effectively and reasonably harmoniously with two coalition partners in the intervening period bears eloquent testimony to the considerable shift that has taken place in Welsh political culture within a relatively short timeframe.

Given the history outlined above, we would wish to underline the importance of Welsh Labour continuing to be guided by the principle of equality in addressing its social justice agenda and managing diversity through the practice of inclusive government.

2 (b): Criminal Justice:

Criminal justice encompasses a broad range of services and a large number of agencies, especially following the expansion, through the Crime and Disorder Act 1998, of responsibility for tackling community safety. However, the core agencies at the heart of this responsibility are the Police, Crown Prosecution Service, Courts, Youth Justice, Prison and Probation services. For that reason it is the work of these agencies that will form the main focus of this section of the paper.

Under both the 1999 and 2006 Transfer of Functions (Wales) Acts, executive powers in relation to policing, prisons and probation etc. remain within one of the UK government Ministries (the Home Office for the police, Attorney General for the Crown Prosecution Service and the Ministry of Justice for Courts, Prisons and Probation). Whilst the Richard Commission (2004) discussed devolving policing, his recommendation was that it should remain under Westminster control. The *All Wales Convention 2009* did not discuss

devolution of the responsibility for policing (it was outside its remit) but did recognise that the Home Office needed to systematically take account of Welsh interests and needs in its decision-making process and policy setting processes. Moreover, it was felt that the Wales Office should play a key role in ensuring that these were represented in London and that UK government policies were understood in Wales. It also recognised a need for more work to be undertaken in relation to the effects of devolved law-making powers on policing in Wales and the changing relationship between Welsh and English police forces. Whilst centralised reports have tended to focus on policing and its role in the new devolution arrangements, a careful and detailed analysis of the effects of devolution on each agency within the criminal justice system needs to be considered.

Notwithstanding the fact that criminal justice is non-devolved the Welsh Assembly Government has a strong and growing influence on service delivery in this area. In some cases this arises through shared responsibility for financial administration. For example, funding for police authorities is the joint responsibility of the Home Office (40%), Welsh Assembly Government (30%) and local authorities, (30%). In other cases, it is because the precise policy area is mainly administered locally. This is seen in the development of strategies to deal with crime reduction and prevention, sections of youth crime and anti-social behaviour, domestic violence, tackling substance misuse, arrangements for mentally disordered offenders, and implementation of transport and roads policies. Linked to this is the fact that the delivery of a number of central criminal justice activities rely on public services and agencies that are devolved: education, health, social services and housing being four key areas. This means that the police and other criminal justice agencies need to work in partnership with these devolved agencies and groups so effectively allowing the Welsh Assembly Government a crucial influence over criminal justice in Wales. For example, under the Welsh Ministers (Transfer of Functions) Order 2008 (2) Power (under Section 47 of the Prisons Act 1947), responsibility to provide prison education, training and library resources in public sector prisons in Wales has now been devolved to the Welsh Assembly Government. This means that the Welsh Assembly Government must work in conjunction with the National Offender Management Service (NOMS) Cymru to deliver this service. Similarly, this is the case in relation to prison health, an area of service that was devolved in the Assembly's second term. A broader example all matters concerning both community safety and the PREVENT agenda (ACPO, 2009). These are discussed in local multi-agency committees which include many agencies answerable to Cardiff as well as the more centralised services such as the police working in partnership to improve life for all people in Wales.

As the above examples illustrate, even though the main criminal justice powers have not been devolved to Wales, the Welsh Assembly Government still has considerable influence over their delivery. In response to this situation a number of criminal justice agencies - the police in particular through the Police Liaison Team - sit on agenda-setting consultative fora such as the Wales Spatial Plan. Such collaborative arrangements and organisational reconfigurations represent the ongoing and unfolding process of devolution in response to new inter agency policy challenges. These need to be continued and expanded. The *All Wales Convention 2009* also recognised that there needed to be more engagement between both Ministries and agencies in England and Wales. These inter-relationships and their effects should be considered both within Wales (e.g. in setting performance targets which are relevant to Wales) and between agencies on both sides of the border.

3. Principles Informing Policy:

As previously noted fairness, equality and inclusiveness are core concepts and should be particularly salient in relation to the domain of criminal justice. Ideally, the criminal justice system should strengthen democracy through empowering people to enjoy security and liberty. This ideal requires social justice to guarantee fairness within society through Welsh Assembly Government powers being used to resolve collective problems in delivering a just and genuinely equal society. To achieve this, decisions and actions within the criminal justice sphere should promote the ideals of fairness and equality and be focused on ensuring security.

