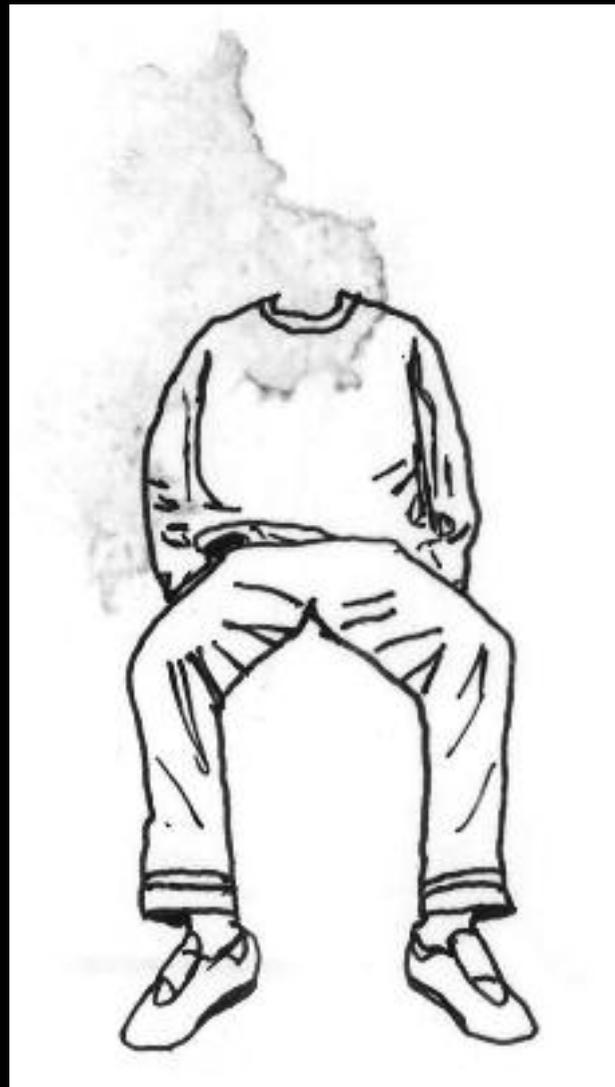


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How the public sphere was privatized and why civil society could reclaim it

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Introduction

Nowadays, one hears a great deal of talk about the need to legitimize the criminal justice system by bringing it closer to the public via programmes which create bridges between 'communities' and 'offenders' as a route to supporting the latter's reintegration to society. Direct participation in criminal justice by citizens represents a positive step in re-socialising justice, it is argued.¹ Furthermore, it asserts the community's interest in avoiding offender recidivism (reoffending), and holds the police, prison and probation services to account for the large amounts of public money spent on their operations. Yet, the belief that bringing 'law abiding' and 'offending' citizens together will foster mutual recognition or integration rests on unexamined assumptions that social solidarity and interaction among citizens have been unaffected by rising social inequality and successive moral panics about law and order in recent decades.

There is a particular irony in all of this because, contrary to the nostalgic political visions that are conjured up by the 'Big Society' project, the symbolic and material significance of the public sphere has been undermined by advocates of marketization and the primacy of private interests as the driving forces of 'society'. For example, the self same proponents of the Big Society equally assert that one tier of social organisation, civil society, can *only* be promoted if another tier of social organisation, the welfare state, is demoted.² Consequently, the apparent inconsistencies in the Big Society/Small State agenda can be reconciled only as part of an ideological project for supporting a preferred version of community comprising the so-called 'law abiding majority', with the goals of radical privatisation of public welfare systems. Such thinking reflects an ideologically preferred, post-Thatcherite vision in which society is best served by a return to what the Conservative MP, Jeremy Hunt, coined as 'collaborative individualism' which is exercised through

the primary social institutions of family, kinship and community. In this ideological world, the operative concept of 'community' is underpinned by assumptions about the inherent benevolence and toleration of citizens, including towards offenders and outsiders, as well as suppositions that social goods such as security and property rights are consensually shared and not subject to conflicting claims between groups.

This short article is part of a longer project for building a case for a renewed theory and practice of civic and local activism that is vested in social democratic principles such as social justice, economic redistribution and the assumption of citizenship rights by disenfranchised groups, including offenders.³ As such, it is necessarily concerned with relationships between what might be broadly conceived as 'social' and 'criminal' forms of justice. In particular, this paper reflects on the taken-for-granted suppositions in political rhetoric that promoting community activism as a method of reintegrating marginalised groups is self-evidently beneficial and efficacious. As it cannot cover all of the arguments, the following discussion considers ways in which concepts of the 'public sphere' and civil society have been redefined to equate with individual responsibility, property ownership and qualified access to citizenship rights in ways that are consistent with neoliberal ideology. It concludes that acknowledging the barriers restricting communities and publics from mutual recognition is the first step to reclaiming the public sphere in the interests of critical citizenship.

