

# Big Society lessons from youth justice

## Rod Morgan reflects on the potential to scale back criminal system intervention

'Big Society' talk has understandably been viewed by most commentators as either a fig leaf for public expenditure cuts or a mechanism for distancing the government from responsibility for services previously delivered by the state. Journalists like Polly Toynbee (2011) repeatedly accuse the Coalition government of ignoring, Soviet style, their predecessor's commitment to community engagement, while simultaneously turning a blind eye to the impact of the cuts on the voluntary sector. This critique has real substance, but it ignores more subtle aspects of the Big Society concept, namely, whether certain services can and should be delivered differently, with outcomes achieved more positively. Take the field of 'law and order' generally and youth justice in particular.

### Governing through crime

New Labour's law and order policies were a classic case of 'governance through crime' (Simon, 2007). One can argue about the precise number of criminal justice statutes introduced between 1997 and 2010 and the number of new criminal offences created, but they were legion. The 'criminalisation of social policy' thesis has arguably been overdone (Rodger, 2008), but New Labour's response to most complaints of harms and incivilities was to criminalise the behaviours both by providing new routes to criminal justice sanctions and evangelically pressing reluctant local authorities and decision makers into using those sanctions. Tony Blair insistently pressed a button at odds with one strand of Big Society thinking. 'The rules of the game',

he argued in his speech to the Labour Party conference in 2004, had changed; 'the 1960s liberal consensus on law and order' was over. A new hierarchy of values was in place. The criminal justice system was based on the 'proposition that its duty is to protect the innocent from being wrongly convicted ... But surely our primary duty should be to allow law-abiding people to live in safety'.

Blair took pride in the fact that all his major reforms, designed for a Manichean world in which the interests of the 'law-abiding majority' ('our boss') were pitted, in zero sum fashion, against the law-breaking minority, bypassed the traditional, 'Dickensian', criminal justice system (for a detailed discussion see Morgan, 2006). In addition to the new civil orders such as the Anti-Social Behaviour Order, New Labour introduced a raft of out of court criminal sanctions and incentivised the police extensively to use them. The result was a huge expansion in the numbers of people criminalised and record numbers of offenders in prison. As Lord Bingham, the most distinguished judge of his generation, quoting Benjamin Franklin, excoriatingly summed up New Labour's statement of priorities: 'he who would put security before liberty deserves neither' (Bingham, 2010).

### The Big Society

The derision and criticism heaped on Coalition exponents of the Big Society concept is largely deserved. Their focus has to date been too narrowly focused on delivery mechanisms and money. In the sphere of law and order this is largely explained by the extreme

nervousness in Conservative ranks that the Tory press, from *The Daily Mail* to *The Telegraph*, will turn on any minister seeking to depart from penal populism. This is a serious risk. The tribulations of Kenneth Clarke demonstrate that Labour grantees, like the shameless Jack Straw, are prepared to argue, without a shred of supporting evidence, that any departure from their governing through crime approach risks an end to civilisation as we know it. What Big Society advocates need are case study examples of how it would be sensible for the state to stop doing some very expensive things which it should never have been doing in the first place. Youth justice arguably provides a test bed.

### Falling youth crime?

Consider three prevailing trends. In the past two to three years the number of children and young people: (1) who are first time entrants to the criminal justice system has fallen by a breathtaking 45 per cent; (2) who are criminalised, in and out of court, has fallen by around 30 per cent; and (3) who are in custody has fallen by one-third from over 3000 to fewer than 2000. Why? Is it because there has been a sharp reduction in youth crime? There is no evidence that it is. Is it because our youth justice system has become dramatically more effective in preventing youth reoffending? There is evidence of improved performance (Ministry of Justice, 2010), but not on a scale that would explain the statistics. No, everything points to managerial artefact: we are responding to youth behaviour differently.

In 2007 the last government amended their catch-all, counter-productive 'offences brought to justice' target which, in effect, incentivised the police to criminalise minor offences committed by easily detected and processed children and young people. In 2010 the incoming Coalition government got rid of such a target altogether. Meanwhile, several parts of the country with particularly high incarceration rates began closely examining, with the aid of the Prison Reform Trust, their statistics and

decision making: the very fact of doing so appears to have had a Hawthorne reactivity effect. Finally, other parts of the country began reintroducing diversion from criminal justice mechanisms (youth bureaux and police station-based triage assessment) that harked back to the practices of the 1980s. The overall effect was fewer children criminalised and locked up, both of which interventions are extremely expensive and, the research evidence suggests (McAra and McVie 2007; Nagin et al., 2009), all other things being equal, criminogenic. That is, the public at large is worse, not better protected from the risk of becoming (repeat) victims by the punitive, 'governing through crime' policies which, despite some notable preventive schemes like SureStart, New Labour gave priority to.

### Squeezing vice to rewarding virtue

The Big Society approach is capable, if bravely and imaginatively articulated, of taking the prevailing trends much further. The Police Foundation Independent Commission (2010) on youth justice has provided the route map of principles, objectives and broad mechanisms on which this policy should be based. A former key advisor to New Labour has seen the light and sketched out the Big Society rationale for doing so. David Halpern (2010) argues for a shift in the centre of policy gravity away from 'squeezing vice' towards 'rewarding virtue', rebuilding what he calls the 'gift' or 'regard' economy, the mutually positive way in which people look after each other. In the same way that 'care' or 'regard' work – teaching, nursing, social work, etc. – is in modern economies poorly rewarded financially compared with impersonal skills and occupations – accounting, banking, etc. – so, Halpern argues, regard has not been sufficiently encouraged or rewarded. It has been punished when absent: many ASBOs, for example, but few individual support orders. This punitive approach, he maintains, carries dangers: if people are generally treated like rogues, they tend to become so. By contrast:

*If we could boost activity in the economy of regard by even a few per cent, the fiscal and well-being impact would be immense. The logic is not that of the altruism of volunteering, but of true reciprocity. Unlike traditional rights and responsibility approaches, the dynamic would be a virtuous one of greater trust and mutual respect.*

What model of government and public services does this imply? Halpern (ibid.) argues that:

*effective government rests heavily on the 'virtue' of citizens, and strength of social capital and norms in society. These webs of interconnection, everyday habits and institutional habits are what do most of the heavy lifting to keep our societies, economies and governments going. Viewed from this perspective, the state is only a part-player in good government ... the paternalistic model ... is one rooted in co-production and partnership ... agency is not a zero-sum game. More collective responsibility does not necessarily imply less personal responsibility.*

### Using the criminal justice system less

All of this points to a youth justice approach in which *policing* is done less by *the police* and more by other control agents, a system in which social order is less a product of criminal justice and more the outcome of informal sanctions. This is not empty romanticism and it would better accord with our international human rights obligations (Article 37b of the *UN Convention on the Rights of the Child* provides that both the arrest and incarceration of children should be a last resort, which under New Labour it manifestly was not). Restorative, neighbourhood and peer group justice can be made a practical achievement. More parsimonious use of the criminal justice system would be no more than turning the clock back a relatively few years. Families and effective parenting could be better supported. The

confidence of teachers could be resuscitated without extending the use of out of court sanctions, so that schools consumed more of their own offensive smoke. Neighbourhood associations could be better encouraged by both local authorities and the police. More parsimonious use of the criminal justice system is one version of a smaller state on which there might be forged agreement across the political spectrum. That is the sort of Big Society about which we should be talking. ■

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**Rod Morgan** is Visiting Professor at the University Police Science Institute, Cardiff and former chair of the Youth Justice Board

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