



Newsletter – Winter 2011

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Riotous assemblies – explaining the riots

The London Association for Youth Justice recently hosted an event at which John Pitts, Professor at the University of Bedfordshire (and a Doctor of Letters – which apparently means that he is cleverer than your average book reader) led a discussion on the August events, based in part on a article which he has written for *Youth and Policy* journal. His starting point was that explanations of the riots have typically focussed around two polarised positions: the government and much of the tabloid press has painted a picture of an upsurge of wanton criminality, the collapse of morality – in short the problem of the 'Broken Society': as Cameron put it '*the slow-motion moral collapse that has taken place in parts of our country these past few generations. Irresponsibility. Selfishness. Behaving as if your choices have no consequences. Children without fathers. Schools without discipline. Reward without effort*'. The problem with that account is that youth crime – indeed crime in general – has been falling for at least 15 years. In the red corner, the more radical view tends to focus on poverty and relative disadvantage – which is OK in its way, but fails to explain why people don't go late night shopping all the time.

Looking at the details of what happened, of course, helps to round out whichever explanation you have more sympathy with. In Tottenham Hale, a black man was shot dead by the police, and while he may have been no angel, early police accounts that he had opened fire on them appear to have been fictitious. In the absence of any consistent attempt to provide the victim's family with adequate information, and a very slow start from the Independent Police Complaints Commission, a demonstration was

called which led to disorder when the family's requests for discussions were not met and the police responded a little heavy handedly to a young female demonstrator who threw a brick. Unfortunately, this scenario is a familiar one: the police have been involved in the deaths of 120 black people since 1997, a fact that John suggested would be well known to the black community if not to their white counterparts. The details of what happened elsewhere also tell a story. The previous week in the Pembury Estate in Hackney, the police had mounted a dawn raid that both resulted in the arrest of 23 suspects for drug related offences and caused significant damage to the premises they entered. When the riots began there, residents effectively barricaded the estate off as if declaring UDI. In Salford, where Hazel Blears – the sitting MP – was rumbled for pocketing £13,000 as part of the MPs expenses scandal – her constituency office was attacked.

One could also give a political account of the targeting of major retail outlets – many of whom have in recent years attracted publicity about widespread tax evasion and the use of sweatshop labour. That explanation however isn't obviously sufficient to explain damage to / looting of local corner shops. John argued that from the outside, commentators see a community – but from the inside, the sorts of neighbourhood that experienced unrest do not look like that at all. Rather there are differentiated groups living together, one of whom might be characterised as having invested everything in the community (ie the small shopkeepers) and another who have no investment at all in the community which for – not entirely bogus reasons– they have come to see as part of their oppression. Norbert Elias, who writes of the civilising process, also notes that the reverse is possible where forces of law and order are not regarded as dependable or are seen to operate against you. The withdrawal of the state leads to an erosion of empathy – and an experience that might be equated with an 'anti community' ethos. (See, told you he was clever.)

Government policy has moreover accelerated this process – while many commentators have pointed to the cuts as a potential cause of the riots, it is less commonly noted that one of the biggest losers as a consequence of the contraction in public sector employment are ethnic minority populations who are overrepresented in the local authority labour force, particular in the lower reaches where levels of redundancy have been highest. John suggested that in this context we might do well to think about Jurgen Habermas' notion of a legitimation crisis (there were cries of '*we do nothing e/se*'). Habermas argues that one of the main functions of government is the management of capitalism through ensuring legitimacy of the current arrangements. The forces of the state ought then to focus on areas where potential legitimacy might be at its weakest. But recent history suggests a failure on the part of government in this regard: banker's bonuses, MPs expenses, FIFA bungs (something to do with football apparently) and the fact that government alcohol policy has been put together by the brewers and planning policy by the construction industry, are instances of reprehensible behaviours on the part of authority. In this context, the government's response to the recession – that we are all in this together – has been experienced in some quarters as a little hollow. The riots have then inevitably given the government pause for thought and led to some tensions: all of a sudden, as attention shifts from

'toffs on the gravy train to oiks on the omnibus', it appears that they may well need a content police force and a well staffed criminal justice system after all.