The article firstly explores theories of the public sphere as a communicative space where citizens come together to discover common interests and to participate in public debate, decision-making and social action.⁴ Next, it examines how, from the 1980s, Conservative, New Labour and latterly the Coalition governments succumbed to the economic and political dominance of market fundamentalism and contributed to a decline in support for the social state, collective welfare and security for all. Thirdly, it discusses how the interests of the public good became equated with those of the 'free' market, which has

1. Maruna, S. and LeBel, T. (2003) 'Welcome home? Examining the 're-entry court' concept from a strengths-based perspective', *Western Criminology Review* 4, 91-107.
2. Norman, J (2010) *The Big Society: The Anatomy of the New Politics*. Buckingham: University of Buckingham Press.
3. Carrington, K., Ball, M., O'Brien, E., & J. Tauri (eds) (2012) *Crime, Justice and Social Democracy: International Perspectives*. London: Palgrave Macmillan.
4. Habermas, J. (1992) *Structural Transformation of the Public Sphere*, Oxford, Polity Press.

strengthened socio-economic barriers and inhibited interaction and recognition among citizens. The concluding discussion makes constructive proposals for putting social inclusiveness, citizenship rights and incorporating the voices of disenfranchised people at the centre of rebuilding just systems of social reintegration.

Refeudalisation of the public sphere

My starting point is taken from Jurgen Habermas's (1962/1992) *Structural Transformation of the Public Sphere*, where he gave theoretical shape to the notion of the Bourgeois Public Sphere as a forum in which 'political participation is enacted through the medium of talk' in modern societies. According to Habermas, the public sphere is given over to the activities of civil society where citizens publicise ('bring to the public') their ideas and engage in deliberative politics about the common good and democracy. Crucially, it fosters an independent civil society which ought to be separate from either states or markets:

Thus, this concept of the public sphere permits us to keep in view the distinctions between state apparatuses, economic markets, and democratic associations, distinctions that are essential to democratic theory (ibid.).⁵

Although it is a utopian proposition, Habermas did not claim that the public sphere is an oasis of autonomy and freedom from dominance by political or corporate interests. Rather his thesis was concerned with the contraction of 'critical publicity' from its origins in the Enlightenment to the dominance of corporate influence on the state and the concentrated ownership of the mass media by the mid-20th century. This transformation, characterised as the 'refeudalisation of the public sphere', hastened the decline in democracy to the degree that private interests assumed direct political functions, in the process eroding distinctions between state, markets and civil society.

Habermas advanced his criticism of 'private interests' in relation to mass, mediatized politics, which,

he thought, allowed the manipulation of public discourse and the eventual dominance of elite perspectives. In a similar vein, I apply the concept of 'private interests' to refer to the activities of corporate and non-profit agencies, including community and charitable organisations, who are being actively invited into a penal services marketplace, with consequent implications for eroding their autonomy and critical disposition towards institutionalized injustices.⁶ Habermas' study stopped at the 1950s, and therefore his theory does not encompass the altered conditions of the early 21st century. Therefore, the following discussion argues that critical efforts to reclaim the 'public' sphere as an arena of citizen discourse, social action and independence will need to contest the colonisation of the public sphere by private interests since the 1980s.

Privatised citizenry

The first shift relates to the neoliberal construction of the 'public' and the 'public interest' as coterminous with the private aspirations and consumerist claims to entitlements which may only be legitimately claimed by economically active consumer-citizens. This has entailed securing an ideological consensus with strategic sections of the public in favour of bracketing off welfarist notions of the common good from individual interests.

From the 1980s, much of the capitalist world was captured by a political credo whose tenets refuted the notion of social democracy based on redistributive justice as unsuitable to the conditions of late modernity. Some more fundamentalist versions of neoliberalism, influenced by Friedrich Hayek⁷ and the Chicago School economists led by Milton Freidman, postulated that state welfarism was antithetical to individual and civil liberties (and hence inimical to the public interest), because it represented an oppressive statist response to social problems such as crime, poverty and social exclusion. The argument ran that public welfare ought to be legitimately curtailed to fostering the capacity of individuals but welfare should not become a permanent and universal feature, lest it deprive citizens of freedoms to determine their own fortunes. It followed from this logic that public welfare programmes that

Although it is a utopian proposition, Habermas did not claim that the public sphere is an oasis of autonomy and freedom from dominance by political or corporate interests.

