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Restructuring Community Justice in Scotland, 2012-2017:  
Policy and Power Dynamics in the Penal Field

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The University of Edinburgh  
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## Abstract

Community justice in Scotland – the system of agencies that deliver community punishments and related services – is being restructured for the second time in a decade. The current system of administration by regional Community Justice Authorities (CJAs) will be replaced by a two-tier model, with local planning passing to Community Planning Partnerships (CPPs) and a new national body providing leadership for the sector. This thesis, the only empirical study of the restructuring, draws on interviews with politicians and practitioners to analyse the policy, its historical background and the ways in which – without directly affecting practice – it connects to major questions about Scottish politics and penal policy.

Using the theoretical concept of the ‘penal field’, the thesis discusses the effects on community justice of struggle and compromise between Scottish local and national government. The birth of CJAs from this compromise caused them to be structurally flawed, but they were nonetheless not without certain achievements. Community justice is also considered in relation to historical narratives of a distinctive Scottish penal identity, and efforts to reaffirm it by reorienting the justice system towards community penalties rather than prison.

Recent scholarship which highlights the role of local democratic structures in penal policy informs an analysis of CPPs (whose limited success has produced concern about their ability to fulfil justice responsibilities) and the relationship between their development (including the recent Community Empowerment (Scotland) Act) and the community justice redesign; the thesis argues that the community justice and community empowerment agendas are being allowed to converge but not meet.

The new system, it is argued, is another structurally flawed compromise. The proliferation of agencies will likely hinder partnership working, while the new national body will have little power to fulfil some difficult and complex responsibilities around legitimacy and accountability. The policy will disrupt lines of communication despite efforts to smooth the transition, and the length of its development has already caused disruption. The restructuring, it is further argued,

is insufficient to fulfil a deeply felt need for major reorientation of Scotland's penal field.

## Lay Summary

This thesis concerns Scotland's system of community justice, which is responsible for working with convicted offenders in the community to help them desist from offending. Specifically, it concerns the organisations that administer community justice in Scotland, the framework of which is currently being reorganised for the second time in about a decade. The thesis is an investigation into the historical roots and likely effects of this policy, and is believed currently to be the only such study.

In the context of efforts to reduce Scotland's prison population, the Scottish Government is aiming to use community justice as an alternative to imprisonment, with lower financial costs and reoffending rates. In many jurisdictions, community justice work is known as 'probation' and carried out by national justice agencies, but in Scotland, it is the responsibility of Criminal Justice Social Work (CJSW) units within local authorities. This distinctive structure is closely connected to narratives which emphasise the distinctively welfare-oriented character of Scottish policy, but – as this thesis also argues – has meant the structure of community justice is shaped by power struggles and compromises between Scotland's local and national government.

These compromises produced serious structural flaws in the previous system of regional Community Justice Authorities (CJAs), which ended up with major responsibilities for reducing reoffending and holding organisations to account, and little power over CJSW units or other bodies. After a long consultation, it has been decided that CJAs will be abolished in 2017 and replaced by a two-tier system in which a new national body, Community Justice Scotland, will be set up but most of the CJAs' responsibilities will pass to the local Community Planning Partnership (CPP) framework, a system which is also being altered by policy to form a prominent part of the Scottish Government's new 'prevention' agenda. As this thesis argues, CJAs and CPPs are similar in suffering from a number of problems to do with partnerships and democratic engagement with local communities.

The thesis draws on interviews with practitioners in the system, policymakers and politicians to argue that the policy will be limited in its ability to resolve the previous system's structural problems and is also likely to create its own. The power of local authorities in the development of the policy has meant the new national body has – like the CJAs – been left with complex and difficult responsibilities yet minimal power. Further, it is unlikely to have major effects on CJSW practice, and in fact falls far short of the kind of major social and cultural shift needed to move Scotland away from its over-reliance on imprisonment. Nonetheless, this thesis argues that the restructuring of the community justice system sheds light on important questions about government, policy and criminal justice in 21st-century Scotland.

# Declaration

I declare and certify that this thesis is an original work, composed entirely by myself, James Guy Michael Buchan. No publications are included within it, and it has not been submitted for any degree or qualification other than the present one, the PhD in the School of Law, College of Humanities and Social Science, University of Edinburgh.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Word count: 101,450



“Any topic of interest in the social sciences has a peculiarly amorphous quality. It looks distinct, tangible, separate – empirically or conceptually – but the closer you examine it, the more it merges into its surrounding space.”

- Stanley Cohen, *Visions of Social Control*<sup>1</sup>

“You wake up in the morning  
And the sun’s coming up  
It’s been up for hours and hours”

- Neil Young, ‘Last Dance’

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<sup>1</sup> 1985: 197





# Chapter I: Introduction

## I. Background: Interesting Times

This thesis concerns the current restructuring of the community justice system in Scotland, still ongoing at the time of writing and due to take full effect in 2017. The second such major reform in only a decade, it comes shortly after the establishment in 2005 of Scotland's eight regional Community Justice Authorities (CJAs). These were found to be deeply constitutionally flawed in a number of ways,<sup>2</sup> and the current reforms will abolish the CJAs and replace them with a two-tier arrangement in which new local partnerships – originally to be Community Planning Partnerships (CPPs) – will administer community justice locally, while a new national body, Community Justice Scotland (CJS), will be established with a mission to provide guidance, share best practice and promote community justice in Scotland.<sup>3</sup> The roles and functions of each of these bodies are explained more fully below.

Like many (perhaps all) theses, this one has narrowed in focus over the period of its development, in a way that has not always been straightforward or easy. But the scope of the project has also widened, engaging with a broader range of literature and theory than expected. The thesis is also in many ways the 'child' of a particularly interesting and unusual time for politics in Scotland. Its conclusions are necessarily tentative, as the developments under discussion are still in motion at the time of writing, and it is in this sense a contemporaneous report on a restructuring process whose full dimensions and effects remain to be seen.

The project was originally conceived largely as a response to the part-privatisation of probation in England and Wales, an unprecedented and controversial policy whose effects on the practice of probation in England and Wales have been described by many practitioners and observers as enormous and highly destructive,

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<sup>2</sup> Audit Scotland, 2012; Angiolini, 2012

<sup>3</sup> Scottish Government, 2014c

and which I had hoped to investigate as they were occurring.<sup>4</sup> I noted also that Scotland was also embarking on a restructuring of its own community justice system, although the detail of this was not yet clear, and thought a comparison between the two would provide valuable insights into processes of community justice reform and the ways in which two somewhat similar and neighbouring jurisdictions were taking such different paths. As detailed in Chapter 4, it eventually became clear that this comparative approach would not be possible – and that the project would have more to do with the administration and management of community justice than its actual practice.

As Scotland's new community justice policy started to take shape, it became clear that there was more than enough material for a PhD in the developing Scottish policy, and it was decided to refocus the project on the Scottish reforms. As the policy had developed, significantly more detail had come to light on the new Scottish system and on the process of its development. This also produced a wider scope for the thesis, in which it was possible to put the detail of the policy into the context of penal and political developments in Scotland and further afield. This policy is a somewhat unusual locus for conflicts and tensions to do with these various developments, allowing the thesis to rise above anodyne and administrative concerns and deal with key issues at the heart of criminal justice policy in Scotland.

England and Wales, in fact, remained in the picture. Even though Scotland has always had separate legal and criminal justice systems from its neighbour jurisdiction, Scottish criminal justice policy (including community justice) has been affected by developments and policies in England and Wales, and by its changing political relationship to that jurisdiction. Scotland is often described as having a different penal philosophy to England and Wales, one marked by a more welfarist and less punitive approach to criminal justice and often referred to as the 'Kilbrandon philosophy',<sup>5</sup> after a 1964 report which produced vital and distinctly

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<sup>4</sup> Robinson, 2016b; Burke, 2016 and others in *Probation Journal*, Vol. 63(2)

<sup>5</sup> McAra, 2008; McNeill, 2005: 33-4; Croall, Mooney and Munro, 2010

Scottish system changes in youth justice and in community justice.<sup>6</sup> The development of Scottish criminal justice has been shaped by narratives of distinctiveness and difference from England and Wales, although close study of the available historical evidence shows a picture which resists simplification, and includes similarities and convergences as well.<sup>7</sup>

In the years following the 2007-08 financial crisis and particularly since the election of the 2010-2015 Conservative-led coalition government, the UK has embarked on extensive 'austerity' cuts to public spending. At the same time, the Scottish National Party (SNP) has gained a surprising degree of power and influence, winning an overall majority in the Scottish Parliament in 2011.<sup>8</sup> The SNP government has embarked on various policies aimed at restructuring public services in Scotland to mitigate the impact of the cuts by improving efficiency while maintaining, as far as possible, the level of service.<sup>9</sup> Scotland's criminal justice institutions have always been separate from those of England and Wales, and these have also undergone major reforms. As well as community justice, the Scottish government has been involved in restructuring Scotland's courts system, integrating the provision of health and social care within local authorities and (perhaps most controversially) uniting Scotland's eight territorial police forces into a single national service, Police Scotland, in April 2013. The SNP majority in the 2011 election also produced probably the biggest single political event since devolution – the Scottish independence referendum of 2014, which produced an enormous rise in support for the SNP (doubling its membership to about 115,000 people, or 2% of the population of Scotland)<sup>10</sup> while falling short of the result the party had intended.<sup>11</sup> Although Scottish criminal justice had always been separate from its counterpart south of the border, the referendum and its galvanising effect on the SNP independence agenda

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<sup>6</sup> Kilbrandon, 1995 [1964]

<sup>7</sup> McAra, 2008; Croall, 2006

<sup>8</sup> Curtice, 2011

<sup>9</sup> Matthews, 2012

<sup>10</sup> Keen and Audickas, 2016: 12

<sup>11</sup> Paterson, 2015: 24

(before and after the vote) have helped to shape a criminal justice policy agenda which aims to pursue both distinctiveness from England and Wales and demonstrate Scotland's competence to govern itself independently (while not always conforming as closely to penal welfarist ideals as this might suggest).<sup>12</sup>

At around the same time, the Scottish Government has also sought to reduce the country's fairly high prison population, which rose from around 5,000 (a rate of about 100 prisoners per 100,000 population) in the early 1990s to nearly 8,000 (a rate of 145 per 100,000 – fairly high for Europe) in 2014.<sup>13</sup> Recent years have seen political and governmental recognition that imprisonment (particularly the very short tariffs that make up the majority of Scottish prison sentences)<sup>14</sup> has little success in reducing reoffending while producing many destructive effects for individuals and communities.<sup>15</sup> The high reoffending rate and enormous economic and social cost of imprisonment make it an unacceptably inefficient punishment, especially at a time of financial austerity, as well as an often disproportionate one. Like other jurisdictions, Scotland has pursued the expanded use of community sentences as a way of reducing imprisonment and its associated costs – but despite its intuitive appeal to many policymakers, this policy has sometimes produced the opposite of its intended outcome when attempted in other jurisdictions.<sup>16</sup>

One particularly important feature of Scotland's 'distinctive' criminal justice identity is that community justice has been primarily the responsibility of local authority social work departments, rather than a national criminal justice organisation like the Probation Service which until recently had responsibility for probation in England and Wales.<sup>17</sup> This may be a factor in aligning Scottish community justice more closely with social work ideas and values, and in insulating it somewhat from changes that have affected other community justice systems,

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<sup>12</sup> MacLennan, 2016

<sup>13</sup> Scottish Government, 2015f: 10

<sup>14</sup> *Ibid.*: 10

<sup>15</sup> Scottish Prisons Commission, 2008

<sup>16</sup> Phelps, 2013

<sup>17</sup> McNeill and Whyte, 2007: 24-7; McNeill, 2005: 33; Younghusband, 1978: 250-5

particularly that of England and Wales. It also has major political consequences, placing the relationship between local and national government at the centre of the current restructuring policy and producing an interesting, and perhaps distinctively 'Scottish' answer to the question of the meaning of 'community' in community justice. Partly as a result of the comparative novelty of Scotland's parliament, local authorities in Scotland exercise an unusual amount of power,<sup>18</sup> and the development of the new system has been marked by conflict and compromise between local and national government – which, as several of the participants in this project have observed, is similar to the process that produced the flawed CJA system. A further problem is to do with the tension between responding to local needs and producing outcomes that are consistent nationally.

As such, the restructuring of community justice in Scotland must be seen not merely as a mundane managerial reform but also as a development in Scotland's complex political relationship with England and Wales, and in the sometimes equally difficult relations between local and central government. It must also be considered as an indirect consequence of austerity policies enacted by the UK government, as this prompted a programme of public service reform in Scotland intended to mitigate the impact of these policies while still maintaining a commitment to levels of social service.<sup>19</sup> Finally, the restructuring also forms part of Scotland's attempts to reorient its approach to punishment, and is thus connected to a number of other criminal justice reform policies – although many interviewees in this project argued the restructuring did not go far enough in this (Chapter 6). It is a policy which has gained widespread but generally cautious and qualified support from a range of politicians and practitioners.

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<sup>18</sup> Jeffery, 2006; Mooney, Croall, Munro and Scott, 2015: 214; Morrison, 2012: 251-3

<sup>19</sup> Christie, 2011

## 2. Defining Community Justice in the Penal Field: A Note on Terminology

Community justice is a complex term freighted with political connotations and not as easily defined, either administratively or spatially, as imprisonment.<sup>20</sup> This is part of the reason why this thesis focuses on ‘community justice’ as opposed to ‘community penalties’, ‘sanctions’ or ‘measures’ (which suggest more of a focus on the penalties themselves, rather than the system as a whole); ‘criminal justice social work’ or ‘social work with offenders’ (which implicitly excludes third-sector and other relevant organisations); or ‘probation’ (which refers only to the supervisory aspect and, unlike in other jurisdictions, is not used in Scotland to refer to the system of provision).

Statutory supervision of offenders is still at the core of community justice. In Scotland this is carried out by criminal justice social work (CJSW) departments, either as part of a community sentence or as statutory ‘throughcare’ provided to prisoners leaving the prison system after sentences of four years or more, in order to aid their reintegration into the community. (Shorter-sentenced prisoners may request voluntary throughcare on their release).<sup>21</sup> The work of CJSW departments also includes various services to Scottish criminal courts – in particular, CJSW staff investigate the backgrounds of convicted offenders to produce reports for sentencers to take into account in making sentencing decisions.<sup>22</sup> As well as supervision and pre-sentence reports, community justice involves running Community Payback schemes (unpaid work) in cooperation with other parts of local authorities, and some aspects of the administration of electronic monitoring of offenders (EM or ‘tagging’), which is provided in Scotland by the private security firm G4S.<sup>23</sup> However, the focus of this project is on supervision- and social work-oriented services and mainly on state-run institutions (although the degree of

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<sup>20</sup> Robinson, 2016a

<sup>21</sup> McNeill and Whyte, 2007: 115-39

<sup>22</sup> *Ibid.*: 68-82; Halliday, Burns, Hutton, McNeill and Tata, 2008

<sup>23</sup> Graham and McIvor, 2015

separation between these institutions is in itself an interesting potential research problem). In addition, there are many small and large third sector organisations (TSOs) providing specialist services to the community justice system in Scotland, such as Sacro, Victim Support Scotland and Turning Point Scotland, which runs the 218 service highlighted by Angiolini as a model for an alternative to prison for women offenders.<sup>24</sup> Because of the complexity of many offenders' needs and the wide range of social problems involved, various non-justice organisations from the public sector, such as the National Health Service (NHS), may also be enlisted in community justice work – but the focus of this project is on institutions for whom community justice represents a major or primary function.

Thus, the community justice 'system' in Scotland, although dominated by certain principal actors with primary responsibility for provision and administration (the CJSW departments, the CJAs and the larger, nationwide specialist third-sector organisations), is somewhat diffuse and has the potential to involve almost any public service organisation, as the Scottish Government's own broad definition suggests:

“The collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce reoffending and the harm that it causes, to promote social inclusion, citizenship and desistance.”<sup>25</sup>

Although this is far from the only definition of community justice, and has been criticised for being too narrow (see Chapter 2, Section 5),<sup>26</sup> it is what I use for the purposes of this thesis.

Much of this project concerns the position of community justice services within the 'penal field', described by Page as “the social space in which agents struggle to accumulate and employ penal capital – that is, the legitimate authority to determine penal policies and priorities – ... [which] intersects the bureaucratic, political, and

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<sup>24</sup> Angiolini, 2012: 26-28

<sup>25</sup> Scottish Government, 2014b: 1

<sup>26</sup> SP OR 19 November 2015, col. 41-44



legal fields, and neighbors the economic, academic, and journalistic fields.”<sup>27</sup> The Scottish Prison Service (SPS) exercises a degree of influence on Scotland’s penal field that is disproportionate to the relatively small proportion of sentenced offenders who are imprisoned; much of the discussion of community justice as a set of institutions and as a penal approach also entails discussing its position in relation to prison, and as Robinson has noted this has been a feature of much of the scholarship on community penalties.<sup>28</sup> Given this, and the interest in using community penalties as a mechanism for reducing imprisonment, this thesis necessarily gives some consideration to the relationship between the two.

The matter is complicated further by various types of institutional ‘blurring’ of boundaries between the systems of community justice and imprisonment;<sup>29</sup> as Cohen notes, efforts in the last few decades to shift from incarceration to community punishment have been characterised not by the replacement of one by another but by “gradual expansion and intensification of the system; a dispersal of its mechanisms from more closed to more open sites and a consequent increase in the invisibility of social control and the degree of its penetration into the social body”.<sup>30</sup> The first type of blurring has to do with responsibilities – the system of community supervision is required to deal not just with offenders punished in the community but also with the ‘throughcare’ or ‘aftercare’ of offenders leaving prison. Personnel from the community justice system may also work in prison with imprisoned offenders, producing a spatial blurring of the boundaries. Community penalties can also turn into prison sentences if offenders fail to comply with the requirements of community supervision (Chapter 2, Section 3). This complicated relationship between community punishment and imprisonment gives the lie to a straightforward narrative which posits using these punishments as ‘alternatives to imprisonment’. It is also often far from clear what is meant by ‘community’ in this

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<sup>27</sup> Page, 2011: 10

<sup>28</sup> Robinson, 2016a

<sup>29</sup> Cohen, 1985: 58

<sup>30</sup> *Ibid.*: 84

context, as efforts to engage local communities in this and other areas of criminal justice have made clear (Chapter 3).<sup>31</sup>

### 3. Explaining the Research Questions: Overview of the Thesis

The research questions of this project are:

1. What historical processes have structured the Scottish community justice field?
2. What are the likely effects of the reforms on the structures of this field?
3. How will the habitus of people working in different parts of community justice adapt to these structural changes?

These questions are structured around Bourdieu's social theory, particularly the concepts of 'field' (a social space in which various agents take positions in relation to each other and may come into conflict) and 'habitus' (a set of "structured, structuring dispositions" both shaping and shaped by everyday practice),<sup>32</sup> which are discussed in more detail in Chapter 4. The first question is intended to site the current restructuring policy within a historical context, dealt with mainly in Chapters 2 and 3 which are based on historical and academic parts of the research. The second and third questions deal more closely with the restructuring policy itself, and are answered partly by the literature research (particularly the 'closer range' research of recent policy documents and legislative developments) and partly by the empirical part of the project, which comprises 21 interviews with various practitioners and politicians involved in various ways with the community justice redesign.

The focus of the longer-term historical research is on the period between the 1968 Social Work (Scotland) Act, which made community justice supervision the responsibility of generic social work departments in local authorities, and the

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<sup>31</sup> Crawford, 1997; Hughes, 2007; Hope, 1995

<sup>32</sup> Bourdieu, 1990 [1980]: 52

present day. Chapter 2 takes theoretical cues from the 'penal field' described by Page and others to set the history of community justice in Scotland in the context of wider movements in community justice history, the complex and intertwined problems to do with the position of community penalties as 'alternatives to imprisonment' in the context of the 'penal turn' described in the work of David Garland,<sup>33</sup> and the ways in which Scotland's 'distinctive' approach to community justice has developed, including the effects of Scotland's changing relationship with England and Wales. Chapter 2 also sketches the development of the community justice redesign policy through its long consultation period up to the passage of the primary legislation underpinning the new system, the 2016 Community Justice (Scotland) Act.

Chapter 3 is more political in focus, taking as its starting point work by Barker, Savelsberg and Dzur which emphasises the role played by democratic structures in accounting for criminal justice policy variation between and especially *within* countries, complicating significantly the picture of the 'penal turn'.<sup>34</sup> In the context of longstanding problems with the public and political legitimacy of community justice, evidence suggesting that more deliberative forms of democracy produce more support for welfarist and rehabilitation-oriented policies connects this strand of political theory directly to current concerns about community justice.<sup>35</sup> This chapter also sets the policy in geographical context: Scotland's small size and geographic diversity have created particular challenges for balancing local responsiveness and national consistency; its local government is unusually influential and its national Parliament unusually new. The chapter then turns to the concept of community in criminal justice, taking a critical perspective influenced by Stanley Cohen's *Visions of Social Control*.<sup>36</sup> It also draws on the 'crime reduction partnership' literature, particularly the works of Crawford, Hughes and Hope,<sup>37</sup> to consider how

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<sup>33</sup> Garland, 2001

<sup>34</sup> Barker, 2006, 2009; Savelsberg, 1994; Dzur, 2012

<sup>35</sup> Rethinking Crime and Punishment, 2002a; 2002b; Barker, 2006

<sup>36</sup> Cohen, 1985

<sup>37</sup> Crawford, 1997; Hughes, 2007; Hope, 1995

community partnership approaches to crime reduction have developed, particularly through the 1990s, in parallel with other 'community'-oriented policies including community planning. Chapter 3 then gives a brief account of the somewhat fraught development of Community Planning Partnerships (CPPs) in Scotland, the particular democratic concerns about these partnerships and the implications of the community justice redesign which will connect community justice to CPPs, just as the Scottish Government also seeks to strengthen these flawed institutions of local democracy. The chapter concludes by arguing that despite the contemporaneity and seeming convergence of these two policy developments, the community justice and local democracy agendas have been kept separate, representing a lost opportunity to create a radically democratic and community-oriented approach to justice.

The fourth chapter explains the development of the project, before returning to Bourdieu's social theory to explain this more fully as a theoretical grounding for my methods, and more specifically considering the applicability of the 'penal field' to the Scottish case. The chapter orients some parts of the project more towards 'field' and other parts more towards 'habitus', before considering some of the literature on interviewing and the ways in which I prepared for the project fieldwork. Chapter 4 then turns to the issue of how the qualitative data from the interviews would be processed; I chose to use the very popular but not always well-understood 'thematic analysis' method. Rather than simply approaching this as a 'default' method of qualitative data analysis, the chapter explains the process and positions the analysis in relation to the vexatious ontological and epistemological tensions identified in the qualitative analysis methodology literature, including in particular the question of inductive as opposed to deductive coding, discussed by Boyatzis and Charmaz among others.<sup>38</sup> The chapter then explains how the themes drawn from the data were connected and related to each other by a somewhat hierarchical and structural system which aimed to organize the findings around a manageable number of interrelated key points, and how I used software to achieve this.

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<sup>38</sup> Boyatzis, 1998; Charmaz, 2001

There follow two Findings chapters which discuss the results of the analysis, illustrated by extensive direct quotes from interviews. The first of these, Chapter 5, concerns aspects of community justice practice and is primarily (but not exclusively) based on interviews with management-level practitioners in CJAs, social work and the third sector. The key findings from this chapter concern the importance accorded by these practitioners to research and evidence-based practice, their general agreement that the CJA system was in need of replacement but was not wholly unsuccessful, and their concerns about the complex and sometimes difficult dynamics of community justice partnerships (and the effects of restructuring policies on these partnerships). Chapter 5 also considers the pervasive impact of austerity cuts, the search for long-term and flexible funding models in an area of public service which often seems to resist easy quantification, practitioners' own experiences of the redesign consultation, the ways in which they sought to smooth the transition to the new system, and their hopes and concerns for that new model.

Chapter 6 is based primarily (but, again, not exclusively) on my interviews with local and national politicians involved in community justice and particularly the redesign policy. The chapter considers a number of matters to do with politics and purposes, beginning with the ways in which CJAs have operated as institutions of local democracy and deliberation, and related issues to do with accountability in the current and the new system. It then turns to the complex dynamics of local and national control in community justice, its connection to political questions and the idea that the new system is intended to combine the best aspects of local and national approaches. The chapter also considers discussion of the purposes of community justice, highlighting the continued relevance of the Kilbrandon philosophy in the modern day as well as the view, expressed by many interviewees, that a major cultural change in Scottish criminal justice and wider society (well beyond the current redesign) was needed, before considering a key obstacle to such a development – the widespread lack of public and political interest in community justice. Chapter 6 concludes by arguing that the compromise between local and national government has left the new national body, Community Justice Scotland,

with some very difficult responsibilities – developing good working relationships with local bodies and raising the public profile of community justice – but very little power.

Chapter 7 draws together and briefly summarises the key themes from the findings chapters and sites them within the theoretical literature discussed in the first half of the thesis, to make several theoretically-grounded arguments about the Scottish community justice redesign. By way of a denouement, the chapter sets the current system and the redesign in the context of the development of Scotland's penal field, taking a critical view of efforts to produce a smooth and straightforward transition and arguing further that the redesign, as well as being only the latest in a series of compromises between local and national government over community justice, represents a continuation of a 'dirigiste' approach to local governance. It builds on this to argue that community justice will remain a politically and culturally invisible part of Scotland's justice system, despite the intention in the redesign to raise its public profile, and then considers the redesign in terms of the development of Scotland's distinctive penal identity, and the wider public service reforms that followed the Christie Report.<sup>39</sup> Despite claims that have been made about desistance and reintegration, the redesign is fundamentally a managerial reform which will not necessarily reorient Scotland's penal field in the way hoped for by many interviewees, and is unlikely to have any significant direct effect on the everyday practice of community justice. It could not be considered a new paradigm in the same way that the advent of generic social work was.<sup>40</sup> However, the restructuring is already having some indirect effects – the transition process is increasing difficulties for some provider organisations and disrupting existing partnership arrangements, despite adaptations of community justice practices that aim to minimise this disruption.

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<sup>39</sup> Christie, 2011

<sup>40</sup> Brodie, Nottingham and Plunkett, 2008

Chapter 7 then concludes the thesis by returning to the research questions above, answering them by summarising some of the main findings and arguments of the thesis. This thesis is believed to be the first empirical study of the Scottish community justice policy, and the only one to involve fieldwork carried out while the policy was still in development. In understanding the historical origins of the policy, its connection to questions about community and democracy in Scotland, the development of the new model and practitioner and political views on it, I hope to explain its relevance to community justice in Scotland and the wider world, the development of the Scottish penal field and Scotland's position as a jurisdiction and a nation.

## Chapter 2: Community Justice in Scotland's Penal Field

### I. Introduction

This chapter examines the historical background of the redesign of the Scottish community justice system. In doing so, it aims to answer the first of the project's research questions: "What historical processes have structured the Scottish community justice field?" It begins by considering some issues and concerns which have persisted throughout the history of community justice in the UK – a breadth of geographic scope intended to overcome the dearth of historical material on early community justice history in Scotland. The chapter then considers a major and complex problem for community justice: a Gordian knot in which are entangled a lack of public knowledge, a deficit of public and political interest, a perceived lack of judicial legitimacy (manifested in complaints of underuse by sentencers), what I have termed 'discourses of optionality' which position community sentences as 'alternatives to imprisonment' and the ways in which policies intended to address this deficit may actually diminish the value of community sentences as diversionary measures. The chapter then takes a somewhat more narrative approach to consider the ways in which Scottish justice policy and community justice have followed a path distinct from but sometimes affected by developments in England and Wales, and marked by complex and ongoing power struggles. The chapter then explains in detail the conception and development of the current restructuring of the system, of which this project is believed to be the first empirical study.

The historical scope of this chapter is wide, but its focus is on the 'late modern' period, defined approximately as lasting from the late 1960s to the present day. As such, its theoretical approach to historical developments is informed by sociological accounts of the development of more punitive justice policies in the late modern period, and in particular by Garland's book *The Culture of Control*.<sup>41</sup> This now-classic account of penal developments in Britain and America investigates the 'penal turn'

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<sup>41</sup> Garland, 2001



which took place in both countries around the 1970s, a sudden and surprising shift from 'penal modernism' or 'penal welfarism' to 'penal populism'. The first of these tendencies is described as being dominant in the early to mid-20<sup>th</sup> century, and characterised by the dominance of rehabilitation in penal discourses (including through the development of community justice practice)<sup>42</sup> and reductions in the use of severe punishments including imprisonment and the death penalty (abolished in the UK from 1965, suspended in the US in the 1970s). However, a 'crisis in penal modernism' developed in which crime and punishment became more politicised and 'law and order' increasingly staked out by right-wing political parties.<sup>43</sup> Other aspects of this late-modern period of 'penal populism' included more emotional and punitive political discourse around crime and punishment, the growth of private crime control, a dramatic increase in the use of imprisonment and – pertinently for community justice – a loss of criminological belief, and political interest, in rehabilitation and the welfare of convicted offenders.<sup>44</sup> This coincided with and was partly the result of wider economic and social factors, particularly social upheaval in the 1960s, recession in the 1970s, the growth of neoliberal capitalism in the 1980s and rising crime from the 1960s until about the 1990s. In general, the penal turn was less dramatic in the UK (and other English-speaking countries) than in the almost uniquely punitive USA.<sup>45</sup> Recent commentary within Scottish criminology has argued that Scotland (a separate jurisdiction within the UK) has avoided the most dramatic aspects of this penal turn.<sup>46</sup>

Garland's account has been criticised for its inadequate explanation of causes, of variation (between places) and of consistency of some practices over time. Garland himself has argued for a conception of penality which "attend[s] more closely to the structure and operation of the penal state".<sup>47</sup> (Chapter 3 considers variation between

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<sup>42</sup> McWilliams, 1986

<sup>43</sup> Garland, 2001: 53-73

<sup>44</sup> Martinson, 1974

<sup>45</sup> Garland, 2013

<sup>46</sup> McAra, 2005, 2008

<sup>47</sup> Garland, 2013

places within Scotland, and the role of democratic structures and local government in community justice, in more detail).

Bourdieu's theory of the 'field' – a social space of any size in which actors vie for positions using various types of 'capital'<sup>48</sup> – has proved valuable in examining the development of penalty at a 'meso' level – one which can 'bridge the gap' between macro-level scholarship of the type exemplified by *The Culture of Control* and micro-level studies which emphasise the complexity of what 'really' happens 'on the ground'.<sup>49</sup> Page makes particularly valuable use of the concept of the 'penal field' in *The Toughest Beat*, his account of the role of the California Correctional Peace Officers Association (CCPOA) in shaping and influencing the ways in which that state experienced its penal turn.<sup>50</sup> The 'penal field' goes beyond the 'penal state' to consider the involvement of non-state institutions, and this is part of its utility in analysing a part of criminal justice in which charities have traditionally been prominent.<sup>51</sup>

Goodman, Page and Phelps developed the 'penal field' concept further in arguing for an 'agonistic' perspective on penal development, a theoretical framework based on three axioms: that penal change results from struggle between actors in asymmetric power relationships with each other (i.e. with differing capital resources), that this struggle is constant and consensus over penal matters largely illusory, and that struggles within the penal field are affected but not determined by wider trends in society.<sup>52</sup> One effect of these structural characteristics is that reforms oriented towards a particular rationale, although often announced with some fanfare, are almost never carried out entirely as intended.<sup>53</sup> However, as will be argued in Chapter 4 (Section 3), the agonistic approach does not translate neatly to Scotland.

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<sup>48</sup> Bourdieu, 1990 [1980]

<sup>49</sup> Goodman, Page and Phelps, 2014

<sup>50</sup> Page, 2011

<sup>51</sup> McWilliams, 1983

<sup>52</sup> Goodman et al., 2014

<sup>53</sup> *Ibid.*

This chapter will show that conceiving of Scottish community justice using the penal field helps explain the extent and patterns of recent restructuring, and the power struggles that have shaped its recent history. In this case, the situation is complicated further by the position of *Scottish* community justice specifically within not just the penal field but also social work and local government fields.

## 2. The Standard History of Probation

Since its beginning in the late Victorian era, the practice and administration of community justice has been affected by certain longstanding issues. There is remarkably little historical material on the early history of Scottish community justice, so any discussion of these concerns must also draw on material about the history of the field in the wider UK. Particularly influential in this regard is the ‘McWilliams quartet’ of articles on the evolution of probation in England and Wales.<sup>54</sup> These articles divided British probation history into three broad ‘eras’, characterised by different approaches to probation practice and the ontology of offenders.

McWilliams describes the origin of probation in the late 19<sup>th</sup> century as a response to social concerns, as well as a convenient judicial third way. This period was marked by concern over urban poverty, crime and the ‘dangerous classes’;<sup>55</sup> among the many philanthropic organisations established around this time was the Church of England Temperance Society (CETS), founded in 1862 as the Church of England Total Abstinence Society.<sup>56</sup> CETS was founded to promote abstinence from (or at least moderation in) drinking, by evangelising to the public – and thereby to save the souls of alcoholics and reduce alcohol-related crime. CETS began appointing missionaries to police courts in 1876, initially “exhorting offenders to give up drink, distributing uplifting tracts, and taking pledges of abstinence”.<sup>57</sup> These missionaries quickly became useful to magistrates in other ways, the most important and lasting

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<sup>54</sup> McWilliams, 1983; 1985; 1986; 1987

<sup>55</sup> Vanstone, 2004: 35

<sup>56</sup> McWilliams, 1983: 134

<sup>57</sup> *Ibid.*

of which would be the supervision of offenders released on 'recognizances' (a power then recently granted to magistrates) and assisting the court in determining which offenders should be so released. The work in the courts,<sup>58</sup> which quickly became the main business of CETS missionaries, established the practices of supervision and presentence reporting which still form the core of modern community justice practice.<sup>59</sup>

The second 'era' in the history of probation was 'diagnostic' and associated with the burgeoning disciplines of psychiatry and sociology.<sup>60</sup> The 1907 Probation of Offenders Act, which applied across the UK, formalised probation orders and made probation personnel (most of them still missionaries at the time) court employees. This was the beginning of a professionalising tendency within community justice whose principal features were the development of more formal structures, the end of church involvement in the 1930s and the institution of formal staff training.<sup>61</sup> Through the 1960s and 1970s, community justice in the UK gained more responsibilities and more community sentencing options became available.<sup>62</sup> In Scotland this period also saw the Kilbrandon Report and the development of what is widely seen as a distinctively Scottish approach to criminal justice, including community justice.<sup>63</sup>

The third era begins approximately at the same time as the 'crisis of penal modernism' identified by Garland,<sup>64</sup> marked by more and longer imprisonment, more punitive discourse around punishment and more public and political concern about crime. This final era is typically characterised as being both punitive and

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<sup>58</sup> Holmes, 1911

<sup>59</sup> McWilliams, 1983

<sup>60</sup> McWilliams, 1985, 1986

<sup>61</sup> McWilliams, 1985

<sup>62</sup> Pease and McWilliams, 1980

<sup>63</sup> Kilbrandon, 1995 [1964]

<sup>64</sup> Garland, 2001

highly managerial.<sup>65</sup> Community justice tended also to become both actually and rhetorically more punitive, particularly in England and Wales.<sup>66</sup>

One feature of this period was a loss of faith in the idea that community punishments could rehabilitate offenders, encapsulated in Martinson's infamous claim that 'nothing works'.<sup>67</sup> However this pessimism ultimately gave way to the idea that some rehabilitative measures *were* effective, and that these could and should be tested empirically – the 'what works' school of thought.<sup>68</sup> In these altered terms, rehabilitation (properly evaluated) remained popular but tended increasingly to be framed in terms of protecting the public from future crimes, particularly from higher-risk offenders.<sup>69</sup> A risk management ethos became prominent in probation, social work and mental health, including the introduction of Multi-Agency Public Protection Arrangements (MAPPA) for supervising high-risk offenders in England and Scotland, and an emphasis on actuarial risk assessment tools such as OASys (Offender Assessment System).<sup>70</sup> In general, community justice practice became more managerial and (in many jurisdictions) more market-oriented.<sup>71</sup> Governments began to exert more central control over community justice services through national standards, performance targets and successive reorganisations.

This periodised history provides some sense of the main currents in the development of community justice in the UK. There are parallels with Scotland, particularly in the diagnostic and managerial phases, but there are also important differences which are discussed further below. Scotland is notable for its earlier adoption of a service run by the state rather than religious charities,<sup>72</sup> and the move towards more risk assessment in the 1990s and 2000s, while also present in Scotland,

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<sup>65</sup> McWilliams, 1987

<sup>66</sup> Nellis, 2004; Robinson and Ugwudike, 2012

<sup>67</sup> Martinson, 1974

<sup>68</sup> McGuire, 1995

<sup>69</sup> McNeill, 2005: 34

<sup>70</sup> Raynor, 2007; Nellis, 2004

<sup>71</sup> Carter, 2003

<sup>72</sup> City of Glasgow, 1955

was not accompanied by punitive rhetoric as it was in England and Wales.<sup>73</sup> Perhaps most importantly, the 'diagnostic' period in Scotland brought not only changes in practice but highly significant structural developments.

### 3. Legitimacy, Optionality and Toughness

Throughout its history, the system of community penalties has suffered from problems with legitimacy.<sup>74</sup> In the wider public sphere this has mostly manifested as a belief that community penalties are too lenient and/or applied to the 'wrong' offenders, where the public is aware of these penalties at all. There is a lack of public or political awareness of what community penalties are and how they work, which may partly be attributed to their low visibility in popular culture.<sup>75</sup>

This has taken place in the wider context of the 'penal turn', a development characterised by rising crime and increasingly emotive and politicised responses to crime and punishment since the 1970s.<sup>76</sup> The most visible aspect of this was the enormous rise in imprisonment across much of the Western world – the prison population of England and Wales more than doubled from 1993 to 2008; Scotland's prison population experienced a similar pattern but grew more slowly.<sup>77</sup> As of 2015, Scotland's imprisonment rate is 143/100,000 population while that of England and Wales is only marginally higher, at 148/100,000 population. Although far lower than those anywhere in the US (which has tended to symbolise the very worst of the 'penal turn'), these imprisonment rates are high by comparison with most Western and Northern European countries.<sup>78</sup>

However, it is less widely acknowledged that the rise in imprisonment in the UK and the US was accompanied by a rise in the use of community penalties. Because of their intended use as diversionary sentences, discussion of community penalties

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<sup>73</sup> McNeill, 2005

<sup>74</sup> Robinson, 2016; Maruna and King, 2008; McWilliams, 1987: 116

<sup>75</sup> Mawby and Worrall, 2013: 94-102

<sup>76</sup> Garland, 2001

<sup>77</sup> Berman, 2013

<sup>78</sup> Walmsley, 2015

also entails discussion of imprisonment and sentencing. Within the penal field, community penalties have long existed in the 'shadow' of the prison, despite their demonstrably greater penal and social value. This is partly because of the blurred institutional boundaries between community supervision and imprisonment, and is evidenced in longstanding concern in Scotland and elsewhere about the underuse of community punishments by sentencers.<sup>79</sup> This section argues that this judicial legitimacy and underuse problem is largely a result of what I term 'discourses of optionality', which have positioned community penalties as 'alternatives to imprisonment' throughout their history. It also considers ways in which the British and Scottish Governments have attempted to deal with legitimacy problems by making community penalties more explicitly punitive, in rhetoric and in reality.

### Public Legitimacy and Awareness

In general, there is little evidence of public legitimacy for, or public confidence in community sentences. As Maruna and King remark, "probation has developed a distinct public relations problem in the USA and the UK",<sup>80</sup> although they acknowledge that this may be less serious in Scotland. Public attitudes research on crime and punishment suggests this is not a straightforward question of the public believing offenders deserve harsh punishments, and that community sentences and sentencers are too lenient, and thus of the increase in imprisonment arising from the popular will. In practice, as Korn has remarked, "the public has become one of criminal justice's 'sacred cows', often deferred to but never consulted".<sup>81</sup>

There is not much evidence that public opinion is against the use of community penalties *per se*,<sup>82</sup> or that public beliefs about appropriate sentences (tested in mock sentencing exercises) are more punitive than those of actual sentencers (although they may believe that they are).<sup>83</sup> Additionally, opinion polls (which involve 'snap judgments' and little discussion, and are often phrased to suit a particular agenda)

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<sup>79</sup> Moore, 1978; Morison, 1962; McIvor, 1994: 434; Rubin, 1961

<sup>80</sup> Maruna and King, 2008: 339

<sup>81</sup> Korn, 1971, quoted in Maruna and King, 2008: 339

<sup>82</sup> Maruna and King, 2008

<sup>83</sup> Hough, 1996

may produce a misleadingly punitive and potentially self-fulfilling picture of public opinion;<sup>84</sup> conversely, more deliberative approaches to gauging public opinion show a more complex and largely more lenient picture.<sup>85</sup>

The public legitimacy issue appears to stem largely from a lack of awareness of community penalties. In their recent major study of occupational cultures in probation in England and Wales, Mawby and Worrall described a sense of frustration among probation staff arising from this lack of public knowledge, which manifested not only in the media and political climate but also in their interactions with personal acquaintances.<sup>86</sup> The findings from this project suggest that public and political ignorance about community justice is also a source of concern to practitioners and policymakers in Scotland (Chapter 6, Section 6), and that this has been considered in the redesign of the Scottish system, but the redesign is unlikely to address it. The low level of public awareness is not entirely surprising in light of the media profile of community punishments. Compared to other areas of criminal justice or of public service, community justice and social work receive little media coverage. Even the Transforming Rehabilitation reforms in England and Wales (see Chapter 4, Section 1), arguably an internationally unique criminal justice reform, received little news media coverage, most of it confined to the *Guardian* and the *Independent*.<sup>87</sup> Further, as Robinson notes,

“[u]nlike prisons, community sanctions have no obvious physical architecture or structural locus (beyond probation and parole offices and supervisees’ homes) and those who administer them tend not to wear uniforms, such that both the sanctions and those who enact them fail to generate ready images or occupy any significant space in the public imagination.”<sup>88</sup>

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<sup>84</sup> Maruna and King, 2004; Savelsberg, 1994

<sup>85</sup> Rethinking Crime and Punishment, 2002a

<sup>86</sup> Mawby and Worrall, 2013: 83-7

<sup>87</sup> Hedderman and Murphy, 2015

<sup>88</sup> Robinson, 2016a: 104



Successful community justice practice is oriented towards prevention or minimisation of future offending, and thus defined by what does *not* happen as a result of it (reoffending or reconviction at the individual and statistical levels). What media coverage there is of community justice and social work tends to focus instead on high-profile failures of supervision or protection – high-risk offenders left unsupervised and thus free to carry out violent crimes.<sup>89</sup> Fitzgibbon argues that although incidents of this type have long drawn news media attention, the tone of the coverage has become – in line with trends towards emotionalised crime and punishment discourse, an eroded sense of community and heightened insecurity – noticeably more emotive and inclined to attack individuals (a recent example being Sharon Shoesmith, head of children’s services in Haringey at the time of the Baby P case).<sup>90</sup>

Community penalties also have a low profile in popular fiction of various types.<sup>91</sup> Compared to the countless films and TV shows in which courts, prison and (especially) the police have featured prominently, there are only a handful of offerings which consider the work of the community justice system, and few are well-known. This underrepresentation in popular fiction might not seem particularly important, but in light of research suggesting that public opinion on community justice is far more readily affected by emotive appeals to moral values around “making good” and “paying back” than by “cognitive strategies” based on dry statistical information,<sup>92</sup> the dearth of high-profile, popular and compelling community justice fiction may be a contributing factor to its public legitimacy problem.

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<sup>89</sup> Mawby and Worrall, 2013: 87-94

<sup>90</sup> Fitzgibbon, 2011

<sup>91</sup> Mawby and Worrall, 2013: 94-102

<sup>92</sup> Maruna and King, 2008: 342-5

## Judicial Legitimacy – Optionality, Net-Widening and the ‘Paradox of Probation’

The public legitimacy deficit has been accompanied by a similar concern, mainly within community justice institutions, that penalties lack legitimacy among members of the judiciary, and that sentencers make insufficient use of them. In the late-modern context of the high and rising prison populations, this concern has taken on a new urgency, with governments pursuing community penalties as a way of reducing the prison population, often with only limited success. Investigating the relevance of judicial legitimacy for community justice in the penal field involves some consideration of studies of sentencing statistics and practice, and of theoretical models which aim to account for the complex and contradictory position of community justice in relation to the ‘penal turn’ of the last forty years, in Scotland, England and elsewhere – specifically the extent to which community justice serves as either a ‘diversionary’ or a ‘net-widening’ system.<sup>93</sup>

Community punishments of various types are sometimes referred to as ‘alternatives’ to imprisonment.<sup>94</sup> This term has different meanings depending on who is choosing between imprisonment and the ‘alternatives’ – sentencers in individual criminal cases at the micro level, or policymakers seeking to alter criminal justice systems at the macro level. Sentencers in the UK are independent from politicians and enjoy considerable discretion in the sentencing options available to them, especially in Scotland.<sup>95</sup> Meanwhile, policymakers, including politicians and civil servants, have the power to introduce certain types of sentences, to alter the set of available sentencing options and/or to restrict the range of judicial discretion in sentencing, including through the use of mandatory sentences. In either case, the language of ‘alternatives to imprisonment’ reifies the dominance of prison in the penal field and the scholarship around it.<sup>96</sup>

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<sup>93</sup> Cohen, 1985: 13-39; Austin and Krisberg, 1982

<sup>94</sup> Austin and Krisberg, 1982

<sup>95</sup> McNeill and Whyte, 2007: 64-8; Millie, Tombs and Hough, 2007: 250-1

<sup>96</sup> Robinson, 2016a: 102

Community justice has been defined in relation to imprisonment since it began in its modern form, in the late Victorian era. As McWilliams writes in his classic history of the early development of probation in England,<sup>97</sup> it developed during a period in which England's justice system was becoming more systematised, crime was rising, and the jurisdiction of magistrates (similar to Sheriffs in Scotland) had been extended to deal with a wider range of criminal matters. All of this resulted in more business for magistrates and a major rise in the prison population. Magistrates also found themselves caught between two sides in a debate over the right way to sentence, between consistency and leniency, particularly for minor offenders – unable simply to let them off but unwilling to punish too harshly (or to contribute further to the severe prison overcrowding of the period). The police court missionaries provided a way out of this by allowing the offender to be supervised but not imprisoned.<sup>98</sup> About a century later, it was crisis in Scottish prisons – rather than within the community justice system – that forced the Scottish Office to attempt to use community penalties as a way of reducing the prison population,<sup>99</sup> while the introduction of the Community Payback Order in 2010 was similarly justified in terms of dealing with overcrowding in prison, following a recommendation by the Scottish Prisons Commission:

“To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission recommends that paying back in the community should become the default position in dealing with less serious offenders.”<sup>100</sup>

Scholars and practitioners in community justice describe a persistent problem with underuse of community penalties by the judiciary;<sup>101</sup> this has long been a concern, even during the diagnostic ‘golden age’ of probation; the 1962 Morison Report on probation in the UK found that during this period, in both England and Wales and Scotland, the ‘market share’ of probation actually declined even though the absolute

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<sup>97</sup> McWilliams, 1983

<sup>98</sup> *Ibid.*

<sup>99</sup> Rifkind, 1989; Coyle, 1991: 140-2

<sup>100</sup> Scottish Prisons Commission, 2008: 3

<sup>101</sup> Moore, 1978; Morison, 1962; McIvor, 1994: 434; Rubin, 1961

numbers of people on probation rose markedly during this period.<sup>102</sup> The 1955 history of probation in Glasgow also emphasised that despite a recent increase in its use “it is felt that probation can play a much more prominent role in the Adult Courts.”<sup>103</sup> The concern may have been even more serious in Scotland before the Kilbrandon reforms. The Scottish Office expressed concern about a lack of understanding in a 1947 report, and 15 years later the Morison Report was raising similar issues:

“Probation is used considerably less in Scotland than in England and Wales especially for adult offenders. The use of probation by the higher courts is also much greater in England and Wales than in Scotland, where there is still a tendency to regard probation primarily as a treatment for juveniles and young offenders.”<sup>104</sup>

By 2010 Scotland had “one of the widest ranges of ‘alternative’ community-based sentences anywhere in the world,”<sup>105</sup> including the Probation Order, the Community Service Order (CSO), the Supervised Attendance Order (SAO), the Drug Treatment and Testing Order (DTTO) and the Restriction of Liberty Order (RLO). After the crisis in Scottish prisons during the 1980s, the CSO (introduced in 1979) was developed as a specific alternative to imprisonment, with a requirement imposed in 1991 that Scottish courts could only impose a CSO where they would otherwise impose a custodial sentence.<sup>106</sup> Similarly, the SAO was developed as an alternative to imprisonment for fine default, which would require the offender to carry out a certain number of hours of ‘constructive activity’, constituting a “fine on the offender’s free time” in lieu of payment.<sup>107</sup> Thus this set of options appears to have developed partly as the result of the highly selective application of the logic of ‘alternatives to imprisonment’, producing measures that were highly specialised in their diversionary intent although not necessarily very different in practice. This complex system of community sentences was described as part of the reason for the

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<sup>102</sup> Morison, 1962: 28-31

<sup>103</sup> City of Glasgow, 1955: 20

<sup>104</sup> Morison, 1962.

<sup>105</sup> Tombs and Piacentini, 2010: 238

<sup>106</sup> McIvor, 1994: 433

<sup>107</sup> McIvor, 2010: 44

low public profile of community justice in Scotland,<sup>108</sup> and was mostly replaced by the Community Payback Order (CPO) in 2010 (see below).

However, much of the research on sentencing suggests that decisions to imprison rather than impose a community punishment do *not* result from a paucity of viable community options.<sup>109</sup> In addition, there is strong recent evidence that increasing the use of community penalties can actually *increase* the prison population.<sup>110</sup> This is to some extent supported by the fact that rises in imprisonment have tended to be accompanied by rises in the use of community penalties.<sup>111</sup> As Cohen has argued, “the claim to be doing more good (or less harm) is somewhat less valid if the alternatives are not real alternatives at all, but supplements”.<sup>112</sup> Attempts to reduce imprisonment by providing ‘alternatives’ to incarceration can widen rather than narrow the net of social control, as a complex apparatus of classification must be developed to determine who gets ‘diverted’ and sentencers give more of these apparently less harmful sentences to minor offenders who might not otherwise have been sentenced at all. Austin and Krisberg describe this aspect as key to the “unmet promise of alternatives to incarceration”.<sup>113</sup> In addition, Millie et al.’s research shows that British sentencers in ‘borderline’ cases (those that could receive either a custodial or a community sentence) are more inclined to impose prison sentences where the offender has reoffended after a community sentence, taking the view that community justice has ‘failed’ in that offender’s case, but using prison as a ‘last resort’ rather than because it is expected to ‘succeed’.<sup>114</sup>

Where community penalties *are* imposed, imprisonment remains available as an option, as it also does in related practices of post-imprisonment supervision such as parole. An offender who breaches the terms of a community penalty or post-prison

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<sup>108</sup> Scottish Government, 2007: 9

<sup>109</sup> Millie and Jacobson, 2004

<sup>110</sup> Phelps, 2013

<sup>111</sup> Austin and Krisberg, 1982: 375-6; Phelps, 2016

<sup>112</sup> Cohen, 1985: 70

<sup>113</sup> Austin and Krisberg, 1982

<sup>114</sup> Millie et al., 2007

supervision, such as by failing to attend an appointment, can be recalled to court and potentially (if the breach is especially grave, or has happened many times) be imprisoned, even for an administrative as opposed to a criminal offence. This becomes particularly likely when community justice systems are encouraged to punish breaches severely (see below). Some community penalties, such as the Suspended Sentence Order in England and Wales, make the threat of a custodial sentence even more direct a consequence of 'failure'. This can result in what Caplow and Simon describe as a form of 'reflexivity' in which community sanctions create "feedback loops" that bring people into prison (and then back out on supervision, etc.).<sup>115</sup> Connected to this is the phenomenon of "back-end sentencing" – returning parole violators to prison for breaches – which has been a major and understudied factor contributing to the growth of imprisonment in the US.<sup>116</sup>

Phelps, writing about the US system in recent years, describes a 'paradox of probation' in which community sentences can function either to divert people away from prison or to feed people into it – or both at the same time.<sup>117</sup> The key factors Phelps identifies in determining which it is are: the extent to which supervision is supportive and rehabilitative or punitive and compliance-focused, how breaches are dealt with by systems, and the extent to which the sentencing process is net-widening or diversionary.