While the government was at pains to deny any links between public sector cuts and an apparently widespread desire to pop into Carphone Warehouse after closing time, a recent issue of *Children and Young People Now* provided some anecdotal evidence that there may be a relationship. Haringey for instance has experienced cuts of 62% in youth provision this year and 30% additional savings next year – a total reduction from £5.11 million in 2010/11 to £1.37m in 2012/13. Salford's youth provision has / will be cut by 48% over the same period, while expenditure in Lambeth this year is £6.22m compared to £8.19m a year ago. Ealing has protected its youth service budget – but at the expense of Connexions which has taken the bulk of the 13% cuts implemented this year. The Council lead for children's services was not convinced of the connection: *'it is unlikely that these savings to youth projects had a direct impact on last week's disorder as many of the people involved in the riots were adults'*. Probably true, but then when you factor in cuts to adult services ...

What happened to those caught up in the riots

While initially representatives of the courts argued that sentences meted out to children caught up in the riots were no more severe than those imposed for similar offences at other times, we now know that such a position is untenable. The Guardian reported that emails, emanating from the London regional office of Her Majesty's Courts and Tribunal Services and circulated to justices' clerks, urged magistrates to depart from sentencing guidelines when dealing with riot related cases since *'nothing like this was envisaged'*. Figures published by the Ministry of Justice suggest that this guidance was taken to heart.

By midday on 12 October 2011, 1,984 people had appeared in court for riot related matters, of whom 26% were aged under 18 years with a further 27% aged 18 – 20 years. In case you are wondering, this compares with equivalent figures for last year (involving similar offences) of 16% and 15% respectively, suggesting either that those involved in the riots were younger than your average shoplifter or that the older participants were better at evading capture (and less likely to put their activities on youtube or Facebook). Although the press has gone to town on the occasional public schoolboy arrested for looting (a personal favourite, the eighteen year old whose statement to the police was cited on Panorama: *'In my view the whole of the riots is an unheard voice so to speak of everyone lower down the social system fighting back'*. Police Officer: *'So you wanted to speak up for this unheard voice of everyone down the social system.'* Young person: *'Not even that. I wanted some clothes as well.'*) It is significant that 42% of children appearing before the court were entitled to free school meals and 64% lived in one of the fifth most deprived areas. Two thirds were classified as having some kind of special educational needs.

Such background circumstances however, don't seem to have mitigated outcomes unduly. Thirty one percent of children remanded for riot related matters were refused bail. Where cases had proceeded to sentence, almost a third resulted in a custodial

sentence. This compares with a custodial rate of 5.3% for similar offences during 2010. The average length of detention was also 2.5 months longer.

Much has been made of the fact that the majority of those arrested in the course of the riots were previously known to the police – and this has been used to confirm that the disturbances were motivated by criminal instinct rather than economic, political and social grievances. Ken Clarke, the Minister of Justice, used it as evidence of the ‘fact’ that our criminal justice system is ‘broken’. Government data do show that 62% of children arrested had an antecedent history – but in some respects this is simply an artefact of the way that the majority of riot participants were apprehended. Few were arrested at the scene and most detections have arisen as a consequence of police recognising people caught on CCTV. If they recognise them, then there is a good chance that they are a family member or they have had previous dealings with the criminal justice system.

Custody pathfinder projects

Custody pathfinder projects finally got under way in four pilot areas on 1 October 2011. One might see this development as a number of things coming together. First, the Youth Justice Board, for some years, had a target to reduce child imprisonment but – in compliance with that well known law – the population of the secure estate only began to fall once the target was formally abandoned (well if you keep watching it that kettle never will boil). Nonetheless, a smaller youth custodial population remained a government ambition. Second, devolution of the custody budget – whereby the cost of locking children up is transferred from the centre to the local authority – has been on the agenda for quite some time. Conceived as a mechanism for reducing custody – roughly based on the idea that if ice cream is free you are likely to eat it until you are sick, but if you have to put your hand in your pocket, your consumption will tend to reduce – finding a formula for divvying up the current budget between local authorities that does not run the risk of punishing areas that have already worked to achieve low custody rates, or making it increasingly hard for high custody areas to provide decent community provision, has proved ‘complex’. Third, the coalition government’s commitment to introduce a ‘rehabilitation revolution’ focuses on the introduction of payment by results into the criminal justice system. The Green Paper, ‘Breaking the Cycle’ talked of providing financial incentives to providers who met targets to reduce custody, reduce reoffending, and reduce first time entrants.

The pathfinder initiative combines each of these elements in one way or another. The idea is that the Board / Ministry of Justice will make monies available up front for the development of services aimed at curtailing expenditure on child incarceration by reducing the number of custody ‘bed nights’ over a two year period. The deal is that if the pilots reduce custody to the required level, they get to keep the cash. By contrast, if targets are not met, the money will be clawed back by the centre.