5. Fraser, N. (1990) Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy. *Social Text*, 25/26, p57.
6. Corcoran MS. (2011) Dilemmas of Institutionalisation of the Penal Voluntary Sector in England and Wales. *Critical Social Policy* 31: 30-52.
7. Hayek, F. (1960/2009) *The Constitution of Liberty*. Abingdon, England: Routledge, p227.

pursued equality for the majority were misconceived because such projects stifled individual liberty:

*If government wants not merely to facilitate the attainment of certain standards by individuals but to make certain that everybody attains them it can only do so by depriving individuals of any choice in the matter.*⁸

This view of the inherently disabling effects of state welfarism was seized upon by the New Right, and later the New Labour Blairites, as an opportune pretext for implementing (and talking about implementing) welfare minimalism through 'modernising' the state. Proponents of modernisation proposed that the breakdown of welfare universalism was historically inevitable, ushering in the necessity for a new social contract wherein citizens would undertake greater levels of personal responsibility for their own security and welfare demands. In office, the Conservatives, then Labour and later the Conservative-Liberal Democrat coalition, attacked the public sector as anti-individualistic and restrictive of citizen choice, asserting that welfare states had curbed citizens' material aspirations and created a permanently helpless underclass, thus hastening the decline of Western economic advantage. The challenge was no less than to restructure state economies in ways which were more amenable to global service markets, including security and criminal justice concerns, and remoulding governments' relationships with self-governing, self-reliant active citizens.⁹

The conflation of the public sphere with the 'open market'

One of the cultural side effects of the neoliberal era has been the exposure of almost every area of social and personal life to the morality of the market place. At its essence, marketisation reflects an economic model of social exchange which has become embedded in political agendas for restructuring public services, including criminal justice. The central components of

the marketisation thesis are that individual and organizational behaviours are governed by rational self-interest, financial incentives and utility. Advocates of the market revolution, which number the Association of Chief Executives of Voluntary Organisations (ACEVO) and the Confederation of British Industry, share the position that this is not simply about applying economic levers such as fines or competition to reform public services, but a project for instituting deep changes in the values and responsibilities of citizens and all forms of social organisation, whether statutory, charitable or corporate.¹⁰

The argument that breaking up the public sector monopoly would institute radical changes in criminal justice was initially advanced in the Carter report which held that 'private and voluntary sectors' are catalysts of

modernisation whose energy and innovation would create 'a new approach to... 'break[ing] down the silos of prison and probation and ensur[ing] a better focus on managing offenders'.¹¹ This proposition was also justified as a shift towards enabling the human resources of the community and voluntary sector and investment capital held by the private sector to be exploited more systematically for social ends. As a consequence, the privatisation of public services is hailed as a democratic achievement which offers greater consumer power to citizens.

Implementing these goals requires that the protective and regulatory state gives way to light touch self-regulation; the welfare state steps back to assume a new role of state as auctioneer of public goods and services; and notions of citizenship based on the social contract secede to those based on consumer citizenship.

Philanthrocapitalism

A sign of recent changes is the way in which the open marketplace has now become a theatre for staging the corporate responsibility of Habermasian private agencies, including profit-making and philanthropic trusts, which seek to legitimate their public-ness in areas hitherto equated with social ownership and control. For example, the surge in

One of the cultural side effects of the neoliberal era has been the exposure of almost every area of social and personal life to the morality of the market place.

8. Ibid. Emphasis added

9. Harvey, D. (2005) *A Brief History of Neoliberalism*. Oxford: Oxford University Press.

10. ACEVO (2006) *Beating Reoffending: The Third Sector Solution*. London: ACEVO/Rainer Foundation.

11. Carter, Lord Patrick (2003) *Managing Offenders, Reducing Crime*. London: Home Office, foreword.

corporate philanthropy in the aftermath of the banking crisis in 2007-8 represented a conscious attempt by the organised corporate sector to reclaim its public legitimacy and demonstrate its social relevance and responsibility. Six years on, the practical and moral necessity of fusing capital with public welfare is manifested in the logic that having reached levels of irredeemable strain, compounded by the economic crash and its aftermath, non-profit and private sector involvement is all the more necessary to rescue the welfare state. What is now represented as a collective endeavour ('we're all in this together') involves no less than an audacious reshaping of the State from social provider to subcontractor of public services and institutions, alongside a project for rewriting the remaining terms of the welfare contract.