In criminal justice terms it requires that empowerment, rather than repression and punishment, should be the overarching aim. Ideally criminal justice agencies should be concerned with the prevention of crime. This involves an implicit commitment to social justice. Removal of the conditions most closely associated with crime is preferable to punishment after the event. Control (through punishment) should therefore only be used as a last resort. Imprisonment, or other removal from society, should be used only when it is necessary to guarantee safety, security and fairness for others; thereby enhancing the wider security and empowerment of law-abiding citizens. Where punishment is necessary it must be tempered with efforts to rehabilitate the individual perpetrator and promote her/his social reintegration and positive participation in community life. Punishment can, of course, empower law abiding citizens and enhance their sense of security. Punishment, when also linked to rehabilitative and reintegrative measures, can meanwhile empower the offender to lead a pro-social and constructive life in the community. When such rehabilitative and reintegrative measures are effective, they also strengthen the security of local communities. It is important to recognise that when criminal justice and state power become too closely wedded to punishment and controlling individuals the dangers to civil society are palpable. If, however, there is a commitment to maximising the rights of all - including offenders – government can use the apparatus of the state to deliver the conditions for social justice and thus meaningful freedom for individuals. In light of this analysis the following should be put in place:

- A clear, centrally led policy of social justice and empowerment for all; including victims and their families; victimised communities; perpetrators and their families; and perpetrator communities.
- Protection of victims and communities should be paramount; ideally through prevention.
- A system of constructive intervention with punishment where necessary. Punishment is important and necessary, but should be used sparingly and always tempered with a commitment to offender rehabilitation and reintegration.
- Within the framework of centrally designed Welsh Assembly Government policies and principles, the empowerment of more local communities should be facilitated through local agenda-setting.
- Political accountability to central and local government as well as other public bodies.
- Legal accountability of criminal justice organisations at all levels of governance: local, to the National Assembly and, where appropriate, UK.
- A complaints system that addresses both practice and policy issues (possibly using a model based on the Independent Police Complaints Commission, IPCC).

4. Areas for Improvement:

Whilst both criminal justice agencies and the Welsh Assembly Government already work together in a well-integrated and supportive capacity, the latter still has no power to set criminal justice agendas. As a result there is often a mismatch between the largely metropolitan focus of the joint England and Wales strategic plans (which tends not to sit well with Wales' more diverse and inclusive strategic planning processes). Furthermore, in each of the sectors the present system has tensions. For example, the Welsh Assembly Government now has control over health, education and training in prisons but it has no control over the custodial context within which these services are delivered (the ethos could be punitive, rehabilitative or restorative). Context and ethos matter in the sense that the nature of the custodial setting can have a profound impact on the effectiveness of the programmes delivered or the health of inmates. Some devolved services rely heavily upon Welsh based but Westminster led agencies which may not always adequately take account of the Welsh policy or context; this can have negative consequences upon the delivery of Welsh initiatives. It can also lead to missed opportunities: the recent Violence Against Women Consultation (2009), for instance, might usefully have embraced criminal justice initiatives more clearly linked with the work of Welsh Assembly Government controlled agencies and within the ethos of social justice.

Although the present devolution settlement allows scope for the resolution of some difficulties on a case-by-case basis, there is the possibility that tensions may increase in relation to some issues. When the Richard Commission (2004) decided to leave policing under the auspices of the Home Office, the deliberations were heavily swayed by practical problems such as pay and conditions and the need for cross border collaboration; issues which have been resolved in other sectors; issues which, as the *All Wales Convention 2009* points out, need to be addressed even under the present system. Less weight seemed to be placed on the need for integrated Welsh policies and the focal part played by criminal justice in this agenda, the *All Wales Convention 2009* recognises the real dangers associated with such an approach and, if the status quo continues, the need for greater consideration by Westminster and especially the Home Office and Ministry of Justice of the needs of the Welsh context. The decision not to devolve policing might therefore be usefully revisited, taking greater account of the broader policy aims in Wales. Logically, if social policy considerations are placed centre stage then the question of whether youth justice, prisons and probation should be devolved is worthy of inspection, indeed these areas might usefully precede policing in this respect. To that end the cabinet will shortly be receiving a report exploring the potential benefits and risks involved in the devolution of youth justice (Morgan, forthcoming 2010).