So, is the Scottish community justice system in 2016 net-widening, diverting or both? Weaver et al. point to an increase in the rates of recall to prison from post-release supervision or licences as a "back-end sentencing" factor that has frustrated efforts to reduce the prison population, but one that "should be understood as a consequence of the political failure to address rising levels of 'front door' entry into prison."<sup>118</sup> However, recalls from post-release supervision have rarely accounted for more than 1% of receptions into prison through recent years (although they

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<sup>115</sup> Caplow and Simon, 1999.

<sup>116</sup> Lin, Grattet and Petersilia, 2010; Simon, 1993: 205-229

<sup>117</sup> Phelps, 2013.

<sup>118</sup> Weaver, Tata, Munro and Barry, 2012: 95

constitute around 9% of Scotland's prison population, up from about 5% in 2006, suggesting that a sizeable proportion of recalled prisoners return to long sentences).<sup>119</sup> Similarly, although about a third of CPO breaches in 2013-14 resulted in a custodial sentence, this only accounts for about 800 prison receptions from an annual total of nearly 34,000.<sup>120</sup> Prison receptions continue to be almost entirely accounted for by remand and direct sentencing, suggesting that "back-end sentencing" is not currently a major factor in Scottish imprisonment.<sup>121</sup> Front-end aspects of the 'paradox of probation' tend to be less easily determined and understood.<sup>122</sup>

The 'share' of community sentences has increased from 12% to 17% of convictions in Scotland over the last ten years. In general, crime and reconvictions have also decreased significantly over this time.<sup>123</sup> This has not however been accompanied by a fall in the share of custodial sentences, which has remained fairly stable while the 'share' of financial penalties has fallen significantly.<sup>124</sup> The replacement of the more specifically diversionary CSO and SAO with the CPO has clouded the picture of the extent to which CPOs are diverting cases away from prison, but is also likely to be part of the explanation for the rise in the share of community penalties. Considering the different shares of custodial sentences for the same crimes over time shows that despite this rise, the percentage share of custodial sentences for most offence types has risen over the last decade – that is, a higher percentage of convictions for similar crimes result in custodial sentences.<sup>125</sup> This counterintuitive finding is probably largely accounted for by the large fall in the share of financial penalties and the contemporaneous large increase in the use of fiscal fines and other out-of-court disposals. It suggests that overall, at the "front door" of sentencing, community

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<sup>119</sup> Scottish Government, 2015f

<sup>120</sup> Scottish Government, 2015b, 2015f

<sup>121</sup> Scottish Government, 2015f

<sup>122</sup> Robinson, 2016a: 101

<sup>123</sup> Scottish Government, 2015g: 22

<sup>124</sup> Scottish Government, 2016b

<sup>125</sup> Scottish Government, 2015a: 43

penalties have not been successful enough at diverting people away from prison to offset the rise in imprisonment.

Millie et al.'s finding that custodial sentences are often imposed in 'borderline' cases where the offender has already served community sentences – out of a sense that these previous sentences have 'failed' and sentencers have 'no other option' but to imprison<sup>126</sup> – could also help to explain the apparent failure of community penalties significantly to reduce the prison population. Statistics on reconviction and sentencing in Scotland support this, with people who have served more than one or two previous community sentences being significantly more likely to receive a custodial sentence. However, much of the rise in custody's 'share' that is observed as the number of previous community sentences increases appears to be at the expense of the 'share' of financial penalties, rather than community sentences.<sup>127</sup> In general, the 'share' of convictions that result in financial penalties decreases significantly with previous convictions or sentences of any type.<sup>128</sup>

It may be that a process similar to the one described by Millie et al., but operating in a different part of sentencing, is occurring in relation to financial penalties; previously imposed financial penalties are seen to have 'failed', leading sentencers to impose CPOs or other supervisory sentences. This is far from certain, though, given that the data do not include information on previous financial penalties. They are also only minimally disaggregated by crime type, and are only aggregate- rather than individual-level data.<sup>129</sup>

Despite these limitations, it seems likely that the process described by Millie et al., in which the perceived 'failure' of previous community sentences leads to decisions to imprison, is continuing to take place in Scotland. Despite some success in increasing the 'share' of community penalties, there is no clear evidence that they have been successful as genuine 'alternatives' which divert people away from imprisonment in

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<sup>126</sup> Millie et al., 2007: 251-4

<sup>127</sup> Scottish Government, 2015g: Table 15

<sup>128</sup> *Ibid.*: 21

<sup>129</sup> I would like to thank Ben Matthews for his advice on using conviction statistics.



significant numbers. However, community penalties in Scotland have so far also largely avoided developing the problematic “back-end sentencing” observed in other jurisdictions.

### Legitimacy Through ‘Toughness’ in the Late-Modern Era

One way in which both the UK and Scottish governments have attempted to improve the public and judicial legitimacy of community penalties is by emphasising that these penalties are not lenient or ‘soft’ punishments. This was widely seen as a way of regaining legitimacy after the 1970s’ ‘crisis of faith’ in rehabilitation and the general turn towards popular punitiveness. Robinson and Ugwudike have explained the ways in which the probation service of England and Wales reconfigured itself to suit a new ‘toughness’ agenda.<sup>130</sup> This was not just an externally imposed agenda but was seen as a route to regaining public, judicial and political legitimacy even within the service.<sup>131</sup> The language of community penalties was altered to seem ‘tougher’, with the development of punitive rhetoric about a ‘punishment service’. Plans to rebrand the entire agency as the Community Punishment and Rehabilitation Service came close to fruition in 2000.<sup>132</sup>

Perhaps more important in practice for probation in England and Wales was the stricter enforcement of penalties (i.e. reporting breaches and acting on them), for which the first national guidance was issued in 1992 – also the year in which probation became an official criminal sentence rather than an alternative to one.<sup>133</sup> This appears to have had some effect on the perceived legitimacy of community penalties among sentencers, but also had significant counter-diversionary implications – the number of offenders imprisoned for breaches rose by an alarming 470% between 1995 and 2009.<sup>134</sup> However in practice it appears likely that probation staff in England and Wales still largely under-enforce breaches, while using

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<sup>130</sup> Robinson and Ugwudike, 2012

<sup>131</sup> *Ibid.*: 301

<sup>132</sup> Travis, 2000

<sup>133</sup> Osler, 1995: 17

<sup>134</sup> Robinson and Ugwudike, 2012: 311

'creative compliance' to achieve enforcement targets.<sup>135</sup> This suggests that although this initiative towards toughness was never enacted completely (as Goodman et al.'s "agonistic perspective" would suggest),<sup>136</sup> it exemplifies efforts towards legitimacy which undermine the diversionary intent of non-custodial measures. Similarly, the Community Service Order in England and Wales became more punitive and was renamed the Community Punishment Order in 2000;<sup>137</sup> it was subsequently renamed 'unpaid work'. Following the publication of Louise Casey's report *Engaging Communities in Fighting Crime*,<sup>138</sup> it was again rebranded (as 'community payback') and 'toughened' by the addition of high-visibility vests which would identify and shame offenders thus sentenced.<sup>139</sup>

In Scotland, similar attempts have been made to gain legitimacy through 'toughness' but have tended not to have such deeply felt effects. The Community Payback Order (CPO), instituted in Scotland by the 2010 Criminal Justice and Licencing (Scotland) Act, although highly oriented towards rehabilitative practice and the reduction of imprisonment (being accompanied by the introduction of a presumption against the shortest sentences), was still framed in the language of toughness. However, the Scottish Government's approach aimed not merely to stress that the new sentences could command public legitimacy through their toughness, but also to challenge preconceptions of the meaning 'toughness':

"The Government will challenge the perception that short prison sentences are "tough" whereas community penalties are "soft". Community penalties can be more demanding than prison. They can require offenders to undertake work, paying back for the wrong they have done. They can involve offenders confronting the victim of their crime and facing up to the consequences of their actions. They can require offenders to develop skills that will enable them to find work and help them move on in life. And at a

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<sup>135</sup> Robinson and Ugwudike, 2012

<sup>136</sup> Goodman et al., 2014

<sup>137</sup> Nellis, 2004

<sup>138</sup> Casey, 2008

<sup>139</sup> Maruna and King, 2008

very basic level they can develop discipline by forcing the offender to adhere to a routine."<sup>140</sup>

Community penalties will likely always lose out to prison in 'toughness', at least in the more punitive sense of the term employed in England and Wales. In general, though, the rhetoric of toughness has been employed far less in the recent Scottish context. Certain aspects of Scottish criminal justice history suggest that this is indicative of a distinctively Scottish approach to criminal justice policy, and it is to this idea that the chapter now turns.

#### 4. Kilbrandon and on and on...

Scotland's legal and criminal justice systems have always been separate from those of England and Wales, and many Scottish penologists have described a distinctive Scottish penal philosophy. The jurisdiction is sometimes described as having diverged from the 'punitive turn' experienced by England and Wales, adopting more welfarist and rehabilitative criminal justice policies and experiencing less febrile political debate about crime.<sup>141</sup> The 1964 Kilbrandon Report into youth justice in Scotland tends to be seen as a watershed moment in the divergence from England and Wales, and as totemic of Scottish penal exceptionalism, encapsulated in references to Scotland's 'Kilbrandon philosophy'.<sup>142</sup> The report's best-known recommendation centred on the principle that children who offend should be treated not as offenders but as 'children in trouble', in the same way as children at risk of poverty, neglect or abuse.<sup>143</sup> This led to the abolition of juvenile courts and the establishment of Scotland's unique Children's Hearings System, an organisation of lay 'panels' to which children are referred on various welfare grounds (offending accounts for only a small proportion of referrals).<sup>144</sup> Hearings panels meet to discuss

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<sup>140</sup> Scottish Government, 2007: 29

<sup>141</sup> McAra, 2008; Croall, 2006; Croall et al., 2010: 8-10

<sup>142</sup> McAra, 2008: 489

<sup>143</sup> Kilbrandon, 1995 [1964]

<sup>144</sup> Children's Hearings Scotland, 2016

issues affecting the child's welfare and to decide whether supervision is necessary.<sup>145</sup>

Developments closely connected to Kilbrandon also established peculiarly Scottish structural features of community justice which persist even today. However, the narrative of Scottish penal exceptionalism is not straightforward, and the period since Kilbrandon has been marked by convergent as well as divergent tendencies in the penal policies of England and Wales and Scotland, including within community justice. This can be partly explained through an 'agonistic' approach which emphasises the importance of (sometimes hidden) struggles between policy actors.<sup>146</sup> This approach has some value in explaining the structural development of community justice, which has been marked by compromise and sometimes conflict between Scotland's central government (the Scottish Office until 1999, thereafter the Scottish Executive/Scottish Government) and its local government. However, as noted below (Chapter 4, Section 3), caution is necessary when applying the agonistic approach to Scotland. A further important theme is the emphasis on 'social work' values in Scottish community justice and the pursuit of a 'generic' social work ideal which sites community justice within a wider welfarist and egalitarian agenda. This chapter now turns to the historical development of Scottish community justice, beginning with the scant historical evidence on developments before the Kilbrandon Report, before recounting the key structural developments which have shaped Scottish community justice.

### **Early Probation in Scotland**

Although there is little literature on the history of Scottish community justice before Kilbrandon, a short history produced by the City of Glasgow Probation Committee provides a valuable (though brief) account of the genesis of that service (the first in Scotland) and its development over fifty years,<sup>147</sup> while the 1962 Morison Report to

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<sup>145</sup> *Ibid.*

<sup>146</sup> Goodman et al., 2014

<sup>147</sup> City of Glasgow, 1955

Parliament on probation in the UK gives some sense of the situation in Scotland immediately before Kilbrandon, and its differences from England and Wales.<sup>148</sup>

Notably, the two probation services did not share a common origin – the Glasgow history describes it being imported from the USA by Bailie (councillor) John Bruce Murray and established by the Corporation of Glasgow.<sup>149</sup> Nor did Glasgow's service share the missionary roots of the English system – instead, probation officers in Glasgow were drawn mostly from the police, until the 1931 Probation of Offenders (Scotland) Act which required probation officers to be appointed in all areas of Scotland, and prevented police officers or ex-officers from working in Scottish probation.<sup>150</sup> However, the Glasgow history also describes developments in Scottish probation similar to those in England and Wales – professionalisation through more rigorous training, closer links with academic social science and the development of a Scottish branch of the National Association of Probation Officers (Napo).<sup>151</sup> The extent to which these developments in Glasgow were mirrored elsewhere in Scotland is unclear, but it appears likely that probation in rural areas was much less developed, and sometimes entirely reliant on volunteers.<sup>152</sup> The Glasgow history shows two distinctive features actually predating Kilbrandon – a strong association between community justice and local government structures, and justified concern about inconsistency between local areas.<sup>153</sup>

By the time of the Morison Report, probation was administered by local probation committees, serving 34 probation areas. These were mostly coterminous with the counties and 'large burghs' into which Scotland's local government was then divided. Apart from sheriffs and stipendiary magistrates (who served as *ex officio* members), the membership of these committees was decided by local authorities,

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<sup>148</sup> Morison, 1962

<sup>149</sup> City of Glasgow, 1955

<sup>150</sup> *Ibid.*: 11-12

<sup>151</sup> *Ibid.*: 14-16

<sup>152</sup> Turnbull, 1931

<sup>153</sup> City of Glasgow, 1955: 11

which were criticised in the Report for taking too little interest.<sup>154</sup> Although Morison focused mostly on England and Wales, the Report also raised concerns about the failure of Scotland's services to develop a professional identity and a consistent system of administration and delivery.<sup>155</sup>

Scotland's diverse geography (see Chapter 3) meant provision tended to be inconsistent and, in rural areas, often organised somewhat informally. At the time of the Morison Report, there were no full-time probation officers north of Aberdeen;<sup>156</sup> in many rural areas officers were also "registrars of births, deaths and marriages or inspectors of weights and measures",<sup>157</sup> and until 1960, probation training was limited to a three-week course.<sup>158</sup> Professionalisation was a keenly felt need, and Morison advocated replacing part-time with full-time officers where possible, and improving probation recruitment and training in Scotland.<sup>159</sup> Bolstered further by the Kilbrandon recommendations, professionalisation of community justice in Scotland continued through the 1960s, although some of Morison's recommendations about this were not implemented until after the 1968 Act.<sup>160</sup> As McWilliams and others have noted, this trend was in accord with, rather than exceptional to, professionalisation in England and Wales.<sup>161</sup>

The Morison Report was less clearly on the right side of history in its recommendations about geographic subdivision. Fundamentally it took the view that "probation is a social service of the courts",<sup>162</sup> and attributed the success of the service in England and Wales to its close links with the court system.<sup>163</sup> Morison criticised the dominance of local authorities in the geographic subdivision of Scottish probation areas and in the probation committees themselves. The report

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<sup>154</sup> Morison, 1962: 93-4

<sup>155</sup> Morison, 1962; Youngusband, 1978: 107

<sup>156</sup> Youngusband, 1978: 107

<sup>157</sup> *Ibid.*: 254

<sup>158</sup> *Ibid.*: 144

<sup>159</sup> Morison, 1962: 70-74

<sup>160</sup> Youngusband, 1978: 144

<sup>161</sup> McWilliams, 1981

<sup>162</sup> Morison, 1962: 97

<sup>163</sup> *Ibid.*: 93

argued the ideal system would be divided along Sheriffdom rather than local authority lines, and lamented that probation “has been regarded not as a court service but as a local authority service”.<sup>164</sup> It would largely remain so.

As in England and Wales, Morison advocated enlarging the probation areas to improve the consistency of service provision and ensure a good level of service for rural areas. Recommendations for altering the appointment system for probation committees reflected an interest in rebalancing power towards courts and away from local authorities, but Morison avoided recommending that Scotland replace the system entirely with either a centralised or a Sheriffdom-based structure.<sup>165</sup>

### Local Authority Social Work: the 1968 Act

The Kilbrandon Report, published two years later,<sup>166</sup> emphasised its proposed structural reform of youth justice would affect Scottish probation as well, particularly since (as Morison also found) probation in Scotland tended to be seen as primarily a youth rather than an adult sanction;<sup>167</sup> thus, many probation officers specialising in youth justice would be expected to transfer.<sup>168</sup> This section draws on Brodie et al.’s history of Scottish social work between 1966 and 2006 to give a brief account of how Scottish social work responded to Kilbrandon.<sup>169</sup>

The 1966 White Paper *Social Work and the Community*, described as “the foundation stone of the modern profession”,<sup>170</sup> broadened the scope of reform to a ‘generic’ social work which would serve all social care needs among all social groups. The White Paper was produced by a small group of experts who believed in the importance of establishing a unified generic profession for reasons of efficiency and professionalism, but also to promote social equality – “an unwritten, but

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<sup>164</sup> *Ibid.*: 94

<sup>165</sup> Morison, 1962: 97-98

<sup>166</sup> Kilbrandon, 1995 [1964]

<sup>167</sup> Morison, 1962: 149

<sup>168</sup> Kilbrandon, 1995[1964]: 74.

<sup>169</sup> Brodie et al., 2008

<sup>170</sup> *Ibid.*: 698

fundamental, objective of the main players.”<sup>171</sup> There was a particular interest in the development of strategic planning of services within local communities, prefiguring the subsequent development of first informal and then formal community planning structures in Scotland (see Chapter 3, Section 3).<sup>172</sup> Professionalisation and politicisation of social work were served further by the establishment of two professional bodies. The Social Work Services Group (SWSG) was established in 1967 to assist with preparing the legislation, but became the main link between profession and the Scottish Office, while the Association of Directors of Social Work (ADSW – now Social Work Scotland) was formed to become a more directly political voice for the profession.<sup>173</sup>

The 1968 Social Work (Scotland) Act abolished Scotland’s probation service and amalgamated probation functions and other social work into ‘generic’ social work departments within local authorities. Although initially reluctant, Scotland’s probation officers quickly adapted to the new arrangements.<sup>174</sup> The Act solidified two key structural features which have shaped the development of Scottish community justice ever since: its status as a social work rather than a criminal justice operation, and its position within local authorities. The extent to which this could be said to be distinctive to Scotland *at the time* is unclear: the idea was in fact considered in England and Wales as well, but rejected. This arose not out of resistance from probation practitioners (which was also present in Scotland) but from legislative exigency. The Labour government of the UK intended, with the draft Local Authority Social Services Bill, to merge probation into new generic social work departments in English and Welsh local authorities, but the calling of the 1970 general election put the government under pressure to pass the Bill quickly, forcing

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<sup>171</sup> *Ibid.*: 702

<sup>172</sup> Younghusband, 1978: 252

<sup>173</sup> Brodie et al., 2008: 702

<sup>174</sup> Younghusband, 1978: 250-252



it to drop the most controversial elements.<sup>175</sup> This legislative necessity was in itself a function of the two jurisdictions' different political structures.

Kilbrandon has been described as establishing a welfarist consensus in Scotland that lasted for decades,<sup>176</sup> as well as a "revolutionary change" in social work.<sup>177</sup> The power and politicisation of social work departments in local authorities was consolidated by the 1973 reorganisation of Scottish local government into nine regions (including the Strathclyde region, which contained half the population of Scotland) and three island areas, and the increasing politicisation of local authorities in Scotland, particularly from 1979 onwards.<sup>178</sup>

As McAra and Croall have both argued,<sup>179</sup> some of the explanation for Scotland's distinctive approach may be found in the structure of Scottish policymaking before devolution. The government of Scotland was administered by Westminster's Scottish Office, but Scotland was (and had always been) a separate legal jurisdiction with a separate criminal justice system. The result of this in practice was that Scottish justice policy was mostly in the hands of a governmental layer of unelected civil servants and experts, nominally under Scottish Office control, but in practice largely free to pursue their own policy aims, which tended to be more welfarist and arguably more criminologically well-supported than in England and Wales – where elected officials had a role in criminal justice policy but often engaged in 'populist punitiveness', making policy for electoral advantage.<sup>180</sup> A further factor is that Scotland is a small country compared to England and Wales, meaning that policy elites tend to know each other, so that in producing *Social Work in the Community* "easy communication between the key stakeholders was critical... The 'parochial' nature of professional, government and academic relations made for personal

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<sup>175</sup> Nellis and Goodman, 2009: 205

<sup>176</sup> McAra, 2008

<sup>177</sup> Youngusband, 1978: 250

<sup>178</sup> McGarvey and Midwinter, 1996

<sup>179</sup> McAra, 2008; Croall, 2006

<sup>180</sup> Croall, 2006; Bottoms, 1995 and see Hutton, 2005

interaction on a level and at a pace impossible south of the border.”<sup>181</sup> A number of interviewees in this project made similar observations.

## Decline and Rebirth

Community justice was largely left out of the development of Scottish social work in the 1970s.<sup>182</sup> Generic social work departments had considerable discretion in how their budgets were used, creating “a classic opportunity for the operation of the doctrine of less eligibility”.<sup>183</sup> Because offenders were seen as less deserving than other client groups such as children and the elderly, there was little funding and a low level of service for work with offenders. This was likely both a cause and a result of a continuing perception of underuse by sentencers at this time.

The 1980s notably saw an “unprecedented number of major incidents” of prison unrest all over Scotland, culminating in the 1987 hostage-taking at Peterhead prison,<sup>184</sup> and this brought about another decisive moment for Scottish community justice. In a 1988 lecture to the Scottish branch of the Howard League for Penal Reform, the then Scottish Secretary Malcolm Rifkind articulated ‘The Way Ahead’ for Scottish penal policy. This included reforms to imprisonment but also an effort to make greater use of community sentences to reduce the prison population.<sup>185</sup> Several reforms were made to community sentences with a view to improving their efficacy and their judicial legitimacy as viable ‘alternatives to imprisonment’, (see above), and reversing the decline of the 1970s.

The problem of ‘less eligibility’ in social work budgeting was resolved by ‘ring-fencing’ funding for work with offenders, which would now be provided entirely by central government.<sup>186</sup> This began in 1991, and in the same year, the first set of National Objectives and Standards for social work with offenders was published by SWSG, setting objectives and requirements for the service (including reducing the

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<sup>181</sup> Brodie et al., 2008: 700

<sup>182</sup> McAra, 2005: 289

<sup>183</sup> Moore, 1978: 39

<sup>184</sup> Coyle, 1991: 140-2

<sup>185</sup> Rifkind, 1989

<sup>186</sup> McNeill, 2005: 34; Rifkind, 1989: 88

use of imprisonment).<sup>187</sup> Social work with offenders was reconstituted as a specialist sub-discipline in itself – criminal justice social work (CJSW) – which “led in larger regions to the creation of specialist teams and in smaller authorities to the identification of designated specialist staff with caseloads devoted solely or primarily to 100 per cent funded work.”<sup>188</sup> This might seem to run counter to the ethos of generic social work, but in practice was largely a question of financial management of the new ring-fenced funding, which had to be kept separate from the rest of the social work budget.

One difficult consequence of this development was that CJSW staff experienced a degree of marginalisation within social work departments, while also, as Halliday et al. note, feeling “marginalized and undervalued in the legal domain” in their court-service and criminal justice role,<sup>189</sup> and being subject to the general stresses and poor public image of British social work (particularly shaken in Scotland by the Orkney child abuse scandal in the 1990s).<sup>190</sup> The organisational structure of Scottish social work, with upper and middle management tiers having responsibilities beyond a single specialisation, also means that “hardly anyone can be promoted more than two or three times and stay a criminal justice specialist.”<sup>191</sup> Furthermore, central funding brought with it central control. The Scottish Office required local authorities to carry out cost-finding exercises and to submit strategic spending plans.<sup>192</sup> The CJSW system was given more responsibilities, including throughcare of offenders released from long (over 4 years) prison sentences.

This period also produced another restructuring, itself largely the result of the restructuring of Scotland’s local government from nine regions and three island areas into 32 unitary local authorities.<sup>193</sup> The fragmentation of some quite large

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<sup>187</sup> Waterhouse, 2000

<sup>188</sup> McIvor, 1994: 435

<sup>189</sup> Halliday, Burns, Hutton, McNeill and Tata, 2009: 420

<sup>190</sup> Brodie et al., 2008: 707

<sup>191</sup> Miller and McNeill, 2013: 8

<sup>192</sup> McIvor, 1994: 444

<sup>193</sup> Morrison, 2015: 155

administrative units (especially Strathclyde, once the biggest local government region in Europe) produced concerns about efficiency and cooperation between local areas, particularly because CJSW was now almost entirely centrally funded. The consultation on 'Community Sentencing: The Tough Option' included several possible options for the structure of community justice in Scotland: retaining the current system, developing more joint working and partnership between local authorities, setting up a network of six areas based on Sheriffdoms, and a national service.<sup>194</sup> In what would become a rather familiar refrain, the local authority body COSLA (the Convention of Scottish Local Authorities) emphasised that:

"Community based criminal justice social work services are a vital bridge between the national criminal justice system and local communities and their concerns, and should therefore be retained within local government..."<sup>195</sup>

COSLA instead proposed a hybrid system which retained local authority delivery while also aggregating neighbouring authorities into twelve regional groupings for partnership working, strategic planning and the joint management of some specialist elements. This structure was adopted in 2000; its acceptance may have been a result of the then Justice Minister, Jim Wallace, being a member of the Liberal Democrat minority faction in the governing coalition of the new Scottish Parliament. The issue was settled for now, but this hybrid central arrangement was far from perfect: as Morrison notes, there was no way of enforcing cooperation or even membership, and with little power to redistribute resources the Tough Option groupings tended to reproduce rather than mitigate funding inequities between areas.<sup>196</sup> Despite nearly twenty years of development, these problems would remain current through this reform and the current one.

## Devolution and 'Detartanisation'?

The 1998 Scotland Act established the Scottish Parliament and a new central government for Scotland – the Scottish Executive (rebranded in 2007 as the Scottish

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<sup>194</sup> COSLA, 1998

<sup>195</sup> *Ibid.*: 4

<sup>196</sup> Morrison, 2015: 156

Government). Although Scotland's criminal justice system had always been separate from that of England and Wales, devolution nonetheless had major and sometimes surprising effects on Scotland's penal policies in general and on the administration of its community justice system in particular.

In the field of broad penal policy, Scottish criminologists have described a counterintuitive result of devolution – after decades of the 'Kilbrandon philosophy' and welfarist consensus, Scottish penal policy began to converge with that of England and Wales, in a process sometimes termed 'detartanisation'.<sup>197</sup> The establishment of the Parliament created a new set of policy actors – Members of the Scottish Parliament (MSPs), who had power to make legislation and (if in government) set policy for Scotland, but who were also elected officials who had to bear in mind electoral concerns when taking political positions.<sup>198</sup> For the Parliament's first two terms (1999-2007), the Labour party was in control of Scottish government as it was in England and Wales, and this is likely also to have been a factor in the convergence. Crime and justice became more politicised in Scotland during this period; MSPs were inclined to 'talk up' crime as an issue even as recorded crime was decreasing in Scotland from its peak in the 1990s.<sup>199</sup> The 2004 Antisocial Behaviour (Scotland) Act brought New Labour's antisocial behaviour agenda to Scotland, extending the use of ASBOs and electronic monitoring to 12-16 year-olds, implementing parenting orders and giving the police wide powers to disperse groups of young people – over and above the objections of critics who were described as "out of touch" with social concerns about youth crime.<sup>200</sup>

Convergence with England and Wales was neither straightforward nor complete; as Mooney et al. have noted, this:

“...was also a period of continuing therapeutic and rehabilitative practices in prisons and social work, more locally led community actions, more attempts to recognize communities affected by crime, greater focus on the needs of

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<sup>197</sup> Croall et al., 2010: 10

<sup>198</sup> Croall, 2006

<sup>199</sup> McAra, 2008

<sup>200</sup> Croall, 2006: 599-600

victims, substantial court reforms, innovation in violence reduction and moves to address the crisis in the physical prison estate that was ‘in some instances, bursting at the seams or falling down around people’<sup>201</sup>.

In community justice, the relationship between local and central government complicates the picture further. There were signs of limited *pre-devolution* convergence with England and Wales in CJSW practice, which became somewhat more managerial and concerned with risk and public protection.<sup>202</sup> Concern with public protection was also reflected in the 2005 establishment of the Risk Management Authority (RMA), a specialist body with a remit to oversee the management of high-risk offenders.<sup>203</sup> The writing of court reports also became more concerned with risk during this period.<sup>204</sup> However, McNeill has argued that although Scottish community justice did experience convergence with England and Wales with respect to public protection, this did not extend to the development of punitiveness in rhetoric or practice; no attempt was made to rebrand as a “punishment service”.<sup>205</sup>

The administrative structure of Scottish community justice was the site of a particularly notable near-convergence, and of conflict between Scotland’s long-established and powerful local government and its national government. This began with the Scottish Labour manifesto for the 2003 Holyrood election, which the party won but (as in 1999) had to form a coalition government with the Liberal Democrats. The opening paragraph of the manifesto, entitled *On Your Side*, made clear its adherence to the New Labour position on crime – the party would be “On the side of those suffering at the hands of thugs or drug dealers.”<sup>206</sup> Unsurprisingly, there is little mention of CJSW among the more headline-grabbing and classic ‘detartanising’ policies, but the manifesto did make the following brief proposal:

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<sup>201</sup> Mooney et al., 2015: 213

<sup>202</sup> McNeill, 2005: 34

<sup>203</sup> Risk Management Authority, 2016.

<sup>204</sup> Tata, 2010

<sup>205</sup> McNeill, 2005

<sup>206</sup> Scottish Labour, 2003: 1

“We will set up a single agency – the Correctional Service for Scotland [‘CSS’] - staffed by professionals and covering prison and community based sentences to maximise the impact of punishment, rehabilitation and protection offered by our justice system.”<sup>207</sup>

The CSS proposal had not been discussed within the party, the civil service or senior CJSW personnel before its inclusion in the manifesto;<sup>208</sup> neither had local government been consulted, despite promises to the contrary.<sup>209</sup> Although it was significantly moderated, on the Liberal Democrats’ insistence, after the election – to propose a consultation on a single agency, rather than the imposition of one<sup>210</sup> – it remained controversial, and “immediately ran up against entrenched defensive opposition from the agencies concerned”.<sup>211</sup> Had the CSS proposal been implemented, it would have removed community justice responsibilities from local authorities. In addition, as Morrison notes, “[t]he proposals would see the new service staffed by personnel who no longer required social work training”,<sup>212</sup> and whose role would centre on ensuring compliance rather than rehabilitative social work.

At around the same time, following the publication of the Carter Report,<sup>213</sup> the National Probation Service and HM Prison Service of England and Wales were merged into a single agency, the National Offender Management Service (NOMS). Although the CSS proposal actually predated the Carter Report by some months, and appears not to have been intended as a convergence with England and Wales, comparison between the two was inevitable. The political fortunes of CSS were damaged by the perception of NOMS as an ‘imposition’ on English and Welsh probation officers, a general sense of concern over the ‘detartanising’ direction of penal politics in Scotland and potentially also suspicion of the party political adviser

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<sup>207</sup> *Ibid.*: 32

<sup>208</sup> Mooney et al., 2015: 214; Morrison, 2015: 157

<sup>209</sup> Morrison, 2012: 127

<sup>210</sup> McNeill, 2004

<sup>211</sup> Mooney et al., 2015: 214

<sup>212</sup> Morrison, 2015: 157

<sup>213</sup> Carter, 2003

who proposed CSS, who “was seen to have close connections with London.”<sup>214</sup>

McNeill, writing in 2004, raised concerns that set this development in the context of ‘detartanisation’:

“Perhaps the most pressing question to be addressed in the current debate is not whether social work or probation can or should survive in Scotland, but rather whether the objectives that probation was established in Scotland to pursue – improving justice and helping offenders to change – can survive the rapid politicization of criminal justice post-devolution.”<sup>215</sup>

In this way, narratives of Scottish distinctiveness could raise concern over the idea of integration being ‘imposed’ by the UK Government. Because of the distinctive structural elements – the inclusion of CJSW within a powerful social work profession (represented by ADSW), with delivery sited within local authorities (represented by COSLA) that were themselves unusually powerful (and an important source of support for Scottish Labour), particularly in relation to the new national government – an organised and powerful opposition to the proposed single service model could develop in Scotland as it did not in England and Wales.

However, the status quo was not tenable, and ministers in Scotland emphasised five key points in favour of change:

- “(i) coordinated and consistent supervision and support to offenders;
- (ii) streamlined management and greater economies of scale;
- (iii) achieving performance standards and effective practice through direct management rather than through financial grant leverage;
- (iv) the benefit of a close relationship between probation and prison services;
- and
- (v) the capability to drive forward a focused political agenda without the dilution or distraction arising from competing local priorities.”<sup>216</sup>

As Morrison explains,<sup>217</sup> the result was a series of compromises between local and central government, and between Labour and the Liberal Democrats. The tension between local government and the new Executive was also to some degree a tension

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<sup>214</sup> Mooney et al., 2015: 214

<sup>215</sup> McNeill, 2004: 35

<sup>216</sup> Maybee, 2006: 379

<sup>217</sup> Morrison, 2012: 195-232



between old Labour and New Labour.<sup>218</sup> CJSW would still be provided by local authorities, but oversight and funding control would come from a new type of body – eight regional Community Justice Authorities (CJAs), with responsibility for allocating CJSW funding to their constituent local authorities, for holding local authorities to account where they failed to meet reoffending targets, and for reducing reoffending in general.<sup>219</sup> The CJA groupings were to some degree coterminous with the pre-existing CJSW groupings – four of the new CJAs were exactly coterminous, while the other half were formed by mergers (but not splits).<sup>220</sup> The CJAs were established by the 2005 Management of Offenders (Scotland) Act, and started operating in late 2006 to early 2007 – and will barely have lasted a decade until their abolition.

### Community Justice Authorities

The official membership of a CJA is made up of councillors from the constituent local authorities (between one and seven local authorities, sometimes more than one councillor from each), who vote on annual and triennial plans for allocating ring-fenced funding to CJSW departments. Responsibility for developing these plans and (in practice) for most of the CJA's work falls on the Chief Officer and their small team of staff, but officially they work for the CJA without being members. These staff fulfil roles similar to civil servants, although the 2005 Act emphasises that they should not be regarded as such.<sup>221</sup>

For the 'elected members' of the CJA, though, the role is one among the many committees on which councillors sit; they are sometimes (but not always) knowledgeable about social work or criminal justice, spend only a small fraction of their time on CJA business and are reliant on information provided to them by CJA staff. Fears that the elected member system would introduce an unwelcome degree of politicisation into the governance of community justice appear not to have been

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<sup>218</sup> *Ibid.*: 126-7

<sup>219</sup> Scottish Executive, 2005: 5

<sup>220</sup> Scottish Executive, 2005

<sup>221</sup> 2005 Management of Offenders (Scotland) Act, s. 3(2)

realised,<sup>222</sup> perhaps because of a lack of public knowledge of, and interest in, community justice in general and CJAs in particular. However, it is difficult to see how elected members have brought much accountability to the system either – particularly since CJA area plans are generally worked out informally before meetings and voting is effectively a formality (Chapter 6, Section 2). As in the Tough Option groupings, this system has made it difficult to alter the distribution of resources between local authorities, as elected members are expected to resist plans that divert resources from their areas.<sup>223</sup>

CJAs were intended to work in partnership with organisations including police, courts, local NHS boards, the Scottish Prison Service (SPS) and a range of third-sector organisations involved in providing services to offenders. However, CJAs only have any financial control over local authority CJSW funding; with no funding control over the other bodies, the CJAs' engagement with them, particularly the already somewhat marginalised third-sector partners, has been limited.<sup>224</sup> Similarly, without any power over SPS (an organisation larger and better resourced than the whole community justice system), CJAs have been unable to compel close engagement from SPS. Cooperation between CJA partners depends in practice on persuasion by the Chief Officer, and their ability to align the priorities of different organisations to the CJA's goals – an unenviable position of “responsibility without power.”<sup>225</sup>

CJAs were meant to hold local authorities to account if they failed to meet targets for reducing reoffending in their areas, by reporting them to Scottish Ministers, but this function was also a casualty of their deeply flawed constitution – CJAs are dependent on the willing cooperation of their constituent local authorities, and using the reporting power would compromise the working relationship. This relationship was for many years a fragile one, with the limited powers and

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<sup>222</sup> Morrison, 2012: 198-201

<sup>223</sup> Morrison, 2015: 156 and 159

<sup>224</sup> Morrison, 2012: 214-217

<sup>225</sup> *Ibid.*: 202

responsibilities of the CJAs set against resentment from CJSW departments who sometimes continued to work in their old groupings.<sup>226</sup> Despite these structural flaws, CJAs have been credited with producing better partnership working and more efficient use of resources, particularly as they began to ‘bed in’ during the tenure of the first SNP government.<sup>227</sup> The flaws and the successes of CJAs are considered in more detail in Chapter 5, Section 2.

## Reclaiming Distinctiveness? Restructuring in the SNP Era

Shortly after the CJAs started operating, the pro-independence Scottish National Party (SNP) won the 2007 Holyrood election, and criminal justice policy in Scotland appeared to enter a new period. The party formed a minority government and appointed Kenny MacAskill MSP, a former lawyer from the left of the party,<sup>228</sup> as Cabinet Secretary for Justice, a position he would hold until November 2014. The party consolidated its power significantly in the 2011 election, winning an overall majority in Parliament despite the Holyrood system having been designed to avoid such majorities. Curtice argues this aspect was intended to prevent nationalists gaining sufficient power to call an independence referendum, which the SNP succeeded in doing in September 2014.<sup>229</sup> Although voters rejected independence, the SNP-led ‘Yes’ campaign was described as both more effective than its opposition and as valuable in winning support for the SNP,<sup>230</sup> a claim supported by the party’s extraordinary performance in the following year’s UK General Election, in which it won 56 of the 59 Scottish seats at Westminster. The 2016 Holyrood election returned a further SNP government, although the party narrowly lost its overall majority.<sup>231</sup>

Although crime and justice was hardly an issue during the referendum campaigning,<sup>232</sup> the ‘Yes’ campaign did emphasise values of welfare and social

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<sup>226</sup> *Ibid.*: 209-11

<sup>227</sup> *Ibid.*: 222-4

<sup>228</sup> MacLennan, 2016: 68

<sup>229</sup> Curtice, 2011

<sup>230</sup> Paterson, 2015

<sup>231</sup> BBC, 2016

<sup>232</sup> Mooney, 2014: 5-6

democracy as distinctively Scottish tendencies which would be best served by independence, in a similar way to the party's rhetoric about criminal justice while in power. MacLennan describes a broad justice policy agenda with two primary intentions which connect to each other and to the SNP's main goal, independence for Scotland: "a desire to portray themselves as competent managers; and a desire to highlight Scotland's distinctiveness, in particular from the rest of the UK."<sup>233</sup> The SNP period has been described as one of 'retartanisation', a reversal of the convergence that had occurred during 1999-2007.<sup>234</sup> As discussed in Chapter 3, SNP governments have also had to deal with significant public spending cuts for most of their life, and as a result, this period has also seen significant restructuring of much of Scotland's criminal justice system, most famously the merging of Scotland's eight regional police forces into a single service, Police Scotland.

In reality, as with the 'detartanisation' of the Labour years, the reality is significantly more complex and marked by contradictions and compromises. MacLennan argues that the SNP's rhetoric of distinctively Scottish welfarism masks some illiberal tendencies, including deference to the 'operational independence' of Police Scotland – even in politically controversial matters such as stop and search, with potentially authoritarian implications for policing practice and for the government's attitude towards young working-class males.<sup>235</sup> As McAra notes, this period has also seen legislation to end automatic early release for long-term prisoners, a populist development carried out "in the face of robust research evidence highlighting its likely damaging consequences."<sup>236</sup> Despite these concerning developments, the prevailing tendency has seemed to be more towards social welfare and inclusion, albeit perhaps in a different form, influenced by the post-Christie approach to mitigating public sector austerity.

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<sup>233</sup> MacLennan, 2016: 63

<sup>234</sup> Mooney et al., 2015

<sup>235</sup> MacLennan, 2016: 72-3; Murray and Harkin, 2016

<sup>236</sup> McAra, 2016: 10

## Community Sentencing and 'Paying Back'

The SNP administration in Scotland has been marked by a particular emphasis on reducing the use of imprisonment, especially the number of short prison sentences imposed in Scotland. These accounted for most receptions into prison, but were also widely recognised as being of little penal value.<sup>237</sup> The new government responded to the growth in imprisonment in Scotland by setting up a review of community penalties in Scotland, and by establishing the Scottish Prisons Commission whose 2008 report *Scotland's Choice* recommended confining the use of imprisonment to the most serious cases and instituting a population target of 5,000 (an imprisonment rate of around 100 per 100,000 population, closer to France or Belgium than England and Wales).<sup>238</sup> The SNP government stopped short of endorsing this, but there was a growing recognition that Scottish criminal justice had to be reoriented away from imprisonment and towards community punishment. The new focus on the value of community penalties might be said to signal a return of rehabilitation to the Scottish justice policy conversation, although the language tended to frame it more in terms of reparation and 'payback'. As discussed above (Section 3), this is somewhat consonant with but also different from the rhetoric of 'toughness' developed as a legitimating mechanism in England and Wales around this time.

*Scotland's Choice* also recommended the creation of a new community sentence which would simplify the system by merging the pre-existing range of community penalties.<sup>239</sup> The Scottish Government's response took legislative and other forms, beginning with the establishment of the multi-stranded Reducing Reoffending Programme (RRP) in 2009, now in its second stage (RRP2). The legislative response was the 2010 Criminal Justice and Licensing (Scotland) Act, which as McNeill notes, implemented the Commission's recommendations on sentencing only in part.<sup>240</sup> The legislation was intended to establish a presumption against prison sentences of six

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<sup>237</sup> Mooney et al., 2015: 216-7

<sup>238</sup> Scottish Prisons Commission, 2008: 57

<sup>239</sup> *Ibid.*

<sup>240</sup> McNeill, 2010

months or less,<sup>241</sup> and the Act made provision to establish a Scottish Sentencing Council which would produce sentencing guidelines and presumably seek to embed that presumption into the system. However, there was political and judicial resistance to the provisions. The short sentence provision was attenuated to a presumption against sentences of *three* months or less, and the Act as passed requires courts only to 'have regard to' the Sentencing Council's guidelines rather than (as originally drafted) 'adhere' to them; Committee discussion also ensured a larger presence for the judiciary on the Council than originally envisioned.<sup>242</sup> The Council was only established in 2015, its membership mostly comprised of lawyers and sentencers.<sup>243</sup>

The Act was more successful in its restructuring of community sentencing. It established the Community Payback Order (CPO), a new community sentence which replaced the existing complex range of Probation Orders, SAOs, CSOs and Community Reparation Orders (community orders for young people that had been piloted, with little success, from 2005 to 2007).<sup>244</sup> The DTTO and RLO remain separate sentences. The CPO, which now accounts for around 90% of community sentences in Scotland,<sup>245</sup> can include any of nine different types of requirement, which include compensation, social work supervision, unpaid work and other mostly treatment-oriented requirements.<sup>246</sup> In this, the CPO not only simplified the community supervision framework but did so in a way that acknowledges structurally the ontological claim which influenced generic social work as well as more recent developments of partnership approaches, and which was often invoked by the participants in this project (see Chapter 5, Section 2) – that offenders often experience a range of social problems at once, that these complex needs are causally implicated in crime and that they are best dealt with by specialist agencies.

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<sup>241</sup> SP Bill 24 Criminal Justice and Licensing (Scotland) Bill 2009 [as introduced]

<sup>242</sup> Hutton and Tata, 2010: 4

<sup>243</sup> BBC, 2015b

<sup>244</sup> Ross, 2009: 7-8

<sup>245</sup> Scottish Government, 2014a

<sup>246</sup> Scottish Government, 2011

Although Scotland's prison population continued to rise until 2011-12, it has fallen in the last couple of years,<sup>247</sup> but this fall has been fairly slight, and current projections suggest the prison population will remain approximately the same over the next decade.<sup>248</sup> It is notable that the drop-off in sentences of three months or less was followed almost immediately by a rise in sentences of six months to two years.<sup>249</sup> However, the restructuring of community sentences would soon be seen as insufficient for penal reorientation, and there would follow a restructuring of the system charged with their delivery.

## 5. Redesigning the Community Justice System

### Two Reports

The current restructuring of community justice has its origins in 2012, with the publication of two reports, that of the Commission on Women Offenders, led by Dame Elish Angiolini (the 'Angiolini Report'),<sup>250</sup> and the Audit Scotland report *Reducing Reoffending in Scotland*.<sup>251</sup> Although these documents were critical of aspects of the community justice system, their end result – the replacement of the CJAs by a two-tier local/national system of administration – was far from a foregone conclusion. The length of time taken to design the new structure makes this topic particularly suited to examining the ways in which penal change in Scotland has been shaped by contests between penal actors and by external conditions. This section considers the specific recommendations of the 2012 reports before examining the development of the new structure, and how it will be implemented.

The Commission on Women Offenders was established following a long-held concern with the number of women prisoners in Scotland (which was rising as a flat figure and as a proportion of all prisoners) and in particular with overcrowding and mental ill-health in Scotland's only dedicated women's prison, Cornton Vale; it

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<sup>247</sup> Scottish Government, 2015f

<sup>248</sup> *Ibid.*: 14-15

<sup>249</sup> *Ibid.*

<sup>250</sup> Angiolini, 2012

<sup>251</sup> Audit Scotland, 2012

dealt only briefly with the community justice system. In relation to prison it tended to follow a similar penal-reductionist line to *Scotland's Choice*, re-emphasising the minimal penal value and the economic, social and human costs of short prison sentences.<sup>252</sup> The report also argued that women offenders are in general lower-risk and more likely to have various types of psychological and social problems (and dependent children) which make imprisonment especially harsh and inappropriate.<sup>253</sup>

The report recommended the establishment of 'Community Justice Centres', along the lines of the 218 Service in Glasgow and the Willow Project in Edinburgh, and the replacement of Cornton Vale with a smaller specialist prison for high-risk women prisoners only.<sup>254</sup> The initial rejection and eventual acceptance of the Angiolini proposals on prison is a different story of penal change, but the report also advised that in order to achieve these outcomes, the entire adult community justice system should be restructured. Angiolini described a "cluttered landscape" populated with a confusing range of public and third-sector agencies, of different sizes and (especially among the larger public sector organisations) tending to operate a range of different (i.e. non-coterminous) systems of geographic subdivision.<sup>255</sup> The report argued, in line with the Christie Commission's recommendations on public services in general, that the system needed to be streamlined. It also claimed the system was inconsistent and unaccountable, and that funding for CJSW was too short-term and inconsistently allocated. Angiolini recommended abolishing the CJAs (then only five years old) and replacing them with a national Community Justice Service, whose "objective would be to protect the public, reduce reoffending and promote rehabilitation".<sup>256</sup>

The interviewees in this doctoral research project mentioned both the Angiolini and Audit Scotland reports often in their accounts of the restructuring; notably, they

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<sup>252</sup> Scottish Prisons Commission, 2008

<sup>253</sup> Angiolini, 2012: 4

<sup>254</sup> *Ibid.*: 28

<sup>255</sup> *Ibid.*: 81

<sup>256</sup> *Ibid.*: 87



tended to be much more critical of the Angiolini Report, arguing that it failed to take into account the successes of the CJA system (See Chapter 5, Section 2 below). The Audit Scotland report was less strongly critical of CJAs, and engaged more substantively with the structure of community justice delivery.<sup>257</sup> This report looked at various measures aimed at reducing reoffending among sentenced adults. Aside from the unsurprising finding that reoffending in Scotland was still high and costly, it made several detailed findings about the CJA system and the extent to which its work constituted value for money.

Audit Scotland found that the CJSW funding system was inflexible and produced inconsistencies between local areas. Between local authorities within CJA areas, funding allocation tended to follow historic patterns and inequities rather than service needs.<sup>258</sup> There were also stark differences between areas in the unit costs of community justice tasks, and these were at best only partially accounted for by offender numbers within areas and differences between urban and rural areas.<sup>259</sup> In addition, much of the community justice budget was spent on 'core' services (legally mandatory activities around delivery of sentences and court services), and much of the remaining 'non-core' funding was also pre-allocated by central government, leaving little flexibility for CJAs and their partners to set up projects of their own. The level of 'flexible' funding differed between CJA areas, producing further inconsistency and inequality between local areas in their ability to develop their own projects. Audit Scotland also found that despite ring-fencing, the funding available for CJSW fell short, so most local authorities had to subsidise their departments from their own budgets, the subsidies totalling £8.6m (a small but not inconsequential fraction of the total community justice budget) in 2010/11. This report did not recommend restructuring, advising instead that performance

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<sup>257</sup> Audit Scotland, 2012

<sup>258</sup> *Ibid.*: 15-16

<sup>259</sup> *Ibid.*: 18

measures for CJAs and councils be developed further and that accountability mechanisms, partnership working and strategic planning be improved.<sup>260</sup>

The two reports agreed that there was a lack of leadership in the field of community justice.<sup>261</sup> In order to fully realise the potential of CPOs, and to seriously reduce reoffending, there would have to be stronger leadership in the community justice sector. The concern with leadership is linked to a broader sense, often articulated by the participants in this project (Chapter 6), of a need for cultural change in how Scotland thinks about crime and justice; such a change would presumably include a reorientation in both practice and culture, which would also involve somehow addressing the oft-remarked problem with public ignorance and political disinterest. The arguments for leadership emphasised the importance of a coherent and strategically-oriented direction for community justice, and of promoting community sentencing as a penal option on a par with imprisonment. This appears to follow McNeill et al.'s argument that leadership is important to bringing about the cultural change needed to reorient Scottish criminal justice away from imprisonment and towards community sentences.<sup>262</sup> The deficit of leadership results at least partly from the complexity and blurred boundaries of the community justice field in Scotland, in which there was simply no place in the structure for national leadership. Implicated in this was the continued position of community justice work within 'generic' social work departments. As McNeill notes:

“Hardly anyone can be promoted more than two or three times and stay a criminal justice specialist. The effect of this is that criminal justice social work since its inception has lacked a cadre of dedicated, expert leaders; leaders rooted in an appreciation of the frontline challenges of the job, but also with the skills and experience that would enable them to provide inspiring professional leadership; to represent the profession publicly; and to sit down with, or when necessary stand up to, the Chief Executive of the Prison Service, the Chief Constable of Police Scotland, the senior law officers,

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<sup>260</sup> *Ibid.*: 35

<sup>261</sup> *Ibid.*: 34; Angiolini, 2012: 83-4

<sup>262</sup> McNeill, Burnett and McCulloch, 2010: 14

the Sentencing Commission (if we ever get one) and even the Cabinet Secretary.”<sup>263</sup>

This leadership seems to be as much a matter of structural features and representation as of charismatic individuals – and this interest in developing ‘leadership’ as a cohesive and strategically-oriented structural feature of the new system would be an important part of the discussions about the new system.