The paradigm shift that is being proposed here can be expressed in terms of a new triangulation in the relationships between the state, the citizen and the market. This is illuminated in the report, *Open Access: Delivering Quality and Value in our Public Services*, which was published by the Confederation of British Industry.¹² That report laid out the business case for putting out £278 billion worth of public services to market competition and concluded that the privatisation of the remaining public sector should be radically expanded and accelerated. Published in September, 2012, the language and findings of the CBI report closely resonated with the government's broader fiscal programme and also predated by a mere four months the outcome of the *Transforming Rehabilitation* consultation which gave the clearest indication to date of the intention to outsource up to two-thirds of the Probation service's caseload. At the time of writing, this schedule has been put back until May 2014, ostensibly on the grounds of ongoing technical issues with payment and commissioning arrangements. However, the delay is more likely to result from the groundswell of criticism as to its complexity and opacity from sources as diverse as the Institute for Government, the Commons' Public Accounts Committee, the Ministry's own research and potential contractors. Yet the foreword of *Open Access*, written by the CBI's Chief

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Executive, John Cridland, lays out the claim that the transfer of public resources to private interests is ultimately in the public interest:

*The CBI believes that open public service markets, with providers drawn from the public, private and third sectors, can square this circle and lead to an increase in quality, choice and value for money. The case for this agenda has been made more difficult by recent, high profile failings in the private sector. Business has to respond to these public concerns and rebuild trust through sustained behaviour change and consistent delivery of results... Delivering savings '... will require new skills on behalf of government to metamorphose from direct provider into a market manager. It will need a clear vision from the government about the markets in which it is prepared to see an end to the state monopoly of provision.'*¹³

Community and penalty: having it both ways

The third elision of 'private' and 'public' interest relates to the shifting of the public sphere from a zone where citizens deliberate and act in pursuit of the common good to a collection of private associations and competing interests consistent with the neoliberal imaginary of individual self-enterprise and responsibility. Whilst a full account for this phenomenon is outside the remit of this article, one facet of this shift relates to the privileged civic status that is afforded in political rhetoric and policy to the self-governing, self-reliant, active and giving citizen. It can at least be observed that the rediscovery of the community, firstly by New Labour and then by the Conservative part of the coalition, is entirely consistent with the neoliberal moral economy of citizenship in which volunteers and local interest groups exercise their consumer rights to influence local crime, justice and community safety strategies. Equally, the claim that all citizens are nominally free to participate in civil activism belies the considerable formal and informal disqualifications that are

12. Confederation of British Industry (2013) *Open Access: Delivering quality and value in our public services* (2013) London: Confederation of British Industry. Foreword.
 13. Ibid. Emphasis added.

experienced by already marginalised groups who may seek to organize in the public domain. Such groups, for example, may comprise offenders, members of ethnic minorities, lesbian, gay and trans-gender people, travelling or homeless people or street-based sex workers, who have historically experienced discrimination, conflict with the forces of law, or exclusionary campaigns by community activists.

Under the Coalition, the era of experimentalism with alternative community-based disposals has continued, but is rooted in authoritarian and punitive orthodoxies, prison expansion, and the virtual privatisation of the Probation service. Within weeks of the Minister for Justice's announcement in February of his support for raising up to 50,000 volunteers to provide through-the-gate mentoring for every person leaving prison or on parole, Chris Grayling confirmed proposals to construct at least one 'Titan' prison with a capacity for 2,000 prisoners and to extend capacity in several other prisons.¹⁴ By November 2013, the programme for outsourcing public prisons was temporarily interrupted when the Ministry of Justice withdrew contracts for privatising three public prisons following findings of overcharging by the transnational corporation, SERCO, while critical reports of G4S's management of The Wolds prison led to its reversion to public control. Since then, governmental policy continues to be underpinned by parallel, contrary policies which are aimed at funding more community based intervention while *expanding* the prison estate. This conflict in objectives reveals the fallacious equation at the centre of neoliberal reformist arguments: that more alternative programmes based in the community will lead to fewer prison places. Official enthusiasm for penal alternatives will always be conditional on the survival of the prison rather than its withering away from disuse or irrelevance.¹⁵ Consider, for example, that Baroness Corston's recommendation that women's prisons be replaced within 10 years by community-based local residential centres was immediately stripped

out in the New Labour governmental response to her report. The recourse to 'community' has never been seriously conceived of as a route to dismantling the ideological scaffolding which props up the punishment of poverty. Rather, successive governments have recast civil society as an indispensable element in the governance of crime from below. This discourse also rests on the false dichotomy which sacralises the 'community' as benign and caricaturises public prison and probation services as malign. But the big policy idea for transferring the site of custody and monitoring from prisons to the community may do little more than facilitate the transition of offenders from 'penal hell to civic purgatory'.¹⁶

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Reclaiming critical citizenship