The logical next step would be to explore the potential to devolve probation and then other offender management services. Even if all criminal justice agencies and functions are devolved to Wales, the Welsh Assembly Government needs to ensure that Westminster and Westminster departments take full account of the characteristics, challenges and ethos of Welsh policing, probation etc. in all their decision making. The Welsh Assembly Government also needs to ensure that the approaches of agencies operating in Wales to interpretation of policies emanating from London remain as close to its own policies as is possible, especially in relation to those on social justice and inclusion.

5. Recommendations:

Strategic Ideas

- Further consideration should be given to devolving the police, probation, courts and prisons to the Welsh Assembly Government. Indeed the establishment of a single administration of justice in Wales is a proposal worthy of close inspection. In an increasingly devolved system, the devolution of both the criminal justice system and the administration of justice become stronger. Before this could be considered, of course, detailed analysis and research on the full implications would need to be undertaken. Nevertheless, it is worth making the point that such a transfer of powers would enable the Welsh Assembly Government to deliver a more cohesive approach to crime and disorder, and ensure a seamless policy agenda between crime control and community safety. Moreover, under the *One Wales Document* (2007: 29) both Labour and Plaid are committed to:

‘consider the evidence for the devolution of the criminal justice system within the contexts of:

- (a) devolution of funding; and
- (b) moves towards the establishment of a single administration of justice in Wales.’

Funding issues are presently under discussion so the question of a devolved criminal justice system needs to move centre stage as devolution of these areas will have a profound effect on any funding settlement to replace the Barnett formula. Devolution of all aspects of the criminal justice system simultaneously might be difficult to manage. In the circumstances a staged process might be favoured. If, as seems possible, Youth Justice is devolved first, the logical next step would be the Probation Service. This, in turn would lead the way for other offender management systems to follow. The devolution of the National Offender Management System (NOMS) would be a logical next step. This would create the opportunity to develop effective and coherent interventions grounded in the Welsh social justice agenda. Ultimately, of course, such a development would also pave the way for devolution in other areas of criminal justice. Were criminal justice powers to be devolved, though, the pressure to move to a punitive agenda might be stronger. Political consideration should, therefore, be given to how best to defend the principles of social justice and inclusion in the domain of criminal justice.

There also needs to be detailed consideration of the impact upon and need to alter the broader administration of justice in Wales.

- Before new policy agendas are devolved, there is a need to work towards the establishment of Wales-only research and statistical teams. A Wales-only Home Office Regional Research and Analysis Team could, for example, replace the present Wales and South West framework. This would facilitate a more focused, evidence based analysis which could inform policy formation and practice development in Wales. Even if criminal justice is never devolved completely, such a move will enable a clearer understanding of the problems faced in Wales and help find the most effective solutions. Clearly the recent establishment of the Welsh Centre for Crime and Social Justice (WCCSJ) and the Wales Institute of Social and Economic Research, Data and Methods (WISERD) are both powerfully important developments as they are bodies capable of delivering co-ordinated high quality, broad-based crime and justice-related research across Wales.

- Whether agencies are devolved or remain under the auspices of London, the Welsh Assembly Government can build on the work that has already commenced. Work in this area needs to continue to address policy and resource lacunae (especially in the rural context) as well as building inclusive policies in fields such as housing, education and health.
- Development of a truly integrated Welsh criminal and social justice policy should be built on a sound evidence base. This requires quality information, research and analysis to be undertaken. WCCSJ and WISERD have the expertise and capacity to provide the knowledge-base and theoretical insights from which new policies can be built.
- As part of a new Welsh approach to the area of crime control, the Welsh Assembly Government might sensibly reopen the agenda of what policing, probation and prisons are designed to deliver. How can the Welsh Assembly Government ensure that they empower citizens and strike the correct balance with the social control of anti-social individuals? An emphasis on community safety and cohesion rather than on crime control seems more closely suited to the Welsh agenda. This entails a move away from a confrontational approach based almost solely on accusation and blame towards one based on the principles of partnership, solidarity and the reintegration of ex-offenders into the community. Such an approach implies delegating greater responsibilities to local communities in order to promote a sense of ownership. Community-based rehabilitative programmes designed to change offenders' attitudes and behaviour are also more likely to have success if the ethos in Welsh custodial regimes is aligned more closely with this type of philosophy. For example, evaluative research could be undertaken on the efficacy of more restorative prison environments that contain and punish (by secure removal from society) whilst simultaneously empowering those incarcerated.