## Redesigning Community Justice: The Consultation Years

The reports set the stage for further changes to the community justice system; however, perhaps mindful of the hasty compromises which produced the structural flaws of the CJAs, the government has spent several years developing the new structure, which will not be fully in place until April 2017. This section provides an account of the development of the new model, while Chapter 5, Section 6 considers participants’ accounts and experiences of the consultation. The first stage of the consultation on the redesign of community justice was launched in December 2012.<sup>264</sup> The consultation document’s foreword, by the then Justice Secretary Kenny MacAskill, echoed the language of previous ministerial statements in this area:

“I strongly believe the status quo is untenable and it is now time to look at how we plan, deliver and manage offender services in the community. It is critical that we have the right structures in place. Working with people who offend and who often have complex and entrenched problems can be very demanding. Structural arrangements should support, rather than hinder, practitioners, managers and leaders working in the field.”<sup>265</sup>

This initial consultation proposed three options for the new system. The first of these, the ‘enhanced CJA’ model, would retain CJAs but with an altered membership structure. Under this option, each CJA would have a Chair appointed by Scottish Ministers, while CJA Boards would also be expanded by the addition of members from local NHS Boards. This option would place a duty on all statutory partners to cooperate on reducing reoffending in the CJA area. CJAs would have more responsibility for strategic commissioning and for promoting community

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<sup>263</sup> Miller and McNeill, 2013: 8

<sup>264</sup> Scottish Government, 2012a

<sup>265</sup> *Ibid.*: 2

justice, with the further possibility that they could be handed operational responsibility for CJSW delivery.<sup>266</sup>

The second option was a 'local authority' model in which CJAs would be abolished and local authorities would take responsibility for planning community justice services as well as CJSW delivery. This option would also place statutory duties on partners to cooperate in reducing reoffending in local areas, and could also involve CPPs as part of the wider community planning framework. The role of the RMA would be expanded to include performance management for the 32 local authorities, developing practice guidance and promoting community justice to the public, media and judiciary (thus it seems likely that, had this model been adopted, the promotion of community justice would emphasise public protection). In this model, national leadership would be provided by a joint Scottish Government/COSLA Leadership group.<sup>267</sup>

The third option would follow the Angiolini recommendations by abolishing the CJAs and replacing them with "a national social work-led service for community justice ... with strategic and operational responsibility for the planning, managing and delivery of community based offender services."<sup>268</sup> The idea is somewhat similar to the Correctional Service for Scotland mooted in 2003, but would not involve merging CJSW with SPS; the proposal emphasised that the national service would continue to be founded on social work rather than criminal justice values and principles. As well as operational and strategic responsibility, the new service would provide national leadership and promote community justice, and incorporate the RMA.

When the first stage of the consultation was published there was little support for the 'enhanced CJA' model, and debate tended to centre on local versus national provision. The local authority model was perceived as being more responsive to

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<sup>266</sup> *Ibid.*: 18-22

<sup>267</sup> *Ibid.*: 23-29

<sup>268</sup> *Ibid.*: 30

local needs and as less disruptive both of CJSW's position within generic social work departments (with the historical baggage that entailed) and of local partnerships. However, the national model was seen as a way to reduce the marginalisation of CJSW within both criminal justice and social work.<sup>269</sup>

This first stage of consultation closed at the end of April 2013, after 13 stakeholder events and 112 written responses. The result, summarised in a second document issued by the Scottish Government in December that year,<sup>270</sup> was a split between the local authority and national service models (the unpopular 'enhanced CJA' option is hardly mentioned in this second report). Participants in the consultation were overall in favour of the strategic direction, leadership and higher profile that a national service could provide, while still favouring the local decision-making, delivery and local partnership models that would be served by the local authority model. As several of the participants in the project remarked (Chapter 5, Section 6), this may partly be attributable to the dominance of local authority CJSW voices at consultation events.

A hybrid option ('Option D') was adopted, which would combine elements of local and national structures. Its main features would be:

- "Local strategic planning and delivery of Community Justice services through Community Planning Partnerships (CPPs);
- The creation of a national body to provide assurance and recommendations to Scottish Ministers and Local Government elected members as well as professional strategic leadership for the sector;
- A focus on collaboration, including the opportunity to commission, manage or deliver services nationally where appropriate;
- A mechanism, reflecting the national and local democratic responsibilities, to afford discussion and agreements as necessary, on aspects of mutual concern."<sup>271</sup>

As MacAskill – the former Cabinet Secretary who set the reforms in motion – noted recently, the 'Option D' model is another local-national compromise with clear

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<sup>269</sup> Miller and McNeill, 2013

<sup>270</sup> Scottish Government, 2013

<sup>271</sup> *Ibid.*: 8

echoes of the establishment of CJAs in 2005.<sup>272</sup> The consultation mostly showed support for ring-fenced funding but there was concern over how it would continue to operate. A separate project within the second phase of the Reducing Reoffending Programme (RRP2) was established to consider the detail of funding community justice; this is unlikely to lead to a major increase in the available funding for community justice in Scotland, but could lead to a more flexible model in which community justice partners and CJSW departments in particular will be aware of their budgets up to three years in advance, allowing for more flexible advance planning.

Further consultation followed in early 2014 – a report in April of that year confirmed that ‘Option D’ would be adopted.<sup>273</sup> Actual CJSW delivery would remain in the same place, while CPPs would gain responsibility for local strategic planning and delivery. A new national body, initially to be named Community Justice Improvement Scotland but now named Community Justice Scotland (CJS), would be responsible for improving practice and, crucially, for ‘leadership’ of the sector, promoting the value of community sentences and acting as a public ‘face’ for community justice. It was emphasised that the new national body would not be able to hold the CPPs to account, but could only provide them with support and assistance.

This stage of consultation ended in June 2014. The Government published *The Future Model for Community Justice in Scotland* in December that year,<sup>274</sup> which set out the full detail of all aspects of the model and the timescale of implementation. This brought an end to the formal consultation period, but not to political conflict over the structure of community justice in Scotland.

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<sup>272</sup> MacAskill, 2015

<sup>273</sup> Scottish Government, 2014b

<sup>274</sup> Scottish Government, 2014c

## Legislative Development

From about the start of 2015 onwards, the Scottish Government began to draw up the legislative and strategic policy framework for the new community justice system. Primary legislation was required to abolish the CJAs, and this took the form of the Community Justice (Scotland) Bill, introduced by Paul Wheelhouse (Minister for Community Safety and Legal Affairs) on 7 May 2015. Following Stage 1 debate in November and shorter Stage 2 and 3 debates, the Bill was passed unanimously on 11 February 2016 and received Royal Assent on 21 March. There was cross-party agreement as to the Bill's general principles, but some details were somewhat controversial.

Although CPPs had clearly been envisaged as the local element of community justice planning, and are referred to as such in the relevant documents on the redesign,<sup>275</sup> they cannot have duties imposed on them by law so are not named in the Act, which instead refers to a list of 'community justice partners' which includes the relevant local authority. Perhaps because of the well-known problems with the CPP framework (Chapter 6, Section 4), the emphasis of the redesign has subtly shifted away from CPPs. Local authorities are instead developing community justice partnership structures ('Community Justice Partners' or sometimes 'reducing reoffending partnerships') alongside and/or within CPP structures; there appears to be some discretion about how each partnership will be constituted, but an expectation that they will work closely with CPPs.<sup>276</sup> As discussed in Chapter 3, the new partnerships will be kept separate from mainstream community planning.

The first version of the Bill did not include any reference to third-sector organisations, either as providers of services or as members of community justice partnerships; this drew criticism from MSPs and the third sector.<sup>277</sup> The Bill was amended to reflect this – requiring the Government, community justice partners and CJS to consult relevant third-sector organisations in developing their plans and

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<sup>275</sup> *Ibid.*: 3

<sup>276</sup> Scottish Government, 2015j: 5-11

<sup>277</sup> Halpin, 2015

strategies – but Parliament cannot impose duties on third-sector organisations as it can on public bodies, so they are not named as community justice partners. The Act as passed requires the local partnerships, CJS and the Government to consult with relevant third-sector bodies when planning, but imposes no participation or engagement requirement.<sup>278</sup> This reflects a further problem to do with the third sector– that third-sector organisations often find themselves used as providers without being treated as full partners (Chapter 5, Section 4); the Act cannot furnish a solution to this. Levels and models of funding were also cited during debate over the Bill as a concern for third-sector and public sector organisations.<sup>279</sup>

A more conceptual and even theoretical issue was also raised by several MSPs – the definition of ‘community justice’. Conservative and Labour representatives on the Justice Committee suggested it could be expanded beyond its current remit to include early intervention and preventive work, in line with the wider prevention agenda in public service reform.<sup>280</sup> While acknowledging the potential value of this, Wheelhouse and other SNP members argued that primary prevention was best managed by other services, and that community justice was concerned only with secondary and tertiary prevention (i.e. of *further* offending). A late attempt by the Conservatives to introduce a ‘sunset clause’, which would require the new model to be reviewed every five years, was overwhelmingly rejected.<sup>281</sup> Other debate around the Bill tended to concern the implementation of the legislation rather than its content.

## The New Model of Community Justice

With its legislative underpinnings in place, the detail of the new model is now fairly clear, and arrangements have been made to ease the transition to it. In the last year or so, local authorities have begun to develop plans for community justice partnerships, while CJAs have started to prepare for abolition. The new local

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<sup>278</sup> 2016 Community Justice (Scotland) Act

<sup>279</sup> SP OR 19 November 2015, col. 56

<sup>280</sup> SP OR 19 November 2015

<sup>281</sup> Scottish Conservatives, 2016



partnerships will be required to produce community justice outcomes improvement plans alongside,<sup>282</sup> rather than within, community plans prepared by CPPs. To smooth the transition from CJAs to the new partnerships, the shift to the new model is graduated through a 'shadow year' (financial year 2016-17) in which both systems operate side-by-side.

Community Justice Scotland (CJS) will be established during this 'shadow year', in October 2016.<sup>283</sup> The new body will contain within it a 'Learning and Innovation Hub' with responsibility for sharing good practice and research findings. The national body will also commission some services on a national basis. The Government has emphasised that the local partnerships will not be accountable to the new body and that "Community Justice Scotland will have a non-hierarchical relationship with CPPs and their partners";<sup>284</sup> the community justice partners will instead retain their existing accountability structures, including (through councillors) to the local electorate. As well as avoiding the 'tangled' lines of accountability described by Audit Scotland,<sup>285</sup> this aspect of the new model is a victory for local authorities, which have avoided having an accountability relationship imposed on them.

In practice, though, there are potentially significant hierarchical elements in the constitution of CJS which seem to suggest an effort to introduce accountability by the back door. Although not nominally an accountability body, the new organisation will have the power to monitor local partnerships' performance in relation to their target outcomes, to report on this monitoring to them and to compel community justice partners to publish these reports. Section 29 of the Act allows CJS to make "local improvement recommendations"; partnerships will not have to comply with these but will have to inform CJS what they intend to do in response. In addition, the Act enables the Scottish Government to expand the functions of

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<sup>282</sup> 2016 Community Justice (Scotland) Act, s. 19

<sup>283</sup> Scottish Government, 2015j: 2

<sup>284</sup> Scottish Government, 2014b: 3

<sup>285</sup> Audit Scotland, 2012: 34

Community Justice Scotland, including “transfer[ring] functions in relation to community justice from another person to Community Justice Scotland”,<sup>286</sup> which leaves open the possibility of switching to a national service model in future, if the partnerships prove unsuccessful.

The redesign also includes the development and publication of a new National Strategy for Community Justice in Scotland. This is intended, among other things, to bridge the local and national aspects of community justice through establishing intermediate outcomes and aims which link to wider outcomes for Scotland, and to the Justice Strategy for Scotland. It may also be a response to the Angiolini and Audit Scotland criticisms about a gap in national leadership and a need for a nationally coherent policy – no such strategy had accompanied other recent community justice policy developments. The Strategy will also be used to inform the development of a performance management framework for community justice in Scotland,<sup>287</sup> which can be read as a response to lack of evaluation of CJAs identified by Audit Scotland in 2012.<sup>288</sup>

When published, the Strategy will comprise a statement of vision for community justice in Scotland and a set of target outcomes linking to the higher-level policy outcomes for Scotland.<sup>289</sup> COSLA has been involved in drafting the National Strategy,<sup>290</sup> which gives considerable discretion to local authorities in pursuing specifically local outcomes. In addition, the outcomes to which the strategy links use a range of metrics that go well beyond simple reoffending rates; this appears partly to have emerged from Justice Committee discussions.<sup>291</sup> The wider definition of community justice advocated by Conservative and Labour politicians during the Bill’s debate stage arguably makes a more prominent appearance in the Strategy as

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<sup>286</sup> 2016 Community Justice (Scotland) Act, s. 4 (5)(b)

<sup>287</sup> *Ibid.*, ss. 15-18

<sup>288</sup> Audit Scotland, 2012

<sup>289</sup> COSLA, 2015

<sup>290</sup> *Ibid.*

<sup>291</sup> SP OR 19 November 2015, col 38

a result, although primary prevention is unlikely to be a major part of the Strategy when it is published.

Funding has been a persistent concern in the development of the new community justice model, as well as a major issue for many people working within the sector (Chapter 5, Section 5). Much of the political discussion around the policy, including in the Stage 1 debate,<sup>292</sup> touched on the problem of inflexibility in funding, including the fact that funding is allocated annually to CJAs, and thence CJSW and potentially third-sector providers. This was described as an obstacle to developing more flexible services, as social work departments do not know what their future allocations will be and thus cannot make long-term plans for service development. The short-term focus particularly disadvantages third-sector organisations, who commonly have to tender annually for contracts in order to secure the funding to continue operating. It is likely that the CJSW funding group within RRP2 will advise the Government to move to a model of funding in which CJSW departments are still funded annually but made aware of their allocations up to two years in advance, allowing them to commission services longer in advance and meaning less time is spent renegotiating or retendering contracts.<sup>293</sup> However, conflict between local and national government has recently flared up again over the CJSW grant allocation, after a delay in the UK government's spending review for 2016-17 delayed the allocation of that financial year's CJSW funding, just as CJAs entered the 'shadow year'.<sup>294</sup>

Funding has also been made available by the Scottish Government to support local authorities in the transition to the new system – £1.6 million a year, for three years. The total is roughly equal to the annual operating budget of the CJAs, and works out at £50,000 per local authority. This has also been an area of controversy, with local authorities arguing it is insufficient to support them through the transition,<sup>295</sup>

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<sup>292</sup> *Ibid.*, col. 56

<sup>293</sup> *Ibid.*, col. 56; SP OR FI 1 October 2015: 4

<sup>294</sup> Robertson, 2016b

<sup>295</sup> Robertson, 2015b

particularly as CJS – a single, small national organisation – will receive significantly more (£614,000 in set-up funding and £2.2m per annum in running costs).<sup>296</sup>

A number of third-sector organisations have used letters to MSPs and submissions to the Justice Committee to highlight a broader concern about funding. At present, SPS has around three times the budget of the community justice system, deals with fewer offenders and does so less effectively, as measured by reoffending rates among other metrics.<sup>297</sup> In the context of a felt need for more efficient public services in Scotland, and an awareness of the enormous and arguably unnecessary cost of imprisonment, the Bill “does not change the funding arrangements for community justice services in any significant way”.<sup>298</sup> This echoes a wider argument about community penalties in Scotland and elsewhere – that unless significant resources are moved away from custody and into community justice, it is very difficult to reorient the system towards community penalties and away from imprisonment.<sup>299</sup>

## 6. Conclusion: Penal Change in Scotland

This chapter has described and analysed the wider and specific historical background of the redesign of Scotland’s community justice system. Following work by Page and others that applies Bourdieusian social theory to criminal justice institutions to develop a theoretical model of penal change which emphasises struggle and sometimes conflict between actors in the penal field,<sup>300</sup> this chapter has considered the ways in which community justice administration in Scotland has been shaped by struggle and compromise – although there are important differences between Scotland and the American examples which inform Page’s model (Chapter, 4 Section 3).

Modern community justice policy tends to be driven less by factors endogenous to community justice as by concern about excessive imprisonment, leading to the

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<sup>296</sup> SP OR 19 November 2015, col. 48

<sup>297</sup> Audit Scotland, 2012: 9

<sup>298</sup> Robertson, 2015c

<sup>299</sup> Scottish Prisons Commission, 2008: 57; Austin and Krisberg, 1982: 389-409

<sup>300</sup> Page, 2011; Goodman et al., 2014

pursuit of community punishments as alternatives to imprisonment, in both the individual-level sentencing sense and the large-scale policy sense. Community sentences are generally of demonstrably higher rehabilitative value and lower social and economic cost, but, compared to imprisonment in particular, community justice enjoys little public or political interest, and suffers from a persistent perceived shortfall in judicial legitimacy and confidence. Attempts to rectify this legitimacy issue by making community sentences 'tougher' can produce the 'paradox of probation',<sup>301</sup> in which community penalties intended as alternatives to imprisonment have instead acted to feed the growth of imprisonment; Phelps is one of a number of scholars to note that in the international 'penal turn', mass incarceration has been accompanied by mass supervision.<sup>302</sup>

Scotland, however, is often described as having diverged from England and Wales and avoided the most dramatic aspects of the 'penal turn'.<sup>303</sup> Instead, Scottish penal policy has been characterised in terms of a welfarist and egalitarian 'Kilbrandon philosophy'. This has not been wholly or straightforwardly constitutive of Scottish penal policy, which at times has seemed to converge with that of England and Wales,<sup>304</sup> and recently has seen welfarist rhetoric coexisting with more punitive and illiberal policies.<sup>305</sup> Nonetheless, the Kilbrandon ethos remains a major influence on criminal justice in Scotland, including among practitioners interviewed for this project (Chapter 6, Section 5).<sup>306</sup> The Kilbrandon Report led directly to the constitution in 1968 of a formal and systematised Scottish community justice field in which services for offenders were of a piece with other social work, and fell within the purview of local authorities.<sup>307</sup> These two developments were primary structural conditions which shaped the practice and politics of community justice in Scotland. All of this took place in a small and geographically diverse country which had

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<sup>301</sup> Phelps, 2013

<sup>302</sup> Phelps, 2016

<sup>303</sup> McAra, 2005

<sup>304</sup> Croall, 2006

<sup>305</sup> MacLennan, 2016; McAra, 2016: 6-8

<sup>306</sup> McAra, 2005; 2008

<sup>307</sup> Brodie et al., 2008

always been a separate jurisdiction with its own justice system, but also part of the UK – governed from Westminster until 1999, and thereafter by a new national government with wide-ranging devolved powers but little political experience.

Discord between local and national has been crucial in shaping Scotland's community justice field. This includes political conflict and compromise between local and national government as political actors, as well as between different principles – the need for responsiveness to locally-specific concerns set against the importance of nationally consistent provision (and see Chapter 6, Section 4). A study of the scant material on Scottish community justice history before Kilbrandon suggests this tension has always existed in some form, manifested in the often informal and unsystematic provision of services in rural areas and in concerns about the local governance of community justice by Scotland's probation committees.

Although Scotland is often described as distinctive, the period immediately following devolution saw some policy convergences with England and Wales' harsher justice policies,<sup>308</sup> and the redesign of community justice must be understood in the context of the SNP government's attempt to re-establish Scotland's penal distinctiveness while demonstrating its own fitness to govern and adapting to austerity policies enacted by the Westminster government. This last it has aimed to do by restructuring rather than cutting public services where possible.<sup>309</sup>

The Scottish Government was established shortly after the restructuring of Scotland's 12 local government regions into 32 smaller authorities. This change produced further local-national disagreement, which combined powerfully with concerns about the direction of Scottish penal policy in the 2003 controversy over the proposed Correctional Service for Scotland. This ultimately produced a compromise system which failed to satisfy either local or national government. Doomed by its compromised structure, the CJA system will soon be replaced. The

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<sup>308</sup> McAra, 2008; Croall, 2006

<sup>309</sup> Matthews, 2012

redesign of Scotland's community justice system forms a relatively unremarked-upon part of a wider SNP agenda which ostensibly seeks to reorient Scotland's entire penal field away from imprisonment and towards community justice, for penal-welfarist and economic reasons. But the new model is the result of another compromise between local and national government, over a very long period of consultation and development. It is likely that, like the CJA system, this compromise approach will have inherent structural problems – although the structural and legislative elements in place could mean the hybrid system is simply a short-term stepping stone to a national service.

Much of the criticism of the CJA system has emphasised a need for cultural change including leadership and accountability, and this was also a theme in the empirical research of this project (Chapter 6), but as Morrison notes, despite “the need for cultural change, it is structural change which lies at the centre of the proposals once again.”<sup>310</sup> The new model is not ambitious, and makes no proposals for changes beyond the administration of the community justice system. The actual restructuring that will take place will be noticeable but not radical – the delivery agencies involved will mostly carry on as before. Reorienting Scotland's penal field would require direct challenges to two very powerful agents – the judiciary and the prison system.<sup>311</sup> There is little evidence to suggest that the new model will, by itself, succeed either in promoting community justice to the public, politicians and sentencers or in making significant reductions in reoffending rates or the costs of criminal justice in Scotland.

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<sup>310</sup> Morrison, 2015: 162

<sup>311</sup> See Austin and Krisberg, 1982: 405-9

# Chapter 3: Partnership and Local Governance

## I. Introduction

Community justice in Scotland is currently organised along regional lines, with eight regional Community Justice Authorities (CJAs) responsible for allocating funding to the CJSW departments in their regions, holding these departments accountable for meeting targets and promoting partnership working to reduce reoffending. Under the new model currently being legislated, CJAs will be abolished in 2017, and their responsibilities will mostly pass to local partnerships led by local authorities. Initially, it was intended that the system of Community Planning Partnerships (CPPs), also led by local authorities, would take these responsibilities. Recently, the emphasis of the policy shifted to referring to 'community justice partners'. CPPs will still have a role in the transition, and to some extent in the new system,<sup>312</sup> and issues affecting CPPs are likely also to be relevant for the new partnerships. The legislation also establishes a new national organisation, Community Justice Scotland (CJS), but this will be a small body with a mainly advisory role – concerned with promoting community justice and sharing innovation and best practice.<sup>313</sup>

This chapter considers the restructuring of community justice in Scotland in terms of political implications, using insights from sociological and criminological literature on subnational variation, deliberative democracy and civic engagement, and local governance of crime and crime control. In doing so it also touches on the complex question of the meaning of 'community' in 'community justice', and attempts to make links between criminological and local government literatures on partnership. It then turns to the logic of prevention, which – although typically absent from discussions of community justice – plays a major role in other types of crime control partnership and in the rationale for major ongoing public service reforms in Scotland.

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<sup>312</sup> Scottish Government, 2015j

<sup>313</sup> Scottish Government, 2014b



The first section considers some comparative work on variation in imprisonment, especially Barker's explanation of variation between US states with reference to different styles of democracy.<sup>314</sup> Dzur's work on deliberative democracy and juries is also considered,<sup>315</sup> before the chapter tests the applicability of some of these concepts to the situation of community justice in Scotland. The second section considers partnership arrangements that have been developed with the intention of making justice both more democratic and more preventive, and the ways in which community justice – traditionally just as much reactive as preventive – has attempted to engage with the 'community', before considering the specific development of partnerships and prevention logics in recent Scottish local government reforms. The chapter then discusses some administrative and civic concerns common to partnerships in a range of contexts, before finally considering legislative developments in community justice and local government in Scotland.

## 2. Local Variation and Civic Engagement

Most western nations have exhibited major change in their criminal justice systems since the 'crisis of penal modernism' described by Garland and others.<sup>316</sup> In *Visions of Social Control*, Cohen describes how challenges to institutionalisation in the 1960s – which some predicted would bring about an end to imprisonment – appeared to culminate in the opposite effect.<sup>317</sup> This included a sharp and well-documented rise in imprisonment in the United States, which now has one of the highest rates of imprisonment in the world.<sup>318</sup> Among other sociological methods, international and subnational comparison has been used to determine the causes of this trend.

### Savelsberg and Suhling in Germany

Savelsberg's influential work on differences in imprisonment identifies differences between the US and Germany in terms of institutional dynamics of knowledge and

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<sup>314</sup> Barker, 2006; 2009

<sup>315</sup> Dzur, 2012

<sup>316</sup> Garland, 2001

<sup>317</sup> Cohen, 1985

<sup>318</sup> Walmsley, 2015

'domination' – in particular the ways in which modes of knowledge production are institutionalised in wider society, and the ways in which domination by elites is institutionalised (particularly through bureaucracy).<sup>319</sup> In general, the institutionalisation of German knowledge production is more stable than the US whose political climate is marked by sharp changes of direction, often the result of changes in 'public opinion' as captured by short-term, single-question opinion polls. American politics and policy-making tends also to be more 'personalistic' (as the recent political successes of Donald Trump might attest) while the German polity is highly bureaucratized and technocratic. The role of 'neocorporate organisations' and communities of interest in the German policymaking process is also highlighted by Savelsberg as a more communitarian counterpoint to the individualism of opinion polling. Particularly relevant for criminal justice is that judges in the US are elected officials (often on a 'tough on crime' platform) while German judges are unelected technocrats who more closely resemble civil servants.

The position of academics, including criminologists, who may serve as expert advisers to governments and policy makers, also differs between the two nations. The German tradition is more theoretical and historical, and its academic labour market less competitive, while academic experts in the more competitive US sector may be under pressure to compromise theoretical rigour and gain state funding for more pragmatic solutions to questions of criminal justice policy. Finally, US news media is almost wholly privately owned while its German counterpart (as in the UK) also includes publicly owned outlets. In Savelsberg's account, these differences contributed to a situation in which the German state responded to rising crime in a bureaucratic way, while in the US politicians were both able, and under considerable pressure, to make decisions based on public sentiment; when this public sentiment is punitive, this leads quickly to rising imprisonment rates.

Suhling, writing a few years later when German imprisonment rates had risen somewhat, examines variation in imprisonment rates between two German *Länder*

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<sup>319</sup> Savelsberg, 1994

(federal states) at the extreme ends of the growth of imprisonment in Germany, and finds that the variation is explained by differences in criminal sentencing, permitted by the broad discretion on sentencing granted to *Länder* by the German federal criminal code.<sup>320</sup> Suhling does not investigate further the possible causes for differences in sentencing between the *Länder*; it is probably safe to assume that it is not connected to pressure from local citizens.

Perhaps envious of technocratic approaches in Europe, some US criminologists have called for the depoliticisation of criminal justice policy, perhaps by setting up expert boards or (following the German example) by strengthening professionalisation and professional identities of criminal justice personnel.<sup>321</sup> However, research on subnational variation suggests that the opposite direction may in fact be more ethical and more effective.<sup>322</sup>

## Defining Deliberative Democracy

Deliberative democracy has been a popular idea in political science since at least the 1980s.<sup>323</sup> Its advocates argue that representative liberal democracies limit civic participation to voting for elected representatives (regularly but infrequently) and that this contributes to voter apathy, political disengagement, a loss of legitimacy for governments, and potentially to the deepening of social divisions.<sup>324</sup> Such democracies, especially in first-past-the-post systems, tend to be characterised by conflict rather than constructive dialogue between people and groups, including political parties. The atmosphere of the UK House of Commons in particular has been described as disrespectful and uncondusive to constructive decision making.<sup>325</sup>

Deliberative democracy seeks to involve a wider range of people in the political process, and to do so in a more constructive way. As Leduc writes, deliberative

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<sup>320</sup> Suhling, 2003

<sup>321</sup> Dzur, 2012: 21-40

<sup>322</sup> Barker, 2006; 2009

<sup>323</sup> Davidson and Stark, 2011

<sup>324</sup> *Ibid.*

<sup>325</sup> Davidson and Elstub, 2014: 373

democracy emphasises voice rather than votes.<sup>326</sup> It admits the possibility of people changing their minds when exposed to different ideas, rather than assuming political preferences are fixed and that the decision-making process should simply aggregate these through voting. Compromise and consensus are emphasised over conflict and debate. An added bonus of deliberative democracy is that in bringing together people from a range of backgrounds and political positions it may also help to encourage greater empathy and civic trust.

Various methods for 'doing' deliberative democracy have been developed – they are mostly forms of meeting between ordinary members of the public, interested stakeholders and organisations, or both, that also involve politicians and/or other decision-makers at various levels. Perhaps of particular interest in the British context is a 'deliberative poll' on crime and punishment conducted in 1994, which found that deliberative discussion could produce less punitive attitudes among at least some members of the public.<sup>327</sup> The idea of deliberative democracy, although popular in political science since the 1980s, has only entered criminology relatively recently, through the literature on restorative justice.<sup>328</sup> Subsequent American research has extended the criminological reach of deliberative democracy, particularly with reference to imprisonment and the role of the jury.<sup>329</sup> Given the well-documented lack of public legitimacy and awareness of community justice,<sup>330</sup> such deliberative approaches could be one valuable way of engaging the public more closely with the community justice agenda.

## **Barker and Subnational Variation in the US**

One limitation in Savelsberg's research, as with some other accounts of the American rise in imprisonment, is that it has not considered the unevenness of this trend within the USA; as a partial result of a high degree of autonomy for individual US states, the rate of imprisonment varies widely between them. In an article and

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<sup>326</sup> LeDuc, 2015

<sup>327</sup> Rethinking Crime and Punishment, 2002

<sup>328</sup> Dzur, 2003; Dzur and Mirchandani, 2007

<sup>329</sup> Dzur, 2012

<sup>330</sup> Maruna and King, 2008

subsequent book,<sup>331</sup> Barker follows Savelsberg's suggestion that explanations of macrosociological phenomena such as imprisonment should pay regard to "nation-specific institutional structures of knowledge production and domination," but instead follows a state comparative approach.

Barker analyses this variation through a comparative case study approach, selecting three US states – Washington, New York and California – not as extremes of imprisonment but as typical of markedly different styles of civic engagement in democratic policy. An acknowledged limitation is that the study does not deal with the highest-imprisonment states, all of which are in the South, a region Barker describes as "underdemocratised"<sup>332</sup> which has followed a divergent criminal justice path determined to a large extent by the legacy of slavery and racism (Garland makes a similar finding with respect to capital punishment).<sup>333</sup>

Barker sets out a brief typology of local political engagement, using two key dimensions – the extent to which government structures are centralised (at the US state level) and the degree of civic engagement and activism – and classifies the states by this typology. Barker finds that the high imprisonment rate of California is due to a polarising and conflictual populist political culture (high civic engagement, centralised government) where public opinion is mobilised around short-term single-issue initiatives which citizens are expected either to be for or against – most notably Proposition 184, which led to the state's infamously draconian 'three strikes' law. Such a system fosters a view of offenders as morally depraved 'others', and thus support for punitive policies. This can also be considered in light of Page's research on California's prison officers' union and how it was able to mobilise public opinion in favour of very punitive measures.<sup>334</sup>

One can recognise Savelsberg's description of the US in California, but less so for the other states in Barker's account. Washington's decentralised government

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<sup>331</sup> Barker, 2006; 2009

<sup>332</sup> Barker, 2009: 20

<sup>333</sup> Garland, 2010

<sup>334</sup> Page, 2011

structure has instead traditionally fostered civic participation through deliberative formats, including town hall meetings, in which citizens can hear a range of voices (including those of offenders), and this has led it instead to limit its use of imprisonment in favour of community penalties. New York state, meanwhile, with a 'pragmatic elitist' government (highly centralised with little opportunity for citizen participation), pursued a technocratic and managerialist approach to the use of imprisonment as a means of controlling particularly undesirable crimes; its imprisonment rate is high for some (drug and violent) offences, and low for others.

### **Dzur on Democracy and Juries**

Dzur is broadly in agreement with Barker's thesis in his defence of the democratic value of juries. He refers to "the myth of penal populism"; like Barker, he argues that the penal excesses of the last few decades have come not from too much democracy but too little – a superficial and conflictual rather than a deep and deliberative consideration of issues, and narrow public mobilisation around particular 'hot button' topics rather than engagement with broader and longer-term ideas. Crime and justice are understandably emotive issues, and public participation in them should not be feared; a technocratic approach implies that the public cannot be trusted. Like Barker, Dzur argues for more deliberative forms of democracy that involve more substantive and long-term engagement and deliberation than voting in elections or opinion polls.

Dzur concedes that for citizens who may well be busy and not immediately inclined to care very much, "popular sovereignty takes too many evenings".<sup>335</sup> His subject is an occasional and (nominally) mandatory mode of participation – juries, whose use has declined partly because of efficiency concerns. Jury trials are longer and more expensive than plea-bargained summary justice, which has become by far the more common form (particularly in the US where plea bargaining is common). However, efficiency rationales tend to privilege technocratic expert knowledge and ossify the state monopoly on justice. Dzur sees the potential for juries to be a form of 'rational

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<sup>335</sup> Dzur, 2012: 3

disorganisation', which offers a democratic challenge to the state and fosters reflexivity about the legal and criminal justice system – even though experts could carry out these functions a lot more quickly, non-experts are likely to do so in a way that questions the traditions, rules and (perhaps) misconceptions of experts.<sup>336</sup>

Dzur positions jury service as a democratic tradition which benefits the jurors by showing them how the institutions of criminal justice operate and how difficult it can be to make decisions when a range of factors are taken into account, and to experience this in a context of sometimes long and heated discussion with fellow citizens from a range of backgrounds. The jury is thus a "civic schoolhouse".<sup>337</sup> Dzur argues further that institutions may also learn something from the involvement of citizens in the jury process.

### **Guided by Voices? Deliberative Democracy in Scotland**

Barker and Dzur both go beyond and beneath the 'penal populism' hypothesis by arguing that punitiveness is in fact the result not of too much democracy but too little – although neither of these studies is directly or straightforwardly applicable to Scotland. Even the comparatively lenient US states exhibit high rates of imprisonment by British standards – Maine is the least imprisoned US state, but its rate of imprisonment (350/100,000 population) is more than double that of Scotland.<sup>338</sup> The UK did not experience the social upheaval engendered by the US civil rights movement, which Barker and Savelsberg both identify as a crucial explanatory factor in policymaking around criminal justice in the US.<sup>339</sup> Despite these differences, these works may be relevant in that both connect questions of subnational variation directly to those of local and deliberative democracy.

Scotland, which has always been a separate jurisdiction within the UK, experiences subnational (in the sense of 'within Scotland', rather than 'within the UK as a whole') variation in a different way to both the US and Germany, and probably to a

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<sup>336</sup> *Ibid.*: 52-61

<sup>337</sup> *Ibid.*: 63-83

<sup>338</sup> Glaze and Kaeble/BJS, 2014

<sup>339</sup> Barker, 2009: 170; Savelsberg, 1994: 938-9

lesser extent. Scotland is not divided into states but into 32 local authorities, which do not have the power or discretion of American states and German *Länder*. Unlike US states and German *Länder* (the first of these influential, in the post-World War II occupation, on the constitution of the second),<sup>340</sup> Scottish local authorities do not have separate parliaments, legal or criminal justice systems, functioning only as providers of services and as political units of local government, with elected councillors responsible for scrutiny and executive decision-making. However, particular aspects of the history of Scottish community justice mean that both of these functions are implicated in community justice services.

When the Scottish Parliament was established in 1999, it was described in some accounts as the birth of a new form of democracy which would overcome the legitimacy problems associated with the Westminster Parliament by taking a participatory and deliberative approach to government, through institutions such as the committee system and deliberative events with the general public. Electorally, the Parliament uses the two-tier Additional Member system, which combines first-past-the-post constituency elections (which elect the 73 constituency MSPs) with proportional representation of parties within the eight Parliamentary regions (which each elect seven regional or 'list' MSPs). This was intended to avoid the outright majorities (and consequent political dominance by single parties) common to the Westminster Parliament, to be more representative of the popular vote,<sup>341</sup> and also to minimise the possibility of nationalists (primarily the SNP) gaining sufficient power to bring about an independence referendum.<sup>342</sup> The Scottish Parliament was seen in its early years as a setting for a 'new politics' based on consensus-finding, coalition and deliberation.<sup>343</sup>

Unlike most Parliaments, it has developed within the context of continuing commitments to the UK (whose Parliament retains responsibility for many matters

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<sup>340</sup> Gunlicks, 2003: 4-5

<sup>341</sup> Scottish Parliament, 2016

<sup>342</sup> Curtice, 2011

<sup>343</sup> Cairney, 2006



affecting Scotland) and to the European Union.<sup>344</sup> Davidson and Stark, in a major analysis of deliberative democracy in Scotland, take an optimistic view but one tempered with a “health warning” – although there have been many deliberative events of various types, these have declined sharply since around 2007.<sup>345</sup> This has coincided with the period in which the Scottish National Party (SNP) has governed, first with a narrow majority of seats and then (from the 2011 election) with a record-breaking overall majority that the new electoral system was intended to prevent.<sup>346</sup>

### The Cluttered Landscape: Local Variation in Scotland

For a small country like Scotland (population around 5 million), 32 is a fairly large number of local authorities (England, with around ten times the population, has only 57 approximately equivalent such authorities). Scotland’s local authority areas range from sparsely populated and remote rural and island areas to compact and busy cities, and this heterogeneity can pose particular challenges for local and national government. A further challenge is that some local areas in Scotland have extremely high concentrations of social problems, including poverty, deprivation, ill-health and recorded crime.<sup>347</sup> In terms of public service delivery and administration, Scotland is a “cluttered landscape” – its public sector organisations are subdivided into geographical units, as is common across the world, but with remarkably little consistency or co-terminosity across organisations.<sup>348</sup>

Politically, Scotland is unusual in being a country whose local authorities predate its national Parliament; as such they have considerable political power and experience, and are far abler than their counterparts in England and Wales to force concessions from national government. Their collective bargaining organisation, the Convention of Scottish Local Authorities (COSLA) has been particularly important in this.<sup>349</sup>

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<sup>344</sup> *Ibid.*

<sup>345</sup> Davidson and Stark, 2011

<sup>346</sup> Curtice, 2006

<sup>347</sup> Christie, 2011: 56

<sup>348</sup> Angiolini, 2012: 81-2

<sup>349</sup> Jeffery, 2006

Scottish local authorities are also the traditional holders of key community justice responsibilities, following the 1968 Social Work (Scotland) Act, which abolished Scotland's probation service and placed responsibility for probation supervision within generic social work departments in local authorities. Since the 1990s community justice supervision and related activities has been referred to as criminal justice social work (CJSW), the preserve of specialist social workers within these departments. Thus, community justice in Scotland is organised at a subnational level, and CJSW provision is the only aspect of criminal justice which is divided entirely along local authority lines.

The exact structural arrangements of which vary between local authorities, and supervision workload, as indicated by the number of Community Payback Orders (CPOs – which make up the large majority of community sentences, and hence seem to be a reasonable indicator of the approximate extent of workload and variation) also varies widely; island areas in particular have very few people being supervised (around 40 in each island area in 2013-14)<sup>350</sup> while urban areas might have over 1,000. In small rural local authorities there may be only one or two full-time equivalent CJSWs,<sup>351</sup> while large ones are more likely to have units specialised in providing services to offenders. Even after controlling for population differences, the rate of community sentences varies widely, being about five times as high in Clackmannanshire as in East Renfrewshire.<sup>352</sup>

This may partly be accounted for by differences in the crime rate of local authorities, which is – unsurprisingly – far higher in populous urban areas such as Glasgow (796 recorded crimes per 10,000 people) than in rural or island areas like Orkney (145 recorded crimes per 10,000 people),<sup>353</sup> but it is likely that a primary factor in the workload of CJSW departments is the sentencing decisions made by Scotland's criminal courts. This system has also recently been restructured – the 2014 Courts

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<sup>350</sup> Scottish Government, 2015b

<sup>351</sup> Homer, Leishman and Marsh, 2010

<sup>352</sup> Scottish Government, 2015b

<sup>353</sup> Scottish Government, 2015h

Reform (Scotland) Act reorganised the courts system along federal lines. The Act divided Scotland into six 'Sheriffdom' areas, each of which contains one or more sheriff courts (a total of 49 such courts across Scotland). It is the practice of criminal courts that has the most impact on sentencing variation, particularly in the Sheriff Courts which account for the vast majority of CPOs (93.2% in 2013-14).<sup>354</sup>

The rate (per population) of CPOs varies by local authority area, but not as widely as the differences in recorded crime would suggest, nor in the same places. This suggests that variation between the sentencing practices of local courts is an important factor which has a knock-on effect on local variations in CJSW workload. A brief comparison of sheriff court sentencing practices for common assault – a frequent and ordinary offence which can attract a wide range of penalties – shows significant variation; in 2013-14, Rothesay Sheriff Court imposed a CPO in only 8% of such cases while Portree and Wick Sheriff Courts did so for 46% of common assaults.<sup>355</sup>

This is not a comprehensive analysis of any aspect of sentencing variation in Scotland, and is further limited by the possibility of variation in charging practices and/or in seriousness of similarly coded offences being confounding factors, and by the minimal caseload of many of the smallest courts (some of which have since been closed), which produced significant percentage variation from very small number changes; however, even excluding the extreme examples, there remains clear and considerable variation between areas (the interquartile range for the rate of CPOs for common assault is 22%-33%). These figures also suggest that more detailed quantitative research on local variation in sentencing in Scottish courts could be fruitful.

The provision of community justice services also varies between local authorities for geographic reasons – group-based interventions are less common in rural and island

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<sup>354</sup> Scottish Government, 2015c

<sup>355</sup> I would like to thank Gilly Diggins at the Scottish Government for providing me with statistics on sentencing broken down by local courts.

areas because of the relative difficulty of gathering together enough offenders in one place. Additionally, third sector projects, Public Social Partnerships and similar initiatives – some highly innovative and successful – tend to be local in scope. Funding for local projects of this sort makes up around 20% of the community justice budget but this varies widely between and within CJA areas.<sup>356</sup> This produces a tension between responsiveness to local needs and concerns and the requirements of consistency in justice, and can cause conflicts between organisations over funding.

The interface between electoral politics and criminal justice in Scotland is limited; judges and sheriffs are not elected, nor has Scotland followed England and Wales in adopting locally elected Police and Crime Commissioners. The only elected officials involved in Scottish community justice are MSPs (and this only in their role as legislators and direction-setters) and the local councillors who sit as elected members in some crime control-related local partnerships and as elected members of CJAs – regional organisations set up to coordinate the community justice activities of local authorities and their partners within their regions. In practice, the role of elected members within these partnerships tends to be limited to reading reports and approving plans prepared by local authority or CJA staff; although CJA members are meant to vote on spending plans for the CJA region, this is almost invariably a formality as the plans have been agreed beforehand. Although there was concern, particularly during the more penal populist ‘detartanising’ era in which the CJAs were first established, about elected members placing political expediency above the needs of the CJA, this appears not to have been a serious problem – perhaps because public awareness of CJAs, and community justice in general, is notoriously low and hence these issues are unlikely to become major political concerns for elected members. In this way, CJAs could perhaps be seen as deliberative but not particularly democratic.

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<sup>356</sup> Audit Scotland, 2012: 16-17

The development of the new community justice system has been marked by an unusually long period of consultation and discussion – although it is far from certain that this could be called deliberative, since participation was limited mainly to experts from interested organisations (particularly local authorities and COSLA) and relatively little information reached the general public about it. The placement of community justice responsibilities with local partnerships – originally to be CPPs – is in some ways an unusual step in a relatively recent tradition of community partnership approaches to crime and justice in the UK, and it is to these this chapter now turns.

### **3. Controlling Crime through Local Partnerships**

This section considers past and future approaches to crime prevention in the community in the UK, drawing primarily on the work of Crawford, Hughes and Hope and on the wider critical insights of Stanley Cohen.<sup>357</sup> After considering briefly the macro social context and different definitions of community, the section gives a brief account of the development of crime prevention approaches before considering specific developments in the field of community crime prevention partnerships and CPPs.

#### **Defining ‘Community’ in the Era of Networked Governance**

‘Community’ is something of a buzzword in British politics and public life,<sup>358</sup> to the point where it is widely used to refer to any group of people. Hughes differentiates between communities of fate (determined by external factors rather than by choice), communities of identity and the communities of choice available to successful consumers.<sup>359</sup> Everyone is concurrently a member of many of these at once, but the term’s political usage tends to refer to local areas and the people living and working in those local areas as both sites and resources of social action.

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<sup>357</sup> Crawford, 1997; Hughes, 2007; Hope, 1995; Cohen, 1985

<sup>358</sup> Crawford, 1997

<sup>359</sup> Hughes, 2007: 13

In *Visions of Social Control*, Cohen describes a rhetorical 'quest for community' at the heart of the movement against institutionalisation from the 1960s onwards. In Cohen's account the term (too often presented as unproblematically 'good') is freighted with nostalgia for pre-modern collective life in rural villages, a reaction against the alienation, anonymity and squalor of the city, and the bureaucracy and institutional repression of the state. Precedents include the Arts and Crafts movement and the work of Durkheim and Tönnies, but Cohen argues the idea began to flourish again in the 1960s with the movement against institutionalisation. As with restorative justice, this nostalgia could also evoke the simplicity and informality of life in tribal societies. As Cohen notes this tends to imply a rose-tinted view both of the past and of tribal societies, one which ignores the high potential for injustice, discrimination and violence in such informal systems.<sup>360</sup>

None of this has stopped 'community' being pursued by states as both a means and an end in the field of crime control in recent decades. The community rhetoric of the late-modern period has been described as developing first from the anti-statist politics of the 1980s, which Marilyn Taylor argues produced a hollowing-out of the public sphere and a subordination of the concept of 'community' to individualist notions of self-help, alongside sharp rises in social inequality.<sup>361</sup>

This was followed, during the 1990s, by a reborn communitarianism, which carried on the distrust of statism while also emphasising that the market alone could not provide solutions to social problems, and might even exacerbate them if not prevented from doing so. At a time of increasing uncertainty and decreasing political legitimacy,

"community' and the ideas that surround it offer resources, social glue, alternative ideas and knowledge that are now seen as essential to society."<sup>362</sup>

The role of 'community' in political rhetoric was strengthened further by the landslide election of a New Labour government in 1997 which pursued a number of

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<sup>360</sup> Cohen, 1985: 117-126

<sup>361</sup> Taylor, 2011: 9-13

<sup>362</sup> *Ibid.*: 17

community-focused policies including (but not limited to) the Crime and Disorder Reduction Partnerships (CDRPs) discussed below, while making extensive use of communitarian 'Third Way' rhetoric (although the extent to which this was actually informed by communitarian political philosophy is a matter of debate).<sup>363</sup> More recently, a similar ethos has been discerned in the 'Big Society' rhetoric of the 2010-15 Conservative-led coalition government.<sup>364</sup>

Cohen described reforms that ostensibly hand social control power to informal community organisations but tend in practice to be organised by the state, and hence to involve more, not less, bureaucracy, centralisation and professionalisation.<sup>365</sup> Crawford has made a similar argument with more specific reference to the UK government in the early 21<sup>st</sup> century - drawing on a nautical analogy, he argues that although the state might not always 'row' it continues to serve both 'steering' and 'anchoring' functions;<sup>366</sup> as Hughes puts it, ours is not an era of 'governance without government' but a "dirigiste nation-state project"<sup>367</sup> which uses arm's-length methods to govern communities at a distance. There has not generally been close or immediate connection between these ideas and 'community justice'; indeed, the 'community' in community justice seems often to mean simply 'non-custodial' (among the connotations of this is that a prison could never be considered a community).

At the time of its beginnings in the work of the police court missionaries and the temperance movement, probation work in England included not just the courts and the justice system but (in theory) any part of the Victorian city in which inebriates and other sinners might be found.<sup>368</sup> In more recent times, a popular and contrasting narrative within the probation literature has been one of decreasing engagement with local communities, as informal home visits to offenders by probation officers

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<sup>363</sup> Hale, 2004

<sup>364</sup> Taylor, 2011: 3

<sup>365</sup> Cohen, 1985: 126

<sup>366</sup> Crawford, 2006

<sup>367</sup> Hughes, 2007: 47

<sup>368</sup> McWilliams, 1983

have declined.<sup>369</sup> Work has moved not just more into the office (with echoes of negative reactions to the movement of British policing away from foot patrols and into cars) but into fewer, larger offices in urban centres at the expense of smaller local probation offices. Meanwhile, the nature of probation work has become increasingly bureaucratised and concerned with scripted programmes which conform to certain quantitative criteria, to the point where the home visit had all but died out by the year 2000.<sup>370</sup>

However, as Bottoms points out, the declining visibility of traditional probation in the community coincided with an increased visibility for community payback (also known as community service or unpaid work), including new requirements for visibility by means of high-visibility community payback uniforms, plaques, signs and the provision of information to the public, following the recommendations of Louise Casey's report *Engaging Communities in Fighting Crime*.<sup>371</sup> A somewhat democratic element was also added to community payback schemes in the form of the (central government-mandated) requirement for all community payback organisers to develop mechanisms for members of the public to provide their own suggestions for work projects for offenders on community payback schemes to carry out. Similar schemes are in place in Scotland, but in both jurisdictions the community payback organisers choose which schemes get approved, and it's hard to envisage how it could be otherwise.

## The Preventive Turn

Having already briefly discussed the uneven impact of the 'punitive turn' – associated in David Garland's account with 'criminologies of the other' – the chapter now considers local partnerships with reference to a 'preventive turn' more closely associated with 'criminologies of the self'. Hughes locates this preventive turn at the heart of community partnership strategies for dealing with crime. Preventive measures include Situational Crime Prevention and similar, often technological and

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<sup>369</sup> Bottoms, 2008; Senior, 2013

<sup>370</sup> Senior, 2013: 248

<sup>371</sup> Casey, 2008



consumer-oriented 'target hardening' strategies but can also include "social crime prevention", through a range of projects such as youth clubs intended to reach out to those thought to be 'at risk' of offending.<sup>372</sup>

As well as its future orientation, the logic of prevention is notable also for its enlistment of wider society beyond specialist crime control agencies. Ordinary citizens are made responsible for their own safety and for reducing their risk of victimisation, through taking 'sensible precautions' but also by becoming consumers of security products such as locks, immobilisers, personal attack alarms and (less commonly) private security guards, surveillance cameras and weapons.<sup>373</sup> A less individualistic aspect of the crime prevention agenda is that citizens are also enlisted as members of communities with responsibility for informal surveillance, most notably through Neighbourhood Watch schemes. Prevention also enlists a range of organisations and professionals, including those who had never previously seen themselves as concerned with crime prevention, such as teachers and architects.<sup>374</sup> In line with the deinstitutionalisation movement's distrust of the state, these approaches imply that crime prevention and control cannot remain the monopoly of specialist institutions.<sup>375</sup>

The overlap between crime prevention and community justice is not immediately obvious – community justice refers after all to sanctions imposed on offenders after they have committed and been convicted of a crime. However, the logic of rehabilitation or desistance that informs most community justice practice is fairly similar to the logic of crime prevention – both can make use of community-based projects and interventions to minimise the risk of (further) offending (sometimes referred to as 'secondary prevention'). This is reflected in the fact that community justice organisations are commonly involved with or at least consulted in crime

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<sup>372</sup> Hughes, 2007: 40

<sup>373</sup> Garland, 1996

<sup>374</sup> Crawford, 1997: 43

<sup>375</sup> *Ibid.*: 64

prevention work as well. A further shared concern, although one usually taken slightly further in crime prevention, is the emphasis on partnership.