The pilots are located in: West London (Westminster, Hammersmith and Fulham, Kensington and Chelsea, and Ealing), North East London (Hackney, Islington, Newham, Redbridge, Tower Hamlets, Waltham Forest, Haringey and Tower Hamlets), West Yorkshire (Leeds, Bradford, Kirklees, Calderdale and Wakefield) and Birmingham (just

Birmingham). As you might anticipate, the projects have developed a variety of different models which they gamble will help to keep kids in the community (the pilot is being run in the spirit of the coalition government's approach of letting 100 flowers blossom – though any links to Chairman Mao's cultural revolution have yet to be made explicit). They include multi-systemic therapy, improving confidence with the court, developing remand accommodation provision, better PSRs, 'at risk of custody' conferences and so on. According to *Children and Young People Now*, the YJB is encouraging areas to look at setting up young offender academies – one stop shops for young crims that (in the original model at least) incorporate secure and non-secure residential provision on site.

A good idea? In general, the NAYJ takes a pretty dim view of payment by results in the youth justice system. (Check out the website for a position statement on the issue.) The pathfinder – although incorporating elements of PbR might be better described as invest to save. Although this might seem like a cop out, the NAYJ's answer to whether that is a good thing is that it depends on what happens in practice. The focus on bed nights means that the target could potentially be met without keeping a single child out of custody – although on average they would be in for a shorter period, which is obviously no bad thing. It seems likely that at least some of those who applied for pilot status were banking on trends in child imprisonment continuing as they have since 2008 – i.e. rapidly downward. If that happens then targets may be met relatively easily – and unless pilot areas perform somewhat better than other YOTs, it could be argued that they are getting additional money for achieving no more than would have happened in any event.

The potential fly in the ointment though is that custody might start to rise again. In the wake of the riots, that can't be ruled out: the population of the secure estate rose by 125 during August (though it fell again – by 45 in September). Targets may therefore be at risk. That raises serious questions about the implications for the pilot areas if they have to pay the grants back, since (assuming that additional services are in fact provided rather than the money being put under the mattress for safe keeping), the cash will already have been spent. In that case, cuts will presumably have to be made elsewhere in order to accommodate the claw back.

Indeed, this appears to have occurred to the pilot areas themselves – they have now successfully negotiated a 'get out' clause that allows them to pull out of the pilot after one year (with three months notice) with no financial penalty. (Cynics might suggest that this rather undermines the whole principle. If the pilots can keep the grant however badly they do in the first year, the influence of the hidden hand of the market through financial reward and penalty is rather constrained.) Moreover, it seems that where there are 'spikes' in custody arising from the disturbances in August, pilots will be allowed to exclude them from the data. The probability of any claw back actually being invoked would thus seem to be on a par with Nick Clegg having 'death or glory' tattooed on his forearm.

Sentencing figures, reoffending and payment by results

Latest figures for sentencing of children confirm the rapid decline in the number of children convicted at court. In the year ending March 2001, 92,351 children were sentenced. Ten years later, in the 12 months ending March 2011, the equivalent figure was 72,011, a fall of 22% – with most of the decline coming since 2008. Over the same period custodial sentences fell from 7,498 to 4,177 (a reduction of 44%). The number of ‘community sentences’ imposed has risen however (the expression community sentences is in quotation marks here because the figures include referral orders – which are clearly no such thing) by 8,468. While part of this increase might be explained by the sharp fall in custody, most of it actually reflects a relative decline in the use of discharges, fines and ‘otherwise dealt with’ (whatever that means) which together accounted for more than half of court disposals in 2001 but less than 27% in 2011.

In the last year or two, reoffending has declined; just a little, but it has gone down. Some have had the temerity to suggest that rather than reflecting the effectiveness of YOT intervention, this success represented something of a hangover of the ‘sanction detection’ target. Since the target operated to bring into the youth justice system a whole group of children who would – in the absence of the sanction detection measure – have been dealt with informally, the cohort for calculating reconviction was diluted; they represented less of a risk of reoffending. This same logic would imply that with the introduction of the first time entrant target reoffending would tend to rise: as children are diverted out of the system, those who remain within it are those whose offending is more serious / persistent – those in other words who are more likely to come back. It may just be a coincidence, but according to an article in *Children and Young people Now*, latest data collated by Ministry of Justice show a rise in reoffending. The same source suggests that as a consequence plans to introduce payment by results according to which grants to YOTs would, from 2012/13, be linked to their performance in reducing recidivism have been shelved.