In the light of the ideologically and socially divisive nature of the previous developments, how might the role of civil society challenge the nexus of marketised and authoritarian penal interests, rather than be absorbed by it? Is it possible to reconcile the desire to engage citizens in deliberative politics with the claims that 'turning offenders around' can be facilitated through interventionist programmes, even if provided by and within communities? It is reasonable to assume that an obvious starting point for any restorative process would be to facilitate access to better economic prospects, legal

equality, civic participation and opportunities to develop social capital? Yet, civic and legal equality and parity of opportunity have been undermined by the continued hollowing out of the citizenship status of the criminalised under late capitalism. Four decades of growing inequality have laid the foundations for a caste system which is founded on a moral distinction between 'citizens' — whose legal, political and social existence, as well as private relationships and claims to belonging are recognised — and 'denizens',¹⁷ a term conventionally applied to non-citizens residing in a state, but which is increasingly applicable to groups who are structurally disqualified from full citizenship or

14. Independent online (2013) *Grayling ploughs on with plan for 'super jail'*. March 13 2013.

15. Carlen, P. (2012) *Against Rehabilitation*. For Rehabilitative Justice. Eve Saville Memorial Lecture, Congress Hall, London. November 6, 2012.

16. Sim, J. (2013) *Exploring 'the edges of what is possible': Abolitionist activism and neoliberal austerity*. Paper presented to the conference, 'Sites of Confinement', Liverpool John Moores University, March 22 2013.

17. Standing, G. (2011) *The Precariat: The New Dangerous Class*. London: Bloomsbury Publications.

on whom preconditions are set on acquiring and exercising agency. The denizen status of 'offenders' and former prisoners has been revealed in recent controversies in the UK over the question of the prisoner franchise, as well as restrictions on rights to family life through the dispersal of prisoners away from their place of domicile, strip searching, and other security concerns which take precedence over equality of treatment or habeas corpus. More typically, inclusion takes the narrower form of economic responsabilisation through obligatory participation in occupational and training schemes, often provided by for-profit and voluntary sector contractors, to prepare lawbreakers for entry (often for the first time) into the waged labour force.

This paper has sketched some trends which threaten to restrict the social spaces where critical dialogue between citizens and denizens might occur and where the 'law abiding' might meet the criminal 'other'? However, these are initial points in an ongoing project for identifying alternative and inclusive approaches informed by theories of legal restoration and social and economic reintegration. That process commences with acknowledging the injustices and forms of objectification that are perpetuated, wittingly or unintentionally, in endeavours to 'engage with' criminalised people by examining the profound 'othering' they are subjected to alongside the persistent deferral of legal recognition and the foreclosure of their rights-bearing status.

It may be helpful to identify some activating conditions based on social solidarity, citizenship and rights if civic efforts to reintegrate criminalised persons are to have a substantive basis. Firstly, critical citizenship encourages public discourse which challenges the personification of 'offenders' as primarily socially deficient and as subjects of reformation and intervention. Out of the hundreds of policy documents, academic papers and glossy prospectuses produced by for-profit and charitable providers in recent years extolling the virtues of voluntary sector work with

offenders, only a handful have discussed the integration of offenders or prisoners in terms of their assumption of full citizenship status. Secondly, there is an onus on knowledge producers (such as researchers, advocates, practitioners and policy makers) to highlight (or continue to articulate) the consequences of compliance with instrumental, official valuations of worthy research based on favoured 'evidence-based' policy orientations at the expense of the underlying structure of exclusion through punishment. In the midst of all the detail about what does and doesn't 'work', the deeper story about the impact of the complex material and symbolic disqualifications that apply to criminalised people is lost.

Thirdly, questions as to whether the restoration of rights to individuals with criminal records should be automatic or qualified processes, are complex and significant matters. However, it is necessary to assert that they are not subject to arbitrary tendencies on the part of the political Executive to withhold rights from criminalised persons as an electoral expediency. Moreover, critical citizenship should be making the case for socially inclusive and rights-based interpretations of desistance theory.

A programme of community justice based on economic, legal and political inclusion highlights the *social* basis of integration. It provides civil society actors with an alternative platform to narrow interpretations of desistance theories. The proliferation of programmes that help offenders to become 'self-actualising' and realise their social capital and capacities are subject to capture by the goals of responsible, self-sufficient citizenship. The potential success of desistance as a critical practice will rely on the degree of independence or separation it can establish from neoliberal conceptual frameworks by continuing to emphasise the importance of tackling structural exclusion. Failure to do so will merely reinforce the paradox of reintegration which simultaneously demands from 'ex offenders' that they demonstrate self-governance while denying them capacity to fulfil these imperatives.