Another type of prevention logic has developed more recently in the context of local government reform in Scotland, in the report of the Christie Commission which advocated a more prevention-focused approach to all forms of local government spending (see below).<sup>376</sup> The political discussions around the Community Justice (Scotland) Bill raised the possibility of including primary prevention of crime (through early intervention and similar initiatives) in the legislated definition of 'community justice'. This was not ultimately passed, with the government taking the view that primary prevention was the proper business of other areas of the public sector.<sup>377</sup>

### **Mobilising 'the community' to prevent crime**

Crime and disorder take place primarily within local communities, and there is a long history of attempts to mobilise the resources of these communities to deal with crime. In the modern era these attempts have often emphasised the role of inter-organisational partnerships – a concept Crawford describes as an “extension of the concept of 'community' to organisations”.<sup>378</sup> Some of these partnerships have also attempted to involve ordinary citizens, with varying success.

Formal partnership between different organisations is also an important part of community justice in Scotland and elsewhere.<sup>379</sup> Pragmatically this is justified by the complex and varied criminogenic needs exhibited by many offenders – homelessness, addictions, mental health, unemployment – which are the preserve of different sectors within public services (Chapter 5, Section 4). There is a long and well-documented history in community justice of working in partnership with what is now known as the third sector (which until the early 20<sup>th</sup> century was the only

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<sup>376</sup> Christie, 2011

<sup>377</sup> SP OR 19 November 2015, col. 60, 70, 85-7

<sup>378</sup> Crawford, 1997: 55

<sup>379</sup> McKenna and Culshaw, 2009: 76

'provider' of community justice).<sup>380</sup> CJAs were set up partly with the intention of encouraging partnership between organisations, and even the most critical reports of them acknowledge a degree of success in this aim. A similar logic has applied in partnership approaches to crime prevention – an acknowledgment, as Hughes describes it, that “people have ‘joined-up’ problems which do not follow the bureaucratic demarcations of traditional public services”.<sup>381</sup>

Hope's history of community approaches to crime prevention in the postwar UK and US helps to provide some historical background.<sup>382</sup> Hope divides the history of these approaches into several periods, beginning in the 'growth city' of the 1960s and 70s, whose community crime prevention approach was heavily influenced by the Chicago School concept of delinquency as a property of socially disorganised communities. As such, prevention approaches tended to emphasise social organisation through schemes including the decentralisation of housing management to involve tenants more in the running of their estates, and the mobilisation of various types of resources within the community to provide legitimate opportunities while also attempting to address structural inequalities. From the 1970s onwards, the city (especially the American city) was widely perceived as dangerous and disordered, especially in the public housing projects that had been constructed in a spirit of optimism not long before. Following the urban theory of Jane Jacobs (informal surveillance on streets) and Oscar Newman (defensible space),<sup>383</sup> crime prevention approaches took a more situational and security-focused turn, emphasising the role of informal surveillance (Neighbourhood Watch schemes being a particularly successful legacy of this period) and various 'environmental modifications'. Subsequent to this, crime prevention policy has tended to emphasise the preservation of social order and the 'targeting' for support of people deemed most vulnerable to criminal victimisation.

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<sup>380</sup> McWilliams, 1983

<sup>381</sup> Hughes, 2007: 46

<sup>382</sup> Hope, 1995

<sup>383</sup> Jacobs, 1993 [1961]; Newman, 1973

Hope emphasises that throughout the history of community crime prevention, informal social control has remained important, but that social order within communities is to a large extent dependent on wider social factors which could never be within the control of a community-based partnership.<sup>384</sup> The areas most affected by crime are also usually those most affected by deprivation and underinvestment, and as such it is likely to be especially difficult to build in these areas the kind of civic trust required for partnership working to control crime. The work of Crawford and Hughes has charted the development of community crime prevention approaches in the UK from the 1990s onwards.<sup>385</sup> Writing ten years after Crawford, Hughes takes a perspective which mixes critical realist criminology and 'radical communitarianism'.<sup>386</sup> Like Barker, Hughes seeks to challenge criminology's traditional bias towards the nation-state as unit of analysis.

Modern forms of institutional partnership structures for crime prevention began to develop – informally at first – in the 1960s and 1970s and then through the 1980s with the establishment of Community Safety departments in an increasing number of local councils. Crawford describes the proliferation of partnerships as a "quiet revolution" in British governance.<sup>387</sup> From 1990 onwards English local authorities began to call for statutory responsibility (and thus funding from central government) for crime prevention.<sup>388</sup> Community partnership approaches to crime prevention began to attract interest from the Home Office with the 1991 Morgan Report.<sup>389</sup> This accelerated from 1997 onwards, under the New Labour government's 'urban renewal' agenda. Maguire describes the period between 1997 and 2001 as a particularly hopeful one for new approaches to crime control, with a falling crime

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<sup>384</sup> Hope, 1995

<sup>385</sup> Crawford, 1997; Hughes, 2007

<sup>386</sup> Hughes, 2007

<sup>387</sup> Crawford, 1997

<sup>388</sup> *Ibid.*: 35-40

<sup>389</sup> Maguire, 2004: 215

rate and a sense of political optimism about partnerships and evidence-based policy.<sup>390</sup>

The major legislative step of this period was the 1998 Crime and Disorder Act, which required local authorities and police forces to work in partnership with probation and health boards to produce strategies for the reduction of crime and disorder in their areas.<sup>391</sup> The Act established partnerships for community-based crime control and prevention in each local authority in England and Wales, known initially (and still currently in Wales) as Community Safety Partnerships and latterly in England as Crime and Disorder Reduction Partnerships. Although as Hughes argues there are important differences in meaning between the two terms,<sup>392</sup> this chapter refers to Crime and Disorder Reduction Partnerships (CDRPs) throughout, for simplicity. CDRPs continue to develop and perhaps to build bridges with the community justice machinery; the 2009 Policing and Crime Act promotes probation from a cooperating body to a responsible authority of CDRPs, and requires CDRPs in turn to adopt a traditional community justice goal, the reduction of reoffending.<sup>393</sup>

The development of CDRPs was quickly followed by the establishment of the Crime Reduction Programme (CRP), in which the Home Office committed to a research/partnership/prevention agenda by allocating unprecedented levels of funding to a wide range of 'evidence-based' crime prevention projects including multi-agency partnership. The CRP began in 1999 and was originally intended to run for ten years, but ended in 2002.<sup>394</sup> As Maguire explains the CRP was largely unable to achieve its goals, and was subject to an inherent tension between its role as a producer of knowledge about 'what works' (or doesn't) and short-term political expediency which pressured the CRP to produce evidence of 'quick wins' in reducing crime (and tended to have little interest in the publication of negative

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<sup>390</sup> *Ibid.*: 224-6

<sup>391</sup> 1998 Crime and Disorder Act, ss. 5-7

<sup>392</sup> Hughes, 2007: 75

<sup>393</sup> NOMS, 2010

<sup>394</sup> Maguire, 2004

findings, regardless of their possible research value). There were also a number of operational problems, some of which appear to be common in partnership approaches to crime and justice (see below).

The CRP ended prematurely in 2002 and shortly afterwards the New Labour government's approach to crime prevention took a very different turn in the form of the antisocial behaviour agenda including the 2003 Anti-social Behaviour Act. The Act is perhaps best known for strengthening Antisocial Behaviour Orders (ASBOs), which had been introduced in the 1998 Act but only rarely used in the intervening years.<sup>395</sup> As well as a sharp increase in the number of ASBOs issued, Hughes identifies a shift in local authorities' crime prevention practices towards more repressive and regulatory approaches and somewhat away from the 'social crime prevention' approach that had characterised their earlier work. This complicates the picture of bifurcation between punitive and preventive, suggesting that elements of the punitive turn have affected preventive work as well.<sup>396</sup>

### **The New Partnership Professionals**

Although crime rates across the UK have fallen since the 1990s, fear of crime remained high, and was increasingly a political concern and object of study in its own right.<sup>397</sup> A sense that CDRPs have largely failed to address either crime or fear of crime led to the wider adoption within local communities of a range of community safety professionals who are not police officers (or at least not full sworn officers), including: Police Community Support Officers, Community Safety Wardens, Community Enforcement Officers, Antisocial Behaviour teams, Environmental/Litter Wardens and others. These new professionals may be employed by the police or by local authorities, directly or through private security companies, and interact in various ways with previously established policing and 'human services'-related occupational groups.<sup>398</sup> They tend to wear uniforms that

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<sup>395</sup> Home Office/Ministry of Justice, 2014

<sup>396</sup> Hughes, 2007: 76-81; 110-138

<sup>397</sup> Gray, Jackson and Farrall, 2008

<sup>398</sup> Hughes and Rowe, 2007: 324

may closely resemble those of police officers and may have powers to issue fixed penalty notices; in practice, though, their function has more to do with public reassurance than with exercising their limited authority.<sup>399</sup>

As Cohen wrote in the 1980s, the impulse within the deinstitutionalisation movement towards questioning the authority of experts produced the perverse outcome of more professionalisation, and more experts. The old experts were able to protect their positions, while new experts flourished in new fields of community crime control and the role of management expanded in all areas of public life.<sup>400</sup>

This trend forms an important aspect of the developments in community crime control approaches. Hughes in particular describes the emergence of a new professional class of ‘partnership experts’ – civil servants with management expertise and particular skills in facilitating partnership working.<sup>401</sup> This facilitation is non-trivial – partner organisations are not always immediately keen to commit scarce resources and time to partnership approaches, particularly where this is not legally mandated. Convincing them to do so is as much a matter of interpersonal skills as policy requirements, and these are the specific skills of the new partnership professionals. Hughes’ insights about these professionals chime closely with the experiences of CJA Chief Officers, as indicated by this project’s fieldwork and by prior research on CJAs.<sup>402</sup>

## **The Origins of Community Planning in Scotland**

The redesign of community justice in Scotland was originally intended to transfer responsibilities away from CJAs to Scotland’s 32 Community Planning Partnerships (see Section 4).<sup>403</sup> CPPs are local bodies, coterminous with local authorities and having responsibility for ‘community planning’. Community planning is a way of, and a set of structures for, aligning disparate cultures and fragmented public service

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<sup>399</sup> Hughes, 2007: 100-101

<sup>400</sup> Cohen, 1985: 169-196

<sup>401</sup> Hughes, 2007: 83

<sup>402</sup> Morrison, 2012: 199-200

<sup>403</sup> Scottish Government, 2014b: 6

delivery to meet particular social aims within communities, while also serving democratic goals by encouraging civic participation in the planning process.<sup>404</sup> Although partnership arrangements for community planning exist in all the jurisdictions of the UK, this discussion will focus on the development of CPPs in Scotland, whose stated aims combine local democratic engagement with inter-organisational partnership:

- “making sure people and communities are genuinely engaged in the decisions made on public services which affect them; allied to
- a commitment from organisations to work together, not apart, in providing better public services.”<sup>405</sup>

As in the history of community justice in Scotland, the development of CPPs has been largely shaped by struggles between local and central government, and much of their work involves linking local with national priorities. The devolution of Scotland and the establishment of the Scottish Parliament and the Scottish Executive (later the Scottish Government) have also been major factors in shaping the conditions of CPPs’ development, as well as being in some sense indicative of Third Way decentralisation policies. More so than in the other jurisdictions of the UK, community planning in Scotland originates in less formal arrangements set up by local authorities. Economic renewal in areas impacted by deindustrialisation was a primary concern of these partnerships, which tended to fit well with the ‘social inclusion’ agenda of the New Labour government of the UK.

The story is one of continuity as well as change. Initially small and informal partnerships could evolve and change - retaining a degree of institutional knowledge of local priorities and administrative issues – through successive policies which developed the formal structures of what is now called community planning, from Priority Partnership Areas and Regeneration Programme Areas, through Social Inclusion Partnerships and finally CPPs.<sup>406</sup> This development through the

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<sup>404</sup> Pemberton and Lloyd, 2008

<sup>405</sup> Scottish Government, 2016a

<sup>406</sup> Fernie and McCarthy, 2001



1990s and early 2000s reflected a continued concern with developing more joined-up and consistent approaches to community planning, and moving away from the inconsistency of more or less formal partnerships with varying degrees of local and subject specificity. The development and formalisation of community planning was also seen as a way to reassert the power of local authorities, in the context of the development of a new set of central government structures for Scotland.<sup>407</sup> The Community Planning Working Group, a joint venture between the Scottish Office and COSLA, proposed three aims for the system of community planning: “to improve local services through coordinated working between local public service providers; to establish a process through which public agencies and the voluntary, community and private sectors could agree a strategic vision for their area and the measures to implement this; and to create a means through which the views of communities could be identified and delivered in policy.”<sup>408</sup>

This culminated in the development of CPPs, extended (mandatorily) to all of Scotland’s 32 local authorities by the 2003 Local Government in Scotland Act. This required the local authorities to take the lead in setting up CPPs in their areas, and mandated the participation of other public sector bodies in CPPs as well. Unlike their predecessor partnerships, CPPs would cover entire local authority areas rather than targeting specific areas with particular problems. Two other elements were important in shaping future arrangements; the first of these, the power to advance well-being, allowed local authorities to become involved in any arrangements within or outside their areas in order to improve the well-being of their areas and people. Perhaps more importantly (particularly in the aforementioned context of austerity spending cuts) the Act also imposed a ‘duty to secure best value’, defining ‘best value’ as “continuous improvement in the performance of the authority’s functions”, in terms of maximising the level of service provided for the cost involved.

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<sup>407</sup> Lloyd and Illsley, 1999

<sup>408</sup> Sinclair, 2008: 374

In 2007, following the election of a minority SNP administration, the Scottish Government entered into a 'Concordat' with COSLA. The Concordat allows local authorities a great deal of flexibility in how they go about meeting targets and dealing with social problems, but in exchange limited the councils' ability to raise funds, instituting a freeze on council tax across Scotland which is now in its eighth year.<sup>409</sup> The Concordat also instituted a system of Single Outcome Agreements (SOAs) – targets that local authorities (and subsequently CPPs) agree on a yearly basis with the help of central government. Guidance on SOAs resonates with 'evidence-based policy' approaches, emphasising that outcomes should be tangible and progress quantifiable by empirical evidence.<sup>410</sup> This system is intended both to ensure that the priorities of CPP partners can be aligned towards the CPP's priorities, and to bridge the gap between local priorities and national outcomes and indicators. One thing that makes the transfer of community justice responsibilities to CPPs somewhat surprising is that CPPs, until the redesign, have had little responsibility for justice-related services;<sup>411</sup> where community plans and SOAs have involved reducing (re)offending, this has mostly referred to the work of the coterminous Community Safety Partnerships (the Scottish counterpart of CDRPs), which in any case tend to be preventative rather than concerned with punishment or rehabilitation. This long-term division is likely to be a factor in the decision to keep community justice separate from CPPs.

In the years following the 2003 Act there was a certain amount of optimism about CPPs – they were seen in 2006 as indicative of a "fundamental shift in local governance which will unfold over a long period of time, even across generations."<sup>412</sup> However, nearly a decade later it is far from clear that CPPs have done very much at all – a recent report by Audit Scotland stated that "overall, and ten years after community planning was given a statutory basis, CPPs are not able to show that they have had a significant impact in delivering improved outcomes

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<sup>409</sup> Matthews, 2012; BBC, 2015

<sup>410</sup> Scottish Government, 2008

<sup>411</sup> Henry, 2009b

<sup>412</sup> Carley, 2006: 258

across Scotland.”<sup>413</sup> Some possible factors in the failure of the CPP model to fulfil its initial promise, many apparently common across various types of partnership, are discussed below.

## Community Planning in the Age of Austerity

The economic crisis of 2007-08 and the election of a Conservative-led coalition government for the UK in 2010 led to the adoption of major cuts to public spending, forming one part of the “scissors of doom” – a fall in the resources available for public services, at the same time as an increase in demand for them (mainly due to an ageing population).<sup>414</sup>

The response of the Scottish Government (from 2011 onwards an SNP-majority administration) to this predicament was to attempt to lessen the impact of these cuts on services by making efficiency savings wherever possible, rather than by lowering the level of service; in the local government context this can be seen as an extension of the ‘best value’ duty already in place the 2003 Local Government in Scotland Act. In November 2010, the Scottish Government established a Commission on Public Services, led by Campbell Christie,<sup>415</sup> to examine the options for this reform.

The report of the Christie Commission, which appeared the following year, has shaped many of the most recent developments in Scottish local government, including upcoming legislation. The four key principles recommended in that report were:

- “• Reforms must aim to empower individuals and communities receiving public services by involving them in the design and delivery of the services they use.
- Public service providers must be required to work much more closely in partnership, to integrate service provision and thus improve the outcomes they achieve.
- We must prioritise expenditure on public services which prevent negative outcomes from arising.

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<sup>413</sup> Audit Scotland, 2013: 6

<sup>414</sup> Matthews, 2012

<sup>415</sup> Christie, 2011

- And our whole system of public services – public, third and private sectors – must become more efficient by reducing duplication and sharing services wherever possible.”<sup>416</sup>

The third principle, sometimes known as the ‘prevention principle’, has been perhaps the most influential and best-known recommendation of the report.<sup>417</sup> The approach to prevention, as described in Chapter 6 of the report, emphasises the role of long-term planning and targeted interventions to deal with inequalities.<sup>418</sup>

Referring back to Hughes’ and Crawford’s descriptions of CDRPs in England and Wales as having ‘social’ and ‘situational’ crime prevention approaches – attempting to deal with long-term social and structural causes, or using architectural and technological methods to harden possible targets against opportunistic offenders – the Christie approach to prevention clearly chimes more with the former type.

The Christie report said relatively little about criminal justice or deliberative democracy; CPPs are also not mentioned often. However, one finding on CPPs is of particular interest here, elucidating a difference between the ‘partnership’ and ‘community’ dimensions:

“The Commission heard a consistent view that the potential benefits of a local partnership approach are far from being fully realised; that there are significant variations in the effectiveness of community planning partnerships; and that, for the most part, the process of community planning has focussed on the relationships between organisations, rather than with communities.”<sup>419</sup>

Variations in efficacy of CPPs appear to remain a serious problem, but COSLA and the Scottish Government agreed to pursue the Christie Commission’s recommendations through the framework of CPPs and SOAs, placing these troubled partnerships at the heart of post-austerity public service reform. However, as Audit Scotland has found, CPPs would need considerable reform in order to meet this rather ambitious goal.<sup>420</sup> Another ongoing policy informed by a similar

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<sup>416</sup> *Ibid.*: vi

<sup>417</sup> See Black, 2011.

<sup>418</sup> Christie, 2011: 53-60

<sup>419</sup> *Ibid.*: 44

<sup>420</sup> Audit Scotland, 2013

approach is the integration of health and social care provision within local authorities under the Public Bodies (Joint Working) (Scotland) Act 2014. What the effect of the integration will be on community justice or community planning is not yet clear, and may also vary between local authorities.

A number of problems with both the 'partnership' and the 'civic' or 'deliberative democracy' elements discussed here appear to be common to both CPPs and the local crime control partnerships described by Hope, Hughes and Crawford. These issues are discussed in the following section. The Community Empowerment (Scotland) Act is the latest attempt to address some of the problems with CPPs, and is discussed further in Section 4.

## **4. Power and Democracy in Community Partnerships**

A number of common problems and issues appear in the literature on partnership work in the community in general. Some of these are linked directly to questions about civic participation and deliberative democracy, while others are likely to be widespread issues within partnership working in general. Some of these may be of particular concern for new Scottish community justice partnerships, so throughout this section I attempt to develop and clarify the links between these various issues and the redesign of the Scottish community justice system.

### **Partnership Dynamics**

#### **Conflicts of culture and aims**

Public service organisations have diverse aims and cultures, and this may be especially true of criminal justice which has historically been the site of conflict between political views and penal rationales, and legally mandatory obligations. Furthermore, partnerships in practice have to be understood not just as collections of organisations but as collections of people in working relationships with each other. Although ostensibly a straightforward matter of policy, partnership working must also be understood in terms of ensuring that cooperative and respectful working relationships can be developed and sustained.

Partnership working in England has often been marked by conflict of aims between police forces and traditionally welfarist services such as social work and probation.<sup>421</sup> This parallels the dichotomy within police culture between ‘crime fighting’ and ‘social work’ roles, with the first traditionally being seen as ‘real police work’ (masculine, exciting and decisive) and the second as ‘pink and fluffy’, time that could be better spent chasing ‘real criminals’.<sup>422</sup> Mawby and Worrall have described an environment of mutual distrust and suspicion between police and probation services, encapsulated in their memorable article title: “They were very threatening about ‘do-gooding bastards’”.<sup>423</sup>

This problem is more pronounced in the case of services such as social work which are not traditionally affiliated with crime control,<sup>424</sup> although this may be less of an issue in Scotland where probation supervision has for nearly 50 years been a social work rather than a criminal justice responsibility. Even without mutual distrust and dislike, differences in aims and cultures can have practical effects, for instance the bias within health and social services towards patient/client confidentiality (as well as specific obligations in this regard) may make them less inclined to share information with police forces.<sup>425</sup>

As well as specific conflicts between aims or cultures, there are issues with partnership working *in general* that may generate problems. The partnership working process requires certain sacrifices – more time has to be spent in meetings and organisations may have to give up some control in the interests of the partnership. Scarce resources may also have to be given up or shared – a particular concern in the current period of public sector austerity. In more abstract terms, people may be concerned about the blurring of organisational boundaries as an

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<sup>421</sup> Crawford, 1997: 105-111

<sup>422</sup> Punch, 1979

<sup>423</sup> Mawby and Worrall, 2011

<sup>424</sup> Maguire, 2004: 223

<sup>425</sup> *Ibid.*: 223.

assault on organisational identity and operational autonomy.<sup>426</sup> Organisations that are not used to partnership working may find the initial adaptation difficult.

These issues are to some extent captured in Crawford's description of two 'ideal types' of crime prevention partnership – 'multi-agency' partnerships are collaborative efforts that happen to involve multiple agencies but in ways that do not challenge their established cultures and ways of working, while 'inter-agency' partnerships go beyond this to begin merging functions and disrupting traditional methods and tendencies within organisations.<sup>427</sup> The latter type may also involve secondments and other processes which require professionals from one organisation to carry out tasks more traditionally associated with others, such as police officers who work closely with probation staff. This may well be beneficial for the person involved, who thus experiences the criminal justice system from a different perspective and gets a sense of the particular pressures that weigh on other professionals, similarly to Dzur's 'civic schoolhouse' thesis about juries.

It should be noted that the blurring of organisational boundaries is not necessarily unproblematic. Teachers and social workers might not be glad to find themselves involved in the crime prevention agenda. There is a real danger that due process concerns, including the right to confidentiality, could be trampled in the convergence of organisations dealing with different needs and concerns. This potentially becomes more of a problem when informal relations become cosy, as confidential information can be exchanged through back channels without this ever becoming a matter of record. The interview data from this project show similar concerns in Scottish community justice about conflicts between partners' aims, and about the structural fragility of partnerships in Scotland (Chapter 5, Section 4).

### **Power Dynamics in Partnerships**

A further potential problem for relationships within partnerships concerns the powers of certain partners over others as constituted in the establishment of

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<sup>426</sup> Crawford, 1997: 115.

<sup>427</sup> *Ibid.*: 119-22

partnerships. Typically, a local partnership will place some partners in a position of greater power. In the case of both CDRPs in England and Wales and CPPs in Scotland, this has been the direct result of the relevant legislation; the 1998 Crime and Disorder Act named the police and local authorities as main partners in Community Safety Partnerships, while the Local Government in Scotland Act names local authorities as key partners in CPPs.<sup>428</sup> The necessarily limited prescriptiveness of the legislation was intended to engender flexibility, allowing partnerships to develop with different partners in different areas – but in practice it has often led to dominance by ‘statutory’ partners, particularly since local authorities play both a service provision and a local democratic role.<sup>429</sup> This has been a particular criticism of CPPs in Scotland, as in a recent critical report by Audit Scotland:

“Community planning has tended to be seen as a council-led exercise. This reflects both the legal position of councils as the bodies with the statutory duty to initiate, facilitate and maintain community planning, and the democratic nature of councils which carries with it an important community leadership role. The fact that only councils were formally held to account for their role in community planning through the Best Value audit also helped reinforce the perception that councils were responsible for community planning.”<sup>430</sup>

The inconsistency of regional subdivisions in Scotland serves to reinforce this, because, first, local authorities are one of only a few subdivisions that are wholly coterminous with CPPs and second, some organisational areas may have to partner with many different CPPs. The Greater Glasgow and Clyde NHS Board is a statutory partner of ten CPPs, each with its own time and resource commitments.<sup>431</sup>

In England and Wales, police forces have often been particularly powerful within CDRPs. In comparison with the other partners, they tend to be well-resourced in materials, personnel and information, while as ‘gatekeepers’ to the criminal justice system they also have considerable influence on which people become clients of the

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<sup>428</sup> 1998 Crime and Disorder Act, s. 5; 2003 Local Government in Scotland Act, s. 15

<sup>429</sup> Sinclair, 2008: 378

<sup>430</sup> Audit Scotland, 2013: 12

<sup>431</sup> Sinclair, 2011: 84



various partnership projects.<sup>432</sup> Although not especially successful at preventing crime, police have increasingly been seen as crime prevention experts and consulted (both by other organisations and the general public) for advice on target hardening and other situational prevention measures. There appear to be affinities between this privileged position and the traditional machismo of police culture which likely contribute to the perception of police forces as domineering presences within community prevention partnerships.<sup>433</sup>

This has been a particular problem for third sector organisations, who often provide innovative and useful ‘social crime prevention’ and offender projects within partnerships, but in recent times have typically done so under contractual arrangements which create an asymmetric power relationship between third sector and public sector partners (the latter being a commissioner of services as well as a direct provider of them).<sup>434</sup> Similarly, CPP partners in Scotland tend to view third-sector organisations as partners with valuable insights and contributions to make, but not as equals – third-sector organisations have neither the same level of resources, nor the same democratic mandate and accountability.<sup>435</sup>

These power dynamics can impact directly on working relationships within partnerships. Maguire’s account of the CRP describes the ways in which the imperative on researchers to evaluate projects was sometimes overridden by the need for the evaluators to maintain good working relationships with the other members.<sup>436</sup> This has also been a major problem for the CJAs, which were established with the conflicting aims of holding local authorities to account and fostering partnership between local authorities and other organisations within their regions. In ten years of operation the CJAs have never used their accountability powers to report local authorities to the Scottish Government for failure to meet targets, because to do so would compromise the working relationship between them

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<sup>432</sup> Crawford, 1997: 126-133

<sup>433</sup> *Ibid.*: 115-6

<sup>434</sup> Hughes, 2007: 76

<sup>435</sup> Sinclair, 2011

<sup>436</sup> Maguire, 2004

and make it more difficult to secure cooperation from local authorities; however, the presence of the accountability power (although unused) nonetheless led local authorities to be highly suspicious of the CJAs in the years immediately following their development. Similarly, CPPs were intended to make a wider range of public sector organisations more democratically accountable, but in practice this challenge to pre-existing lines of accountability generated tensions within the partnerships.<sup>437</sup>

Despite these concerns, organisational and individual habitus are not fixed, and there is encouraging evidence that these differences can be overcome with time. The difficult relationship between probation and police forces gave way in the years following the 1998 Crime and Disorder Act to an increasingly cooperative and 'federated' approach which recognised different styles of working while still engendering a mutual respect.<sup>438</sup> In general there has been a shift in police culture to greater recognition of the value of community-based work and interagency working. The research in this project suggests there have been improvements in the partnership working of CJAs, but that these have appeared too late to save them.

## **Civic Concerns**

A further set of issues with community-based partnerships of various types are concerned with less with partnership dynamics than with civic participation; they have less obvious relevance for community justice, where civic participation is limited, but are arguably of considerable concern for deliberative democracy.

### **Penal Populism and Electoral Imperatives**

As discussed in Section 1, much of the criminological antipathy to public and community involvement in criminal justice policy centres on the punitive responses of many members of the public to crime and offenders. Cohen has noted that the pre-modern, pre-police forms of community crime control, which have sometimes been regarded with nostalgia, were marked by erratic vigilante enforcement and

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<sup>437</sup> Sinclair, 2008: 380

<sup>438</sup> Mawby and Worrall, 2011

sometimes extreme violence.<sup>439</sup> This is a particular concern to community justice, as opposed to crime prevention providers, as community justice deals with people who have committed and been convicted of a crime. Although there is strong evidence that the expression of punitive sentiments does not always or even often translate into aggression against offenders, members of the public do sometimes behave aggressively towards those identified as offenders. This can include abusive behaviour towards the offenders and staff involved in community payback/unpaid work schemes,<sup>440</sup> or more seriously towards sexual and other serious offenders living in the community. 'Public protection' is sometimes as much about protecting offenders from the community as the other way round.

The development of a role for local authority members in CDRPs, under the 1999 and 2000 Local Government Acts, was seen as a positive development for making the local partnerships more democratic, and had previously been recommended by the Morgan Report as a way of preventing the marginalisation of crime and justice issues within local public policy agendas.<sup>441</sup> In Scotland, elected members are in fact the only 'official members' of CJAs (the staff who do the actual work are positioned as support personnel). In both the English crime prevention and Scottish community justice contexts, there have been concerns that elected members would have difficulty reconciling their partnership roles and their electoral needs.<sup>442</sup>

However, in general there has been little political interference in CDRPs or in CJAs. In both cases this is likely partly attributable to a lack of expertise; unlike the new 'partnership professionals', the partnership role is only a small part of a local councillor's job. The experts involved in CDRPs may intentionally have protected themselves against political interference by emphasising the role of empirically evaluated 'evidence-based' measures; it probably helped that the introduction of

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<sup>439</sup> Cohen, 1985: 120-2

<sup>440</sup> Bottoms, 2008: 158-9

<sup>441</sup> Crawford, 1997: 36-40

<sup>442</sup> Hughes, 2007: 42-3; Morrison, 2012: 203-205

elected members to CDRPs coincided with the beginnings of the CRP.<sup>443</sup> Within CJAs the support staff are similarly able to shape the agenda (as discussed briefly above), but there does not appear to be the same protectionist impulse in their case. It may be that the lack of political interference has in either case more to do with a general lack of public or political interest in CJAs and community justice in general. In the context of these (real or potential) issues around the involvement of elected members, it is noteworthy that during this project's fieldwork interviews with CJA elected members, questions about the extent to which their roles as local politicians impinged on their CJA roles were typically answered with descriptions of their experiences dealing with constituents' inquiries about sexual and other high-profile offenders moving into their local areas, rather than operational issues about community justice in general.

#### Civic Disinterest and 'Community Leaders'

A further problem is that citizen participation in partnerships is limited. There has tended to be little public awareness – opportunities to participate, whether deliberative or not, are not always well-publicised. Participatory events are also likely to take place during the day when many citizens will be working. If “popular sovereignty takes too many evenings”,<sup>444</sup> it's more likely to be the preserve of those with enough time and resources not to have to work long hours. Participation is thus commonly limited to “local worthies” who gain disproportionate agenda-setting power,<sup>445</sup> or to those who become involved as part of their professional role or through their expertise (as discussed further below), as in the case of local crime prevention and Neighbourhood Watch initiatives, which have tended to be dominated by better-off homeowners.<sup>446</sup> Looking out for crime is also quite boring most of the time,<sup>447</sup> and it may be that getting involved with community

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<sup>443</sup> Hughes, 2007: 43

<sup>444</sup> Dzur, 2012: 3

<sup>445</sup> Hughes, 2007: 71

<sup>446</sup> Hope, 1995

<sup>447</sup> *Ibid.*: 49

partnerships is not much more interesting – especially in meetings that may be dominated by expert-level discussions.

In some cases the ‘voice’ of the community, or of particular communities within a local community (ethnic, religious, etc.) is channelled through ‘community leaders’, but as with other leaders, the extent to which these people really represent their communities and their interests is unclear. There appears to be little to no democratic accountability in choosing who gets to be a ‘community leader’ – as opposed to an elected member – in the local partnership context. As Hughes and Rowe note, such concerns may be the subject of real tension and disagreement within communities.<sup>448</sup> A recent example from the press describes just such disagreements with reference to Muslim ‘community leaders’:

“Muslims are mostly under 25, female and from low-income backgrounds, but the “leaders” are much older, male and middle class – they don’t speak for typical Muslims because they aren’t typical Muslims.”<sup>449</sup>

Particular concern arises where the issue of how and by whom ‘the community’ is represented interacts with longstanding social divisions and inequalities. A study by McAlister of Community Planning Partnerships in Northern Ireland found concern that civic participation in these organisations was at risk of becoming dominated by sectarian interests.<sup>450</sup> Although Scotland is not a ‘post-conflict society’ in the same way, it is not inconceivable that such problems could arise in some areas of the country.

#### **Inequality Between Communities and Local Inconsistency**

Acknowledging that different local communities have different needs is a vital part of the local partnership approach, but it entails, inescapably, a recognition that not all local communities are equal. Attempting to engage the communities most severely affected by crime and deprivation is an admirable goal, but complicated by the fact that those communities with the most capacity to develop either

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<sup>448</sup> Hughes and Rowe, 2007: 337

<sup>449</sup> Afzal, 2015

<sup>450</sup> McAlister, 2010: 538

participatory democratic arrangements, community crime control efforts or arrangements that are both of these at once – are likely to be those which already possess considerable resources and ‘collective efficacy’.<sup>451</sup> The result is inequality between areas, especially when combined with the tendency for resource conflicts to arise within partnerships, which may be deepened further by the unevenness of participation, middle-class professionals and other experts being more likely to participate in community planning arrangements.<sup>452</sup>

Particular problems exist in this regard for community planning structures in Scotland, where the system of Social Inclusion Partnerships that predated CPPs was criticised for its failure to provide for the poorest neighbourhoods.<sup>453</sup> The fact that CPPs in Scotland were developed around or within pre-existing (often informal or semi-formal) partnership networks, rather than created from scratch, probably helped to smooth the transition and minimise the risk of resistance from local authorities and COSLA; however, this also meant that those local authorities without such pre-existing partnerships *did* have to create CPPs *ex nihilo*. Even some years after the development of CPPs, the Christie Commission and Audit Scotland emphasised that inconsistency between areas remains a problem, including in levels of partnership engagement and accountability arrangements, which is partly a result of the wide discretion granted to local authorities in setting up CPP structures.<sup>454</sup> This is a particular concern for the provision of justice-related services, where differences between local areas could conflict directly with the judicial value of consistency.

#### The Continued Dominance of Experts and Governments

In his chapter on the system dynamics of community crime control projects, Stanley Cohen has argued:

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<sup>451</sup> Hope, 1995: 72-8; Hughes and Rowe, 2007

<sup>452</sup> McAlister, 2010; Crawford, 1997: 128-131

<sup>453</sup> Carley, 2006: 253

<sup>454</sup> Audit Scotland, 2013: 19-21

“The real, awful secret of community control... the same old experts have moved office to the community and are doing the same old things they have always done”<sup>455</sup>

The probation officers and academics who mourn the passing of home visits and the like might disagree, suggesting instead that their offices have in fact moved *out* of the community. The quote above arguably also raises the same questions about the meanings of community – surely any office, wherever located, is in some sense part of a community. More importantly, Cohen’s argument is that the efforts to challenge the dominance of experts within criminal justice (and perhaps other areas of public service) ultimately failed and even made them stronger. Although efforts to locate crime control in the community, through measures such as CDRPs as well as through the Neighbourhood Watch and similar informal surveillance schemes described by Hope,<sup>456</sup> have sometimes granted a degree of democratic participation and even power to ordinary citizens, this has rarely been at the expense of experts. As also considered above, the development of CDRPs in the UK, and arguably CJAs in Scotland, have in fact created new types of expert professionals, but not at the expense of the old ones.

The continued concentration of power in the hands of experts is likely to be compounded by low levels of public participation in the various forms of neighbourhood-based partnership, and the aforementioned tendency of these partnerships to select (whether deliberately or not) those participants and community representatives whose aims already conform to those of the local administration.<sup>457</sup> In the specific case of neighbourhood community justice work through local partnerships, this problem would likely be compounded by a lack of public awareness about local government structures and community justice issues. There is also a central-local dynamic in play – policies that ostensibly seem to devolve power from central government to local communities are in fact typically designed, circumscribed and implemented by central government – and sometimes

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<sup>455</sup> Cohen, 1985: 75

<sup>456</sup> Hope, 1995

<sup>457</sup> Taylor, 2011: 174

imposed on local authorities and organisations.<sup>458</sup> In the specific case of CDRPs, Crawford – writing nearly a decade after his first study of these organisations – has since stated that:

“...the reality is that, in most instances, [CDRPs] have singularly failed to meet even the most limited aims of networks. They lack significant autonomy from central government, and can hardly be described as ‘self-organizing’.”<sup>459</sup>

Even in Scotland, with its strong tradition of powerful local government, requirements for CPPs and similar organisations have typically been imposed from above and enforced by central government. The Concordat between the government and COSLA made operational flexibility for local authorities conditional on central government restriction of a major source of revenue.<sup>460</sup> Citizen participation in CPPs in Scotland is potentially costly and difficult to put to use in a constructive way. There is little incentive in practice for CPPs to develop systems and milieux that encourage local deliberative democracy. In these ways, pressures towards efficiency seem likely to be factors in the continued failure of CPPs to achieve their democratic goal.

### **Into the Future: Legislative Developments**

In Scotland, the ongoing redesign of the community justice system, legislatively underpinned by the 2016 Community Justice (Scotland) Act and scheduled for completion in 2017, was intended for some time to transfer responsibility for community justice delivery to CPPs. However, this move was always going to be tentative and partial. Unlike other areas of public service funding, including other social work, funding for CJSW will remain ring-fenced, limiting the discretion of local authorities to spend the money elsewhere (such as in a more prevention-focused way) as they have been able to do in most areas under the 2007 Concordat. The Scottish Government would continue to ‘steer’ local provision of community

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<sup>458</sup> Crawford, 2006

<sup>459</sup> *Ibid.*: 460

<sup>460</sup> Matthews, 2012



justice by requiring “community justice outcomes improvement plans” separate from mainstream community planning.<sup>461</sup>

Although the Government has emphasised that the new national body, Community Justice Scotland, will not be in an accountability relationship with local partners,<sup>462</sup> it will have the power to compel these partners to report on their progress. The implication is that local partners cannot entirely be trusted with responsibility for community justice. CPPs have not always been able to fulfil an ambitious mandate that combines efficiency, partnership working and local democracy. Criticism of the CPP system has particularly emphasised their failure as institutions of local democratic engagement, and it is this aspect in particular which the 2015 Community Empowerment (Scotland) Act was intended to address, as seen in the Scottish Government’s own description of the justification for the Act which invokes the language of deliberative democracy:

“The Scottish Government is committed to our communities being supported to do things for themselves – community empowerment – and to people having their voices heard in the planning and delivery of services – community engagement and participation.”<sup>463</sup>

The participatory element is dealt with in Parts 3 and 10 of the Act, which make provision for mechanisms for community participation. Although it is too early for there to be much commentary on the Act, there have already been claims that the legislation as enacted represents a “watered-down” approach to empowerment resulting from compromises with local government.<sup>464</sup> Unfortunately for deliberative democracy in Scottish local communities, the content of the Act appears to support this claim. Part 3 makes no statement about participation beyond granting a right to “community participation bodies” (rather than all members of the public) to “make a request to a public service authority to permit the body to

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<sup>461</sup> 2016 Community Justice (Scotland) Act, s. 19

<sup>462</sup> Scottish Government, 2014c: 21

<sup>463</sup> SP Bill 52 Community Empowerment (Scotland) Bill [policy memorandum] (2014)

<sup>464</sup> *Holyrood*, 2015

participate in an outcome improvement process.”<sup>465</sup> Local authorities may refuse these requests if there are found to be “reasonable grounds for doing so”. Part 10 of the Act enables Scottish Ministers to require public authorities to promote participation, but does not in itself require anything of local or other authorities.

There may in any case be an inherent conflict within the mandate of CPPs – between efficiency and democracy. As Dzur has remarked in advocating the ‘rational disorganisation of juries’, participation by non-experts is comparatively costly in time and resources. Expert participation by contrast is likely to be relatively straightforward and to feed efficiently into the process of planning or policy development.<sup>466</sup> In the context of local government service provision, encouraging participation by ordinary citizens is likely to require specific outreach events and ‘community meetings’ which are costly in terms of resources. The ‘best value duty’ required by the 2003 Local Government in Scotland Act has been reinforced by public sector austerity,<sup>467</sup> and the Scottish Government response to austerity which has emphasised adapting institutional arrangements to maintain the quality of service. The ways in which local authorities must make savings are circumscribed – many have policies against making mandatory redundancies.<sup>468</sup> In short, real civic participation is in conflict with the needs of austerity and the duties of local authorities to their taxpayers. Strangely, the justification for the transfer of community justice responsibilities to CPPs made no mention of deliberative democracy and local civic participation, despite its institutional and temporal proximity to a community empowerment policy which emphasises these virtues. The interface between local democracy and community justice will continue to be limited to the presence of local councillors in CPP meetings.

The Community Empowerment Act widened the range of participation in CPPs, extending the range of statutory partners beyond just local authorities (initially the

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<sup>465</sup> 2015 Community Empowerment (Scotland) Act, s. 22 (1)

<sup>466</sup> Dzur, 2012: 54-62

<sup>467</sup> 2003 Local Government in Scotland Act, s. 1

<sup>468</sup> Audit Scotland, 2015: 15

only partners whose involvement was legislatively required)<sup>469</sup> to include NHS boards, police, transport partnerships and a range of other public service and education bodies.<sup>470</sup> There may be more justification for optimism here, as this does deal directly with one widely-reported problem for partnerships in general – the dominance of local authorities. A similar partnership approach is implied in the content of the Community Justice (Scotland) Act:

“The following persons are “community justice partners” for the purposes of this Act—

- (a) each local authority,
- (b) each health board,
- (c) the chief constable of the Police Service of Scotland,
- (d) the Scottish Fire and Rescue Service,
- (e) Skills Development Scotland,
- (f) an integration joint board [health and social care] established by virtue of section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- (g) the Scottish Courts and Tribunals Service, and
- (h) the Scottish Ministers. [representing the Scottish Prison Service]”<sup>471</sup>

Both Acts were the subject of concern around the role of third sector organisations,<sup>472</sup> which are not mentioned, even in the abstract, in the Community Empowerment Act, or in the first version of the Community Justice (Scotland) Bill. This arguably protects the third sector’s independence and flexibility, and recognises the local nature of many third-sector organisations, but it is also likely to reinforce the dominance of the public sector in partnership settings – although the Community Justice (Scotland) Act did acknowledge the role of third sector bodies and require both local and national elements of the new system to consult them in their planning activities.<sup>473</sup>

In recent months the redesign of community justice has undergone a subtle shift in emphasis. CPPs, initially described as “central to the new arrangements”,<sup>474</sup> could

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<sup>469</sup> 2003 Local Government in Scotland Act, s.15

<sup>470</sup> 2015 Community Empowerment (Scotland) Act, Schedule 1

<sup>471</sup> 2016 Community Justice (Scotland) Act, s. 13 (1)

<sup>472</sup> Halpin, 2015

<sup>473</sup> 2016 Community Justice (Scotland) Act, s. 14

<sup>474</sup> Scottish Government, 2014b

not be named as statutory partners. Instead the 2016 Act, and more recent documents about the redesign, refer to local community justice partners. Local authorities, required to keep community justice planning separate from other planning work, are in some cases opting to set up community justice partnerships separate from CPPs.

The partnership structures for community justice are at the discretion of CPPs, who thus still have a role in justice planning, but potentially only at this remove.<sup>475</sup> Therefore, whether CPPs become involved with community justice partnerships is also somewhat at their discretion, and will probably vary between areas. The set of community justice partners includes most statutory members of CPPs, so the partnerships will be similar in composition. Community justice planning must “have regard to... Local Outcome Improvement Plans produced by the CPP”,<sup>476</sup> locating the justice responsibilities within the wider planning framework. CPPs have also been enlisted throughout the redesign process to assist with the transition to the new model.<sup>477</sup>

The exact reasons for this shift are presently unclear. It may result from concerns about CPPs’ suitability for the community justice role, or from resistance by local authority interests to CPPs gaining complex additional tasks separate from their mainstream work. However, even without knowing how active CPPs will be in the new system, the foregoing issues with local government partnership approaches are – as argued above – not confined to CPPs, and are likely still to apply to the new model of community justice in Scotland.

## 5. Conclusion

This chapter has considered a range of literature related to subnational variation and deliberative democracy in criminal justice, the history of crime control and community planning and issues of power dynamics and democracy in both types of

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<sup>475</sup> Scottish Government, 2015j: 4

<sup>476</sup> Scottish Government, 2015i: 4

<sup>477</sup> Scottish Government, 2015j: 14

local partnership before briefly considering two legislative developments in Scotland. In the process it has attempted to bring together a number of different strands of work to develop insights on the redesign of community justice in Scotland, but this discussion has been marked by awkward gaps as much as by helpful convergences.

Deliberative democracy in Scotland was a promising idea, particularly in the years immediately after the establishment of the Scottish Parliament, but it has not fully developed and may even have regressed. Deliberative democracy has not entered community justice in Scotland, even though it might in some ways seem both institutionally suitable (given the long-established location of community justice responsibilities within local authorities) and potentially fruitful for reducing the stigma of offending and making the system more democratic and accountable (as Dzur's and Barker's work suggests). The current policy on community justice in Scotland emphasises the role of partnership working in the system and has a considerable amount in common with the history of more prevention-oriented crime control partnerships in England and Wales and the US – which also share a prevention orientation with the main thrust of Scottish local government reform in the last few years. Both the current and future community justice providers in Scotland appear to share with these crime control partnerships a range of governance problems with implications for administrative efficacy and democracy.

Recent legislation in Scotland has attempted to make CPPs more democratic. At the same time, community justice responsibilities are being transferred to local partnerships with structural connections (and conceptual similarities) to CPPs, but the redesign does not seek to make community justice more democratic. In fact, the policy seems to resist the idea that community justice and local democracy could or should converge, despite the democratic rhetoric around CPP reform. The justice role has been carefully kept separate from other community planning, and it is now

clear that the two could potentially work entirely apart, despite their common interests, as occurred with CPPs and CJAs.<sup>478</sup>

The criminological and political literature discussed in the first half of this chapter highlights the potential value of democratic and local approaches to community justice. However, despite some apparent convergence between community empowerment and community justice agendas, the local community justice partnerships are likely to be another 'dirigiste' approach with little in the way of novel contributions, and many of the same problems.

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<sup>478</sup> Henry, 2009b: 103-4



## Chapter 4: Methods and Project Development

### I. Initial Comparative Intentions

This project investigates the origins, development and probable consequences of the current restructuring of community justice in Scotland. The project began in September 2012, at a time when the Scottish restructuring policy was in its very earliest stages of development. Over the following four years it has been possible to observe the development of the policy through successive consultations and finally legislation.<sup>479</sup>

The project began with the following research questions:

1. What historical processes have structured the Scottish community justice field?
2. What are the likely effects of the reforms on the structures of this field?
3. How will the habitus of people working in different parts of community justice adapt to these structural changes?

The project develops answers to these questions through a combination of empirical and secondary research. Secondary research was initially focused on the history and development of Scottish community justice, including in relation to England and Wales (Chapter 2), and later moved to considering the relationship between the current restructuring policy, attempts at community engagement in criminal justice and the complex relationship between the current restructuring policy and the development of community planning in Scotland (Chapter 3).

Empirical research for the project was carried out between June 2014 and January 2015 and comprises semi-structured interviews with 21 practitioners and politicians connected to community justice. This strand was intended to complement the secondary research by introducing a range of perspectives on the policy, including accounts of personal experiences of the formation of the policy and expectations for the future (still uncertain at the time).

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<sup>479</sup> Scottish Government, 2012a; 2013; 2014b; 2014c; 2016 Community Justice (Scotland) Act



By discussing the theoretical underpinnings of both parts of the project and their relationship to each other, as well as the process of analysis conducted on the empirical data, this chapter is intended to serve as a 'bridge' to the second half of the thesis. It will begin by explaining the initial intentions for a project which would consider not just the restructuring reforms to the Scottish system of community justice, but also the more dramatic and in many ways more radical reforms in England and Wales, known as the Transforming Rehabilitation policy.<sup>480</sup> The early part of this chapter explains the initial intentions to study the two policies comparatively, before explaining why this could not happen, and the fairly radical change of plans that resulted from this. It then moves to less specific methodological questions, considering first the relevance of social theory to the methods used in the project, which comprised the literature-based research discussed in Chapters 2 and 3, and fieldwork interviews which produced the findings detailed in Chapters 5 and 6. This chapter then details my approach to analysing the data from the interviews, explaining the reasoning for choosing a thematic analysis method, and considering some of the epistemological and ontological questions and concerns implicit in the process, before briefly detailing the choice to use QSR NVivo qualitative analysis software and how this software was used.

The project was developed with a view to direct comparison between policies aiming to restructure the community justice systems of England and Wales, and Scotland. The original intention of the project was to use a Bourdieusian framework – particularly the concepts of field and habitus – to conceive of these policies and their effects. This was to be reflected in an essentially dichotomous research plan, built around a mix of literature review and interviews conducted on both sides of the border.

## **Transforming Rehabilitation**

The project began as a comparative study which would compare the redesign of community justice in Scotland with 'Transforming Rehabilitation' (TR), a highly

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<sup>480</sup> Burke, 2016

ambitious set of reforms launched in England and Wales in 2013.<sup>481</sup> Under TR, the probation service of England and Wales – increasingly, since the 1990s, the focus (and arguably the victim) of competitive ‘New Public Management’ logic<sup>482</sup> – was reorganised in a completely unprecedented way.

The 35 local probation Trusts which had administered the service under the National Probation Service since 2008 were replaced with a two-tier system of 21 local Community Rehabilitation Companies (CRCs) and a new National Probation Service (NPS). NPS would remain publicly owned (although as part of the process it would also be brought further into the NOMS fold) while the CRCs would be contracted out to bidders including private companies, third sector organisations, ‘public service mutuals’ formed by current public sector probation staff or any combination of these bidding as consortia. These organisations would be paid using a new ‘Payment by Results’ system, which was intended to ensure that contractors would only receive payment where they succeeded in meeting reoffending reduction targets.<sup>483</sup>

The workload between CRCs and NPS would, unusually, be split largely by risk, with CRCs responsible for supervising low- and medium-risk offenders and the NPS retaining responsibility for high-risk offenders and court services (including pre-sentence reports). A new IT system for offender management, nDelius, would be rolled out across England and Wales, intended to replace the mix of three IT systems used previously and to facilitate the exchange of information and offender records. Before the bidding could take place, the full cohort of probation staff in England and Wales were ‘sifted’ into either NPS or CRC roles.