Gang injunctions to be implemented for children

The first gang injunction – or GANGBO as the order is called by some people who ought to know better – has been imposed on an 18 year old. The injunction bans him from producing video material that might encourage violence and from associating with more than two people in his local area (better not go to Tesco’s then). The injunction was sought by Southwark Council after Matt from Peckham had posted rap material on the net that made threats to other gangs in south London. Matt apparently feels a little hard done by: while admitting that some of his lyrics are violent, he points out that he is simply reflecting life on some London estates. ‘*What else do they want me to talk about?*’ He has a previous caution for possession of a knife but denies ever having been in a gang. ‘*There are films of people getting murdered and PlayStation games of people being shot in the head. But I get in trouble just for rapping about what happens on the road.*’ Yes but the difference is ... well there must be a difference. GANGBOs are currently available for adults – but provision that would allow extension to children aged 14 or over is already on the statute book and is likely to be rolled out nationally before Christmas.

Youth Justice Board making a business case for introduction of revised assessment framework

In a cart before the horse type adventure, the Youth justice Board embarked on a review of the *Asset* framework shortly after introducing the scaled approach. Still better late than never. The review is now over and according to the government response to '*I think I must have been born bad*' (a report produced by the Office of the Children's Commissioner for England), implementation will depend upon whether the business case prepared by the Board is sufficiently convincing. A decision on whether the project proceeds, the response indicates, will be made in the autumn, but given that the document was published on 11 November, a certain amount of slippage can safely be predicted.

Ironically, the main cost of introducing a new assessment framework is that involved in updating case management systems. Information technology, frequently heralded as a mechanism for allowing people to do things more effectively and efficiently, can thus become a fetter on further progress and innovation. A contradiction that Karl Marx would, no doubt, have appreciated.

On the subject of the Youth Justice Board, the Ministry of Justice has announced – in something of a surprise move – that it will no longer be pursuing abolition. It may be the government does not relish the prospect of another clash with the House of Lords – who amended the Public Bodies Bill to remove the Board from the (rather long) list of quangos slated to go the way of the dinosaur last time it was before them. Alternatively the strength of the argument in favour of the retention of the Board may have persuaded the government – although that level of rationality is rarely evident in criminal justice policy formation.

Thematic inspection of appropriate adult provision to be published shortly

If the Youth Justice Board has now been saved from the brink of extinction, transfer of children from police detention to local authority accommodation under section 38(6) of the Police and Criminal Evidence Act remains an endangered species. Although there is a statutory requirement on the police to effect such a transfer when they refuse bail on a child below the age of 17 years, and a reciprocal statutory duty on the local authority to provide accommodation, it seems clear that the law is regularly flouted on both sides. (Indeed like the statutory requirement that cab drivers must carry a bale of hay to feed their horse, the duty to transfer appears in many areas to be regarded as an archaic law that has no bearing on current practice – if anyone knows about it that is.) In that context, it will be interesting to see what the pending joint inspection of appropriate adult provision and provision for children in police detention makes of it all.

Minimum sentences for knife crime to be extended to 16 and 17 year olds

Clause 128 of the, ponderously titled, Legal Aid, Sentencing and Punishment of Offenders Bill provides for minimum custodial sentences for those convicted of making threats with an offensive weapon or bladed article in public. The original proposal was that such sentences should apply to adults only, but in the aftermath of the riots, the government announced that it would introduce an amendment to include children

aged 16 – 17 years in the arrangements, albeit with a lower minimum sentence of 4 rather than 6 months. The government estimates that this would result in an additional 200–400 children imprisoned each year. At the time of writing, the amendment has passed the House of Commons, but has yet to be debated in the Lords.

In what might be seen as a case of poacher turned gamekeeper, Nacro backed ‘this tough’ approach. Paul McDowell, the chief executive of the charity that once campaigned for the abolition of youth custody – alright it was a long time ago – said: *‘If you threaten someone with a knife, you should expect to go to prison. Young people know that, judges know that, and the public know that. The government is right to send a clear message to young people who threaten others with knives’*. By contrast, the Standing Committee for Youth Justice (an umbrella group of voluntary organisations – including the NAYJ – with an interest in youth justice) opposed the amendment (see the SCYJ’s website for details). Perhaps less predictably, the Magistrates’ Association also had reservations, arguing against *‘mandatory sentences as there are rare but exceptional circumstances when such a custodial sentence may be inappropriate and, whatever the offence, youths lack the maturity of thought of adults and must be treated accordingly’*.

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