A More Focused Agenda

- We need to move towards even closer co-operation between agencies working in the field of criminal justice, crime control and social justice. WAG has already made a move in this direction through the inception of the National Forum on Criminal Justice. This initiative should facilitate more effective inter-agency and inter-departmental co-operation and provide the foundations of a solid infrastructure of mutual support should the argument for further devolution of criminal justice functions gain more political traction. Through the National Forum the Welsh Assembly Government also needs to provide a clear lead to agencies on issues such as data sharing and the distinctive Welsh ethos. This will help agencies make more informed decisions concerning victims, perpetrators and communities. There is still reluctance by some agencies to share information with partners. So, for example, whilst the police are the lead agency in MAPPAs (Multi-Agency Public Protection Arrangements) and quite rightly expect information on high-risk offenders to be properly and fully shared by others, they do not always effectively reciprocate in areas such as anti-social behaviour. Information shortfalls of this sort weaken the impact agencies can have on crime control and community safety. Whilst Community Safety Partnerships have made significant progress, even here more might be achieved. A greater sense of openness between agencies will ensure the following:

- i. Agency partnerships are in a position to identify whether punishment or control are necessary, and calibrate the upper limits of any intervention accordingly.
- ii. Identification of any possible perpetrator needs so that intervention is more likely to be constructive and address underlying problems to support individuals to make more acceptable, pro-social choices in future. This includes ensuring that there is local provision to meet needs such as medical support, including mental health interventions and financed drug treatment programmes, for both adults and young people. Other forms of social support might include finance and accommodation.
- iii. Local provision of similar support for victims (both practical and emotional) and communities afflicted by high levels of crime and social disorder.

All of this requires a more cohesive working relationship between the police, probation service and prisons as well as with other public services such as social services, education, housing, fire and health, and third sector organisations in such areas as social housing. Delivery of these would require a marriage of the strategic aims of each of the criminal justice agencies and of certain other public bodies and third sector agencies. In order to achieve this the Welsh Assembly Government needs to:

- i. Promote openness and trust between agencies at all levels, but particularly at front-line / operational levels.
- ii. Ensure access to outreach work for all service users of all agencies, including some semi-public or third sector agencies; this might be achieved through provision of broader support structures and initiatives such as FIPs (Family Intervention Partnerships).
- iii. In line with its equality agenda, ensure that there is outreach provision, not only for perpetrators but also for others in need - especially victims of crime and anti-social behaviour.
- iv. Require and support better information gathering and reporting to the National Assembly. This will help ensure accountability and inform future decision making.
- v. Ensure that punishment and control measures are, where appropriate, complemented by adequate support for the perpetrator. This will not only maximise the chances of promoting pro-social behaviour and rehabilitation on the part of the perpetrator, but also increase her/his sense of personal empowerment.
- vi. In line with the more inclusive agenda promoted by the Assembly in relation to young people (Welsh Assembly Government, 2000), work towards the provision of similarly supportive strategies for adults.
- vii. A move away from a risk based criminal justice system towards one based on justice, mitigated and underpinned by restorative and rehabilitative policies.
- viii. Some policies, particularly those emanating from the Social Justice agenda, are to be applauded. For example, the Assembly Government has recently launched the Violence Against Women initiative. This is an exciting new initiative that offers welcome protection and support for women. However, it might have gone further, particularly in its protection of children living in homes where there is domestic violence.

<http://wales.gov.uk/docs/dsjlg/consultation/090622voilenstagainstwomenen.pdf>).

6. Conclusion:

This paper has hopefully highlighted some of the ways in which criminal justice agencies and public services in Wales can work together in a partnership based on a common vision of the good society. A good government in a good society, meanwhile, should try to create the social conditions that minimise the causes of crime and maximise the personal security and individual freedoms of the citizenry. In contrast to the view expressed by the neo-cons, it is our view that the state is capable of delivering greater personal freedom by intervening to create a more equal society. The personal criminal responsibility of the offender, meanwhile, needs to be weighed against the extent to which society has delivered on its social responsibilities to the individual citizen in the dock. Has the offender been in receipt of all of his or her social entitlements? Social justice and criminal justice are, therefore indivisible. In light of this, we would exhort Welsh Labour to continue in its pursuit of policies that promote a 'solidarity society' (Horton & Gregory, 2009): one that replaces the notion of 'us and them' with the idea that 'we are all in this together'.

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