Most of the CRC contracts were awarded to the private sector, particularly Interserve and Sodexo Justice Services.<sup>484</sup> It was in general a bad time for criminal justice privatisation: the 2012 London Olympics had been marred by the failure of

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<sup>481</sup> Ministry of Justice, 2013

<sup>482</sup> Burke and Collett, 2010

<sup>483</sup> Puddicombe, Corry, Fox and Albertson, 2012

<sup>484</sup> Travis, 2014

G4S to provide adequate guards, and not long before the tendering process began it was revealed that both G4S and Serco had been overcharging the government for providing electronic monitoring services, forcing two of the strongest contenders to pull out of the TR bidding. Additionally, the Work Programme (also overseen by Chris Grayling during his tenure as Minister for Employment) had involved several of the same contractors and a similar 'payment by results' system, and was widely criticised.<sup>485</sup>

The policy has been controversial, particularly among probation officers, and has led to a series of industrial actions by the National Association of Probation Officers (Napo), the trade union representing probation and family court workers in England and Wales and some limited but highly critical coverage in the news media.<sup>486</sup> Major criticisms of the policy itself have included moral issues around privatisation, the untested nature of the reforms and the possibility of increased risk to the public.<sup>487</sup> The *implementation* of the policy (particularly the CRC-NPS split) has also been criticised as hurried, disruptive, bureaucratic and beset by IT problems,<sup>488</sup> and in February 2015 the chief inspector of probation, Paul McDowell, was forced to resign over a possible conflict of interest when it emerged his wife was managing director of one of the likely bidders (Sodexo Justice Services).<sup>489</sup> As Robinson, Burke and Millings have noted, the restructuring of probation has also had significant effects on probation staff, including a powerful sense of loss and anxiety about the forced remaking of their professional identities.<sup>490</sup>

## Comparison Points

This project as originally conceived would have considered a number of points of similarity and difference between the two policies, including certain contextual

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<sup>485</sup> Puddicombe et al., 2012: 46

<sup>486</sup> Hedderman and Murphy, 2015

<sup>487</sup> See Napo, 2013; BBC, 2014

<sup>488</sup> Napo, 2015

<sup>489</sup> Travis, 2015

<sup>490</sup> Robinson, Burke and Millings, 2016

aspects. Perhaps the first of these chronologically was the question of divergence in the *previous* nearly-contemporaneous set of community justice reforms, in 2003-05.

In this period, probation in England and Wales was merged, along with HM Prison Service, into the new National Offender Management Service (NOMS). This development was generally greeted with concern among probation scholars, who argued that the new arrangements would mean more bureaucracy and central control for the probation service and domination by the prison service.<sup>491</sup> In Scotland, a similar development was mooted but rejected – the Scottish Labour 2003 manifesto *On Your Side* included a commitment to merge CJSW and SPS into a Correctional Service for Scotland – before this had been done in England and Wales.<sup>492</sup> However, because of the historic political power of Scottish local authorities, and the position of probation work within local authority social work, representative bodies of both Scottish social workers (ADSW) and local authorities (COSLA) could ally and successfully resist the move.<sup>493</sup> The argument against a national service seemed to be strengthened further when NOMS was implemented in England and Wales. This divergence not only suggests comparability between the two developments (because similar policies were under consideration in both jurisdictions at the same time), but could also offer insight into the ways in which developments in one jurisdiction can affect others.

The comparative aspect of the project would have been focused primarily on the current set of policies – TR and the Scottish redesign of community justice. In both jurisdictions (and likely in others as well), the main problems faced by community justice are similar: community sentences have been repeatedly shown to be more effective, more humane and cheaper than prison, but nonetheless tend not to enjoy the confidence of sentencers or of the general public (where the general public are aware of them at all).

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<sup>491</sup> Nellis, 2004

<sup>492</sup> Scottish Labour, 2003

<sup>493</sup> Morrison, 2015: 157-161

However, the two policies themselves are clearly very different, conceptually and developmentally. The Scottish redesign has been marked by a very long and complex process of consultation involving a wide range of people and organisations involved in community justice, while TR appears to have been an ideologically motivated imposition by central government. The near-total absence of the private sector from community justice in Scotland is another major point of difference.

A further line of comparison would involve the complex arguments that have played out between local and national loci of system control, often at some length. Local probation organisations in England and Wales have been subject to increasingly directive control and standardisation from central government, through the implementation of national standards through the target-driven Effective Practice Initiative in 1998,<sup>494</sup> the formation of first the National Probation Service (in its pre-TR incarnation) in 2000,<sup>495</sup> and the foundation of NOMS in 2004. As Minkes and Raynor have argued, this has sometimes come at the expense of good probation practice developed locally, particularly in rural areas.<sup>496</sup> It has tended to be accompanied by rhetoric and practice that was both more punitive,<sup>497</sup> and more concerned with risk management; as McNeill notes, Scottish CJSW partially adopted aspects of the risk management ethos while remaining essentially welfarist.<sup>498</sup>

This is likely a partial result of the two key structural factors in Scottish community justice (see Chapter 2): the positioning of probation supervision and related responsibilities within local authority social work departments, instituted by the 1968 Social Work (Scotland) Act and largely unchanged ever since; and the power of those local authorities in their relations with central government, derived largely from their considerably longer political experience. It would become clear that local

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<sup>494</sup> Nellis, 2004: 121

<sup>495</sup> Nellis, 2002

<sup>496</sup> Minkes and Raynor, 2013

<sup>497</sup> Robinson and Ugwudike, 2012

<sup>498</sup> McNeill et al., 2010

authorities had been able to exercise considerable influence in the Scottish community justice redesign.

Under the current policies, both jurisdictions will have two-tier systems that combine local and national provision, but with different balances between the two and different institutional configurations reflecting not just the power relations between local and national government, but also the positioning of community justice services within the field of public service as a whole.

It was clear that comparing the two sets of community justice reforms would not be entirely straightforward. The points of comparison were clearly shaped by a complex mix of long- and short-term factors, and there were clear and essential differences between the two jurisdictions (especially perhaps their size relative to each other) which could have confounded rigorous comparison. However, it was ultimately a less conceptual set of concerns that led to the comparative element being abandoned.

## 2. Changes of Plan

### Approaching NOMS

The first plan was finalised near the end of 2013. In the next few months, interview schedules were developed and letters of access drafted. Ethical approval – required for the fieldwork stage to commence – was sought, and obtained on 13 March 2014. I had decided, in early 2014, that the best place to begin was with probation officers working for the public sector probation apparatus of England and Wales – then comprising 35 Probation Trusts, but (since June 2014) split into the National Probation Service (NPS) and 21 Community Rehabilitation Companies (CRCs), many of them now owned by large private companies. Public sector probation officers were chosen because the impending NPS/CRC split (originally to take place in April 2014) meant they were likely to become very hard to access quite soon, and hence required quick action to attempt to secure interviews. In addition, I suspected

that the highly bureaucratic nature of the National Offender Management Service (NOMS) would make the process quite a lengthy one.

This proved more correct than I was expecting. NOMS guidance on research applications<sup>499</sup> introduced a new application process in which all applications had to use a standardised NOMS form which would then be submitted to the NOMS National Research Committee. It took some weeks to complete the lengthy and complicated form, and I submitted it on 2 April 2014. The next meeting of the National Research Committee was to be held on the 21<sup>st</sup> of that month, and I was told to expect a reply within two weeks of that meeting. When, nearly a month later, I had received nothing, I followed up with NOMS and was told on the 29<sup>th</sup> May that my application had been rejected by the Committee.<sup>500</sup>

There was the possibility of appealing this decision, but given that this was a PhD project with a single researcher and funding that only covered PhD fees, it is doubtful that it would have been possible to reconfigure it to an extent that the NRC would have approved it. The decision could have been appealed, but this would have meant further delays of weeks or even months with no guarantee of success, and the project's limited timescale would render such delays a serious problem. It was decided not to appeal the decision. Around this time, NOMS in general seemed to become less inclined to grant access to independent researchers. One example of this which has recently been reported in the news media was when the Howard League for Penal Reform was prevented from interviewing serving prisoners about their experiences of coercive sex and rape in prison.<sup>501</sup>

Meanwhile, I had also been attempting to make contact with the National Association of Probation Officers (Napo), the probation and family courts union in England and Wales. Although the Napo staff with whom I corresponded were very understanding, the timing was far from propitious: this was at a time when Napo

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<sup>499</sup> NOMS, 2012

<sup>500</sup> NOMS National Research Committee, personal communication, 29 May 2014

<sup>501</sup> Fogg, 2014

were involved in a series of industrial actions to do with TR, and when their members within probation<sup>502</sup> were being reallocated ('sifted') to the new NPS or to CRCs. Hundreds of Napo members appealed their reallocation decisions,<sup>503</sup> creating further pressures on the union. It was made clear to me that I should not be optimistic about my chances of interviewing Napo members.<sup>504</sup> Given what appeared to be continuing serious administrative problems within probation in England and Wales, and a certain amount of internal conflict within Napo, it seemed unlikely that I would gain access to Napo within the timeframe of the project. These two barriers – particularly the refusal from NOMS, after having put a significant amount of time into applying – meant it would be very difficult to gain access to public sector probation workers in England and Wales.

### Refocusing on Scotland

The public sector probation staff of England and Wales have a highly developed occupational culture, as well as (often) a strongly academic view of their work.<sup>505</sup> Fundamentally, they are the traditional 'owners' of probation work, and are definitely those most dramatically affected by TR (as exhibited in the 'sifting' process, the overhaul of probation IT systems, the further growth of bureaucratic processes and a serious fall in morale). While it may still be possible to gain access to other provider sectors within that jurisdiction, any fieldwork to do with English/Welsh probation structures that didn't involve this key group would fail to engage with the impact of TR in the way that I had initially hoped. A slow start to the beginnings of the Scottish fieldwork was not encouraging for the possibility of making significant gains in England any time soon.

Therefore, I decided, on the advice of my supervisors, to shift the focus of the project. The fieldwork part of the project would now focus entirely on the restructuring of community justice in Scotland. While this did constitute a

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<sup>502</sup> Napo also serves staff of the family courts, but these constitute a minority of its members.

<sup>503</sup> Shaw, 2014

<sup>504</sup> Napo, personal communication, 11 May 2014

<sup>505</sup> Mawby and Worrall, 2013: 128



limitation, it also allows for more depth in investigating the Scottish restructuring: a greater range of organisations within Scotland could be approached for interviews, including more individual third-sector organisations.

I had spent some time researching the TR policy, and had gathered (and written) a fairly significant amount of material already. I had intended not to let this go to waste, with the result that in the period immediately after deciding not to go ahead with the English fieldwork, the project was intended to retain the comparative element even though fieldwork was only possible in one of the jurisdictions; in essence, to be comparative but asymmetrical, structured around the Scottish redesign of community justice as a case study but with frequent comparison to TR with particular reference to the comparison points detailed above.

There was a sense that such an approach, by itself, would miss out valuable qualitative data about the experiences of English and Welsh probation staff of the impact of TR. The use of online sources – mostly blogs and discussion forums – was considered as a possible approach to filling this gap, as they seemed to have a number of advantages. Much of the information is produced without any kind of prompting or request, by ordinary probation officers directly affected by TR – despite, or perhaps partly because of, attempts by the Ministry of Justice to regulate their dissemination of information online.<sup>506</sup> The online material had the further advantage of presenting minimal ethical issues – the writers are almost invariably pseudonymous, and where they are using their real name this is in an official capacity. It should not be necessary to seek the authors' permission, given the public domain status of the work.<sup>507</sup> In general, internet research scholars appear to agree that it is ethical to use publicly viewable forum posts without getting consent or approval.<sup>508</sup>

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<sup>506</sup> Travis, 2013

<sup>507</sup> Hookway, 2008: 105-106

<sup>508</sup> Seale, Charteris-Black, MacFarlane and McPherson, 2010: 598

Another advantage of such media, particularly blogs (which are designed as diaries), is that entries are automatically date- or time-stamped, and archived in such a way as to make older posts as easily accessible as newer ones and (assuming no user intervention) permanently archived in the same way.<sup>509</sup> This makes it extremely straightforward to look at changes in the qualitative data over time. The posts from the forums and blogs could easily and fairly quickly be analysed using NVivo or similar software, in the same way as with the interview data.

The difference in the qualitative data gathering methods could even be a strength – while direct comparison is less straightforward, it may have been possible to gain information from more different sources within the English/Welsh context. Bearing in mind the principle of triangulation, it might have been instructive to make comparisons between the data uncovered by interviews in Scotland – in response to my questions, in an unusual setting that is at once naturalistic and artificial – and data from England and Wales that was spontaneously and freely produced. In an article comparing qualitative interviewing and qualitative internet research, Seale et al. summarise the advantage of this:

“Research interviews, by contrast—even ones that, like these, are designed to encourage the respondent to tell his or her own story—not only provoke narratives involving a positive presentation of self but also involve the researcher participating in setting the agenda for talk, framing the terms in which the topic is to be conceptualized by the respondent.”<sup>510</sup>

This study also found that individuals were more likely to say on the internet what they would not say to researchers in interviews, although this is likely to be in large part due to the sensitive nature of the health topics under investigation there.<sup>511</sup>

## Narrowing Further

However, the use of online research methods to complement more traditional fieldwork interviews never progressed beyond this stage. By this point, the fieldwork in Scotland was gathering pace, and there was far more detail available

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<sup>509</sup> Serfaty, 2004: 462-3

<sup>510</sup> Seale et al., 2010: 603

<sup>511</sup> *Ibid.*: 596

about the Scottish community justice redesign than there had been even a few months before.<sup>512</sup>

These led to two insights which would finally and conclusively set the shape of the project. The first of these was that there was more than enough material in the Scottish redesign policy for a PhD project. Despite appearing fairly minor (particularly by comparison with the dramatic break of TR), the redesign of community justice in Scotland played into a number of major questions about practice and about politics, and was not entirely uncontroversial.<sup>513</sup> The second, linked, insight was that there were aspects of political and policy context I had not previously considered – particularly the moves towards reforming CPPs and the integration of health and social care – which were likely to be relevant in analysis of the community justice redesign. Conversely it was also becoming clear that the redesign had relatively little to do with the core practice of criminal justice social work.

With this in mind, and after discussion with my supervisors, I decided to remove the comparative element from the project entirely. Instead the research would focus entirely on the redesign of Scottish community justice. This tightening of focus also allowed the fieldwork to be changed in a way that both broadened its range of participants and shifted its emphasis in a way that benefited a more policy- and politically-oriented approach to inquiry – away from practice and towards administration and engagement with policy. The revised scheme for fieldwork would still include CJA staff, but not CJSWs and third-sector personnel who worked directly with offenders; instead I would interview management-level staff from CJSW/social work departments and third-sector organisations, as they would be more likely to have knowledge of the policy and engagement with the process of consultation. The fieldwork was also expanded to include political actors, a course of action already suggested to me by one of my participants and (independently) by

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<sup>512</sup> Scottish Government, 2013; Scottish Government, 2014b

<sup>513</sup> MacAskill, 2015

my principal supervisor – elected members of CJAs (as the local authority politicians with the most involvement in community justice work), MSPs with justice-related responsibilities and civil servants involved in community justice policy. Incorporating these groups into the fieldwork was intended to help to fill a gap in knowledge which started to become apparent after the first couple of CJA interviews, to do with higher-level aspects of the policy and its direction, and the policy positions taken by the implementation part of the Directorate. Although it was not anticipated that this change would raise new ethical issues, ethical recertification was sought, and received in early October 2014. Appendix B gives a sample letter of approach, while Appendix C is a sample interview guide.

Despite this change of plans, much of my research on England and Wales remained relevant to this project. Scottish penal policy has tended to be defined in relation to England and Wales, through a complex dynamic that has combined divergence and convergence,<sup>514</sup> and Chapter 2 (Sections 2-4) uses literature from both jurisdictions to set Scottish community justice in this historical context.

Pragmatically, the dearth of material on early Scottish community justice history necessitates using historical work from England and Wales to gain a sense of the shared social origins of community justice. More recent literature from England and Wales, alongside some work from the US,<sup>515</sup> gives a sense of issues facing community justice that go beyond Scotland. Similarly, most of the research on the development of community partnership approaches to crime and justice (Chapter 3) has focused on England and Wales,<sup>516</sup> where crime and disorder-focused partnerships developed before appearing in similar form in Scotland,<sup>517</sup> where they exist alongside a system of community planning influenced to by developments in England but also by earlier local precedents.<sup>518</sup> Other research focused on England

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<sup>514</sup> McAra, 2005; 2008; 2016; Mooney et al., 2015; MacLennan, 2016

<sup>515</sup> Simon, 1993; Phelps, 2013

<sup>516</sup> Crawford, 1997; Hughes, 2007

<sup>517</sup> Henry, 2009a

<sup>518</sup> Pemberton and Lloyd, 2008; Fernie and McCarthy, 2001

and Wales, particularly on criminal justice privatisation, was not relevant to Scotland's community justice restructuring and is not discussed here.

### 3. Theorising Methods

What did not change during this difficult period was the way in which social theory was used to frame the conception of community justice and the methods of the project. In particular, the 'grand theory' work of Pierre Bourdieu was used to give the project an overarching theoretical framework. Bourdieu's framework, increasingly popular in sociological and criminological scholarship, centres on three concepts which are seen as constitutive of social settings:

- *Field* is "a mesolevel concept denoting the local social world in which actors are embedded and toward which they orient their actions".<sup>519</sup> Fields can (and do) contain and overlap one another, and are structured partly by the agents within them, whose positions and position-takings within the field affects that field's structure.
- Agents' ability to take positions is determined by their possession of *capital*. Capital could be any type of resource that grants power within the field – money is a universally known example, but symbolic power - "the most effective form of power"<sup>520</sup> is what gives agents the power to define the principles, structure and terms of engagement within the field.
- Agents' interactions and positions with the field and each other are structured by *habitus*, a "system of structured, structuring dispositions... which is constituted in practice and is always oriented towards practical functions."<sup>521</sup> The habitus is always structured by past experience – emphasising the importance of history.

Crucially for a project that is concerned with agents (community justice workers) working within structures (formal organisations), the advantage of the

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<sup>519</sup> Sallaz and Zavisca, 2007: 24

<sup>520</sup> *Ibid.*

<sup>521</sup> Bourdieu, 1990 [1980]: 52

Bourdieuian framework is that it transcends a 'false antinomy' between sociological traditions that overprivilege either agency or structure at the expense of the other. For Bourdieu, structuralism tends to overstate the solidity and determinacy of relational social structures, while 'social phenomenology' perspectives make the opposite error by viewing these structures simply as constructions of individual actions and perspectives.<sup>522</sup> Sallaz and Zavisca state that "Bourdieu's theoretical project bridges the deep philosophical divide between the structuralism of Lévi-Strauss and the existentialism of Jean-Paul Sartre."<sup>523</sup> The model is one that acknowledges the importance and solidity of exogenous structures while also leaving room for individual agency.

### Sketching the Penal Field

I was particularly attentive to two recent examples of successful application of Bourdieu's framework to the sociology of punishment. The first of these was smaller in scale and closer to home – an ethnographic project in which a group of Glasgow-based criminologists investigated the ways in which CJSWs in Scotland approach one part of their work – the writing of social enquiry reports.<sup>524</sup> Like Page, they seek to use Bourdieu to address the 'governmentality gap', "a lacuna in the existing penological scholarship which concerns the contingent relationships between changing governmental rationalities and technologies on the one hand and the construction of penalty-in-practice on the other."<sup>525</sup> Their work describes the ways in which CJSWs, as multiply marginalised penal agents subject to particular pressures, use court reports to stake claims to expertise and influence sentencing decisions. However, in the processes of social enquiry reporting and sentencing, the CJSW habitus comes into conflict with a (much longer established) judicial habitus, producing ironic outcomes for social workers who attempt to influence sentencing decisions:

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<sup>522</sup> Bourdieu and Wacquant, 1992: 8-11

<sup>523</sup> Sallaz and Zavisca, 2007: 23

<sup>524</sup> McNeill, Burns, Halliday, Hutton and Tata, 2009; Halliday et al., 2008; Halliday et al., 2009

<sup>525</sup> McNeill et al., 2009: 419

“Predictably perhaps, the judges in our study trusted neither the outcomes of risk assessment instruments nor the professional judgements of social workers, preferring to trust their own skills in judging offenders... Thus although policy discourses may lead social workers to hope to find in their manipulation of risk-based rationalities and technologies the potential to acquire the cultural capital that they need, to the extent that they understand or intuit judicial resistance to risk, the ambivalence of their own relationship with these rationalities and technologies is exacerbated.”<sup>526</sup>

The project makes greater use of a more distant theoretical precedent, however – the development of the ‘penal field’ in *The Toughest Beat*,<sup>527</sup> Joshua Page’s sociological history of the California Correctional Peace Officers Association (CCPOA), a prison officers’ union which gained a considerable level of influence on the penal politics of California. Page conceives of the penal field as a “the social space in which agents struggle to accumulate and employ penal capital—that is, the legitimate authority to determine penal policies and priorities”.<sup>528</sup> As Page has described, the Californian penal field had once been oriented towards rehabilitation of offenders and minimal imprisonment. Within prisons, rehabilitation-oriented approaches and the development of prisoners’ rights discourses produced resentment among ordinary prison guards, leading to the formation of the CCPOA. California experienced a very rapid and dramatic change of penal climate from about the 1970s onwards, with increasingly politicised and emotive language about law and order (aided, as Barker has explained, by a populist approach to democracy),<sup>529</sup> and a penal model which (in common with, and arguably emblematically of, much of the rest of the US) rejected rehabilitation in favour of a penal rationale of ‘ultra-incapacitation’ whose primary method was mass incarceration.<sup>530</sup> The CCPOA, as a right-wing, anti-rehabilitation organisation – which (as Page’s title implies) played up the level of danger they faced from the ‘superpredators’ in their charge – was both a beneficiary of and a contributor to the shift in penal thinking in California, as well as an example to prison officer unions in other states. Page also explains how the

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<sup>526</sup> *Ibid.*: 435-6

<sup>527</sup> Page, 2011

<sup>528</sup> *Ibid.*: 10

<sup>529</sup> Barker, 2009

<sup>530</sup> Simon, 2014

forging of strategically valuable alliances, such as with victims' rights groups, was vital to its success. In developing the concept of a penal field to help to explain this dramatic political development, both Page and the Scottish CJSW project seem to be answering Garland's call for penologists to go beyond explanations and expositions of macro-level policy developments<sup>531</sup> – to consider not just what the broad policy trends are but also how they are made and enacted by a range of actors, who may be in conflict, at different levels. This section now turns to the applicability of this approach to Scotland.

The particular value of the penal field model for discussing justice policy in Scotland lies in its emphasis on the construction of penal policy and practice by and between various different institutions with different aims, and in the way it highlights the role of structural relationships between these institutions. This can perhaps be seen most clearly in the long period of compromise between local and national government over community justice, and in the way that the development of generic social work under the 1968 Act reflects structurally the cultural value of the Kilbrandon philosophy that adult offenders should be treated as people with unmet social needs. The penal field helps to go beyond the oversimplified discrete periods and clean breaks that can sometimes be suggested – although not usually actually advanced – by reading broad histories such as McWilliams' periodization of community justice in England and Wales.<sup>532</sup> As Garland notes, "there is an unavoidable tension between broad generalization and the specification of empirical particulars",<sup>533</sup> and the penal field helps to bridge this gap.

The penal field approach also highlights, and helps to account for, sometimes overlooked continuities between apparently different eras as well as seemingly contradictory developments within the same era.<sup>534</sup> As McAra argues (and see Chapter 6 of this thesis), Scottish penal policy has exhibited significant continuities,

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<sup>531</sup> Garland, 2013

<sup>532</sup> McWilliams, 1983; 1985; 1986; 1987

<sup>533</sup> Garland, 2001: vii

<sup>534</sup> Goodman et al., 2014: 322



particularly of penal welfarism and the 'Kilbrandon philosophy' which have proved durable even in the 'detartanising' period and despite a growing concern with risk in the early 2000s.<sup>535</sup> Similarly, current penal policy in Scotland has included both welfarist and reductionist developments (such as the presumption against short sentences and the development of the CPO – although even this was justified in rhetoric which highlighted “the pains of reparative effort”),<sup>536</sup> and more punitive developments such as the end of automatic early release for some prisoners.<sup>537</sup>

However, the penal field model cannot be adapted to Scotland simply or completely, and consideration of its limitations serves also to highlight the importance of local political structures and systems for the development of criminal justice policy (Chapter 3). Goodman et al., building on Page's earlier work, emphasise struggle and conflict in their 'agonistic' framework for penal development, with particular reference to “the rise and fall of rehabilitation in California”,<sup>538</sup> a state notable for emotive and politically charged criminal justice policy, including a particularly egregious shift towards mass incarceration.<sup>539</sup> The agonistic model takes as axioms that penal development results from struggle and that contestation is constant, and consensus largely illusory.<sup>540</sup>

I suggest that this does not quite hold true for community justice, or criminal justice in general, in Scotland. There have been moments of direct and even open conflict between institutions, the most recent example in community justice being the argument over a single integrated service in 2003-05. In general, though the development of community justice structures has been marked not by conflict but by consensus-finding and compromise, particularly between local authorities and national government, as in the Tough Option groupings, the CJAs and the current

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<sup>535</sup> McAra, 2005: 286-292

<sup>536</sup> McNeill, 2016: 182

<sup>537</sup> McAra, 2016: 8; 2015 Prisoners (Control of Release) (Scotland) Act

<sup>538</sup> Goodman et al., 2014: 316

<sup>539</sup> Simon, 2014

<sup>540</sup> Goodman et al., 2014: 318-20

restructuring.<sup>541</sup> Similarly, the operation of CJAs has sometimes entailed disagreements over the allocation of ring-fenced funding, but (as discussed in Chapter 6, Section 2) these have tended to be resolved by compromise and consensus, with conflict being rare.

This plays into a different argument that seeks to distinguish Scotland from other jurisdictions (particularly England and Wales) – the claim that Scottish policymaking is traditionally more consensual in nature. One major feature of this is a traditional emphasis on consultation between a range of expert parties before making policy,<sup>542</sup> which can also be seen in the lengthy consultation process that surrounded the restructuring of community justice in Scotland. Notably, Paterson highlights the development of generic social work as an example:

“the legislation that laid the basis of Scottish social work for a third of a century was achieved by consensus arising out of thorough consultation and by avoiding the partisan strife that is, nowadays, supposed to mar the policy process at Westminster.”<sup>543</sup>

The consensual quality has been emphasised as a characteristic of Scottish politics before devolution, connected to the development of an identity distinct from England and Wales, and after devolution as a symbol of the new Scottish politics.<sup>544</sup> It is also connected to a sense of there being more shared values between services in Scotland, producing an approach to policy that was often both cohesive and pluralist.<sup>545</sup> Even in criminal justice, an area traditionally characterised by competing and conflicting values,<sup>546</sup> there is still evidence of agreement on some key values in current Scottish criminal justice. This includes the development of more cohesive approaches to dealing with reoffending, including the Whole System Approach for youth offending and the promotion of partnership approaches

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<sup>541</sup> Morrison, 2015

<sup>542</sup> Paterson, 2000: 48

<sup>543</sup> *Ibid.*: 49

<sup>544</sup> Keating, 2010: 31-2

<sup>545</sup> Paterson, 2000; McAra, 2016: 4-5

<sup>546</sup> Crawford, 1997: 94-147

through the CJA system.<sup>547</sup> Nonetheless, there are still differences of values within these partnerships (see Chapter 5, Section 4).

While the penal excess of California is to be avoided, there are disadvantages to Scotland's more consensual approach to policy making – as Keating notes, consensus “may also stifle pluralism, dissensus and debate”.<sup>548</sup> A number of people interviewed for this project, particularly from third-sector organisations, highlighted certain antidemocratic aspects of the consultation process, such as the ability of local authorities to dominate it (Chapter 5, Section 6). The more consensual style of policymaking in Scotland was implicated in the development a pluralist and consultative – but also mainly middle-class and somewhat opaque – community of policymakers,<sup>549</sup> a group credited in some accounts with the development and preservation of penal welfarist policy in the period before devolution.<sup>550</sup> The foregoing discussion also has parallels with the argument made by Barker – also with reference to the emotive and populist penal politics of California, in contrast to different characteristics in other US states – that the structure of democratic institutions within jurisdictions plays a vital role in shaping the development of their criminal justice policy.<sup>551</sup>

In summary, the penal field is a highly valuable theoretical framework in assessing the development of the restructuring of community justice in Scotland, particularly the way in which the policy has been constructed by and between institutions with different aims, and the interplay between structural characteristics and values held by the system. However, the penal field, particularly the ‘agonistic’ approach developed around it by Goodman et al.,<sup>552</sup> is not entirely directly applicable to Scotland. The limitations of that applicability also help to shed further light on the nature of criminal justice policy making in Scotland. The specific characteristics of

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<sup>547</sup> McAra, 2016: 6-8

<sup>548</sup> Keating, 2010: 31

<sup>549</sup> Paterson, 2000: 48; Keating, 2010: 32

<sup>550</sup> Croall, 2006; McAra, 2008

<sup>551</sup> Barker, 2006; 2009

<sup>552</sup> Goodman et al., 2014

Scotland's community justice field, and the ways in which the restructuring policy is likely to affect it, are addressed in Chapter 7.

The literature review part of the project has also included sociological studies of how different approaches to democracy can affect the development of penal fields and how certain common problems seem to recur within the subfields created by formal partnership structures, and the relationships between the Scottish community justice redesign and other restructuring policies. In the process, a range of criminological theory has been considered as well – Garland's 'culture of control' thesis,<sup>553</sup> McAra's 'detartanisation' hypothesis,<sup>554</sup> various theories about the role of democracy in justice – but these have been necessarily somewhat more limited in scope.

The methodological structure of this project was initially intended to be dichotomous, combining literature research with fieldwork interviews. Initially I had intended a theoretical-methodological synthesis: that the literature review strand would enable me to sketch the contours of the community justice field(s) and the fieldwork interviews would give an insight into community justice habitus through the transition(s). I believed that this would produce a degree of methodological, data and to some extent theoretical triangulation which would improve the validity and plausibility of the findings or at least produce interesting further results.<sup>555</sup> In practice, though, it soon became clear that this artificial division of conceptual labour would be neither successful nor useful; in fact it almost seemed to miss the point of a theoretical framework intended to transcend false distinctions.<sup>556</sup> The interview data often referred to particular aspects of the structure of the field, while much of the literature consulted as part of the literature review – particularly the Deering and Mawby and Worrall studies of probation

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<sup>553</sup> Garland, 2001

<sup>554</sup> McAra, 2008

<sup>555</sup> Arksey and Knight, 1999:21-31

<sup>556</sup> Bourdieu and Wacquant, 1992: 8-11

habitus in England and Wales,<sup>557</sup> and the aforementioned Glasgow study of CJSW – gave insights into community justice habitus, which in turn informed the development of the interview schedules for this project. The following sections explain the development of my methodological intentions and the way in which questions of power might play into the process.

## Interviewing in Theory and Practice

Community justice work is defined by practice; histories of community justice are to a large extent histories of practice and how people think about it. Thus, as McWilliams writes of England and Wales, the missionary era is defined by practice oriented around religious conversion, the clinical era by the diagnostic and therapeutic aspects of its practice and the late-modern era by the importance of managerial methods and computerised risk assessment.<sup>558</sup> In Bourdieu's work, the habitus shapes and is shaped by practice; the importance of formative previous conditions in shaping habitus helps to explain the importance of understanding historical practices in explaining current ones, particularly perhaps for those informants with longer experience in the field. This, for Bourdieu, partly explains why practice is not always carefully reasoned or perfectly rational.<sup>559</sup>

One aspect of habitus which is particularly relevant in reference to the sociology of organisational change is the ways in which it is affected by changes to the field, particularly exogenous ones such as government-ordered restructuring. The habitus, structured as it is by previous conditions, must undergo a process of 'adaptation' when the field changes. Where the habitus is misadapted to the new conditions of the field, the result may be what Bourdieu described as a 'hysteresis effect', in which the durable dispositions of the habitus, formed under and adjusted to a previous set of conditions, are no longer well-adapted to the new conditions.<sup>560</sup>

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<sup>557</sup> Deering, 2011; Mawby and Worrall, 2013

<sup>558</sup> McWilliams, 1983; 1985; 1986; 1987

<sup>559</sup> Bourdieu, 1990 [1980]: 45-54

<sup>560</sup> *Ibid.*: 116

On the other hand, the historic structuring of habitus can sometimes produce surprisingly *successful* adaptations to new conditions through being put to use creatively. Kerr and Robinson made this interesting finding in a study of a British corporation operating in post-Soviet Ukraine from 1998 to 2001, following a period of long-term economic crisis in the country. Some of the corporation's Ukrainian workers had been dissidents during the period of Communist rule, which in some cases was a factor in their seeking employment with the corporation; once there, though, they found a number of 'homologies' between the ritual domination of their role in the corporation and that of Soviet rule – and used similar types of practice to deal with them.<sup>561</sup> Without necessarily expecting such a finding in Scottish community justice practice, this example highlights the potential for the hysteresis effect to be an asset instead of, or as well as, a liability.

I decided to conduct empirical research on habitus using semi-structured qualitative interviews. These were intended to gather not just opinions about the policies – which might be best measured by surveys – but also the details and stories of community justice worker reactions as well. These stories include somewhat emotional data, which accompanies stories about practice that are more narrative and factual – at least to the teller. This mix also determined the balancing of realist and constructivist approaches in the thematic analysis (Section 4).

A semi-structured approach would allow both types of information to emerge without accumulating too much irrelevant data. I aimed to interview one person at a time, in order to ensure people feel free to speak their minds without worrying about what others will think; this can be a problem in interviews with more than one subject, particularly focus groups which often fall prey to problems with false consensus.<sup>562</sup> Two interviews were conducted with two people at once, as a result of arrangements made by the organisations I approached. The remainder of the participants were interviewed one at a time.

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<sup>561</sup> Kerr and Robinson, 2009

<sup>562</sup> Arksey and Knight, 1999: 77

As well as gaining some insight into habitus, the interviews were intended to give some sense of a 'ground-level' view of the structures of different fields and subfields, particularly where these differ from those given in official accounts. In reality, the distinction between the field/literature review and habitus/interview parts of the project was less marked than I had initially expected. To a large extent the participants' accounts spoke not only to their habitus as community justice practitioners or politicians but also to specific and concrete details to do with the structure of the Scottish community justice field and its subfields.

### **Interviewing, Power and Politics**

The growth of feminist research practice in the 1970s focused attention on the role of power relations in sociological research, and emphasised that some quantitative and positivist research (including survey interviews) tended to involve the researcher – and their interpretations – dominating the subject. In contrast, qualitative interviews were viewed as more egalitarian and caring – a process in which other people were invited to speak about their lives and what the topics under discussion meant to them.<sup>563</sup>

Kvale argues that even qualitative interviews are not unproblematic in this regard – there are definite imbalances of power in qualitative interviews. Although often referred to as 'dialogues', qualitative research interviews are inherently asymmetrical. The researcher is the one setting the agenda, asking the questions, gathering and (perhaps most importantly) interpreting the interview data and then disseminating that interpretation.<sup>564</sup> But if my role as an interviewer inherently privileged me, the interview subjects were also 'elites'. Many are highly-qualified and experienced criminal justice officials or politicians, with extensive experience of high-level discussion (and in some cases of interviewing and being interviewed), and their jobs may involve power dynamics of their own.

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<sup>563</sup> Kvale, 2006

<sup>564</sup> *Ibid.*

In the previous, comparative version of the project (which was more focused on ‘frontline’ community justice practice), there were more considerations about power as it related to probation supervision and restructuring. The practice of probation supervision is somewhat similar to an interview, in which the probation officer/CJSW has considerable power over the offender, and expects their questions to be answered. Power relations within the penal field more generally are of more enduring and general relevance to the project, but this was perhaps even more marked in the case of TR, where probation officers – already disadvantaged by the dominance of prison within NOMS<sup>565</sup> – appeared powerless to resist the enormous changes wrought to their careers.

Mawby and Worrall found that probation officers in England and Wales tended to have deep concerns about managerial probation reforms but not to voice these to management, preferring instead other adaptations including leaving the service, finding ways around regulations and reaffirming their loyalty to the organisation.<sup>566</sup> My intention in approaching English probation officers was partly to give them a voice at a time in which their concerns about the reforms were not being adequately aired and indeed sometimes actively suppressed (such as by the social media ‘gag’ imposed by the Ministry of Justice).<sup>567</sup> Although the TR part of the project had to be dropped, questions about voices and power relations are still relevant in the Scottish penal field during the redesign of the Scottish community justice system. As discussed below, there was a sense that some voices, particularly those of local authorities and local authority social work departments, predominated in the process of the redesign and the consultation around it.

All interviewees occupied senior positions, and many could be considered ‘elites’ of one sort or another; this term is contested, with elite status being defined sometimes in terms of policymaking and sometimes in terms of expert knowledge.<sup>568</sup> My own

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<sup>565</sup> Mawby and Worrall, 2013: 76-81

<sup>566</sup> *Ibid.*: 109

<sup>567</sup> Travis, 2013

<sup>568</sup> Lilleker, 2003; Wicker and Connelly, 2014



role as a researcher, belonging to an elite university, was also a privileged position; as Kvale notes, “the interviewer rules the interview” by choosing the questions and how to follow up on answers.<sup>569</sup>

Nearly a third of the people interviewed were politicians, which might ordinarily seem to entail the risk that their answers would follow a ‘party line’ too closely. However, as noted in Chapter 6 (Section 6), community justice has a low political profile and the political interviewees had only a relatively minor involvement in community justice issues. Nationally, there had been little political discussion of community justice or the restructuring at the time of the interviews (which ended before the legislation was proposed), while at the local level, the consensus-based system of the CJA (Chapter 6, Section 2) militated against the development of ‘party lines’. While these interviewees, particularly the MSPs, could be considered political ‘elites’, the limited relevance of community justice to their work suggests that these do not really constitute ‘elite interviewing’ as usually understood – it is not what they were ‘elites’ *about* at the time of the interviews.

One issue that this raises in terms of power dynamics is that I found myself more informed on the detail of the restructuring than some of the politicians I interviewed. This necessitated a degree of care to ensure that the discussion remained open; hence the political interviews go less into specific detail about community justice or the restructuring. The civil servant interviewed, as might be expected, adhered more closely to the Scottish Government’s position, highlighting that their role was to offer clarification on policy, not personal views. As such the data from this interview was used mainly for its insight into governmental rationales and intentions for the restructuring.

The more practice-oriented interviewees (CJA staff, social work directors and third-sector managers) had some access to the policies of their own organisations but were not politically powerful. However, these interviewees were highly knowledgeable about their field, making it necessary for me to demonstrate

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<sup>569</sup> Kvale, 2006: 484

sufficient knowledge about key events and procedures to appear credible, while still being receptive to the knowledge and insight they could provide.<sup>570</sup> Careful revision of key literature, sources and events was necessary in both the preparation and the analysis stages.

In general these interviewees were extremely willing to discuss the details of their experiences, opinions and concerns related to their policy. Some interviewees from these groups expressed gratification that this policy was coming to academic attention and that (through the guarantee of anonymity) they were able to speak freely about community justice and the restructuring policy. In general, only fairly little prompting on my part was necessary. While I do not doubt the honesty of these interviewees, I argue in Chapter 5 that their positions on issues to do with the restructuring are closely connected to aspects of their habitus, particularly some key aspects of community justice practice as they have described it.

Ultimately, the differing positions of the interviewees was part of what I sought to capture, and hence it was necessary to acknowledge and understand these while still remaining sufficiently detached to give an overview and a relational perspective on Scotland's penal field. I continued to hold the researcher's "monopoly of interpretation",<sup>571</sup> and the next section addresses the process of interpreting.

#### 4. Thematic Analysis Development

In total, the fieldwork comprised interviews with 21 community justice practitioners in Scotland:

- Six CJA staff (four Chief Officers and two part-time analysts)
- Three CJA elected members
- Six third-sector managerial staff
- Two directors of social work

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<sup>570</sup> Lilleker, 2003: 212

<sup>571</sup> Kvale, 2006: 485

- Three MSPs with justice-related responsibilities
- One civil servant involved in developing the redesign policy

The CJA staff were drawn from four CJAs across Scotland, of varying sizes and covering urban, rural and mixed areas. As noted in Chapter 6, Section 4, this helped to develop a sense of how local concerns played into debates about local and national organisation. These interviewees came from a range of occupational backgrounds, largely in the public sector, and varied levels of CJA experience. Because CJAs employ only 24 full-time equivalent staff, this group constitutes nearly a quarter of all CJA staff. The social work managers came from large urban local authorities, as smaller areas rarely have criminal justice specialism in their social work structures and have smaller CJSW workloads. Hence, while not necessarily representative of social work as a whole, these interviewees were more able to comment on community justice and the restructuring.

The elected members were drawn from two CJAs and from the two most represented parties in Scottish local government, Labour and the SNP.<sup>572</sup> All were Conveners or Vice Conveners, as these positions entail more responsibility and hence more engagement with issues surrounding community justice. The MSPs interviewed represented three different parties (Labour, SNP, Liberal Democrat) and varying occupational backgrounds, and were selected because of their roles in Scottish justice politics, including (but not limited to) the Scottish Parliament's Justice Committee. In the interests of balance, Conservative MSPs were approached but declined my requests. I had hoped to interview more than one civil servant, but the length of time involved in gaining access to the Justice Directorate made this impracticable; nonetheless, the civil servant interviewee was sufficiently senior to discuss the restructuring and the rationale behind it in some detail.

The third sector group included two chief executives and four other managers with operational responsibilities, drawn from four different third-sector organisations. These organisations included both specifically criminal justice-focused

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<sup>572</sup> BBC, 2012

organisations and more generally social care-oriented bodies. All the organisations approached were statutory partners of at least one CJA and hence had experience of the CJA system; because statutory partner status is based on funding,<sup>573</sup> this necessarily excludes smaller organisations. However, most third-sector staff in Scotland are employed by a few large organisations.<sup>574</sup>

The interviewees' anonymity is a way of ensuring open discussion, as well as an ethical commitment. In order to preserve anonymity (particularly given Scotland's small criminal justice policy community),<sup>575</sup> it is not possible to give any further information about the interviewees. Interviewees were approached directly by email (Appendix B); in some cases, interviewees kindly suggested I contact particular colleagues.

The interviews, which took place between August 2014 and January 2015, were digitally recorded and manually transcribed. They varied widely in length and, as I had hoped, included a range of different perspectives of the restructuring of Scottish community justice and related policy and justice matters. The data comprise the words spoken by people working in various parts of Scottish community justice, largely in response to questions and prompts from me. They are mostly about the current structures by which community justice in Scotland is administered, how the participants work with those structures, and the participants' experiences with and views of the restructuring policy. For some participants this policy will constitute a major alteration to their working lives – particularly people working for the CJAs, which will be abolished in 2017. For others, such as those working in charities that are not primarily justice-related, the policy is of less immediate relevance.

Having conducted these interviews, it was necessary to proceed with analysis of this qualitative data. Having conducted a short literature review of qualitative data analysis methods, I had decided to use the popular but not always well-understood

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<sup>573</sup> Audit Scotland, 2012: 30

<sup>574</sup> SCVO, 2014: 3

<sup>575</sup> Mooney et al., 2015: 208

method of thematic analysis. In the process of developing a thematic analysis process I encountered and considered some core epistemological and ontological questions, before commencing an analysis using QSR NVivo software.

## Choosing an Analysis Method

One important issue in selecting an analytical method is that the range of qualitative data analysis methods appears less systematic and less uniform than the mathematical procedures for analysis of quantitative data. Some qualitative methods have capitalised 'official' names and clearly prescribed methods, while others are less prescriptive and less easily defined.<sup>576</sup> As such, any research on qualitative data analysis methods may have some gaps, while definitions may also vary across different methodological texts. Decisions about how to interpret data are more or less closely based on "the ontological and epistemological positions we adopt before we start the process of interpretation."<sup>577</sup>

Analysis methods also differ in what 'level' of the qualitative data they focus on. Conversation Analysis is focused on language in use, and what the verbal and nonverbal details can show about the 'order' behind conversations.<sup>578</sup> Conversation Analysis favours the "naturally occurring data" of conversations that take place in ordinary settings,<sup>579</sup> and as such is probably unsuitable for interview-based studies. Discourse Analysis focuses on the meanings of specific words and phrases used in qualitative data, and on "a conceptualization of language as constructive and performative."<sup>580</sup>

Having considered a range of options, I decided that thematic analysis, probably the most popular form of qualitative analysis, would be well suited to this project.

Thematic analysis can be briefly defined as a process of sifting through qualitative

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<sup>576</sup> Braun and Clarke, 2006

<sup>577</sup> Willig, 2014: 137

<sup>578</sup> ten Have, 2007: 3-13

<sup>579</sup> *Ibid.*: 9

<sup>580</sup> Willig, 2014: 144

data to find themes within the data. Richard Boyatzis' definition of a theme is broad enough to serve as a starting point:

"A theme is a pattern found in the information that at the minimum describes and organizes possible observations or at the maximum interprets aspects of the phenomenon."<sup>581</sup>

Finding themes, then, is a process of pattern recognition, the end product being "a description of those patterns and the overarching design that unites them".<sup>582</sup> The discovery of themes and patterns within data, and the ability to describe the relation of these themes to each other is arguably a fundamental function of the human mind. People do some form of thematic analysis all the time, even if only in the mental processes of understanding art or literature or making decisions based on available information; Winter and McClelland found that the ability to do this well was one of the core skills developed in American "liberal arts" university programmes.<sup>583</sup> Boyatzis refers to another project in which Winter was involved, in which the similar concept of 'pattern recognition' emerged as a key characteristic of the best-performing naval officers.<sup>584</sup> Fitting its importance in many parts of social life, thematic analysis appears in a wide range of scholarly endeavours, including almost all areas of qualitative social science.<sup>585</sup>

Braun and Clarke's much-cited 2008 article on 'Using thematic analysis in psychology' characterises thematic analysis as "essentially independent of theory and epistemology",<sup>586</sup> in contrast to methods closely associated with particular theoretical standpoints. They divide the latter group further, between highly prescriptive methods like Conversation Analysis and more flexible (but still theoretically anchored) methods including narrative analysis. Its near-ubiquity and lack of theoretical or methodological prescription may serve to make thematic analysis a process that is more easily grasped than more prescriptively defined

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<sup>581</sup> Boyatzis, 1998: vii

<sup>582</sup> Ayres, 2008

<sup>583</sup> Winter and McClelland, 1978

<sup>584</sup> Boyatzis, 1998: 32

<sup>585</sup> *Ibid.*: vi

<sup>586</sup> Braun and Clarke, 2006: 78

methods, but could also create an impression that thematic analysis is simple or straightforward. Thematic analysis is sometimes seen as a “default” option in qualitative projects, which means it is not always well explained in Methods sections of articles and books. Braun and Clarke’s view that, despite its popularity, thematic analysis is “poorly demarcated and rarely acknowledged”,<sup>587</sup> is a popular one in the thematic analysis literature. However, sociological authors have posited a range of definitions and more or less prescriptive methods for the thematic analysis process, and some would question whether it is a “method” at all.

Qualitative analysis of any sort is a value-laden process. Recognising themes is not always straightforward, and – just as in other methods – what counts as a theme depends on the epistemological and analytical approaches taken by the researcher, as well as what they are looking for. No analysis can be complete; deciding to use one type of analysis could mean closing off the research to insights that could be gained by another method, as Roulston discovered when she reanalysed, using Conversation Analysis, some interview data that had previously been analysed using thematic analysis.<sup>588</sup>

Thematic analysis was chosen for this project largely because of its intuitiveness and its versatility with regard to theoretical and epistemological standpoints (especially when compared with other methods). But this versatility and independence also meant that in order to produce a rigorous analysis it was necessary to consider questions and develop a set of working assumptions about what the data represented, and about this would be developed into an analytical argument, and it is to these that I now turn.

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<sup>587</sup> *Ibid.*: 77

<sup>588</sup> Roulston, 2001

## Epistemological and Ontological Questions

### Dichotomies: Objectivity/Subjectivity, Naturalism/Constructionism

Several authors begin their discussion of methodology by describing a fundamental dichotomy at the epistemological foundations of any research method.<sup>589</sup> There are differences in the vocabulary used, but the principle is the same: on one side (or at one end) is a position that states that social science can empirically uncover information about the social world or people's lived realities, through gathering factual accounts. This is clearly associated with a more objective and perhaps a more 'scientifically'-minded approach to qualitative research.

The flip side of this is an approach which treats knowledge as constructed, and tends to focus more on the construction than the 'facts' – the question of *how* one can know rather than *what* one knows. This process of constructing knowledge is likely to be observed in the accounts of participants; some methodological writers see the researcher as involved in the process as well, and knowledge being 'co-constructed' between researcher and participant. The constructivist approach is more associated with subjectivity and a focus on individual experience and ways of seeing and doing.

A related, but subtly different dichotomy concerns the focus of the research: in short, whether the qualitative analysis is concerned with studying a social reality (but not with how that reality comes into being) or with how that reality is produced and constructed. Silverman, following Holstein and Gubrium, differentiates between 'naturalist' and 'constructionist' models of qualitative research.<sup>590</sup> For Silverman, naturalism (which combines positivist concern with facts and romanticist interest in experience) has the advantage of being representationally simple, but overlooks the question of how people create meaning and constitute reality. Naturalism does not address the above-mentioned issue of whether or not that reality exists outside of human action, but does aim to approach the question

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<sup>589</sup> Silverman, 2013: 237-8; Braun and Clarke, 2006: 81-2

<sup>590</sup> Silverman, 2013: 106-7



with a minimum of theoretical preconceptions and to view the meaning that people create in the terms in which they create it. Constructionism, which informs methods including narrative analysis, is concerned with the production of social reality through people's thoughts and activities. Braun and Clarke take a similar view of this dichotomy, substituting the term 'essentialism' for 'naturalism'.<sup>591</sup>

Unsurprisingly, nearly all projects (including this one) fall somewhere between these two poles – and very often the two facets are not easily distinguished in practice, as most people tend not to separate what they know or believe from how they know or believe it. My intention with this research was to bring out both “factual” information about processes and occurrences that had happened, and subjective accounts of people's reactions and how they had developed their views about them, as in the following two examples from an interview with a CJA Chief Officer:

“So we did the survey and then we attended the CPP managers' network at the beginning of October and had a sort of 50-minute workshop with them.”

Here, the interviewee was describing a fact: an event that occurred. It may be evidence about some aspect of the relationship between CPPs and CJAs. During the analysis process it could – potentially – have been grouped with other statements like this one under themes like 'Meetings between CJAs and CPPs', 'Meetings', 'Dealings with CPPs', etc.

“I feel that [the Angiolini Report] was less well-informed, to tell you the truth. I think it was particularly informed by the view of certain people in the criminal justice system.”

This seems to suggest a more constructionist interpretation, as it shows something about a participant's view and how they came to that view. The participant says, first, that the Angiolini Report was less well-informed than another report (the Audit Scotland report mentioned shortly before in the interview).<sup>592</sup> Then the participant states why they think this is the case: that the report was biased and

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<sup>591</sup> Braun and Clarke, 2008: 81

<sup>592</sup> Audit Scotland, 2012

influenced primarily by particular interests whose beliefs and opinions (it is implied) the participant does not share. We start to get a sense of how the participant is defining what they think about the Angiolini Report in relation to what some of their colleagues in criminal justice think. Potentially, during the analysis process, this statement could be grouped alongside and compared with other statements about the Angiolini Report, contrasted (as already implied) with statements about the Audit Scotland report and set in the context of the participant's statements about policy issues more generally.

I was also aware that some aspects of the data could be of interest in terms of the specific language used – an example that comes to mind is the tendency of the politicians interviewed to refer erroneously to “Criminal Justice Authorities”, as well as a broader tendency for some of the participants' remarks to echo (consciously or otherwise) official criminal justice policy literature. Although there are other methods that would allow in-depth consideration of language as data, the advantage of thematic analysis is that it allows such data to be considered alongside other data that relate to the same concept – ignorance about what CJAs do, to the point of misnaming them – in a more conventionally referential way. Thematic analysis is versatile in what it includes as data. In this case external facts, the construction of knowledge and opinions, and the particular words and phrases used were all potentially valuable and relevant, and a thematic analysis approach would be able to encompass all of them. However, the actual process of analysis would raise another major question.

#### **Deductive and Inductive Approaches**

A further important dichotomy/continuum is to do with what the research seeks to do in relation to theory, usually divided into deductive and inductive approaches. A deductive approach implies a pre-existing theoretical framework which has an effect on what the analysis is looking for. The deductive approach is 'top-down' and

aims primarily to test rather than build theory. It is associated more strongly with quantitative social research,<sup>593</sup> but can also inform qualitative research.

There were deductive elements in this research – the interviews are fairly restricted in their range of subject matter and the data primarily constitute fairly specific answers to questions developed from the earlier research, rather than undirected explanations or observations on the social world of the participants. The questions in the interviews were derived from literature review of both social theory and research on criminal justice policy. In some cases, I was expecting particular answers to these questions and my analysis would seek to bring out these ideas.

In other cases, though, the participants mentioned things I did not expect to find. For instance, the Scottish Government's policy of integrating health and social care provision in local authorities was mentioned unprompted in a few cases (before I updated my interview instruments to mention it). The thematic analysis was also intended to be able to capture themes like this which did not 'fit' with pre-existing theoretical ideas, otherwise there would be a risk that the end product would appear to confirm these pre-existing ideas by removing data which conflicted with them.

Inductive methods aim to approach the data with as little as possible in the way of theoretical preconceptions, and to allow the theory to "emerge" as far as possible from the data. This 'bottom-up' approach is strongly associated with anthropological and grounded theory approaches, which Braun and Clarke characterise as theoretically anchored although not methodologically prescriptive.<sup>594</sup> This is also an area in which the lack of a widely agreed methodological taxonomy is an issue. There are different accounts of the relationship between grounded theory and thematic analysis – Chamberlain seems almost to equate the two while Braun and Clarke separate them. Methodologically, the two have important aspects in common – both concern the development of some sort of framework from

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<sup>593</sup> Chamberlain, 2013: 81

<sup>594</sup> Braun and Clarke, 2006: 78

patterns within the data, in a way that is to some extent inductive. There is a theory-building aspect of thematic analysis, particularly in the later stages which focus on arranging the themes and patterns drawn from the data into a framework or hierarchy (see below).

Chamberlain characterises traditional grounded theory methods, with their assumptions about social realities existing outside of people's thoughts and actions, as taking a "realist epistemological position",<sup>595</sup> while the work of Charmaz from the 1990s onwards has emphasised a more constructivist view which sees the researcher as a participant in the co-construction of knowledge.<sup>596</sup> The 'grounding' aspect of grounded theory, expressed in terms of "an emphasis on supporting claims with data",<sup>597</sup> and more particularly with iterative checking of claims against data, is something it shares to some extent with thematic analysis and an approach which was likely to be useful in terms of maximising the rigour of this project.

This 'groundedness' also extends to the distinctive 'theoretical sampling' approach of grounded theory. This is a sampling strategy that is informed by theory as it develops, which seeks to fill out conceptual categories and address gaps in knowledge; Charmaz describes it as the process that "endows grounded theory studies with analytic power".<sup>598</sup> In my project, the participants have been selected from a range of organisations with the expectation they will represent different views and experiences of the restructuring of community justice in Scotland – as far as the scale of the project, the sometimes slow and difficult process of getting access and the relatively small numbers of people involved in the relevant parts of the justice system will allow. This sampling strategy is neither sufficiently comprehensive, nor embedded enough in the research process to be considered 'true' theoretical sampling. Grounded theory texts also tend to recommend that coding begins immediately or as soon as possible after the first interview or

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<sup>595</sup> Chamberlain, 2013: 77-9

<sup>596</sup> Charmaz, 2001: 678-9

<sup>597</sup> Guest, MacQueen and Namey, 2012:12

<sup>598</sup> Charmaz, 2001: 689

observation, with a view to improving and refining the subsequent fieldwork.<sup>599</sup>

This was not possible in this research; other time commitments meant that even transcription had to take place at least a few weeks after the interviews.

Theoretical sampling and iterative coding both inform the key characteristic of grounded theory: the generation of theory (whether realist or constructivist) in an inductive way. This research has not proceeded with this idea in mind; the earlier literature review stages have helped me to develop a theoretical framework which informs (without necessarily containing) the data analysis. A further key distinction is that thematic analysis is at its core a way of reducing data to its most important or relevant aspects,<sup>600</sup> rather than on producing more data based on the original work. Corbin and Strauss state that the ideas of grounded theory analysis can still be applied to qualitative data analysis while stopping short of the development of theory,<sup>601</sup> and this is the approach I decided to take in the thematic analysis process.

## Code Development

The previous section briefly considered a series of continua that appear in the methodological literature on qualitative research. It may not be possible to quantify these continua, but it is possible to make statements about the position taken by the analysis in relation to them. It may be that thinking about these questions as the analysis continues is as important as knowing where the analysis would lie.

The short and not particularly helpful answer to the latter question is 'somewhere in the middle'. The analysis presupposes the existence of social phenomena outside of people's constructions and knowledge of them. The topic of the research – a government policy – exists in artefacts like documents as well as in people's minds,<sup>602</sup> and is having (and will continue to have) effects through these. However, my interest is largely in the more subjective question of how people are adapting to this policy, and in their beliefs and views about it. The analysis was informed by a

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<sup>599</sup> For instance, Corbin and Strauss, 2008: 159-194

<sup>600</sup> Ayres, 2008

<sup>601</sup> Corbin and Strauss, 2008: 159-194

<sup>602</sup> Scottish Government, 2012a; 2013; 2014b; 2014c

theoretical framework and was partly concerned with testing certain assumptions, but I also intended to be sensitive to themes I had not expected, and to construct a thematic framework in a somewhat inductive way.

The question of inductiveness or deductiveness, in particular, has a close bearing on the actual process of thematic analysis. The primary and arguably most characteristic feature of thematic analysis is the 'coding' of the data – reducing it to thematically oriented labels, or putting it into conceptual 'bins'.<sup>603</sup> Charmaz defines coding as “a form of shorthand that distils events and meaning without losing their essential properties.”<sup>604</sup> These can either be (inductively) generated or (deductively) discovered, through a process that usually begins with generating themes. This section considers that process and how it relates to the questions discussed above.

#### The Coding Process I: Inductive and Deductive Coding and Sensitising Concepts

Some authors have developed taxonomies of coding methods which often rely partly on the inductive-deductive distinction. Boyatzis' influential book *Transforming Qualitative Information* proposes a tripartite classification of code development: theory-driven, prior data- or prior research-driven, and data-driven.

Theory-driven codes will generally be developed outside of the coding process and then applied to the data analysis process. These codes could come from the work of other researchers. The theoretical framework should also determine choices to do with sampling (though this is not quite the same as the “theoretical sampling” of grounded theory). Data-driven coding is at the inductive end of the spectrum, and aims to draw on the “words and syntax of the raw information” to develop the themes. Boyatzis argues this approach is in some ways fundamental to all thematic analysis, but not well-understood.<sup>605</sup> This distinction also informs the difference between “in-vivo coding” (which uses the words in the data itself, sticking closer to the 'voices' of participants) and “researcher-denoting coding” (based on the

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<sup>603</sup> Miles and Huberman, 1994: 18

<sup>604</sup> Charmaz, 2001: 684

<sup>605</sup> Boyatzis, 1998: 45

researcher's own interpretations).<sup>606</sup> In the middle of the continuum is coding driven by prior research or previously gathered data. Exactly where this falls between 'pure' inductive and deductive approaches is largely dependent on what sort of pre-existing research and data are being used to guide the development of the code. Importing a pre-existing set of codes and applying it to one's own data is at the deductive end of the prior-research driven approach to coding; taking a more conceptual approach and thinking in terms of broad themes drawn from academic literature could be seen as representing the inductive end of this process.

My analysis was likely to draw broad concepts from pre-existing research and literature; as such could be classified as a prior research-driven approach. These concepts included relatively abstract ideas that seem to inform a lot of the discussion about the policy – for instance, the concept of past and future – which could be used, following Charmaz,<sup>607</sup> as “sensitising concepts” during the coding process.

Fundamentally, the fieldwork part of this project was intended to complement and further the earlier non-empirical stages. It would therefore be surprising and perhaps counterproductive if the literature did not influence the code development process to some extent. For instance, my research made me aware of the literature that Community Planning Partnerships (CPPs) had been criticised as ineffective in a fairly widely circulated report by Audit Scotland.<sup>608</sup> When I was preparing the interview guides I was expecting that at least some participants would refer to this criticism, and perhaps indicate the extent to which they shared this view; as such I asked participants about their views of CPPs (Chapter 6, Section 4). During the analysis stage I was aware of the possibility of 'CPPs are ineffective' becoming a theme during the coding process. However, as Braun and Clarke have warned,<sup>609</sup> there is a danger of becoming over-deductive. If the list of themes becomes

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<sup>606</sup> Corbin and Strauss, 2008: 159-194

<sup>607</sup> Charmaz, 2001: 683

<sup>608</sup> Audit Scotland, 2013

<sup>609</sup> Braun and Clarke, 2006: 94

indistinguishable from the questions asked in the interview, the analysis becomes a set of self-fulfilling prophecies. Wolcott advises that only vigilance and scepticism on the part of the researcher can prevent this from occurring,<sup>610</sup> and I aimed to keep this in mind while coding.

In approaching my coding process, I used several broad 'sensitising concepts' which would give my thinking about my analysis some shape (deductively) without actually determining its exact thematic content. The first of these was 'past and future' – a straightforward concept, and one fundamental to all social life. This was intended to bring out and emphasise the diachronic themes in the data, particularly the ways in which past experience had shaped present practice and expectations about the future, and could also be one way to make the data analysis more readily relatable to the other work in the project (and outside it). A further benefit is that past and future are mutually exclusive – this helps to create a foundation of certainty for coding from the very beginning.

Another broad 'sensitising concept' was the long-term tension between 'localism' and 'centralism'. As discussed in Chapter 2 above, this tension has animated much of the history of community justice administration in Scotland, and it was becoming clear from participants' accounts of the consultation experience that it had been an important aspect of this policy as well. The range of the participants produced a wide range of views on the tensions between local and central control, the need for responsiveness to local differences and the need for consistent delivery of services across Scotland (Chapter 6, Section 4).

The third 'sensitising concept' concerned the tension between partnership and accountability, which was an important theme in criticisms of the structure of CJAs (Chapter 5, Section 2; Chapter 6, Section 3). A number of the reports critical of these and other partnership bodies, as well as several of my participants, referred to a tension in partnerships between, on the one hand, collaborative approaches that seek to secure collaboration and cooperation based on finding common ground and

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<sup>610</sup> Wolcott, 1994: 21



common objectives and, on the other hand, an approach which stresses stronger leadership and holding partners to account. Concern about the 'tangled lines' of accountability in the CJA model was prominent in the fieldwork interviews,<sup>611</sup> as was a concern that the new model – at the time not fully developed – would impose on local authorities an accountability relationship with the new body, Community Justice Scotland.

### The Coding Process II: Connecting the Themes

Whether themes are 'discovered', 'constructed', or imported from literature review (or all three), the richer insights from the analysis are likely to develop from the ways in which these themes relate to each other, and particularly the relationships between lower-level and higher-level concepts. Even in the everyday thematic analysis involved in (for instance) reading a novel, we are able to differentiate between less abstract, lower-level concepts and more abstract higher-level ones and to appreciate the interplay between them – and literary value is usually seen as inhering in the way the novel handles more abstract themes. Corbin and Strauss refer to this as a difference between concepts and categories.<sup>612</sup> The importance of the relationship between themes at various levels applies regardless of whether the analysis takes a 'full' grounded-theory approach – whether or not the framework of themes is an inductively developed theoretical output or a way of understanding the topic of study that bridges the gap between the 'raw' data and whatever theoretical assumptions are being tested or applied.

Grounded theory provided some interesting insight into the coding process, notably in the work of Corbin and Strauss.<sup>613</sup> Earlier editions of their book *Basics of Qualitative Research* proposed a three-stage process of open, axial and selective coding.<sup>614</sup> Open coding is a data-driven/inductive stage which sticks close to the data, often reducing it to line-by-line summaries as in Charmaz' research on people

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<sup>611</sup> Audit Scotland, 2012

<sup>612</sup> Corbin and Strauss, 2008: 159-194

<sup>613</sup> Corbin and Strauss, 2008

<sup>614</sup> Chamberlain, 2013: 85-90

living with long-term illness.<sup>615</sup> Axial coding involves making links between themes in a way that might (but doesn't necessarily) imply dimensional measurement. Selective coding involves searching for the most common or "revealing" themes. Charmaz seems to suggest combining axial and selective coding,<sup>616</sup> while the latest edition of Corbin and Strauss collapses together open and axial coding; however Corbin and Strauss also note that the important thing is not the number or name of different stages, but that the process of moving from lower-level themes to higher-level organising principles takes place, and that the researcher is aware of it.<sup>617</sup>

Attride-Stirling's development of thematic networks suggests a slightly more prescriptive system of levels of theme: Basic, Organising and Global Themes.<sup>618</sup> Basic themes make sense only in relation to other basic themes while global themes are at the centre of thematic networks and serve to tell stories about particular phenomena or explain them in broader terms. Multiple global themes can be brought out of the same set of data, allowing for it to be interpreted in terms of multiple arguments or sets of ideas. Organising themes serve to group together basic themes into broader principles that serve to inform global themes.

I did not copy any of these processes exactly. My participants often invoked quite high-level themes (such as democratic accountability) and (in at least some cases) have theoretical frameworks of their own, and my analysis had to be aware of, and sensitive to, these frameworks. However, it should not aim to replicate them, and the inductivity of a bottom-up analysis could help to maintain a degree of rigour and independence. On the other hand, the knowledge and theoretical perspectives of the literature review could be used to set the analytical product in context and to explain references made by the participants. Agar's thematic analysis of policy arguments in American trucking organisations is one example of the development of a thematic framework which uses literature review to set a context. Here, Agar

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<sup>615</sup> *Ibid.*: 90; Charmaz, 2001: 677-8

<sup>616</sup> Charmaz, 2001: 683-4

<sup>617</sup> Corbin and Strauss, 2008: 195-228

<sup>618</sup> Attride-Stirling, 2001

used context and background knowledge about the trucking industry to understand the relationships between themes in the analysis:

“But given that carriers are greedy – by assertion and past example – and given that that implies that they can't be trusted, why does it follow that they must be regulated? The answer lies in the third NO LEVERAGE theme; owner-operators have no bargaining power. To understand this, some more background knowledge on trucking is necessary... rates have changed rapidly, usually in a downward direction.”<sup>619</sup>

As well as explaining the development of a framework of themes, Agar's article exemplifies the maxim “think display”. This appears in Miles and Huberman's *Qualitative Data Analysis: An Expanded Sourcebook*, where the authors argue that long, complex textual explanations of thematic frameworks are not very interesting to read or easy to process, and as such researchers using them are likely to “drastically overweight vivid information.”<sup>620</sup> This view has been endorsed by a number of other writers on thematic analysis.<sup>621</sup> Miles and Huberman suggest a range of displays, mainly comprising matrices (tables) and networks; they are not prescriptive about them but make a strong case for the value of visual display as a way of showing how information is organised.<sup>622</sup>

## Using NVivo in Thematic Analysis

### Why Use CAQDAS?

As Chamberlain remarks, one way in which researchers can develop the “display” aspect of their research is through the use of computer software.<sup>623</sup> A further methodological question, then, was whether or not my research would make use of Computer-Aided Qualitative Data Analysis Software (CAQDAS), such as QSR NVivo (a popular example of such software for which this University had a licence). As Seale argues, “the chief contribution of CAQDAS is automation of the retrieval of text segments (for instance, sections of an interview) that have been categorized as

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<sup>619</sup> Agar, 1983: 607

<sup>620</sup> Miles and Huberman, 1994: 10-11

<sup>621</sup> Chamberlain, 2013: 99; Wolcott, 1994: 30

<sup>622</sup> Miles and Huberman, 1994: 90-102

<sup>623</sup> Chamberlain, 2013: 99

examples of some analytic concept.”<sup>624</sup> The main attraction of using CAQDAS is that it allows quick and reliable text searches in a fraction of the time it would take a human researcher, and comprehensive organisation by code labels (unlike a human being leafing through papers for coloured labels, it will not miss any). Seale suggests that “the software's requirement that I code systematically and the tireless capacity of the computer to confront the analyst with all coded instances enforced a rigor that might otherwise have been daunting to achieve”<sup>625</sup> – a statement with echoes of Miles and Huberman’s justification for using display rather than extended text for displaying qualitative data.<sup>626</sup>

There are, however, some potential pitfalls in using software for qualitative analysis. Bong describes the dangers of reifying CAQDAS or conflating its use with the analysis process in general:

“I then realised that my initial questions, i.e. to use or not use CAQDAS and which software, was short-sighted. The fundamental question I ought to have deliberated on instead is how to analyse qualitative data within the methodological framework of my research design...”<sup>627</sup>

Flick also cautions against over-reliance on CAQDAS, emphasising that it will not do the analysis for the researcher and criticising methodological explanations that simply refer to software without explaining how it was used,<sup>628</sup> while Coffey et al. have suggested that the rise of CAQDAS has contributed to a homogenising tendency within anthropology and other qualitatively-oriented social science, with CAQDAS programs privileging a grounded theory perspective through the predominance of coding in the software.<sup>629</sup>

I decided that with a sufficiently reflexive and careful approach I could avoid over-relying on CAQDAS or conflating CAQDAS coding with analysis; in addition, since I had decided to use thematic analysis coding well before considering the CAQDAS

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<sup>624</sup> Seale, 2001: 652

<sup>625</sup> *Ibid.*: 653

<sup>626</sup> Miles and Huberman, 1994: 11

<sup>627</sup> Bong, 2007: 259

<sup>628</sup> Flick, 2014: 4

<sup>629</sup> Coffey, Holbrook and Atkinson, 1996

question, it seemed unlikely that the allure of technology had influenced my choice of analytical method. After learning more about how to use NVivo using the *NVivo Handbook*,<sup>630</sup> and testing the software with one of my interview transcripts, I decided that I would use NVivo for my analysis.

#### Developing a Framework with NVivo

An NVivo project is a computer file which can contain a large variety of project data types, including (to begin with) many types of data source, including text, audio, video, quantitative data and (using its companion browser extension NCapture) Facebook and Twitter posts. NVivo supports the creation of complex classification systems for sorting sources and themes, and can potentially be used to produce sophisticated quantitative analyses of words and phrases, and is particularly useful for multiple researchers collaborating on the same project (particularly as it offers easy and quick checking of intercoder agreement).

However, I saw little need for these advanced features which seemed to be of more use to projects with much larger datasets (and arguably to more surface-level approaches). In terms of how the software was used, my analysis was straightforward and stayed within the core functionality. I imported my anonymised interview transcripts into the file (as 'Internal Sources'), and coded them iteratively in the way described above. In the program's language, themes are referred to as 'nodes'. Opening a node within the program produces a view of all the material coded at that node. Nodes can be placed in hierarchical (parent-child) relations with each other or sorted into folders. The Findings chapters of this thesis (Chapters 5 and 6) are structured around the list of nodes as it stood at the end of my analysis.

Throughout my analysis I maintained an iterative and reflexive approach. One feature of the software that was useful in this regard was the possibility of writing text memos about the process of analysis, which could be linked to any source or

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<sup>630</sup> I am grateful to Dr Andy Aydın-Aitchison for the loan of the *NVivo Handbook* and for creating the School of Law's NVivo Group, which has proved a vital and enjoyable forum for discussion of qualitative analysis methodology.

node. After the first 'pass' of coding for each interview I wrote a memo which summarised the content and key points of that interview. Between coding interviews, I also wrote memos, sometimes very long, about the process of coding. In each of these coding memos I examined the list of nodes individually and considered the analytical usefulness (or not) of each, while also trying to keep the number of nodes low enough that I could remain familiar with the full list as I coded. This led to many instances of 'recoding' as I moved iteratively towards nodes that were more analytical and conceptually distinct from each other.

As Bong warns, the NVivo file is not the same as the analysis.<sup>631</sup> The software allows the convenient collection of past and current coding schemas and reflexive commentary on the coding process in one convenient and searchable format, but the interpretation of the data is necessarily my own.

## 5. Conclusion

This chapter has examined the development of the project in general but with particular reference to methodology. As this chapter has explained, my initial intentions were to produce a project which would compare the Scottish community justice restructuring to TR, a contemporaneous and in many ways much more radical restructuring of the community justice system of England and Wales. However, protracted access problems made the original plan impossible and, after some consideration, it was decided to keep the project focused entirely on Scotland. A number of academics have studied and are studying TR,<sup>632</sup> but this project is believed to be the only empirical study of the Scottish restructuring of community justice.

The theoretical approach taken to community justice was inspired by Pierre Bourdieu's theoretical framework,<sup>633</sup> an increasingly popular one in social science. This places my research in a developing tradition of Bourdieusian approaches to the

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<sup>631</sup> Bong, 2007

<sup>632</sup> Burke, 2016; Robinson et al., 2016

<sup>633</sup> Bourdieu, 1990 [1980]; Bourdieu and Wacquant, 1992

sociology of punishment, applying the concept of the 'penal field',<sup>634</sup> and (more critically) the 'agonistic' framework that has been developed from it,<sup>635</sup> to the Scottish policy under consideration here. In methodological terms, the concepts of field and habitus in particular informed the decision to combine literature review with qualitative interviewing, although in practice the separation between the two was not as sharp as initially expected.

The analysis of the data collected was a complex process which began with the decision to use thematic analysis, a popular and versatile qualitative analysis method but not always a well-understood or clearly explained one.<sup>636</sup> In developing and deciding on a thematic analysis approach it was necessary to take a position relative to several epistemological and ontological questions. I was able to clarify in my mind and in my writing that my research would combine naturalist approaches (emphasising objective extrinsic facts) with constructionist ones (emphasising the construction of knowledge and beliefs), because both were relevant to understanding the Scottish community justice redesign – and thematic analysis is versatile enough to combine these approaches. Turning to the more mechanical question of how the coding process would work, it was necessary to consider the position of the analysis between inductive and deductive modes of reasoning with relation to theory and prior research. The coding would ultimately be informed but not prescribed by prior research, proceeding inductively within a schema demarcated by several 'sensitising concepts'. Finally, I decided to use software rather than coding by hand, although this was largely for reasons of convenience rather than because it seemed to carry any special analytical insight.

The process of methodological development was both practically difficult and intellectually challenging, although only rarely at the same time. However, the end result was a project that was far more focused than before and far clearer about what it was and what it seeks to do: to produce a rigorous description of how the

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<sup>634</sup> Page, 2011

<sup>635</sup> Goodman et al., 2014

<sup>636</sup> Braun and Clarke, 2006

restructuring of community justice in Scotland has developed, its current and likely future effects, and how practitioners and politicians think about and adapt to it.





# Chapter 5: Findings I – Community Justice as a Professional Discourse

## I. Introduction

This chapter presents the first of two strands of the findings from fieldwork with community justice practitioners in Scotland. It collects findings on a range of themes connected to community justice practice, as the system is being restructured, focusing on output from the practitioner interviews – CJA staff, directors of social work and third sector managers. The next chapter will be concerned with the political dimensions of community justice, and will draw more on the interviews with local and national politicians.

The criticisms of two nearly contemporaneous reports sealed the fate of the current system (see Chapter 2, Section 5). The report of the Commission on Women Offenders (Angiolini Report), which appeared in April 2012, mostly made recommendations about women offenders but also obliquely advocated the abolition of CJAs and their replacement by a national service.<sup>637</sup> This was followed in November by an Audit Scotland report which went into more detail about the operations of community justice, highlighting several flaws of CJAs but not advocating their abolition.<sup>638</sup> The consultation on ‘Redesigning the Community Justice System’ began in December 2012, focusing on three possible models – the enhanced CJA model, the local authority model and the national service model.<sup>639</sup> The deadline for responses to the first phase was 30 April 2013; in the intervening time, the Government held 13 ‘stakeholder events’ and received 112 responses.<sup>640</sup> A document released in December 2013 explained that neither of the three options in the original consultation had proved satisfactory, and that instead ‘Option D’ – a

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<sup>637</sup> Angiolini, 2012

<sup>638</sup> Audit Scotland, 2012

<sup>639</sup> Scottish Government, 2012a

<sup>640</sup> Scottish Government, 2013

mixed local authority/national service model – would be pursued.<sup>641</sup> Another round of consultation would decide on the detail – this consultation was launched in April 2014, with the beginnings of an indicative timeline and an outline of the new model’s key features, and ran until 2 July. By the time of the final consultation report, which appeared in December, the process had involved 22 stakeholder events attended by 900 people, and received over 170 written responses.<sup>642</sup> This fieldwork was carried out between July 2014 and January 2015, so the discussions considered some details of the new system which had not yet been determined.

The final round of consultation set a long timeline for the transition to the new system: CPPs would begin assuming their new responsibilities on 1 April 2016, but would be assisted by the CJAs, which would continue to operate for a ‘shadow year’ until formal disestablishment on 31 March 2017.<sup>643</sup> This gave Parliament time to approve the necessary legislation, the Community Justice (Scotland) Act, passed in February 2016. Community Justice Scotland (CJS) will be established around October 2016.<sup>644</sup> When the new model is fully implemented, it will have been very nearly five years since the first calls for restructuring.

This chapter will consider a number of key dimensions of interviewee views of community justice practice in relation to the restructuring of the Scottish community justice system and with reference to relevant literature and theory. In doing so it aims to sketch certain aspects of Scottish community justice habitus as they experience and adapt to the restructuring of the community justice field. This chapter and the next one make extensive use of direct anonymous quotations from the interviewees; italics denote my own questions and remarks. Particular reference is made to the report of the Commission of Women Offenders (‘the Angiolini

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<sup>641</sup> *Ibid.*

<sup>642</sup> Scottish Government, 2014c

<sup>643</sup> *Ibid.*

<sup>644</sup> Scottish Government, 2015j: 2

Report') and the Audit Scotland report *Reducing Reoffending in Scotland*, the two major reports which led to the decision to abolish CJAs.<sup>645</sup>

Of the six CJA staff interviewed, four were Chief Officers and the other two were part-time policy analysts. Given that CJAs only employ around 24 full-time equivalent staff, even this small sample constitutes a fairly large proportion of CJA workers – including half of all CJA Chief Officers. The four CJAs in the study included urban, rural and mixed areas, and the staff came from a range of occupational backgrounds in public service at the management level both within and outside social work and Scottish local government. CJA staff occupy an unusual position within the community justice system; the constitution of CJAs left Chief Officers with little power to direct activities or secure compliance from partners, so they must rely on their interpersonal skills to get partners to cooperate (Section 2).<sup>646</sup> This makes Chief Officers similar to the 'new partnership professionals' described in community crime prevention partnerships in England and Wales.<sup>647</sup>

Interviewees also included two directors of social work from large local authorities, with responsibility for managing various strands of social work, including criminal justice social work (CJSW), in their areas. These included managing social workers and attending meetings, including with CJAs and bodies such as Social Work Scotland. Both these interviewees were social workers of long experience. I also interviewed six management-level staff from four different third-sector organisations across Scotland. These were larger national organisations, which were chosen as they were statutory partners with one or more CJAs, and had more involvement in the redesign consultation and designated management staff with responsibilities connected to policy. Their occupational background was fairly similar to the other practitioners; their previous jobs had mostly been in public sector and third sector social work and health. One third sector interviewee had worked for a CJA and could thus provide a valuable double perspective. The actual

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<sup>645</sup> Angiolini, 2012; Audit Scotland, 2012

<sup>646</sup> Morrison, 2012: 201-3

<sup>647</sup> Hughes, 2007: 93

day-to-day work of these interviewees tended to be dominated by meetings with colleagues from their own and other organisations. As managers (or, in some cases, practitioner-managers) their role was strategic, largely concerned with developing plans and partnerships. A civil servant involved in developing the policy was also interviewed.

More recently in the development of the policy, CPPs have been replaced by sets of local 'community justice partners', some defined statutorily, which may or may not work with or include CPPs.<sup>648</sup> Because of the timing of this fieldwork, though, interviewees make reference to CPPs throughout.

## 2. Community Justice Authorities – A Flawed Design

Most interviewees, including CJA employees, agreed that CJAs were deeply constitutionally flawed in important ways, and had been from their inception; many referred to the Angiolini and Audit Scotland findings in discussing these problems.<sup>649</sup> CJA employees in particular were able to describe the ways in which the constitutional flaws in the CJA system had hindered their work – but some interviewees, while acknowledging these flaws, defended the CJAs. This section will draw on Morrison's work on the development and constitution of CJAs, a rare and valuable study of these organisations which uses CJAs as a case study of penal transformation in post-devolution Scotland.<sup>650</sup> Drawing on interviews conducted in 2009, Morrison explains the development of CJAs before highlighting key aspects of their operation and their relationships with other organisations. This fieldwork, conducted five years later, confirms some of Morrison's findings, showing that some key structural problems persist. However, there are signs that in their later years, CJAs were beginning to find their own institutional identities and had been successful in some respects (at least compared to the previous system).

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<sup>648</sup> Scottish Government, 2015j; 2016 Community Justice (Scotland) Act, s.13

<sup>649</sup> Audit Scotland, 2012; Angiolini, 2012

<sup>650</sup> Morrison, 2012: 195-232

## “A Schizophrenic Identity”

“I think the tension has always been that CJAs are a public body that holds partners to account, which is essentially what the legislation wants us to be, or whether we’re a partnership to reduce reoffending. That schizophrenic identity hasn’t really helped to clarify what the role of the CJA was... or is, I should say.” [CJA Chief Officer]

As Morrison has also found,<sup>651</sup> and as discussed below, the responsibility of holding partners to account is inherently in conflict with the need to promote good working relationships and collaboration between partners. Interviewees who elaborated on the causes of this ‘schizophrenic identity’ were unanimous in their view that it resulted from hasty compromise between the then Scottish Executive and local authorities (see Chapter 3). The power of local government, and compromises between it and Scotland’s national government, were also raised in discussions of the redesign (Chapter 7, Section 4).

“[W]hen I first got the interview for this job and obviously I went to speak to a lot of people as part of my preparations for that, you know, people did say to me, “oh, it’s a bit of, CJAs are a bit of an unhappy compromise and a bit of a fudge”, I’ve always known that they weren’t really an ideal setup, they were a sort of slightly weird creation to keep everybody happy.” [CJA Chief Officer]

“I don’t think it’s achieved what people had hoped. When it came in it was a compromise because at the time, I think about, that was when... there was a Labour administration at Holyrood and there was a real push for a national service... and there was a lot of concern in local authorities that if you set up a national service it would be a takeover by SPS... And to be subsumed into that was not where most people wanted to be, so there was a huge campaign against going into a national agency, and there was an argument for criminal justice social work remaining within local authorities... the eight CJAs was a compromise, because the government wanted to move away from negotiating with 32 local authorities, but there was resistance to having a national organisation, they compromised with the CJAs.” [Director of social work]

This constitutional flaw produced a difficult characteristic of Chief Officers’ work – their position of “responsibility without power”.<sup>652</sup> Chief Officers have no power to

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<sup>651</sup> *Ibid.*: 201-2

<sup>652</sup> *Ibid.*: 202

direct delivery, only to allocate ring-fenced funding and agree spending plans. The nominal accountability powers granted to CJAs do not even apply to most partners, meaning that in practice CJAs exert almost no power, despite being nominally in charge of, and accountable for, reducing reoffending.

“I think there’s some truth in the accusations that there’s a poor design of CJAs, so CJAs have certain accountability, certain responsibilities, but lack some of the authority, so there are aspects of what we do which make it very challenging to provide leadership in a difficult field.” [CJA Chief Officer]

The evidence of this project suggests this continues to be a source of frustration and disappointment for Chief Officers, and of concern for policymakers. Chief Officers, unable and unwilling to use official formal channels to exert influence on partners, are reliant instead on their social skills and ability to convince, rather than compel, partner organisations to work in particular ways. This is one important facet of the ways in which informal interpersonal relationships play a vital role in community justice partnerships (Section 4).

### **CJA Successes: Development, Partnership and Professionalisation**

Interviewees who had worked with or for CJAs for several years tended to suggest that a process of professionalisation had started within CJAs, with the beginnings of successful and innovative work, and a distinctive contribution to the success of community justice in Scotland, coming only after a tumultuous early period (as detailed by Morrison).<sup>653</sup> Interviewees sometimes attributed this to staff changes:

“But the CJAs when they started were – they were set up with a degree of optimism but really for the first two years of their life they did absolutely nothing, they didn’t get the cooperation from local authorities, no one was quite sure what they were doing, and by and large they were chaired – or their principal officers were local authority people, almost without exception. What happened two or three years ago, I think, was that a number of those people stood down and were replaced by effective civil servants. People from either a legal background or from a civil service background, who – to a man, really, or a woman – were much more effective than their predecessors and were much more open. And suddenly the CJAs,

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<sup>653</sup> *Ibid.*: 195-230

as a result of that the CJAs became a lot more open, they became a lot more accessible, they started thinking broader.” [Third sector manager]

The post-Angiolini period, in which it was clear that the CJAs would be abolished, was sometimes described as the third act in this cycle. Other interviewees – like the Scottish Government, in documents about the redesign – invariably emphasised that they were critical of the system but not of CJA staff, who were described with respect.<sup>654</sup> Their work tended to be seen as a poisoned chalice – a role rendered difficult by the constitution of the CJAs. CJA staff were described as doing the best they could, under these circumstances, to take creative approaches to reoffending.

“my view on CJAs is the people in them work very hard, some of them do a lot of remarkable innovative thinking, but they are underpowered and under-resourced to do the job that is necessary” [MSP]

“the CJA Chief Officer doesn’t have the authority to come along and direct local authorities to do anything. His authority’s purely by, in [this Chief Officer]’s case, using charm and cajoling and all of that, and it’s not a job I envy very much...” [Director of social work]

Reducing reoffending is a primary function of CJAs,<sup>655</sup> as well as a wider criminal justice priority.<sup>656</sup> The problem of reoffending was widely discussed by interviewees as both a current and putative future focus of criminal justice efforts, but only occasionally in relation to CJAs:

“[I]f you look at the performance improvement for example, around reconviction rates, you would have to say that there has been continuous improvement in reconviction rates throughout the period of time that CJAs have existed. So from a statistical point of view, certainly for [this CJA area] we could say that we have an evidence base that continuous improvement is in place. So from that point of view I think that’s a positive.” [CJA Chief Officer]

“It seems it’s a good system because the partnership and the sharing of the information is really good, and it’s a way to address all the issues and use one another’s experience. The partnerships that are forged have gone some way out to reducing reoffending and in this area, [CJA area], our target was to be [a certain amount] below the average by 2017 and we’re already [close

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<sup>654</sup> Scottish Government, 2013: 1; 2014c: 1

<sup>655</sup> 2005 Management of Offenders etc. (Scotland) Act, s.5 (a)

<sup>656</sup> Scottish Government, 2012b: 36



to this target] and it's gone down steadily over the last few years, which we're all really pleased about." [CJA elected member]

Scottish Government data shows a clear, but not large, fall in reoffending – as measured by reconvictions – over the period CJAs have been active (from 2007 onwards).<sup>657</sup> This has been accompanied by a longer fall in recorded crime in Scotland (and some other western jurisdictions).<sup>658</sup> There is no evidence to link the fall in reoffending to CJAs; Audit Scotland found they had “had little impact in reducing reoffending”,<sup>659</sup> and that this was largely a result of their constitutional flaws – making it unlikely that the CJAs could have done much directly to reduce reoffending. The report added further that the efficacy of CJAs in reducing reoffending had never been systematically evaluated – so that even if CJAs *had* significantly reduced reoffending, it might not have been possible to evidence a causal relationship. CJAs have not been very successful in reducing reoffending, and it's difficult to see how they could have been, given their limited powers.

However, success was more evident, and more attributable to CJAs, in other areas. One of these, Audit Scotland argued, was partnership working.<sup>660</sup> Many interviewees from within and outside the CJAs agreed, and some took exception to the Angiolini Report's more critical view of partnership in the CJA system.<sup>661</sup>

“I think if you look at for example bringing partners – one of the key aspects being bringing partners together, making sure that they set a common agreed policy for addressing offending within their area, I think they've been a huge success. Those partnerships across the country are really strong between local authorities, SPS, the police, health.” [Third sector manager]

“I feel that [the Angiolini Report] was less well-informed [than the Audit Scotland report], to tell you the truth. I think it was particularly informed by the view of certain people in the criminal justice system. I don't think it was accurate in everything that it said. For example, it said “we could find no evidence of joint working across boundaries”, well if anyone had asked the

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<sup>657</sup> Scottish Government, 2015g

<sup>658</sup> Scottish Government, 2015h; Farrell, Tseloni, Mailley and Tilley, 2011; for a critical view on Europe see Aebi and Linde, 2010

<sup>659</sup> Audit Scotland, 2012: 30

<sup>660</sup> *Ibid.*

<sup>661</sup> Angiolini, 2012: 81-83

CJAs we could have given them a handful – more than a handful – of examples of services that were operating across local authority areas and across CJA boundaries.” [CJA Chief Officer]

The interest in partnership is not surprising in light of the emphasis placed by interviewees on the value partnership working (Section 4). Innovation and research were perceived as other areas of success – a number of interviewees, mainly within CJAs, described innovative partnership projects they had been involved in setting up or carrying out, and sometimes leading and promoting. Giving specific details of the projects could compromise the anonymity of interviewees, but they included Public Social Partnerships (PSPs),<sup>662</sup> pilots working with offenders and training and knowledge exchange events for practitioners:

“I think we’ve always been quite clear in our CJA – and that predates me being in the Chief Officer role – that we can add value, we don’t do that by doing what other people are doing, so we’re not trying to micromanage social work services or get stuck in to the service delivery end, it’s very much about bringing people together, sharing information better, building relationships between different agencies so they can work better together, supporting the development of new initiatives and new tools and resources for people, so for example we commissioned [various outreach projects] – so stuff like that, which is just a wee bit different. And we produce guidance, and practice guides and all that sort of thing, for practitioners.”

“Yeah we were part of the leadership to bring [a new project] about, and we were part of the... We have a steering group of professionals and we take the responsibility for facilitating that steering group, so there were a lot of partners who were really critical to that, but I think the CJAs have been critical in putting the case to establish funding, in putting the case to secure long-term funding.”

“So in my CJA we do lots of events and training and awareness raising and so on for practitioners, and just bring people together, give them an interesting agenda or some sort of particular input around a certain theme, and then sort of see what happens, so we do quite a lot of that.” [all CJA Chief Officers]

One third-sector manager and former CJA employee argued that this success stemmed from CJAs’ unusual position both within and outside the system of

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<sup>662</sup> See Strachan, 2014

criminal justice social work provision, which allowed CJAs to take more innovative approaches.

“I’d also add on the strengths side as well, that – again this is from conversations, it wasn’t in our response – but there was a sense that having that, that CJAs were able to take a different perspective to local authorities, in that they were able to – and maybe it’s a question of duties and responsibilities, in that criminal justice social workers are so under pressure in terms of budget, in terms of fulfilling statutory obligations. CJAs were able to take that step back and look a bit more broadly, and think a bit more creatively, and that’s where some of the answers are found, you know? Our concern at the time was if it goes just back to a criminal justice social work-led response, then it will be very much “you do this and then that and then it’s done”, it’s not in the kind of holistic approach and creative approach that we have found effective. So yes, that was another strength that came through our submission.” [Third sector manager]

The capacity of CJAs to become involved in such projects demonstrates the ‘positional advantage’ associated with their being organisations above and outside the mainstream system of CJSW delivery, but this is perhaps small compensation for structural features which hinder the achievement of their core aims.

## Discussion

Interviewees were widely critical of the CJA system. CJAs were seen as having a ‘schizophrenic identity’, caught between promoting partnership working and holding partners to account, and this was a serious hindrance to their successful operation. This structured the Chief Officers’ ways of working; lacking their own resources and symbolic capital, they nonetheless attempt to use their interpersonal skills to carry out their role, and even to resist and circumvent the constraints placed on them.

Among the CJA interviewees there was often an implicit disappointment with their role – particularly Chief Officers, whose job title suggests a degree of power and influence that in fact proved to be absent (largely a result of the political compromises around the CJAs).<sup>663</sup> On one (non-interview) occasion, the Chief Officer of Lothian and Borders CJA remarked, “when I took this job I didn't realise

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<sup>663</sup> Morrison, 2012: 154-7

I'd be spending so much time on the road and driving between meetings".<sup>664</sup> This was linked to the sense that there was little awareness of CJAs' nature and functions even among those who worked with them (Chapter 6, Section 6).

"[W]e've got this very highfalutin title – "I'm the Chief Officer of the Community Justice Authority!" – and people who don't know us have this idea that we're this huge organisation with myriads of staff and so on, and I think actually we are, as I've said, tiny. And actually I'm quite a junior officer. I'm in a well-paid local government job but I would be regarded as below a head of service in a local government context. So you're not massively powerful, if you know what I mean, in terms of where your ranking is compared to some of the other players." [CJA Chief Officer]

Despite their well-documented and persistent structural problems, interviewees emphasised that CJAs had not been a total failure. There was a sense that CJAs had developed over their lives and that, owing to the skilful work of Chief Officers pushing against the constraints imposed on them, there had been success in developing partnership working and innovative practice. The theme of structural deficits hindering the successful operation of the system was at the heart of the Angiolini and Audit Scotland criticisms of the CJAs,<sup>665</sup> and of practitioner concerns about the new system (the detail of which was far less clear at the time of the fieldwork). However, as this chapter goes on to argue, it is not certain that the new system will eliminate these problems entirely, and it is likely to produce structural problems of its own. These structural issues are linked closely to two aspects of practice described as particularly important: research and evidence-based approaches, and partnership working.

### 3. The Role of Research and Evidence

One of the most common themes was the importance of research and evidence. Even politicians – non-practitioners with little direct involvement – invoked this concept, although they mainly described their knowledge in terms of their personal experience, especially visits to projects (Chapter 6, Section 1). Research was widely

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<sup>664</sup> Thanks to Fiona Young for agreeing to be quoted on this remark made in a non-interview context.

<sup>665</sup> Angiolini, 2012; Audit Scotland, 2012

seen as vital to community justice practice and policymaking, and an important part of CJA work in particular. A number of interviewees, particularly within CJAs and TSOs, described specific research-related projects they had been involved with, some highly innovative despite the operational constraints on CJAs. The value of research was linked to the other most discussed practice value – partnership working (Section 4) – through an emphasis on the importance of robust mechanisms for sharing information within partnerships.

Discussions about the redesigned community justice system entailed consideration of more academic research approaches, including in particular the development of desistance theory. Interviewees expressed hope that the new system would promote more of an emphasis on research and on desistance approaches – however, it is not certain that this will in fact happen, and there is no necessary relationship between community justice structures and desistance principles.

### **Information Sharing in Partnerships**

Accurate, timely information was seen as crucial. This included research outputs that could guide the development of practice, statistics and day-to-day operational information. In the latter case, the need is particularly acute with MAPPA and similar arrangements which supervise high-risk offenders, where information sharing between partners could mean the difference between life and death. In CJA partnerships this is dependent on partners' actions, and on the development of robust systems for ensuring that information can be shared quickly and easily between partners; the information sharing process appeared to be considered constitutive of partnership working. Crawford describes a similar view in crime control partnerships in England and Wales:

“In place of a rhetorical model of professional ‘expertise’ is one which emphasises shared information, stressing the importance of diverse knowledgeable organizations and the knowledgeable public. And yet... expertise is being recalibrated, restructured and redefined.”<sup>666</sup>

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<sup>666</sup> Crawford, 1997: 59 and see 110-111

Hence, structural obstacles to partnership working (Section 4) also hindered information sharing, and thus the wider evidence-based practice agenda. As well as improving partnership working, robust systems of information sharing were seen as potential solutions to problematic aspects of partnerships, particularly the tendency for their success to depend on individual people and personal relationships. Information sharing from CJAs to CPPs was also described as an important part of 'smoothing' the transition from the current to the future model (see Section 6).

"So information sharing has to be systematic, resource sharing has to be systematic, commissioning has to be shared, the intelligence that you need to bring together to arrive at shared priorities needs to be systematically shared, analysed, presented in a way that's going to make sense for partners." [CJA Chief Officer]

Failures of information sharing were cited as a frustrating aspect of community justice partnership work. This was a particular problem for CJA staff, whose role involves monitoring the work of other organisations and directing resources to them. Partner organisations however sometimes described it as a burdensome process.

"One of the main problems that we have is trying to ensure we have relevant and the most up-to-date information. Most of the data that we deal with is... could be three or four years out of date by the time we get access to it.

*Right...*

There's also an issue over accuracy of the data, so it's... in order to try and develop policies and in order to try and direct resources as efficiently and effectively as possible, we have to look at other methods, other sources of information that will help us to ensure that the funding reaches the people that need it the most." [CJA Staff]

"The CJA also takes up an enormous amount of time, it's almost like feeding the machine, there's lots and lots of information required and it's not actually very clear what's done with all that information." [Director of Social Work]

The latter quote also supports the assertion by CJA interviewees that there is little awareness about what CJAs do and how they work (Chapter 6, Section 6). The importance of information sharing as a constitutive aspect of these public sector

partnerships links the values of research and evidence-based practice with the importance of functioning partnership structures (Section 4).

## Evidence and research in community justice practice

“I think essentially in the whole justice sphere we have a fairly good knowledge of what we’re trying to do, we have an understanding of the client group – if I can describe it that way – we seek to affect, but we have a paucity of information about what works. And I’m shocked at that, given that we’ve had public policy for hundreds of years, you’d have thought one of the first things we’d have done is designed an effective tool to measure success accurately.” [MSP]

Evidence has been described as vital to community justice practice,<sup>667</sup> within a broader context of UK criminal justice reform on ‘evidence-based’ principles,<sup>668</sup> including (within community justice) the shift from ‘nothing works’ to ‘what works’.<sup>669</sup> Practitioners typically described engaging with or carrying out research as a key part of their jobs. In practice, ‘evidence-based policy’ is not a value-neutral concept,<sup>670</sup> but it was rare for interviewees to discuss specific details and methods, as might be expected of academic research. Instead, ‘the evidence’ tended to be invoked as an almost monolithic entity which connoted certainty about its meaning and how to respond to it. As Sanderson notes, uncritical approaches to ‘evidence-based policy’ can be misleading,<sup>671</sup> and fail to reflect the heterogeneity of forms of knowledge involved in making policy.<sup>672</sup> As discussed further in Chapter 6 (Section 1), accounts given by politicians tended to describe their knowledge coming from interactions and visits rather than more objective forms of evidence.

It was argued by public sector interviewees that research should inform the allocation of resources, through the commissioning of services that ‘the evidence’ showed to be effective. For third-sector providers – whose contribution was seen as distinct and valuable, but which were also under unique pressures (Sections 4 and

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<sup>667</sup> Senior, 2013

<sup>668</sup> Hughes, 2007: 43; Maguire, 2004

<sup>669</sup> Cullen and Gendreau, 2001

<sup>670</sup> Maguire, 2004; Sanderson, 2011

<sup>671</sup> Sanderson, 2011: 61

<sup>672</sup> Freeman, 2008

5) – evidence was an important part of legitimacy and survival. As government funding for third-sector services has shifted from being mainly unconditional to mostly contractual arrangements which resemble investments, funding has become contingent on evidenced success.<sup>673</sup>

“Our focus at the moment is on gathering that evidence to make that case, really, it’s to make sure we’ve got the robust data to support that process and to say that it does work.” [third sector manager]

Some specific research projects were discussed from a practitioner perspective. Describing the details of these could compromise the anonymity of interviewees, so they are referred to in general terms here. They included independent evaluations of third-sector interventions with offenders, small projects carried out by CJAs (using their very limited resources) and knowledge exchange events. Additionally, many of the interviewees were involved in some way in Public Social Partnerships (PSPs), and sometimes cited these as examples of successful innovative practice by CJAs. However, pilot projects in Scotland have tended to be locally focused and thus limited in scope, playing into the local-national dynamics of community justice:

“You know you can pilot these things in wee courts all over the shop, but they make no difference to national reoffending rates because it’s so small and insignificant, and it could be the best practice in the world but it ain’t going to make a difference to the national reoffending rates, you have to be ambitious and do that on a national scale and that’s what we would have wanted to have done... I mean I do understand the need to pilot complicated areas of new service development, but it should only be that. You know, it should last as short as possible, learn the lessons and then get rolled out. But what happens is, you tend to pilot these things and then they stay as blooming ongoing pilots for five years because the government hasn’t got the money to roll it out, and... I just think we know what works in Scotland, you know, we can do it, we’ve got a great third sector that are really vibrant, skilled-up, you know, and let’s just bloody get on and do it.” [CJA Chief Officer]

As discussed above, research and innovative practice was seen as an area in which CJAs had succeeded – although the regional structure meant much of this work was confined to single CJA areas rather than applied nationwide.

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<sup>673</sup> Bruce and Chew, 2011



“I think one of the things CJAs have been very good at is learning and knowledge exchange. I think there’s still more to be done but there’s certainly a lot of development of research being undertaken, understanding of the issues, and I think it’s important that that isn’t lost.” [CJA Staff]

Alongside general concerns about the danger of losing the knowledge and expertise developed under the CJA system (Section 6), these projects were sometimes invoked specifically in discussions of concern about the community justice transition, with a sense that without the CJA to guide and promote them, they would lose momentum and their work would have to stop.

## Academic Research and Desistance Theories

Some interviewees discussed the role of criminological research in community justice and in developing the new system. This included references to desistance scholarship, a relatively recent strand of theory which conceives of the cessation of offending as “the maintenance of crime-free behaviour in the face of life’s obstacles and frustrations”<sup>674</sup> – a process which may be long and complex. In Scotland, McNeill’s work has been vital in developing desistance paradigms and applying them to community justice practice.<sup>675</sup> Desistance shares with earlier concepts of non-treatment paradigms in probation practice<sup>676</sup> an emphasis on the offender’s agency in the change process, and involves challenging practitioners (particularly public sector probation/social work)<sup>677</sup> to consider themselves not as treatment agencies acting on the offender (a tendency arguably prevalent during the 1960s and 70s)<sup>678</sup> but as supporters and helpers to offenders’ self-defined desistance experiences – collaborators rather than diagnosticians.<sup>679</sup> Other key principles of this approach include a holistic and somewhat narrative “individual-level view” of the process, justified by the very different desistance experiences of individuals (and,

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<sup>674</sup> Maruna, 2001: 26

<sup>675</sup> McNeill, 2006

<sup>676</sup> Bottoms and McWilliams, 1979

<sup>677</sup> McNeill, Farrall, Lightowler and Maruna, 2013

<sup>678</sup> McWilliams, 1986

<sup>679</sup> McNeill, 2006

McNeill argues, militating against managerialism and centralisation).<sup>680</sup> Some interviewees described the effect of desistance theory on their practice:

“[H]as the work around desistance that’s contributed to all of that, has it made us think differently as a local authority provider of statutory services? Well yes it has, we’ve put money into different things now. So that’s something that might or might not interest you, we’ve put some money into a couple of things that we wouldn’t have we were not, kind of – not mindful of thinking around desistance... Has the underpinning theoretical approach to people who offend made us think differently? Well, yes it has. Both in the kind of relationship that exists between social workers and recipients of supervision in the community, but also in terms of what is it we invest our money in. So we invest less in programmes now, formalised accredited programmes, but we’re likely as things progress to invest more in the type of social enterprise that we’ve talked about, and more in the kind of employment opportunities and volunteering opportunities that are around. So there’s, there is a shift I would say in terms of an investment based on what is proven to be more effective, but that’s not necessarily about the policy of redesign. It’s just – it’s just the growing evidence about what’s effective.” [Director of Social Work]

Documents about the redesign policy refer often to desistance;<sup>681</sup> the Policy Memorandum for the Community Justice (Scotland) Bill states that “The Scottish Government also wishes to embed desistance at a strategic level and therefore is prioritising the principle of desistance in the new national strategy and in the new national performance framework for community justice.”<sup>682</sup> This idea was welcomed by interviewees, but there was no evidence that desistance principles had informed the substance of the policy itself, which is primarily structural and administrative in nature. The civil servant interviewee’s description of the role of desistance referred mainly to the funding allocation under the new system, suggesting that desistance could inform the allocation of funds to some activities but also emphasising that local authorities would retain discretion for their CJSW spending. Some interviewees took a more critical view of the role of desistance theories in the redesign.

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<sup>680</sup> McNeill, 2004

<sup>681</sup> Scottish Government, 2012a: 15-16; 2013: 6; 2014b: 8

<sup>682</sup> SP Bill 68 [policy memorandum], 2015: 2

“Desistance theory has developed in leaps and bounds over the last kind of ten years, and I didn’t see any discussion about “how does desistance theory inform how we should structure our service to actually work towards reducing reoffending?” We had all the evidence base that was there about the kind of things that we could be doing and should be doing – should have informed a discussion about “what structure will best allow us to do that, and get the best results for the service users?”” [Third sector manager]

The absence of academic voices in CJA leadership structures was described by one Chief Officer as a structural factor that had further inhibited their development as distinct institutions with their own identity. A role for academic criminology in the Board of Community Justice Scotland could be a step towards embedding criminological and desistance perspectives into the new system, but this is not guaranteed and the membership is still an open question at the time of writing. There is little evidence that the restructuring of the system, *per se*, will help to embed desistance principles in it, but unrelated to the redesign itself, there were signs of engagement with desistance principles, including in particular the emphasis by many interviewees on the complexity of offenders’ needs (see Section 4) and the need to reduce the stigma of offending (Chapter 6, Section 4).

## Discussion

Research and the use of evidence were perceived by most interviewees, especially practitioners, as vital to criminal justice practice – including the development and use of particular interventions with offenders – and to policymaking. This perceived importance was also bound up with partnership, the other widely emphasised element of community justice practice, through an emphasis on the value of partnership as a mechanism for sharing information (including research findings). In general, ‘evidence-based’ and partnership approaches to criminal justice were approximately contemporaneous in their historical development,<sup>683</sup> but the relationship between the principle of evidence basis and the community justice redesign is far from straightforward. Its structural features are shaped mainly by evidence from reports and consultations, but this evidence is mainly political rather

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<sup>683</sup> Maguire, 2004; Hughes, 2007; Sanderson, 2011

than criminological. As Coyle argued in relation to the previous restructuring,<sup>684</sup> there is no evidence that the administrative structure of community justice has any effect on its efficacy.

Much of the research discussed did not have the rigour and reflexivity of academic research, but there was discussion of the value of academic criminological research, and particularly desistance theories, in developing community justice practice. However, nothing about the new structure is certain to 'embed' desistance principles into this part of criminal justice. One possible area of development in this regard is the Learning, Innovation and Development Hub which will form part of Community Justice Scotland. The Hub is expected to focus on training and development as well as commissioning research and knowledge exchange on a national level between partner agencies.<sup>685</sup> In this regard the Hub can be seen as the extension of the CJAs' work on research and innovative practice, from a regional to a national model – although the extent to which it will succeed is not yet known.

#### 4. Partnership Dynamics

Partnership was the most common theme in the fieldwork, discussed (often at some length) in every interview. All the practitioner interviewees were involved with some form of partnership working. For CJA staff, this was the running of an organisation which aimed to promote and coordinate partnership between community justice providers (and, as discussed above, this was seen as one area in which CJAs had succeeded). Social work directors and third sector managers were also involved in partnerships including CJAs and PSPs. CJA elected member interviewees were involved in CJA partnerships, although only through their attendance and voting at CJA meetings, and usually in other local service partnerships including various boards and committees.

Partnership working was described as essential to community justice, but interviewees also described problematic and difficult aspects of it. This section

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<sup>684</sup> Coyle, 2003, quoted in McNeill, 2005: 24

<sup>685</sup> Scottish Government, 2015j:15

considers the rationale invoked for partnership, before discussing some problematic dynamics of community justice partnerships including the uniquely valued but difficult position of third-sector partners. It argues that these partnerships are essentially fragile, and that the redesign of community justice – as well as disrupting of existing partnerships – will bring its own structural problems.

## The Value of Partnership Working

In discussions of the future development of community justice (including most importantly the transfer of responsibilities from one type of partnership organisation to another), the importance of partnership working and good partner relationships was emphasised. Part of the reasoning for transferring justice responsibilities to local partnerships (originally to be CPPs, which were also being strengthened by the Community Empowerment Act) was to enable better partnership working.<sup>686</sup>

“So if we see that the objective is around about how we ensure local delivery of criminal justice social work – community justice, about how we see that being localised, taking account of local needs, with good levels of intelligence and information here from central government or from local government. Through the auspices of community planning with all of the relevant partners, that’s a reasonable objective that we engage partners that we’ve, hitherto, not been able to engage in a criminal justice agenda – or have struggled, maybe that’s more appropriate, to engage in a criminal justice agenda... So I’m hopeful, in terms of going back to the question of “how’s it going?”, I think the direction of travel is the right direction of travel and it engages a whole host of people through a local delivery model that seems appropriate and proportionate, seems the best outcome, seems the best structure for a set of outcomes for local people rather than a national approach to this particular issue.” [Director of social work]

As some interviewees explained, this approach was evidenced and justified by the complex needs of offenders. Linked to a concern with reducing the stigma around offending (Chapter 6, Section 5), interviewees emphasised the complexity of the problems experienced by the offenders in the community justice system as a rationale for partnership working between specialist agencies.

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<sup>686</sup> Scottish Government, 2014c: 3

“the point about reoffending is it requires contributions from a whole range of different organisations and sectors, and that’s just the fact of you’re dealing with helping people to change their lives, and people’s lives aren’t organised by the way in which we structure our public services, so there are contributions required from all sorts of people.” [Civil servant]

A similar argument was used in discussions of another policy development which may affect community justice in some areas (at the discretion of individual local authorities) – the integration of health and social care provision within local authorities.

“If you take somebody who repeatedly comes to hospital because of their intoxication, their alcohol-related difficulties, the lack of joined-up work when somebody’s in a hospital – A&E – with community-based alcohol rehab, connecting with criminal justice social work, that kind of triangle of intervention is still weak. It shouldn’t be as weak as what it currently is. And maybe the view that I have is that if we look at health and social care integration, and we look at the influence and requirements around health and social care integration with a thrust about more community planning, that recipe seems to me to be more effective... if you look at the recipe that’s now being constructed around community planning and health and social care integration, I think you could reasonably argue optimistically that you’re going to get a better set of outcomes for people.” [Director of social work]

The variation and multiplicity of criminogenic needs is well-known; a 2005 study in England and Wales finds an average of four needs per offender in areas including housing, employment, emotional well-being and addictions.<sup>687</sup> Although the statistics for Scotland in 2016 are probably different, the needs of offenders are probably as complex. The emphasis on complex needs links the concern with partnership to the ‘needs’ discourse in probation practice which gained traction from the 1990s.<sup>688</sup> The identification of such a wide range of offender needs thus justifies and requires partnership with agencies specialised in dealing with these needs, such as the NHS and housing departments. This also includes the third sector which was often described as having certain inherent special qualities.

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<sup>687</sup> Harper and Chitty, 2005

<sup>688</sup> Andrews, Bonta and Wormith, 2006

The emphasis on complex needs forms a key part of the Kilbrandon approach, and was used to justify the development of generic social work in the 1960s.<sup>689</sup> However, the partnership discourse implies there are limits on the reach of any service, no matter how generic; there have also been developments towards specialisation in Scottish community justice, including the development of CJSW as a separate sub-discipline within social work.<sup>690</sup> In some ways, the modern Scottish partnership approach combines aspects of specialising and genericising tendencies, drawing on agencies' specialist expertise while also developing more and closer links between them. Crawford describes inter-organisational partnerships as "an extension of the concept of 'community' to organisations",<sup>691</sup> and like communities in the context of Crime and Disorder Reduction Partnerships and similar developments, specialist organisations were seen as holders of specialist knowledge and skills which could be mobilised through partnership mechanisms, including regular meetings and clearly maintained lines of communication.

### **Misalignment, Conflict and Short-Sightedness**

Partnerships were not always straightforward; practitioners described structural problems and power dynamics that could hinder successful partnership working, similarly to some discussed in the literature on the development of partnership approaches to crime control in England and Wales (Chapter 3). Power imbalances between CJSW, SPS and other partners have been highlighted as a particular problem for CJAs.<sup>692</sup>

"You either believe that you need partnership to address these issues, or that you want your profession or your department or your area to be protected against the threat, if you like, or the challenge of partnership. The reality is, that's not feasible anymore and that we need to see institutions and professions sacrificing a little of their power and expertise for the greater good, and I think that's got to happen." [CJA Chief Officer]

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<sup>689</sup> Brodie et al., 2008: 699

<sup>690</sup> Morrison, 2015: 154-5

<sup>691</sup> Crawford, 1997: 55

<sup>692</sup> Morrison, 2012: 201-3

“There is often, there are often different pressures pulling partners in different ways, and sometimes they fail to act, quite as, you know, quite with one voice, like you might imagine.” [Third sector manager]

The specialised nature of partner organisations was described as a source of potential conflict as well as valuable expertise. Most have cultural tendencies or legal obligations which can conflict with those of other partners, or with the higher needs of partnerships and the ‘bigger picture’ goals of reducing reoffending. There is a persistent tension between organisational goals and the need to maintain good partner relationships, while conflicts of aims and values were seen as a particular problem for agencies involved in community justice partnerships but not traditionally concerned with justice goals.

“Some areas are doing better than others, but it’s the delivery, it’s getting people on board. Some of that is about getting people in the room, some of it’s culture, because I notice that a lot of things I do with the police, there’s still a view of health “we’re health, we’re bound by a Hippocratic Oath and we’re required to keep people, data confidentiality” ... So I think some of this is about changing attitudes and culture, at the present moment health are still a wee bit of a laager<sup>693</sup> of “we’re health, we’re different”” [MSP]

A particularly pointed conflict of aims is implicated in the “schizophrenic identity” of CJAs (Section 2) as institutions required both to promote partnership and, where necessary, hold some partners (SPS and CJSW) to account. In practice the importance of maintaining good relationships has led CJAs *invariably* to favour the former.

“Holding accountable, that’s a difficult thing, we have a power... Our only teeth, if you like, is that if any partners are not working to the agreed area plan, we have a board, and the board should then hold the partner to account. And if the board is unable, or the board fails in its duty we have a responsibility to report that to the Cabinet Secretary. Never used that power. And there’s a good reason for never using it, which is that as soon as you do, you kill what you *really* have, which is influence, partnership, respect, and those are the powers – the tools of the trade, if you like, that we have had to use, which is to put the reasoned case.” [CJA Chief Officer]

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<sup>693</sup> South African term for a defensive circle of wagons, hence a defensive position or attitude.



This confirms and updates Morrison's earlier finding,<sup>694</sup> and the redesign is intended to rectify this by 'untangling' lines of accountability (see Chapter 6, Section 3).<sup>695</sup> Among public service organisations, justice agencies are particularly likely to have legally mandatory duties, some with implications for public safety. As several interviewees explained, these could conflict intractably with the higher aims of the partnership.

"I think, you're not going to find any of our partners who disagree that reducing reoffending is a noble and appropriate objective. And I don't think you'll find any of them that won't use their resources to achieve that. But if the courts are sending people to prison, they have the responsibility of care for those individuals, and the responsibility of maintaining good order in the prisons, and making sure that people stay in the prison to finish their sentence! So, they can't negate those responsibilities, and similarly if we have people going through the justice system, and they wind up in court, we can't not write them a court report... you don't want to close a prison and then tomorrow the courts send a whole bunch of people and you don't have the capacity for it, so the prison forecasts continue to go up, if I can pick on the Scottish Prison Service... so the prison forecasts continue to go up, and the forecast is for growth, so they have to, in all good profession, plan for an expansion. And yet what we really want to do would be shutting prisons down, pulling that money back and investing somewhere else in the system." [CJA Chief Officer]

Arguments over financial resources were implicated in disrupting partnerships (Section 5), although political conflict was rare (Chapter 6, Section 2). A further problem had to do with the difficulty of bridging gaps between national structures (including SPS and Police Scotland) and local ones (CJSW departments) involved in community justice (Chapter 6, Section 4).

Some interviewees also suggested that institutional obligations could produce short-sightedness within the institutions themselves, especially CJSW departments. These departments are the primary 'owners' of community justice in Scotland and the recipients of ring-fenced funding (currently and, as confirmed in 2014,<sup>696</sup> in the new system). One director of social work described how strictly enforced but easily met

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<sup>694</sup> Morrison, 2012: 201-2

<sup>695</sup> Scottish Government, 2014c: 20-1

<sup>696</sup> *Ibid.*: 30

obligations combined with budgetary pressures to produce a low level of service before the introduction of National Standards:

“[C]riminal justice really didn’t really get a service – or those subject to probation didn’t really get a service – because the money came into the local authorities, money was tight, so money was distributed across the social work tasks. So what you did is you did what you were publicly accountable for, so there were significant people on probation in Scotland who didn’t actually, or received a very poor quality of probation service, so we did the court report – because that’s really what you were accountable for! – and then delivering the Order, the level of service that individuals subject to that, which was pre-National Standards, actually received, was very variable and on many occasions was actually fairly poor.” [Director of social work]

Despite what was almost universally described as the immense benefit of ring-fencing and the National Standards, the problem of short-sightedness remained, having developed from CJSW being caught between budget pressures and legal obligations – a situation that persists.

“[I]f they don’t have that statutory obligation to deliver the service, why would they invest when times are hard and public sector budgets are shrinking?” [Third sector manager]

Social work interviewees referred to this problem, but tended instead to place the blame on inflexible funding mechanisms (Section 5). As discussed in Section 2, the position of CJAs was seen as a potential corrective, as was that of third sector organisations. The issue of short-sightedness on the part of CJSW, in relation to the restructuring,<sup>697</sup> is returned to in Chapter 7.

### **The “Heineken Effect” and the Third Sector Position**

Interviewees expressed approval for the role of third-sector organisations (TSOs) as community justice providers. These organisations are at the historical root of British community justice, having pioneered the first probation arrangements in the Victorian era,<sup>698</sup> although Scotland was notably early to adopt a state-run service.<sup>699</sup> Although TSOs were described as uniquely able and innovative partners, some

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<sup>697</sup> Nellis, 2016

<sup>698</sup> McWilliams, 1983

<sup>699</sup> McNeill, 2005: 26; City of Glasgow, 1955

interviewees – especially from the third sector – described difficulties unique to this type of organisation. Both appeared to stem from the position of TSOs as public service providers who were not part of the public sector.

As well as being more able to question ways of working, third sector partners were described as being uniquely able to reach certain people at certain times – in contrast to the constraints on service availability that affect the public sector. One interviewee, echoing an earlier comment on Glasgow’s voluntary sector,<sup>700</sup> described this by referring to the advertising slogan, “Heineken refreshes the parts other beers cannot reach”.

“The public sector doesn’t have the answers to everything. It doesn’t have all the expertise, it doesn’t have all the resources, it doesn’t have all the solutions, it doesn’t have all the intelligence. You need the third sector to help the public sector respond to these big challenges, so as you’re taking advantage of the expertise that that sector can bring, in what I call the Heineken effect, which is the third sector reaching the parts that the market or the state cannot.”

“They provide services after five o’clock at night and they provide services at the weekends. They provide services at the times when a lot of our service users need it, not when we plan our services to be available because it suits us, between 9 and 5, Monday to Friday.” [both CJA Chief Officers]

“Putting a third sector hat on, we might challenge and say there would be different ways in delivering some of the services, you could be more efficient, you could make more use of commissioning rather than having, you know, in-house provision and that kind of thing, that might create some efficiencies there.” [Third sector manager]

This was similar to the view expressed by some about the positional value of the CJAs (Section 2), although TSOs have more discretion and a higher profile (it is estimated that thousands of people work in TSOs in Scotland linked to community justice or social work, while CJAs have only 24 full-time equivalent staff).<sup>701</sup>

“It’s really good that the third sector are in the chair for all of them [PSPs], I think that’s been really good for the public sector, it’s been an absolute eye-opener for me I have to say, just about how quickly the third sector can

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<sup>700</sup> Fyfe and Milligan, 2003: 2074

<sup>701</sup> SCVO, 2014

move, you know, their partnership skills, all those things that have really been fantastic, and also their ability to connect with service users, you know I think that's been really really good." [CJA Chief Officer]

As partnership working was justified in terms of complex criminogenic needs, third-sector partners were seen as organisations that combined specialist expertise with the positional advantages of being outside the public sector. This is consonant with approving descriptions of the sector's capability and importance as a provider of services (particularly in the post-2010 'Big Society' context).<sup>702</sup> However, just as the perceived positional value of CJAs accompanied structural barriers to their functioning, the position of TSOs – as public service providers, but not themselves members of the public sector – had significant downsides. As well as particular financial pressures (Section 5), there were implications for relationships with other partners, as contractual relationships entail power imbalances.<sup>703</sup>

"I think the definition of partnership – frankly, I'll be candid here – I think the vast majority of what we call partnership tends to be more of a purchaser-provider arrangement.

*I see. Is that something you've perhaps experienced particularly with local authorities?*

Very much so. Yes, I don't consider ourselves to be particularly in partnership with any commissioning organisation, that's the wrong statement for the arrangement. A commissioning agency, a commissioning authority, by its nature, contracts you, so you are a contracted agency, so it's not a partnership arrangement."

"I suspect the consensus would be that generally for all the talk of partnership the third sector is always an afterthought – that the scrutiny that's sometimes asked to pass around impact and cost of services is not applied to statutory services, so it's not a level playing field." [Both third sector managers]

CJAs rarely act as commissioners, but do oversee some commissioning of TSOs by local authorities. Additionally, some TSOs are statutory CJA partners, guaranteeing at least that some TSOs have some voice in CJA discussions. No such guarantees are yet in place for the new system at the local level; the Government cannot

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<sup>702</sup> Senior, 2011

<sup>703</sup> Hughes, 2007: 76

legislatively require participation by TSOs, or list them as statutory community justice partners, although the Act does require “appropriate” third sector bodies to be consulted on strategic matters.<sup>704</sup>

The contracting process was a focus for some third-sector criticisms of the current and future system (Section 5). There was a concern that the redesign, by passing planning responsibilities from eight CJAs to 32 local partnerships, would complicate the tendering process further and increase the amount of contract negotiation required of TSOs – especially larger providers which might work across local boundaries. However, the shift to a longer-term funding allocation cycle is likely to alleviate some of the difficulty of contracting with CJSW departments.

One limitation of this research with respect to the third sector is that it only involved organisations engaged with the redesign as statutory CJA partners. As a result, the four in the study were large organisations providing services across wide areas. Other, smaller TSOs might not have the same level of engagement with the redesign, but are probably even more financially vulnerable.

### **Fragility and the Disruption of Partnerships**

“[T]he problem I have is a lot of these partnership agencies, they make a decision because they’ve got budget pressures, but they make that decision, it impacts on others. There’s unintended consequences, you know?” [CJA elected member]

Despite the interest in developing structures which could facilitate and ensure partnership working, the data suggest that community justice partnerships in Scotland are fragile – easily disrupted by structural changes and dependent on informal relationships between individuals. Discussions of the effects of structural change set the redesign in the context of structural changes across Scottish public services. This included the restructuring of the Crown Office and Procurator Fiscal Service, and of the courts system (including closing some local courts), as well as the nationalisation of Scotland’s police. Several interviewees described the ways in

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<sup>704</sup> 2016 Community Justice (Scotland) Act, s. 13

which these types of organisational change could produce disengagement with partnership structures, including CJAs.

“[W]hat we’ve seen recently is, unfortunately, is a reduction in information being made available to Community Justice Authorities and their partners from Police Scotland, for instance... The culture change with Police Scotland has made a massive impact... I think the police traditionally have done quite well at the community level. I think because of the reorganisation those lines have been redrawn, and that’s something that they’re aware of and they’re working quite hard trying to sort out.” [CJA Staff]

“[T]his would be more going back a couple of years, really – the PF [Procurator Fiscal] links dropped away when the PF moved to the federal structure. Again the police structure’s changed significantly, so it’s actually hard to know how much is due to the redesign and how much is due to all these organisations reconfiguring, and only now thinking “right, how do we link into this body?” so, say for example the PF side of things, we used to have the area PF who sat on our board, he was super supportive, very involved. That post completely disappeared and we didn’t ever manage to really get anybody at that level – or anybody – to come to the board meetings” [CJA Chief Officer]

The integration of health and social care – not a justice policy, but a major part of the reorientation of public services to prevention – was seen as having the potential to have these effects as well, depending on how local authorities pursued the integration, which is at their discretion (see Chapter 6, Section 4).

As well as being affected by changes to other organisations’ structures, CJA partnerships were already being affected by the community justice restructuring; several interviewees expressed concern that partners were becoming less engaged as a direct result of the redesign policy, because they knew the CJAs would be abolished.

“For example, some people have not attended meetings, because they said “oh, the CJAs are going to disappear, so what is the point?”, you know, some people. Not all the people.” [CJA Staff]

The length of the redesign and transition process was seen as particularly problematic in this regard, as it produced a long period in which it was clear that the CJAs would be abolished, but there was little certainty about what would replace them and when (see Section 6). However, accounts of the effect of the police

nationalisation (the earliest of the restructurings named above) tended to agree that disruption was lessening as the police structure had begun to re-adapt and reforge partnership connections. This can be expected of other restructurings, in time.

Partnerships between organisations entail interpersonal relationships, and this fact was a further source of fragility. Despite considerable discussion about the development of partnership *structures*, it was clear from the interviews that the success of partnerships depended largely on the personalities involved and the informal relationships between them.<sup>705</sup> This includes the figure of the Chief Officer, who is unable to use the power granted them by legislation and depends instead on their ability to convince partners to cooperate with their agenda (Section 2).

“In Scotland it seems to be much more developmental, evolutionary, small steps approach to partnership, and a voluntary approach to it as well! You know ‘you can do this if you want’ and I think one of the key weaknesses is that partnership in Scotland often relies on personalities and the strength of relationships. And that’s true, but the turnover of staff in some big public sector organisations is such that as soon as somebody leaves it undermines the resilience of those partnership arrangements, so you need a systematic approach to partnership, which can meet that resilience challenge of staff leaving and having to build up new relationships and all that.” [CJA Chief Officer]

“[I]f we’ve got wee concerns about things, if we’re kind of hearing things on the grapevine and we want to see, you know, is this just a wee rumour, or is there something more to this, we can lift the phone to them and say “are you hearing anything about this? What do you know about it?” that kind of thing. So it’s a very real and a very meaningful relationship that we’ve got. To lose that and to have to try and re-establish that with 32 local authorities with absolutely no clarity at the minute about what that structure might look like and who the people might be ... there’s a whole challenge for us in terms of trying to identify those people and build up those new relationships.” [third sector manager]

The departure of key individuals can be especially disruptive, and this was a particular concern about the transition to the new system. This chimes with a widely expressed worry that the transition process could cause the loss of invaluable expertise and knowledge, as individuals leave their jobs (see Section 6). The

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<sup>705</sup> Crawford, 1997: 139-40

problem is particularly pronounced in Scottish community justice, which involves many fairly small local organisations – including the eight CJAs, which employ an average of three full-time equivalent staff each, and the 32 social work departments – a quarter of which, as of 2010, employed fewer than 20 full-time equivalent CJSW staff.<sup>706</sup> This aspect of fragility is unlikely to change, given the new partnerships will also be small and numerous.

## Discussion

This section has considered several important aspects of practitioner accounts of partnership, a major theme in the data. Partnership was invariably seen as vital to effective community justice work, largely because of the complex and varied criminogenic (and other) needs of offenders subject to community sentences – similarly to the rationale for the health and social care integration, and with echoes of the Kilbrandon ethos of generic social work. As such, partnership-oriented activities such as inter-agency communications and meetings were core parts of community justice practice.

It was recognised that community justice and the challenge of reoffending bring together agencies who might have different organisational cultures and objectives, but successful partnership was seen as dependent on aligning different sets of priorities and ensuring people could see the ‘big picture’ rather than focusing too closely on more proximate concerns. This was not always straightforward – partnerships were described as sites where different cultural tendencies and obligations could come into conflict, or where organisations’ individual aims could distract from or conflict with the partnership’s overall goals.

Partnership was particularly vital for CJA Chief Officers who, being unable in practice to use the powers granted to them by legislation, rely on finely-honed interpersonal skills to develop good working relationships. Their powerlessness was held largely to be due to an inherent conflict between the elements of CJAs’ ‘schizophrenic identity’ (Section 2) – accountability and the requirement of

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<sup>706</sup> Homer et al., 2010: 1



maintaining good working relationships. Additionally, the informal and personal dimension of partnership was emphasised, with practitioners commonly describing relationships with individual members of organisations rather than the organisations themselves; good personal relationships were seen as more important than the structures intended to facilitate partnership working, particularly given the proliferation of very small organisations in Scottish community justice.<sup>707</sup> This had the consequence that even minor staff changes could be very disruptive to partnerships, as could restructuring in partner organisations.

“So I think we’ve tried to do everything we can to get people working better together, but I think sometimes other things still get in the way of that. You know, competition for resources and legislative pressures and everyone’s different accountabilities. But I’m reasonably happy with partnership working as far as we’ve been able to take it.” [CJA Chief Officer]

Although difficulties in partnership working were widely acknowledged, it was described as an area which had seen significant progress in the last few years, and a particular area of success for CJAs. There was some optimism about the possibility that the new design would build on these gains and improve partnership working through the CPP system. However, the redesign has since moved away from the CPP framework and made CPPs’ participation optional (although the community justice partners include many CPP partners, and it is expected the two will work together).<sup>708</sup>

“Police were at the last meeting, I think it was the first time police had ever been there, so I found that strange. I’m hoping that’ll change when we go into the local model, because the police are a big partner in our Community Planning Partnership, so I hope that changes... I’m hoping – there is hope for improvement there, there’s no doubt about it, and I’m hoping that the local model will sort that, as I say.” [CJA elected member]

“I think theoretically, it could be an ideal model. I think everybody... I think there’s a warm welcome to the acknowledgement that what happens on the ground happens at a local level – that criminal justice social workers are heavily integrated with housing, with other social work, with health staff, with other partners – and you wouldn’t want to have nationalised in the

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<sup>707</sup> Angiolini, 2012: 81

<sup>708</sup> Scottish Government, 2015j

way that one of the options was, so I think that's valued." [CJA Chief Officer]

The policy will probably complicate the development of partnerships by introducing more bodies – switching from eight CJAs to 32 local partnerships. This will probably be a particular problem for third sector agencies, whose position in partnerships is an unusual one – seen as uniquely valuable and effective, but sidelined from decision-making and lacking the financial security of public sector partners. The effect of the new system on partnership working is likely still to vary between local areas, and to be contingent on the success of an organisation that doesn't yet exist – Community Justice Scotland. The change to the new system has also already proved disruptive in and of itself, partly because of the length of time involved in developing it. This has occurred in the context of other major public sector restructurings, some of them similarly disruptive – policies which were developed largely as a response to public sector austerity.

## 5. Budgets and Austerity

Practitioners were very aware of financial concerns, particularly in a post-recession climate dominated by cuts to public spending by the UK government (particularly the 2010-15 Conservative-led coalition). Scotland's SNP government has attempted to mitigate the impact of austerity on public services by making efficiency savings, restructuring some services and implementing as far as possible the 'prevention logic' called for by the Christie Report,<sup>709</sup> which found that spending on preventive services would be repaid many times over by the savings to reactive services. This leaves community justice services in an unusual position – reactive (requiring a criminal conviction) but also preventive (towards future reoffending). In Parliamentary debate about the Community Justice (Scotland) Bill, it was suggested that the Bill's definition of 'community justice' be expanded to include primary prevention of crime; this was however deemed the responsibility of other services.<sup>710</sup>

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<sup>709</sup> Christie Commission, 2011

<sup>710</sup> SP OR 19 November 2015

CJSW is one of very few services that receives centrally ring-fenced government funding (“section 27 funding”); this was seen as vital to its survival and success, but not without disadvantages, particularly for partnerships. Funding pressures are still keenly felt; the level of funding is inadequate, with local authorities having to top it up from their own budgets.<sup>711</sup> The funding is also allocated annually, which makes longer-term planning difficult and puts significant financial pressures on third-sector providers. The sense was of a constant search for sustainable, long-term funding that would give providers enough flexibility to try new approaches while still fulfilling their obligations. Further challenges relate to difficulties of quantification – the difficulty of determining costs which vary across Scotland’s diverse geography, and – problematically for the wider prevention approach – of calculating cost savings from counterfactuals.

### **Austerity and the Cost of Offending**

Practitioners emphasised the enormous financial cost of offending, which they explicitly connected to other social problems (Section 4) and thus costs to other services; the cost of offending and of responding to it was both large and widely felt. Practitioners emphasised the value of community justice agencies as preventive services which could save public money by preventing reoffending. Imprisonment was viewed as a sanction with very poor value for money, especially by contrast with community penalties, one of whose perceived advantages is their lower cost;<sup>712</sup> a preventive approach would therefore entail directing money away from prison and towards community penalties.

“[T]hey’re young people/men that cause significant harm to their communities and cause significant impact on the public purse and any reduction around their criminal activity is a good thing, both in terms of community safety as well as expenditure as well.” [Director of social work]

Interviewees agreed the community justice budget was already inadequate to deal with reoffending, and spending cuts were increasing the pressure. The Scottish

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<sup>711</sup> Audit Scotland, 2012: 17

<sup>712</sup> Audit Scotland, 2008: 36

Government's expenditure on justice declined markedly from 2010, and is mostly spent on policing; among other spending categories the Scottish Prison Service is the most expensive (£382 million of the 2015/16 draft budget) while community justice, including national and local government funding, accounted for about £118 million.<sup>713</sup> The impact of austerity on community justice funding was described particularly in terms of services' ability to carry out work beyond their mandatory responsibilities.

"[I]f you look at the changes to the organisations, both in terms of their structure, but changes and ongoing changes and future changes to their culture, the way they undertake the various services – given that there are budget deficits that people have to cover, so if you look at – if you actually look at the process of criminal, community justice in Scotland, every organisation, I would suggest, within that has had to have some fundamental changes..." [CJA staff]

"I think again the other change that happened over that kind of lifetime for the CJAs was obviously the economic collapse and the impact that had on public sector funding. Up until that point, funding for criminal justice services had been increasing, and increasing reasonably significantly, so again, it was much easier to be creative, to try new things, because your core services weren't under any threat – in fact they were being enhanced anyway – and then there was more money on top of that to do new things... but then, you know, once the financial crisis hit and the funding started [gestures downward] again..." [Third sector manager]

In these accounts, austerity heightened the importance of allocating resources to interventions that were proven to work – contributing to the importance of evidence-based practice (Section 3). The emphasis of spending money in the right places, thus reducing costs as well as reoffending, has parallels in the justification of the prevention ethos more generally. Some interviewees suggested, contrary to the Government line, that community justice should become involved with more primary prevention.

"[Y]ou know, the idea of Community Planning is the same as the idea of the CJA, which is you know, we do spend the wrong money in wrong place, Christie identified that in the report. And Community Planning is meant to have been there to say "how do we shift our focus in public spend to achieve

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<sup>713</sup> Scottish Government, 2014e: 76-7; 89

for the population in a more effective way, in a more beneficial way?" and I think there's still a long journey to go." [CJA Chief Officer]

"And what about the government? You know, I mean the government core funds the Scottish Prison Service, why doesn't it fund more preventative work like mentoring, sort of as a core service, not as a wee pilot or whatever?" [CJA Chief Officer]

As well as its other advantages (Section 4), partnership working was seen as key to ensuring that the problem of reoffending received sufficient resources. It was also described as fairer, by a slightly circular logic – non-justice agencies bore some of the cost of offending, so stood to gain if reoffending was reduced, and thus should contribute to justice partnerships. However, making this argument was not seen as straightforward – partly because of protectiveness on the part of the other services (also affected by cuts, and lacking ring-fenced funding) and partly because of the difficulty of quantifying the saving from offences not committed (see below).

"So for example if you look at Shine, who's actually benefiting from women not reoffending? I mean there's a huge range of partners, but actually are any of them... are the police going to come up with some cash? Are the courts going to, are the PFs going to come up... you know, these are not bodies that are known for putting their hand in their pocket, so then the governments keeps putting the focus on local authorities and prison service, and you're like, well, they might be funders, but really co-funders, not the only funders. And what about the government? You know, I mean the government core funds the Scottish Prison Service, why doesn't it fund more preventative work like mentoring, sort of as a core service, not as a wee pilot or whatever? So yeah... hard to see how that will develop in the future – I don't know just now."

"That has to be the key priority – it can't be about reducing reoffending within existing section 27 resources for criminal justice social work, because you can't really do that. You can do it up to a point, but you really need to use any discretionary funding that's available within whatever budget to encourage other partners to brigade their resources behind community justice." [Both CJA Chief Officers]

Financial pressure also sometimes caused conflict within CJA partnerships, usually between local authorities, over the allocation of resources (Chapter 6, Section 2). The question of ring-fenced funding was implicated both in this and in wider discussions about spending.

## Views on Ring-Fenced Funding

CJSW has been comparatively protected from financial pressure, because its funding has been 'ring-fenced' since 1989.<sup>714</sup> Previous to this, local authorities' discretion with 'generic' social work budgets meant offenders tended to lose out to more 'deserving' client groups such as children and the elderly.<sup>715</sup> Since then, local authorities have gained wider discretion over other spending, making CJSW ring-fencing anomalous:

“[A]pparently it's only us and Gaelic that's ring-fenced these days”  
[Director of social work]

However, nearly all interviewees argued it was valuable and necessary, particularly as it was accompanied by the development of National Objectives and Standards which improved the quality of service significantly.<sup>716</sup> The consultation on the restructuring considered whether or not funding should continue to be ring-fenced; most respondents were in favour, and in 2014 it was decided ring-fencing would continue.<sup>717</sup> Interviewees emphasised the value that ring-fencing had produced for CJSW, often (particularly among those of longer experience) with reference to the situation that had prevailed before ring-fencing as well as current financial pressures:

“I suppose the idea of protecting it has legitimacy in the sense that we know the pressures local government are under, and if that went into the general grant allocation, it would be hard when they're closing schools or services for older people, to still justify things that they're doing with a group that doesn't always elicit the same level of empathy.” [CJA Chief Officer]

“So the ring-fence brought a focus and a rigour around about this area of activity, and that in itself has to be seen as an absolute good thing, yeah? That coupled with National Standards, ring-fenced money I think probably gave birth, almost a rebirth to criminal justice social work service in Scotland.” [Director of social work]

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<sup>714</sup> Rifkind, 1989

<sup>715</sup> Moore, 1978

<sup>716</sup> McNeill, 2005: 34

<sup>717</sup> Scottish Government, 2013: 14

But interviewees also described disadvantages to ring-fenced funding, particularly in its effect on partner relationships. Ring-fencing was sometimes seen as creating a sense of imbalance and hence a distance between CJSW and other partners, particularly TSOs whose funding is less secure. The result was a negative impact on working relationships and on partners' willingness to share resources to deal with complex problems – as well as potentially contributing to a degree of short-sightedness about the real (widely spread) cost of dealing with offending.

“I have to say that I don't think ring-fencing in some ways is always a good thing, I can understand the argument that, you know, community justice was a Cinderella service so they had to ring-fence it, because money was getting pauchled [stolen] away for other things, but I think it's made criminal justice social work, because obviously it's criminal justice social work funding, it's made them quite an isolated service, and they haven't really had to face the same sort of budget pressures as other council services, so sometimes I think that's made them a bit less creative in terms of service redesign and the way that other services have had to respond to service pressures, because they've had this sort of protected budget, and it's also been difficult to attract resources in, because other budget holders are going “well, look, you've got a ring-fenced budget, so, you can just look after yourselves, we don't feel the need to support what you're doing”, so I think it's left them quite disconnected in some ways.” [CJA Chief Officer]

“And that was again one of the challenges that Reducing Reoffending and the CJAs and criminal justice social work always faced was, because everybody always kind of followed the money, and just looked at that chunk of the budget, the kind of nine million or whatever it was that went in to section 27... they only ever looked at that, and they didn't look at the money that was going into drug and alcohol services, and you know, huge, huge crossover between offending substance misuse, but then they didn't look at the homelessness budgets, they didn't look at the NHS budgets for healthcare. You know, all those kind of things, so there's a huge amount of money actually being spent on offending, but again, a very, very small kind of locus of control.” [Third sector manager]

Ring-fenced CJSW funding forms part of the history of compromise between local and national government in Scotland (Chapter 2); financial security was accompanied by increased control through National Objectives and Standards.

Ring-fencing was seen as crucial to the continued survival of CJSW as a distinct and

successful service, but one other disadvantage is that there is little flexibility in how money is spent.

## Budget Flexibility and Temporal Scope

Financial pressure was described not just in terms of insufficient money but also inflexibility in how it could be used. There was a general concern that funding (particularly section 27 funding) was allocated in an inflexible, short-sighted way, ill-matched to current needs and unresponsive to future ones, which constrained community justice practice and particularly innovation. The problem stemmed partly from legal obligations on justice services, and partly from time; although innovative work was highlighted in discussions of CJAs and TSOs, this was described as happening in spite of inflexibility in the funding system. At the regional level, CJAs can disburse money, but have very little freedom to do anything with it except decide, by consensus, how it will be allocated to local authority CJSW:

“[W]e don’t have any of our own resources, you know, we sort of coordinate resources and allocate resources for social work, for local authorities – but those aren’t my resources to purchase services that I might choose... the way we were set up and kind of resource limitations has sort of left us limited in terms of what we can deliver” [CJA Chief Officer]

As discussed above (Section 2), the CJAs also have no real power to hold local authorities accountable, while the mutually consensual nature of funding allocation (Chapter 6, Section 2), along with the difficulty of pulling funding away from active projects, means patterns of funding within CJA partnerships have changed little, reflecting and perpetuating historic inequities between local areas.<sup>718</sup> Further constraints exist at the local level; Scottish Government statistics show most of the £86.5 million spent on section 27 funding pays for legally mandatory activity – mainly meeting National Standards requirements for sentences and producing court reports – leaving little for innovative or preventive approaches.<sup>719</sup> This was linked to the sense of inflexibility and short-sightedness on the part of CJSW in particular, in

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<sup>718</sup> Morrison, 2015: 159

<sup>719</sup> Audit Scotland, 2012: 15-17



which ring-fencing, despite its importance to maintaining good CJSW service, was also implicated.

“Any partnership funding goes to social work, which reinforces the argument that it’s about criminal justice social work. Whereas there should be, if you want to incentivise partnership working, you need to – I think, it’s a personal opinion – you need to provide resources that will incentivise the other partners to bring resources to the table. We won’t be able to do that because the resources that come in just go to social work. They can’t be used in a sophisticated way... We’ve distinctly failed to bring the resources of other partners to the table in a coordinated way, we don’t have an integrated resource framework around reducing reoffending. Our focus has been on social work and meeting the statutory responsibilities under the legislation, around financial management.” [CJA Chief Officer]

The second source of inflexibility was the temporal scope of funding. Section 27 funding is allocated annually, without an indication of how much recipients can expect the following year. Although funding will continue to be ring-fenced, austerity cuts will also continue while obligations on criminal justice remain, making annual budgeting increasingly fraught and contributing to a problem described by non-CJSW interviewees as short-sightedness on the part of CJSW (Section 4). Practitioners argued that advance knowledge about budgets would help to mitigate this.

“[I]f there’s greater flexibility you can make the budget work more effectively for you. So I’m more interested in the discussion that says we should have a three-year planning cycle for the budget, yeah? And that we should have less restrictions around how the budget is managed, whilst retaining for the reasons that I’ve said previously the ring-fenced nature of it. That gives, that in my opinion provides both flexibility and longer-term planning but a security of tenure as to where the money should actually go.” [Director of social work]

The short-term and inflexible nature of the current funding model has been particularly difficult for TSOs which are contracted as service providers. Interviewees described a ‘knock-on effect’ in which short-term local authority funding produces even shorter-term third-sector funding, often requiring annual retendering – a process which drew time and energy away from the ‘real’ work and potentially put staff at risk of losing their jobs.

“Here’s a good example – so, domestic violence is a big thing in [this area], it’s a real issue for us in terms of providing a very good, top-standard criminal justice service. So I buy in what we call partner support for an intervention that we have that deals with men’s domestic violence. And what that is, is an independent kind of analysis of the effectiveness of the group-work intervention through the partner, but I never have any money from one year to the next to purchase that, so the organisation that I purchase it from come to me as soon as I get my budget and I tell them whether or not I can sustain it next year. You know, I could, over three years, actually begin to say “right, this is what we’re going to buy from you over the next three-year period, because I know how much money I’ve got, I know where my fixed staff costs are, and then you then deliver some of the priorities for your service”. That’s very difficult to do when you don’t know what your budget will be, and the margins between a very small reduction and the capacity to invest in a very small resource are very tight as well.” [Director of social work]

“I think that short-term funding has come in and that’s been a huge problem to us because we get, we get annualised funding, we can’t invest in staff, we can’t invest in staff training, we can’t plan ahead, we’ve no idea whether whatever programme we’re running is going to still be running for more than a year...” [Third sector manager]

Since this fieldwork was carried out, the Scottish Government has indicated that the new model of community justice is likely to involve a system where local authorities are notified of their section 27 allocations on a three-yearly basis.<sup>720</sup> This should allow local authorities more leeway in allocating resources and potentially to make longer-term arrangements with TSOs, but – given that austerity will continue at least for the next few years – the financial pressure will remain a major constraint.

## The Unquantifiable in Community Justice Practice

It is a commonplace in social science that “not everything that counts can be counted”,<sup>721</sup> and a similar idea was raised here. Although budgetary efficiency requires certainty about how much is spent and where, it’s clear that in practice the amount of money spent on, or saved by, community justice is not always easily determined. The redesign of the system brought renewed effort to clarify its cost, including attempting to find a comprehensive unit cost for the Community Payback

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<sup>720</sup> SP OR FI 1 October 2015: 4

<sup>721</sup> Cameron, 1963: 13

Order (CPO), the main community sentence in Scotland since 2010. The difficulty of finding this figure stems partly from the geographical diversity of Scotland and its local authorities, and partly from the complexity of CJSW funding; political negotiations between local and national government were also implicated in the discussion. As such, interviewees were sceptical.

“Well, there’s a big exercise going on, you probably know this as well, of trying to get a unit cost for a Community Payback Order – it’s the Holy Grail. People have been trying to do that for years. I think it’s extremely difficult because there are different – and I’ve been involved in discussions for this local authority, with people that are doing it – staff are paid differently across different local authorities. Different local authorities have different cost pressures so if you’re working in the Highlands – a part of the country that’s the size of Belgium with a population a fraction of it – you can’t have the efficiencies that [you would] in a city, because it takes half a day sometimes to get into where you need to be going, you can’t run group-work programmes because you don’t have enough people to run the group-work programme, if you’re in the Western Isles there are all sorts of logistical issues in relation to getting from island to island, and in the Northern Isles; if you’re in [this area] there’s a very high cost of property so any accommodation that we provide is extremely costly, if you’re in the big cities you’ve got the majority of very high-risk offenders who take a lot of resources to manage, and in our case with [a particular local programme provided to certain offenders], so I’m not confident that anybody’s going to come up with a unit cost for a CPO that everybody will agree is fair.”  
[Director of social work]

“[M]y personal view, and I’m happy to say this on record, is that I think it’s an absolute blooming red herring... I mean, what would we use it for? I’ve no idea. When we get it, you can be absolutely certain that it’s going to be more than the attributed cost, as I’ve just kind of told you, it will be more than that, so why government are wanting to have this, because they’ll just get beaten about the head by COSLA and the local authorities, once they have it, to increase the funding. And it’ll be the same for court social work reports and all other areas of activity, because local authorities do subsidise these services just now, some to a greater extent than others, but pretty much all of them subsidise it. And the unit cost is going to, you know, it will flag that up.” [CJA Chief Officer]

None of the discussion of unit costs considered the possibility that the number of CPOs could fall. It also raises the question of why it is worth finding a unit cost for a service that’s a legal requirement once the offender is sentenced; the service must be

provided, whatever it costs, and local authorities have no power over the number of CPOs in their areas. A further quantification problem – perhaps a serious one for the prevention agenda as a whole – is the counterfactual nature of prevention savings. The cost of a hypothetical offence that didn't happen is difficult to determine, particularly as offending has costs across the public sector; prevention undeniably saves money, but savings might not accrue entirely (or at all) to the justice system. Even if reduced reoffending reduces criminal justice costs, savings are not fine-grained – casting further doubt on the reasoning for unit costs. A Chief Officer explained this in terms of the interconnectedness of criminal justice, positioning it as a further frustrating obstacle to budgetary flexibility and to partners' committing their resources to partnership aims.

“Well, if we want to change the way we spend on justice, it is really difficult. So the PSPs are there to show that if you work with prisoners, and you put this resource in supporting them out the gates, that the likelihood of reoffending is less. So if they're less likely to reoffend there are health benefits, so we can make the case to health. There are benefits to the police – if you're not having to arrest people that frees up police time. Less people in custody – prison is expensive. Court – less people going through court, social workers don't have to write so many court reports, there's impacts for the family. The difficulty comes when you then say, “Well, is that real cash?”, so you know, if fifty less people were offending in [CJA area] in a year, so you know, normally they'd have come out of prison and they'd have started to offend – and they reduce or stop offending – we're not going to fire a bunch of police officers, take that money, and pay for it. And if [Prison] tomorrow reduced its prison population – even if you reduced it by five percent, that's a lot of people – but actually, it's not real cash because the prison's still open, you still need the staff there, so the only time you start to make it cashable, take money out of the system, when it's big changes, you know, when we close a prison... The Scottish Government makes a big statement around the fact that there are a thousand more police on the beat and they will continue to keep that thousand more when the SNP came to power, they're not going to cut the police force because we're reducing reoffending. The police will do other things, you know, they will use their time to good value in a very positive way...” [CJA Chief Officer]

None of the individual factors that make quantification difficult are unique to Scottish community justice, but what is probably close to unique is their confluence – in a multi-agency, cross-sector, locally organised and variable, and legally circumscribed field which combines reactive and preventive aspects.

## Discussion

Austerity formed the backdrop to much of the discussion; the financial pressure of spending cuts was keenly felt in community justice as in other services. This was set against the enormous cost of offending, and particularly imprisonment, to the public purse; the significantly lower cost of community sentences was often invoked as an important advantage of it. Although more secure than most public services because of ring-fenced funding, CJSW is still feeling the pressure of budget cuts. TSOs are in a more precarious position, often having to spend time securing contracts and other funding sources which are now harder to find than before.

On a larger scale, it was austerity that led the Scottish government to attempt to reorient public services towards prevention rather than reaction, an approach with clear social and financial advantages.<sup>722</sup> Although not a 'primary' prevention service, community justice performs secondary and tertiary prevention functions. As part of local authority social services it has inevitably been affected by the shift in thinking towards prevention. In some areas (at individual local authorities' discretion) it will also be affected structurally by the integration of health and social care.

The research has also highlighted epistemological problems to do with budgets and prevention. Practitioners described how the Scottish Government's attempt to find a 'unit cost' for community sentences was seriously hindered by the diverse conditions of Scotland's local authorities. A different quantification problem is found in the counterfactual nature of prevention policies, particularly in relation to offending, whose cost is not only high but also widely spread because of its connection to a wide range of social problems.

Financial concerns related not only to quantities of money available but also the inflexibility of its allocation. At present the use of ring-fenced funding is highly circumscribed by legal requirements and by the short-term system of allocation (with knock-on effects for third-sector providers, through the contracting system).

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<sup>722</sup> Christie, 2011

Legal requirements on providers will remain, and it is unlikely that budgets will increase significantly, but the problem is likely to be partly alleviated by the introduction of a longer funding cycle as part of the redesign.

## 6. Experiences of the Redesign and Transition

Interviewees described the process of developing the new community justice system as unusually long and costly, with implications for the continued operation of the current system. Although this was a source of frustration, interviewees (particularly those from CJAs) also described their own significant efforts to ensure that the transition to the new system would proceed with as little disruption as possible. They described an uncertain future, both in terms of the little detail then available about the structure of the new system and in some cases the effects on them personally.

### The Redesign Consultation – A Drawn-Out and Costly Process

The redesign has been a long process, and for most of this time, the system has operated in awareness that CJAs will be abolished, creating particular pressures and concerns. The new system will not fully replace the old one until April 2017, and the amount of time spent in consultation was described as a distraction from the ‘core business’ of CJAs and community justice in general, as well as a significant additional cost at a time of financial pressure.

“It’s just sort of gone on and on, really. I mean it’s amazing to think that it was April 2012, I think, Angiolini first made that recommendation... I think it’s just dragged and dragged.”

“It’s been a long time, it’s been at times a distraction, you know, the process is long, that’s in the nature of bureaucracy I suppose... it has taken a lot of energy from all the partners to be part of that consultation process, it has taken a lot of time, and that sometimes has made that look like the front-end business, instead of what is the front-end business...”

“The actual redesign project was initially presented to us as a zero-budget exercise, well I mean I just think that’s a total joke, because now there’s something like eight work streams, all working on the redesign, and the

amount of officer time, you know, if you actually costed all the meetings so far, all the consultation papers, all the consultation responses, the meetings, attendance at events, you know, if you added that up for government, CJAs, all partners, it'd be millions of pounds already – it's crazy! And I think that's the – so, is it taking up lots of time? Yes. It is taking up time constructively? Not really." [All CJA Chief Officers]

The length of time involved was described as disruptive as well as wasteful. By keeping the CJAs operating in the shadow of abolition for this long, the redesign process was putting the expertise built up within them at risk. Innovative approaches developed by CJAs were also at risk, as the Chief Officers interviewed saw little point in starting new projects and aimed instead to ensure existing ones were ended or transferred safely to CPPs.

"I think we're having a kind of phoney period. I think it's unfortunate that they're taking so long to kill off the CJAs, and I think what's going to happen is across the country, is exactly what's happened with [our Chief Officer] – you know, people who are not wanting to be unemployed, who have talents, will go off and find other work... I think they'd be much better if it had been a shorter period." [Director of social work]

The consultation itself was described as well-run, but also as a site of political compromise and conflict between local and national government (see Chapter 6, Section 4). Engagement with the consultation was sometimes highlighted as inconsistent or lacking in some areas – a function of the varying ability of different organisations to become involved and make their views known. Responses, particularly attendance at consultation events, were dominated by local authority social work departments, although the civil servant interviewee emphasised that this was less true of the second round of consultation.

"I don't think you can blame the civil servants for the consultation process. I think the Scottish Government ran the consultation process really well. What has been less well done is the response of the public sector more widely." [CJA Chief Officer]

"[I]f you look at the number of people that attended those consultation groups, they were packed by local authority. They had a three-line whip. Every community justice social worker was out there. Every social work manager, everybody that they could mobilise. I would think on average – I went to three of them, and there would have been no more than two or three

people from any other sector than community justice social work in any of those consultation meetings. And if you look at the responses you'll find the same sort of thing... absolutely flooded by community justice social work [*sic*] and local authorities saying "what we want is more power to community justice social work"! Ha, really? You know? They're by far the biggest group and they can mobilise the greatest, but does that count as... I don't know, does that count as consultation? I'm not sure... I mean organisations like ourselves, we can't send – you know, I mean, I would have gone and in my own time effectively, because we can't afford to send people. I haven't got staff to send to these things." [Third sector manager]

As the third-sector manager explained with some indignation, this put TSOs in particular at a disadvantage, their marginalisation extending from everyday partnership work to matters of policy.

### **Through the Transition: Maintaining Service, Retaining Knowledge, Handing Over**

Although many details of the redesign were not finalised at the time of the fieldwork, most practitioner interviewees had given thought to the transition process and some had already carried out preparatory work. Government policy, as well as the accounts of the practitioners interviewed for this project, emphasised the importance of managing the transition in a way that minimised uncertainty and avoided repeating the sort of hasty compromise implicated in the structural flaws of the CJAs and their difficult early years.

"I think people found the CJAs quite difficult to establish in the early period, they were set up, as you probably know, as autonomous organisations separate from government, separate from local government, but I don't think they really established themselves until probably their second or third year in... there were some changes in staff during years 1 and 2, which I don't think helped either, a couple of Chief Officers left quite early with health problems. I think they found it quite stressful in the early days just trying to establish their organisations." [CJA Chief Officer]

Concerns about the transition were informed by the sense that the CJAs had had some successes, and that the new system should build on this legacy rather than starting from scratch. One key area of concern about the transition itself was the



possibility of maintaining levels of service throughout the process; partner disengagement (see Section 4) was seen as a particular risk to this.

*“We’ve, during this period we have set up the PSPs, we’ve set up [various projects], you know, we’re doing a lot of work, and everybody is coming to that work with a sense of “This doesn’t have a start point at 2016, this is what we’re doing in [CJA area] and if the hands on the tiller change slightly, well, the hands on the tiller change, but this is where we’re going.”*

*“And have you found your own work changing, in terms of making preparations?”*

We’ve actually been busier! Couple of risks involved here. One risk is that people take their eye off the ball and think “it’s OK, CJAs are gone, the argument around local social work has been won”, for example, we don’t really need to bother with all of that. My experience is that’s not happened. People still understand we’ve got to deliver our statutory obligations until such times as they change. We’ve got to keep our eye on performance – we can’t allow reform to detract from the focus on performance... I think it’s going to be more important over the next eighteen months that that partnership engagement continues and doesn’t dwindle.” [both CJA Chief Officers]

The bipartite aspect of CJA planning cycles, which involve a strategic Area Plan every three years (the most recent being 2014-17) alongside yearly plans, added to the need for a carefully managed transition, particularly before it became clear that the new system would not be fully in place until 2017. One of the main new responsibilities for local partnerships will be the development of local “reducing reoffending outcome improvement plans”, similar to CJA plans but on a smaller scale. Therefore, the successful alignment of CJA and new local plans and priorities was key – and CJAs are in a good position to support the transition by working with partners and instilling awareness and knowledge of community justice issues. The 2016-17 ‘shadow year’, in which both systems run in parallel, was instituted for this purpose. CPPs have been the subject of concerns over their effectiveness and their dominance by local authorities (Chapter 6, Section 4),<sup>723</sup> and have never held community justice responsibilities, remaining similar in approach to CJAs but separate from them.<sup>724</sup> At the time of the fieldwork, CJA interviewees referred to

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<sup>723</sup> Audit Scotland, 2013

<sup>724</sup> Henry, 2009b: 103-4

strengthening their relationship with CPPs – this still largely applies to the new local partnerships.

“In terms of restructuring we have, at a local level we have, we’ve enhanced work – upped our game in terms of a dialogue with Community Planning, to make sure that we’re really close, that the CJA area plan and the Single Outcome Agreement from the CPP are saying the same thing. That’s the critical thing, that actually – you look at one, you’re looking at both.” [CJA Chief Officer]

As well as the shadow year, the Scottish Government has also reallocated the £1.6m annual CJA budget to transitional funding, providing £50,000 to each local authority – although since the fieldwork was carried out, one CJA Convenor has described this as insufficient.<sup>725</sup> One aspect of CJAs that was seen as successful was the development of innovative practice and specialist knowledge; research and evidence-based practice were also viewed as vital to community justice in general (Section 3). As well as administrative support, many interviewees emphasised the importance of retaining the knowledge and expertise developed within CJAs through the transition, rather than allowing them to be lost as staff departed; this was particularly keenly felt because of the effect of even minor turnover on such small organisations.

“As a CJA we have three full-time equivalent staff. If somebody goes it’s a huge dent, so we have to think about that kind of continuity planning with our partners. So if we lost somebody, how would we manage that? Because the closer we get to 2016, the harder it would be to recruit somebody... So what would you do? And that’s a lot of expertise you lose as well, you know, you couldn’t just bring somebody in cold, so it’s about sharing resources.” [CJA Chief Officer]

“The real risk is that you actually lose what you’ve got with CJAs because of their insecurity about their jobs, and you lose the intelligence and the knowledge. If that’s not retained, that’s a risk to us in terms of the timescale from it.” [Director of social work]

Interviewees generally agreed that the efforts to prepare CPPs for the transition were valuable. However, the work of preparing for the transition and attempting to make it a smooth process, inevitably distracted to some extent from the main

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<sup>725</sup> Robertson, 2015b

business of the CJAs and their efforts to develop innovative practice, and all this was exacerbated further by the length of time involved in the consultation and transition.

## Uncertain Futures

Perhaps not surprisingly given the length of the consultation, interviewees often discussed a sense of uncertainty about both the new system and the futures of some people working in the current one. CJA staff, particularly Chief Officers, were aware they would lose their jobs. They seemed to take a stoical view of this as far as they themselves were concerned, but practitioners often expressed concern on other people's behalf, especially Chief Officers on behalf of their staff. The concern with making the transition smoother extended to personnel issues – interviewees described meetings scheduled between CJAs and the Scottish Government, and between CJAs and local authorities, to discuss and clarify the future prospects of CJA staff (whose exact employment arrangements vary between CJA areas). Some Chief Officers had set up arrangements to incentivise their staff to stay in post until the transition was complete, or to make it easier for them to find work after leaving. This appeared to be motivated partly by a sense that individual staff members held valuable knowledge and expertise as well as being vital links in partnership arrangements.

“I think as I said before the transition has gone from kind of a quiet murmur to something more prominent and it's started to touch people's lives as well, so you have to be alert to the sensitivities of things like people, and jobs, and mortgages... You know, there are people who the change is a worrying thing. So from that point of view it's become a bigger chunk and a bigger focus and it's harder to keep that just in a manageable piece somewhere... We're not a big force, across the eight CJAs we're two dozen people, it's not a huge staff resource, but where will people go? Should we be helping them out the door now to other jobs? We're doing a little bit of that but that has a knock-on effect because we still have a job to do until 2016. Is there a place for them in the local work that's going to happen? Is there a place for them in the national body? We don't know. So we're working with government on that”

“Other CJAs don't have the same arrangements as us, however, around [this particular arrangement] and all that kind of stuff, so you might find that

their staff begin to leave the closer you get to reform. And as I've said, three full-time equivalent staff in each CJA, you get one person leaving undermines the capacity of the CJA – you got two leaving, you're in trouble. So, would you be able to fulfil your statutory obligations? Well, maybe not. So there's a real resilience challenge there, but each CJA's responsible for taking that forward on their own." [both CJA Chief Officers]

The government has aimed to reassure and inform staff members through a series of meetings, and forestall a disruptive exodus from CJAs. This seemed to have been successful at the time of the fieldwork, but recently evidence has emerged of an unexpectedly protracted period of uncertainty about CJA staff employment before the confirmation that at least some will be made compulsorily redundant, prompting concern over the loss of specialist knowledge that this would entail.<sup>726</sup>

Interviewees expressed uncertainty over the detail of the new model, still under development at the time. Although all agreed the CJA system was deeply flawed and should be replaced, interviewees exhibited mixed feelings on the new system. There was qualified optimism about the new model's emphasis on research, local delivery and partnership, and about the potential for combining the best features of local and national delivery (Chapter 6, Section 4), but it was recognised that the redesign was not a major conceptual step forward, and, in compromising between local and national interests, could be repeating the mistakes of the past.

"We like the relationship between research and practice in there – I think that's important. We like the fact that there is an intention, somewhere, to hold local authorities to account. The problem that we see in it is that it's one of these high-minded, idealistic pieces of work where you think "and then the miracle starts here"" [Third sector manager]

"they seem to be making a lot of the same mistakes again, you know, about trying to fudge things and keep everybody happy, and have national and local and you think, well, I think the government might just want a national service but COSLA are going to want a local arrangement, so they're trying to do it all, and I think it's still very unclear how that'll actually be better..." [CJA Chief Officer]

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<sup>726</sup> Robertson, 2016a

Practitioners emphasised the uncertainty which continued to surround the redesign at the time of the fieldwork; that this persisted even after such a long period of development was a particular source of frustration.

“[I]t’s really gone on for like two and a half years already and we’re still waiting for a government response, a sort of definitive response, so that experience has not been great.” [CJA Chief Officer]

“I think there’s a long discussion yet to be had. I mean, I think that all that we’ve got is a very brief pen picture of that centralised body... the degree of influence, and power, and reach, into local delivery mechanisms has yet actually to be fully articulated by Scottish Government, frankly.” [Director of social work]

There was qualified optimism but not certainty about the capability of the system to make structural and practice improvements. Although certainly possible, these are in many cases not certain, and the new system is likely to have structural problems of its own – especially the creation of more local partnership bodies which is likely to complicate and hinder partnership working.

## Discussion

The redesign and transition process has been unusually lengthy, involving many organisations over several long stages. This was probably intended to avoid the rushed decision-making that hindered the development of CJAs, but the length of time involved was itself a source of frustration and concern. From 2012, but especially from the second stage of the consultation (which confirmed CJAs would be abolished, but not until 2017), the CJAs have been in a ‘Phoney War’ – under pressure to maintain levels of service, but increasingly hindered by the disengagement of partner organisations, and by having to spend time and resources on attempting to smooth the transition to the new structures – and as noted in Chapter 7 (Section 2), a smooth transition could also have disadvantages.

There was a deep sense of uncertainty about the redesign process – partly concerning personal futures and job prospects after the abolition of the CJAs, but tending to focus more on the lack of available detail about the new model at the time of the fieldwork and the frustration that this produced at the time (although

much of this has since become more definite). As will be discussed in the next chapter, much of the discussion of the new system instead turned on political aspects of it. These included the complex dynamics of local and national delivery and governance as well as a sense that there needed to be a major cultural and political change in Scottish criminal justice and public policy, which the redesign cannot provide.

## 7. Conclusion: Structure and Practice

This chapter has considered a range of aspects of practitioner discourse around community justice, drawing mainly on interviews with community justice practitioners from the public and third sectors. This part of the research was focused on practitioner views of the current system and of particular aspects of community justice practice, and how these both relate to the restructuring of the system.

All interviewees agreed that the CJA system was deeply constitutionally flawed as a result of awkward compromise between local and national government, and would have to change – although CJAs had had some successes, and appeared in the last five years to have made progress towards professionalisation and the development of distinctive contributions. The perceived overlooked successes of CJAs tended to centre on two practice values which were emphasised throughout the interviews – research and innovative practice, and partnership working. Research and evidence-based policy and practice was highly valued, not just as a valuable tool for allocating resources and developing policy, but also – in the case of TSOs – as key to securing the contracts necessary to their continued operation. Practitioners were keen for research to play a greater role in the new arrangements, particularly through the integration of desistance approaches into community justice practices, although there is no necessary relationship between desistance approaches and the structure of the new system.

Inter-agency partnership working was seen as vital, due to the wide range of criminogenic and other needs exhibited by offenders on community sentences. Partnership working seems to be a balance between, and a development from, the

generic approach traditional in Scottish social work and an acknowledgment of the value of specialist expertise, and as such is not straightforward, with interviewees reporting a number of problems which appear to be common to justice partnerships across the UK. These include cultural differences between partner agencies as well as conflicts of aims – both between the aims of different partners and between short-term (and often mandatory) goals and the higher aims of the partnership. In this context, third-sector providers were seen as having particular value because of their position outside the public sector – however, this was balanced by a sense that they were not considered ‘full’ partners and were sidelined in partnership discussions. Despite efforts to develop formal structures to facilitate and reinforce partnership working, this research suggests that community justice partnerships in Scotland are fragile – dependent less on good structures than on informal interpersonal connections, and prone to major disruption from staff turnover or restructuring in other organisations. Although not unique to Scotland, these are intensified by the composition of Scotland’s community justice field, which as Angiolini noted contains many very small organisations from various spheres of public service and local government.<sup>727</sup>

A context of public sector spending cuts across the UK formed a major contingent factor in community justice practice, which occupies an unusual position in this regard because of ring-fenced CJSW funding (which can also have a negative effect on partnership working). Despite ring-fencing, budget pressures are keenly felt in Scottish community justice, with interviewees describing concerns about quantities of money but also about attempts to find funding that was long-term enough to allow a degree of flexibility. In the context of a wider effort to reorient public services to a prevention approach, the immense, wide-ranging cost of offending (and reoffending) was recognised as a problem which the practice of community justice could help to mitigate, but also an area in which quantification of costs and savings was almost intractably difficult, potentially presenting challenges to the

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<sup>727</sup> Angiolini, 2012: 81-2

prevention agenda as a whole. Although the community justice redesign will probably introduce some more budgetary flexibility, budgets are unlikely to increase significantly.

The restructuring process was fraught with concern for many interviewees. The length of the consultation has created a long interregnum in which the progress of CJAs was halted while uncertainty prevailed and partners began to lose interest. Despite this, practitioners were working hard to ensure that the transition, when it happened, would be as smooth as possible. There was cautious optimism about the community justice redesign, and a sense that it would help to resolve some structural problems, promote better partnership working and bring more focus to research-led practice and policy. However, the extent to which the new system will be able to actually fulfil these promises is bound up with political questions to do with power dynamics between local and national government and the enduring problem of public ignorance of community justice – as the next chapter will show.





## Chapter 6: Findings II – The Political Discourse of Community Justice

### I. Introduction

Chapter 5 considered various practical dimensions of community justice, drawing mainly on interviews with practitioners to consider dimensions of community justice practice in the current system and their relationship to the redesign. These included the enormous value placed on research-led practice and on successful partnership working. There was also a widely-held view that Community Justice Authorities (CJAs) were hampered by intrinsic structural flaws born of hasty compromise around the 2005 Management of Offenders (Scotland) Act – although practitioners also emphasised that criticism of CJAs sometimes overlooked their partial successes. Insufficient and inflexibly allocated funding was seen as a major constraint on community justice practice, especially in the context of spending cuts imposed by the Westminster government from 2010. Finally, it considered practitioners' experience of the redesign process itself. This was seen as a drawn-out, disruptive and costly process, and one marked by uncertainty about the new system itself and the personal futures of some people working in community justice.

The practical issues to do with the restructuring of community justice in Scotland are only part of the story. As discussed in Chapters 2 and 3, the policy is bound up in various ways with political concerns. Like other government policies, it is subject to Parliamentary discussions and conflict between political parties, particularly during the legislative process. One important political aspect, specific to Scotland's 'generic social work' structure, is the overlap between community justice and local government, which brings local government into Scotland's penal field. The Scottish system of local government is geographically diverse and politically powerful, particularly through its representative body COSLA. Like previous restructurings in 1998 and 2005-07, the current redesign has involved a compromise between local

and national government, and many interviewees emphasised the importance of ensuring that the new system could balance both local and national needs. In addition, there was significant comment, some of it highly critical, on the power held by Scotland's local authorities.

The politicians interviewed for this study included three Members of the Scottish Parliament (MSPs) who all had some involvement or interest in community justice policy in Scotland. One important limitation was that it was not possible to discuss their views on the legislative process leading up to the 2016 Community Justice (Scotland) Act, as this process was not yet underway at the time. There were also three local councillors from three different local authorities, who were serving as elected members of two different CJAs. Although the CJA role was only a small part of their everyday work, they provided complementary perspectives to those of the CJA staff who, although not the CJA's official members, do most of its actual work. The politicians who were interviewed came from three different parties, and included supporters and opponents of Scottish independence. As in Chapter 5, direct quotes are used extensively throughout; my own questions and interjections are denoted by italic text.

One notable difference between the politicians (CJA elected members and MSPs) and the practitioner interviewees in the project was an epistemological one. Although most interviewees emphasised the value of evidence and research in formulating practice and policy (Chapter 5, Section 3), politicians – whose jobs are unlikely to leave them time to do their own research or to peruse research findings at any length – tended also to describe gaining their awareness and knowledge of the issues around community justice largely through “learning by meeting”,<sup>728</sup> from advice by expert practitioners and sometimes academics and especially from visits to projects involved with providing services to offenders.

“I think sometimes MSPs are so busy running around doing things that they don't really know what's happening, so if you can say to them, in their

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<sup>728</sup> Freeman, 2008

village or their constituency, “Did you know that there was X amount of violent reoffenders and X amount of prolific offenders”, and they’re horrified and they want to know what we’re doing to address it.” [CJA elected member]

These ‘fact-finding’ visits were described as ways of learning about the difficulties faced by offenders, and about ways in which different parts of the criminal justice system were succeeding and failing. CJA elected members also described this type of activity as a valuable part of their induction to the role.

“And I visited the women’s centre recently, and it’s just new but they’re starting to make inroads, because for many of these women there’s a lot of challenges in their life, they lead very chaotic lives, so the system that they have there is a good, and they’re starting to get results there, so that’s good. So yeah, I agree with the [Angiolini] report.” [CJA elected member]

“I was in Barlinnie about five months ago, and the officer on the gantry, one of the prison officers, he was telling me that a prisoner released at Barlinnie is given a coupon, if they don’t have a house to go to, they’re given a coupon which guarantees them three nights’ lodgings in a sleeping bag on the floor of a homeless persons’ unit. That’s not conducive to making sure they don’t reoffend. So very often prisoners just throw that in the bin and on day one, they just exist off the fat of the land, and then we’re surprised when they get arrested again.” [MSP]

One third-sector manager expressed cynicism about this tendency:

“We do lots of mentoring, most of our services are built around mentoring but I can’t find anywhere from the Scottish Government that actually points from research to that decision. I think that decision is made on the back of whatever the Justice Secretary happens to have heard last – says he, being slightly injudicious! – or what some group have basically decided is the model they wanted to push.” [third sector manager]

As this quote suggests, this tendency can conflict with the needs of policy being informed by empirical evidence and research. However, many politicians interviewed also emphasised the importance of some documentary sources – the Angiolini and Audit Scotland reports.

“[W]ith the driver of the Angiolini Report, we knew that CJAs couldn’t go on.” [MSP]

Politicians in the study seemed to describe a process of ‘epistemological bricolage’ – combining information from various different sources (documents, advice, experiences) based more on availability than epistemological value.<sup>729</sup>

Where Chapter 5 considered structural flaws in the CJA system from a practice perspective, this chapter draws on other insights from within CJAs to consider their operation as political institutions, and the extent to which they have succeeded as democratic institutions. There follows some discussion of accountability – interviewees generally agreed with Audit Scotland’s assessment that there was an accountability problem with the CJA system,<sup>730</sup> and emphasised that the new system would have to ‘disentangle’ the lines of accountability. There was also a sense that accountability mechanisms were implicated in power relations between local and central government, and this was a further area of concern about the community justice redesign.

Another, more abstract aspect of the political discourse around community justice had to do with purposes. Interviewees emphasised the value of an effective and high-profile community justice system not just in delivering sentences but also in preventing crime, dealing with other social problems and generally articulating a welfarist, desistance-oriented approach to offending, of the sort sometimes described as distinctively Scottish. However, interviewees from all roles emphasised the existence of a major obstacle to this agenda – a lack of knowledge about, and interest in, community justice and the structures involved in delivering it. This included a deficit of public legitimacy as well as a lack of political interest. In places there were also instances within interviews in which politicians’ misconceptions about the community justice system became clear.

## 2. Democracy and Consensus in the CJAs

Where Chapter 5 (Section 2) considered the well-documented and much-discussed structural failings of CJAs as community justice organisations, this section considers

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<sup>729</sup> Freeman, 2007

<sup>730</sup> Audit Scotland, 2012: 32-35

their workings as institutions of local democracy. As discussed further in Chapter 2, the official membership of a CJA comprises one or more councillors from each of its constituent local authorities, who vote on the CJA's regular spending plans. CJA meetings are nominally open to the public, and many CJA documents are published online.<sup>731</sup> However, CJAs' appear to have had little actual success as democratic institutions, and the discussions with elected members in particular give some insight into this. Much of this failure likely stems from the lack of public and political interest in community justice in general and CJAs in particular (Section 6), but there are also specific structural features of CJAs which undermine their ability to function well as democratic institutions.

### Seeking Consensus

Various mechanisms have developed which serve to generate informal consensus, and it is this rather than political discussion and debate which sets the tone for most CJA business.

“Actually at the Board meeting – it's usually, in all the time I've been at the board meetings we haven't really had a vote... It's always been done by consensus and we've all more or less agreed with maybe just little adjustments to things, we've never actually had to come to a vote, which is very good.” [CJA elected member]

Despite the representation of opposing parties on CJA boards, and a febrile political atmosphere in the run-up to the independence referendum,<sup>732</sup> disagreement and conflict on party lines was described as rare, and the relationships between elected members as convivial.

“[A]ctually, the CJA has been very apolitical, I'd say. Including the National Convenors' Group, where all the Convenors meet together, and they're all different political parties, and you'll get a bit of light-hearted ribbing, in the run-up to elections and the run-up to the referendum, obviously, you got folk coming in with a big 'No Thanks' badge and a big 'Yes' badge and so on, but actually it's all quite light-hearted. So we haven't really had any political difficulties, and I don't know if other CJAs are the same or not, but

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<sup>731</sup> Morrison, 2012: 197-8

<sup>732</sup> Tierney, 2015

we've had all parties around the table and politics aren't really something that's mentioned." [CJA Chief Officer]

In fact, party loyalties were sometimes described, counterintuitively, as a factor militating against, rather than for, political conflict – by producing a situation in which small-scale disagreements between individuals would be likely to escalate into party disagreements.

"sometimes if we were not to come to a consensus, if we were to vote, we'd have to vote on party lines and that would mean [my party] and the Convenor being defeated. So it's in my interests to have a consensus."

"I usually agree a line with [our Chief Officer] that we're taking, in conjunction with the leader of the council here, who's the same... the administration here, and put that input in. So it's not necessarily my ideas, it's sometimes a hybrid of ideas or a consensus of ideas between what the information we get from [our Chief Officer], our criminal justice social work person here, what my political party say and what we think as an administration." [both CJA elected members]

Elected members generally have relatively little knowledge or expertise about community justice, so are in practice dependent on CJA staff, who prepare spending plans and assist the elected members in working out consensus behind the scenes.

## Resources and Conflict

Despite the emphasis on consensus-building and the avoidance of open political conflict, arguments could still take place; as Goodman et al. noted, "while periods of relatively less explosive conflict appear on the surface as consensus... these moments are characterized simply by quieter conflicts."<sup>733</sup> Although party loyalties did not militate against consensus, members' loyalties to their areas could be a factor in arguments over the allocation of section 27 funding.<sup>734</sup> Pressured and inflexible budgets (Chapter 5, Section 5) were also implicated in this.

"[S]ometime before the financial year it has to be agreed, and that sometimes causes a conflict between the five members, because the chap in the [rural area] always thinks that they're getting hard done to, because they're not getting enough to cover these time-space elements. And [an urban] Council

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<sup>733</sup> Goodman et al., 2015:316

<sup>734</sup> Morrison, 2012: 204-5

have got a big volume because they're a big town and they are the ones with the court... So [the urban council] will then argue 'we need more money to address the issues that happen in court etc.'"

"I mean there was one issue that [one rural member council], they felt they weren't getting allocated enough money, that was the first meeting I went then... the colleague from the [rural council], he must have been primed to ask why they're not getting enough money, you know? And he was kind of just banging the table, making his point forcibly, and I was sitting there, well, what's fair and what's not fair, you know? Hadn't been, hadn't had any background so it's issues like that can catch you out, so, he never got his extra money but... But I think that arguments on that can come to the fore, then there's last year, I think, or earlier this year I should say, or round about summertime there were an issue, [urban council] had an issue as well about not getting some money, not enough money to do some project or something like that. Well, I think that wasn't quite as bad as the first time, you know, but it's only two times that issues like that have been raised at an open meeting, you know. I think, by and by I think we... things are usually amicably resolved before people start falling out..." [both CJA elected members]

The difficulty of getting elected members to prioritise CJA interests over those of their local areas was criticised at the time CJAs were developed, and it continues to be seen as another fundamental structural flaw in the system – and a further source of frustration for Chief Officers.<sup>735</sup>

"we got new board members, we used to give them induction training, we used to do it jointly with local authorities, and we made it clear that although they were nominated by local authorities to sit on the board, they weren't there to represent the interest of the local authorities, and that they should see themselves as being independent members appointed to hold the CJA to account, not to represent the interests of... But that, to be honest with you, that message was quite difficult to get through, and I'm not sure, even [some] years in, that I've been successful with that. In fact, I know I probably haven't been successful!" [CJA Chief Officer]

However, arguments over funding were described as rare, and the general picture was one of political consensus and cooperation between elected members, CJA staff and others. One result of this is that although CJAs' power to reallocate funding was intended to reduce historic inequities between areas, the system has largely

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<sup>735</sup> Morrison, 2015: 160



functioned to preserve them, particularly in the context of ongoing budget pressures.

“And also getting councillors from different local authorities to sit around the table and expecting them to then begin to look at an overall picture, and some of them to be offering some of their resources to others, was never ever going to work, so you were never going to get any redistribution, so I think although in theory they have these huge budgets, the headroom for actually making change in how those budgets are spent has been absolutely tiny.”  
[Third sector manager]

“real life is that people don’t act in a fair and rational way, and somebody comes along and says “well actually you should be losing that money because it’d be fair to the other local authority who did it”, they’re not going to say “oh right enough, so it is”, you’re going to make all the arguments to retain the money you’ve got because services are stretched anyway, it’s not as if anybody’s sitting on a pot of money.” [social work manager]

One unusual structural aspect of CJAs is their inconsistency in how membership is allocated. Some, such as Northern CJA, have one member from each local authority while others, including Tayside and Lanarkshire CJAs, have two or three from each. Only one (Fife and Forth Valley CJA) uses any type of weighting by population, with more populous areas accorded greater representation. Although the equal representation of areas was described as helpful in preventing more populous areas dominating CJA agendas, it reduces further the capacity of CJAs and their staff to make changes in how funding is allocated.

“one of the things that [this Chief Officer]’s aspired to, and has singularly failed – and it’s all our fault – is to shift the thinking around non-core funding to current needs rather than historical allocation. But of course we as local authorities resist that.” [social work manager]

One limitation of this insight into the democratic workings of CJAs is that the elected members interviewed constitute only a small sample – three out of a total of over fifty across Scotland. Furthermore, all three were Convenors or Vice Convenors and thus more likely to take a serious interest in community justice and the CJA, as well as having more responsibilities than other elected members (including regular

meetings with Chief Officers, the CJA Conveners Group and other organisations).<sup>736</sup> Morrison's findings on elected members suggest that while Convenors and Vice Convenors tend to be seen by others sitting on the CJA as proactive and informed, other elected members may be less well-informed and more likely to attempt to promote 'penal populist' agendas.<sup>737</sup> However, not only did none of the elected member interviewees in this study express such a view, there was no reference to any others doing so either.

As with the discussion of CJAs' limited effects on community justice practice, the accounts of CJAs' functioning as democratic institutions portrayed them as structurally ill-suited to make substantive change. In particular, the conflicting loyalties of elected members mean CJAs' serve to preserve rather than reduce the budgetary inequalities between their constituent local areas. As in other ways, (Chapter 5, Section 2) the structure of CJAs has prevented them from exerting any real power.

## Discussion

As a venue of democracy, the CJA is an interesting counterpoint to national parliaments, where struggles over criminal justice policy have sometimes been divisive along party lines (although less so now than in the 'detartanising' period immediately after devolution).<sup>738</sup> The introduction of elected politicians to this part of the justice system does not appear to have brought penal populism with it, but has created other problems – in particular, elected members' loyalties to their local authorities have tended to produce defensiveness about resource allocation.<sup>739</sup> CJAs operate as consensus-finding organisations, which partly accords with the deliberative democracy scholarship's advocacy of a policymaking process which

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<sup>736</sup> Lanarkshire CJA, 2012

<sup>737</sup> Morrison, 2012: 204

<sup>738</sup> McAra, 2008; Mooney et al., 2015

<sup>739</sup> Morrison, 2015: 160

sets aside political divisions in favour of finding common ground and working towards mutually acceptable solutions.<sup>740</sup>

However, this consensus is developed not in the public eye but 'behind the scenes' through informal communications between elected members, Chief Officers and members of partner organisations. Even if citizens did attend CJA meetings – unlikely given that these meetings are hardly publicised, and there is a widespread and longstanding lack of public knowledge of and interest in community justice (Section 6) – they would likely find them dully technocratic affairs in which most matters of importance had already been agreed. Although structural flaws had prevented CJAs succeeding as democratic institutions, a few interviewees raised the compelling idea that they were a step towards resolving some complex questions about the political structure of community justice:

“[I]t’s really complicated, the role of politicians in the justice system is not an easily answered question. It’s not an easily answered challenge, if you like, so I think Community Justice Authorities have at least road-tested what the role of local elected members could be in justice and what that interface between democracy and the justice system should look like in the future... So I think it’s a road test for the future rather than saying they had all the answers. The constitutional tensions around democracy and the underpinnings of the justice system have not really been fully reconciled through the CJA process. We’ve strayed into that territory but still got a wee bit to go to make sure the lessons have been learned and responded to in the future.” [CJA Chief Officer]

By implication, the new system is also only another step towards resolving these questions, not a conclusive answer. By moving from a regional to a local framework, the new system eliminates political conflict and compromise between local areas. Low levels of participation and transparency are already well-documented problems for other local partnerships and planning bodies, and (as discussed in Chapter 3) the new community justice system is being kept completely separate from the community empowerment agenda, and hence is unlikely to make significant gains in terms of democratic discussion and civic engagement.

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<sup>740</sup> Davidson and Elstob, 2014; Leduc, 2015

### 3. Accountability Past and Future

Accountability was another commonly discussed theme among both practitioners and interested politicians, as well as being an important characteristic of democratic institutions. However, there is relatively little agreement about the meaning of the term.<sup>741</sup> In developing a “minimal conceptual consensus”,<sup>742</sup> Bovens et al. describe accountability as a virtue – a property of well-governed public organisations – and as a mechanism – a system or systems by which people and/or organisations can be required to give an account of their actions, which in turn can (if necessary) be called into question, and judgment rendered (if necessary) on the party being held to account. This second meaning is required if any organisation can possess the first. Much like research-based practice and partnership working (Chapter 5, Sections 3 and 4), accountability (in both senses) was highly valued. It was also tied into structural questions about the development of the new community justice system, and hence to potential political conflict and compromise between local and national government.

#### Barriers to Accountability

The position of accountability in the CJAs is complex. The presence of local councillors was intended to add an element of electoral accountability; in theory, an elected member who had failed to fulfil their duties could be held accountable by being voted out. In reality, electoral accountability is already a weak form with limited scope,<sup>743</sup> and there is so little public awareness of or interest in CJAs that it’s unlikely that elected members would ever be held to account in this way. CJAs were also meant to be accountable to the Scottish Government, but as the 2012 Audit Scotland report noted, there has never been systematic assessment of their effectiveness.<sup>744</sup>

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<sup>741</sup> Mulgan, 2000

<sup>742</sup> Bovens, Goodin and Schillemans, 2014: 3-9

<sup>743</sup> Warren, 2014: 45

<sup>744</sup> Audit Scotland, 2012: 32-4

“[I]t’s about what performance information you can bring together in a way that’s going to facilitate scrutiny – scrutiny of community justice.” [CJA Chief Officer]

The lack of evaluation of CJAs, Audit Scotland argued, made it difficult to determine their contribution to reducing reoffending.<sup>745</sup> Partly for this reason, a national performance framework for community justice is being developed as part of the redesign policy.<sup>746</sup> However, it was the failure of the CJA as an accountability “principal”<sup>747</sup> (a body that could hold others to account) that attracted most attention. The CJAs have *never* used their power to hold local authorities or SPS to account, and the main reason for this was an institutional design which meant any attempt to use this power would always conflict with the need for good working relationships. In addition, and as noted by the civil servant interviewee, the accountability structure of CJAs is a complex one in which lines of accountability diverge and sometimes cross each other; even organisations that are accountable to the CJA also have lines of accountability leading elsewhere.<sup>748</sup> The occupational backgrounds of CJA staff, particularly in their early years of operation, and the conflicting loyalties of local councillors (Section 2), may have been a further barrier to the CJAs’ ability to hold CJSW to account.

“when the CJAs were established there was quite a large influence on the CJAs – many of the staff employed initially and to this day are former social workers. So there was that sort of, while it’s good in terms of internal delivery for the social work services, there can perhaps possibly be a conflict of interest between the independence of the CJAs from community justice social work departments within the local authorities.” [CJA Staff]

“It could have been better in terms of accountability, I think again that was, that was probably a fault in the design of our boards, again with it being local authority members.” [CJA Chief Officer]

CJAs were described in this and other ways as institutions which had begun to develop an independent identity, and to make distinct contributions (Chapter 5,

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<sup>745</sup> Audit Scotland, 2012

<sup>746</sup> Scottish Government, 2015j: 19

<sup>747</sup> Bovens et al., 2014: 12

<sup>748</sup> Audit Scotland, 2012: 32-35

Section 2), but the structural obstacles to accountability would not have changed by themselves.

## Disentangling Accountability

Accountability was widely described as something the new system would have to 'get right', and was a priority early in the redesign consultation.<sup>749</sup> This was often described in terms similar to those of the Audit Scotland recommendations – the need to 'disentangle' lines of accountability.<sup>750</sup> The civil servant interviewee emphasised the new system would ensure clear accountability by retaining the pre-existing accountability relationships of individual partners, rather than trying to create new community justice-specific accountabilities.<sup>751</sup> The decision that Community Justice Scotland (CJS) would not be in an accountability relationship with CPPs had been reached as early as April 2014:

“We do not propose to duplicate or cross over any established lines of accountability for CPPs, local authorities and other partners who must come together locally in order to effect improved outcomes for community justice.”<sup>752</sup>

However, there was still significant uncertainty about how accountability would work in the new system, much of it implicated in questions about local and national control and local-national compromise in the consultation process. Some suggested that it would be beneficial for the national body to have more powers to hold CPPs to account – in the background of some of this discussion was the possibility of a high-profile failure of supervision, which can be highly damaging for community justice and social work, and for the people working in these systems.<sup>753</sup> If such a situation were to arise, a national body was seen by some as a potential source both of support for the sector (Section 4) and by others as a way of holding CJSW to account and ensuring necessary changes were made.

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<sup>749</sup> Scottish Government, 2012a:15

<sup>750</sup> Audit Scotland, 2012: 34

<sup>751</sup> Scottish Government, 2014c

<sup>752</sup> Scottish Government, 2014b

<sup>753</sup> Fitzgibbon, 2011

“So those people [in the consultation] who were very adamant that this needed to be left locally were wondering “well, what’s this national body going to be doing?” Equally those people who I think were nervous about leaving this to 32 different local authorities were very keen to ensure that the national body would have sufficient teeth to make a difference.” [civil servant]

“[T]here would have to be some form of board, because you couldn’t have a position where in Falkirk you’ve got this, and in Stirling you didn’t get that – if somebody says “this has to be done” because it seems to me if there’s a FAI [Fatal Accident Inquiry], if there’s a review, as we’ve seen with Alexis Jay,<sup>754</sup> south of the border, if there’s something like that comes back in Scotland... then government’s got to be able to say “take action”, what do we do, write to 32 local authorities? Everyone’ll say, you know, “that ain’t going to work” so you’ve got to have something that says “this is what needs done and you folks have got to do it!” They can do it locally and councils will do it, so it’s a political fix of not being a national agency, not being the status quo, delivered locally because I think that’s the right thing, but with a national advisory board capable of calling some shots when a debacle happens...” [MSP]

Others stated either that accountability arrangements under the new system could constitute, or at least be seen as, an imposition on local authorities by central government.

“I think it depends... a lot of it depends on the detail of the national body, and to begin with the government said it’s going to have an assurance and improvement function, which I think COSLA obviously were like “well that’s all right, we can cope with that”, but ...there’s a lot of kind of muddiness around exactly what the national body will be doing, so I think a lot of what happens in reality will depend on the relationship between that national body, you know, who is leading it, what kind of ethos and philosophy it has, what kind of relationship it builds with the CPPs. Because it could be seen as a really supportive, facilitative body that’s really encouraging, or it could just be a sort of policing role that’ll just annoy the CPPs and wind them up, and put them off...” [CJA Chief Officer]

This connects the question of structures for accountability back to the centrally important issue of the working relationship between local bodies and CJS, and to questions of local and national power dynamics (Section 4).

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<sup>754</sup> This interview occurred shortly after The Independent Inquiry into Child Sexual Exploitation in Rotherham, chaired by Professor Jay, published its report.

## Discussion

The failings of CJAs as democratic institutions extended from a lack of deliberation and public awareness to a lack of robust accountability systems; as well as being unable in practice to hold agencies to account, CJAs ran up against structural barriers to accountability. The question of how accountability would work in the new system has been an area of compromise between the Scottish Government and local authorities, but also one of continuing ambiguity, which is reflected in the structure of the system as legislated.<sup>755</sup>

Although policy documents around the redesign have emphasised that the local and national parts will not be in an accountability relationship, CJS will have powers to scrutinise local partners' reports on reducing reoffending and to advise them on these reports.<sup>756</sup> The 2016 Act provides for the national body to gain further powers later on, so that as with national administration, there is the possibility for accountability to be introduced by the 'side door'. Questions about how accountability would work formed only a part of the complex power dynamics between local and national government, and it is to these that the chapter now turns.

### 4. Local and National: Trying to Find a Balance

To some extent 'community justice' is defined not by what it is, but by where it takes place – in 'the community'. Advocates emphasise the value of community justice as a set of sanctions which punish without breaking links between the offender and the community where they live.<sup>757</sup> Scotland's local communities are highly varied, encompassing cities and sparsely-populated rural and island areas (Chapter 3), and this poses particular challenges for local government and community justice.

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<sup>755</sup> 2016 Community Justice (Scotland) Act

<sup>756</sup> Scottish Government, 2014c

<sup>757</sup> Senior, 2013



Scotland's distinctive community justice structure has entwined the structure of community justice services with the country's system of local government. As discussed further in Chapter 2, there had previously been connection between the two through the Probation Committee system;<sup>758</sup> however, it was in the 1960s that the key structural factors of community justice, as well as other distinctive aspects of Scottish criminal justice, were established. The 1968 Social Work (Scotland) Act abolished Scotland's probation service, moving its responsibilities into 'generic' social work departments within local authorities.<sup>759</sup>

## A History of Compromise

The current restructuring of Scotland's community justice system is only the latest in a series of compromises between local and national government. These are connected to, but distinct from, local- and national-level interests and local and national delivery. The compromises began in 1989, in the context of an attempt to reduce Scotland's prison population by making more use of community sentences. This required a shortfall in funding for criminal justice social work (CJSW) to be addressed, which it was by the introduction of ring-fenced funding from central government for CJSW ('section 27 funding'). This financial security was conditional on increased central control and accountability, through the system of National Objectives and Standards.

Other compromises concerned the structure of community justice more directly, while having less significant effects on delivery itself. The 1998 Tough Option consultation on plans for a national CJSW service produced a compromise of 12 regional groupings.<sup>760</sup> When Scottish Labour proposed a national Correctional Service for Scotland in 2003, resistance from local authorities and social work produced the current compromise system of eight regional CJAs.

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<sup>758</sup> Morison, 1962: 92-100

<sup>759</sup> 1968 Social Work (Scotland) Act; Brodie et al., 2008

<sup>760</sup> Morrison, 2015: 155-7; COSLA, 1998

The redesign of community justice has produced a further compromise option – after initially offering three options (the ‘local authority’, ‘enhanced CJA’ and ‘national service’ models), the Scottish Government agreed to ‘Option D’ – a hybrid between local and national, with CJSW remaining in local authorities and strategic responsibilities mostly passing to local partners, with a national service (initially to be named Community Justice Improvement Scotland, now Community Justice Scotland) acting to facilitate best practice, share research, advise local partners and provide national leadership for community justice. In general, there was a sense that the new system should as far as possible attempt to balance local and national needs, but it was far from clear how and where this balance should be struck; the interviews also suggest a more complex and contradictory picture than straightforward conflict and compromise between monolithic local and national interests.

### **The Power of Local Authorities**

As discussed above (Chapter 3), local authorities in Scotland hold an unusual amount of power in their relationship with Scotland’s (comparatively new and inexperienced) central government. Interviewees from within national government tended to see this as problematic, and this included a view that the consultation had been dominated by local authority voices (Chapter 5, Section 6) and a general sense from MSPs in particular that local authorities were being obstructive.

“Some of this comes about because of the dysfunctionality of local government in Scotland, who basically oppose centralisation even when it’s not about centralisation.” [MSP]

Local authority interviewees – social work managers and elected members – did not tend to see the power of local authorities as a problem and this was reflected in some of their descriptions of CJAs. The CJA is usually only one of many different boards on which an elected member sits, and the work involved in CJAs and local authority boards is similar. Both social work managers in the study had worked in local authority social work for long enough to remember the systems before CJAs. Elected members and social work directors seemed to see CJAs as essentially of a

piece with other local authority structures, although CJAs are actually sited at the organisational level above local authorities.

“given it was a new body in local government, it was incumbent on a manager to actually understand what it was” [Social work manager]

“I suppose it’s a bit like within [this local area] we have [arm’s-length organisations], so for instance I sit on [one of the boards of these], so their minutes would not be on the [local authority] website but they would have their [own] site. So I suppose it’s just that connection – although it’s part of [the area], there’s this kind of arm’s length as such” [CJA elected member]

As well as political power, local authorities in Scotland have considerable discretion in carrying out reorganisations required of them by central government.

Interviewees referred to this in reference to the community justice redesign and to the ongoing integration of health and social care provision within local authorities.<sup>761</sup> Although not directly connected to the community justice redesign, the integration has the potential to affect community justice services delivery in some areas, as local authorities have the option to merge CJSW with other areas of social work and social care.

“The legislation is permissive, so it basically starts with “you’ve got to”, “you’ve got to join older people with community health”, and the permissive elements of it allows you to put other services and other structures in. The council has decided to put all the social work structures in, whereas you’ll find across the country the 32 local authorities have done different things.” [director of social work]

At the time the fieldwork was conducted, some local authorities had chosen to integrate all social work (including CJSW), while others were only integrating elderly social care with health and keeping other social services separate; others had not yet chosen exactly what would be included in the integrated structure. Since the fieldwork was conducted, a similar situation has developed in community justice as local partners start developing community justice partnership structures.<sup>762</sup> Some areas are setting up specialist community justice partnerships or boards alongside or partly within their CPPs. As with the initial development of CPPs, the new

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<sup>761</sup> 2014 Public Bodies (Joint Working) (Scotland) Act

<sup>762</sup> Community Justice (Scotland) Act 2016, s.19-20

community justice partnerships and the health and social care integration exemplify 'dirigiste' approaches to local partnership development, where central government sets requirements but local bodies have discretion in some structural details.<sup>763</sup>

## Community Justice in Local Areas

The operation of community justice was sometimes described in terms of particular local concerns, including about crime. CJA elected members unsurprisingly emphasised that the new system should be responsive to specific local needs:

"in [council area] we have very farming and rural things, so it's expensive things that are getting damaged – tractors, these quadbike things that farmers use for going round the hills and stuff – and that's particularly prevalent in the [rural area], and somewhere in [urban area] things like that doesn't happen, it's maybe like car thefts and drunk and disorderly kind of offences and opportunistic stuff..." [CJA elected member]

"I suppose people will always kind of shout their corner, but [this CJA area] has so many unique issues that it's important that whatever model is implemented, it takes cognizance of that, and that we are able to deliver to the needs of what is required within the [CJA area]." [CJA elected member]

The operation of community justice is also contingent on social and geographic conditions which vary between local areas, including building rents and the remoteness of some areas of Scotland. This was a factor in the difficulty of assessing unit costs for community justice services (Chapter 5, Section 5), and thus implicitly an argument against centralised control. Centralisation was generally viewed with suspicion, particularly by elected members. It was described as a tendency which damaged the ability of public services to engage with and respond to particular local concerns and locally-specific practices. One elected member referred to the controversial centralisation of Scottish policing.

"[W]e've already centralised the police and I think there has been an effect, no matter what anyone says, there has been. Centralisation has had an effect on the police and the delivery of what the police do. So that I personally feel there has been and when I've been going to my community council meetings, there does seem to be a deterioration in the service..."

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<sup>763</sup> Hughes, 2007: 57

*Like armed officers in the Highlands, that kind of thing?*

Yeah, armed officers, the way that they treated the massage parlours in Edinburgh, where something worked, seemed to work, and then suddenly this policy is – you know, so again I just have concerns about the centralisation of it and I think we shouldn't be centralising. We talk about centralisation – I think we're too central and we've had a lot of centralisation of the major departments and I am uncomfortable with that." [CJA elected member]

Police nationalisation had significant political support when it took effect in 2013, but the new force has been at the centre of a number of controversies.<sup>764</sup> The most widely reported of these have concerned specific incidents unrelated to community justice, but much of the criticism of centralisation – as articulated in the 2015 Pearson review of Scottish policing – has argued that the reforms damaged the localism and community focus of the police, disconnecting them from local communities and damaging local accountability.<sup>765</sup> Centralisation also took power away from local councillors, and there have recently been calls to return some control of policing to local authorities.<sup>766</sup>

## The Value of Central Provision

However, centralisation of at least some parts of the system was valued. This partly had to do with the value of consistency – a sense that the level of service should vary as little as possible between local areas (although some degree of difference is probably inevitable, given the effects of local geographic differences). It was also connected to financial pressures on local authorities across Scotland,<sup>767</sup> which even ring-fenced CJSW funding cannot entirely alleviate. Linked to this argument, some interviewees highlighted local variation in levels of service as a serious problem in various spheres of public service. As small organisations whose success as partnership agencies was dependent on the personalities of their Chief Officers,

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<sup>764</sup> Murray and Harkin, 2016

<sup>765</sup> Pearson, 2015

<sup>766</sup> Whitaker, 2016

<sup>767</sup> Audit Scotland, 2016

CJAs were described as varying in effectiveness, including in how well they dealt with disruption from the redesign.

“each of the eight CJAs that exist in Scotland are different in terms of scale, how many local authority partners they have, what sort of area they cover, so that relationship tends to vary from CJA to CJA. That’s mainly down to the, if you like, the personalities, the culture, the chief officer or the board members made up of local authority council elected members. So that could vary and does vary quite dramatically across the piece.” [CJA Staff]

“some CJAs it seems to me have kind of slightly lost their ambition and their forward vision, because they’ve been thinking “you know, well, what’s the point?”, this is more just hearsay, it’s not really anything I can really evidence, but I just think a couple of CJAs have really thought ‘you know? It’s really... we’ll not be here anyway, so what’s the point?’” [CJA Chief Officer]

Likewise, CPPs were described as highly variable in their efficacy (as well as a source of concern in general – see below), both in general<sup>768</sup> and specifically with reference to new community justice responsibilities.

“Actually people are just in varying stages. Some of them have really thought it through, they’ve already got lead officers, they’ve thought about the governance structure, you know, where they would put the agenda. They’ve thought of a lot of the advantages, the disadvantages, the kind of opportunities and challenges of it, they’ve really thought it through. Other ones are more like “you know what, we don’t have a clue, we’ve not really thought about this yet” so there’s a range.” [CJA Chief Officer]

Discussion of the national part of the new system was necessarily somewhat hypothetical, because although its functions had largely been decided by the time of the fieldwork, CJS did not yet exist (and will not until October 2016). Interviewees agreed that there were advantages in having some functions performed nationally, particularly where this could provide for economies of scale and where expertise developed within central government could be put to use, and that this would be a potential future role for CJS. The view that centralisation can improve efficiency of at least some aspects of provision echoes concerns expressed by third-sector

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<sup>768</sup> Audit Scotland, 2013

managers about the disruption that could result if they went from working with eight CJAs to 32 CPPs.

“I think it’s valued that there’s a recognition that in a country the size of Scotland, there are elements of things that you can’t and shouldn’t do thirty-two times over.”

“I think there is an issue to be said if we’re not careful about the things that need to be done nationally, and we don’t identify the resources to do the national work – then there is a real risk, because you will never get 32 local authorities to sign up for an approach.”

“Most of the bodies operate at a national level, so surely it would make sense to use their national analytical capacity together, in a coordinated way, to develop if you like an offender profile for Scotland that can be then shared with CPPs, so you’re not expecting CPPs to use resources that they might not have to develop their own analytical products around offenders... And I think that’s really where a national body could add value.” [all CJA Chief Officers]

Financial inequities between local authorities formed the background of much of this discussion. As well as being geographically diverse, local authorities vary widely in their level of income – most of it received from the Scottish government, and thus outwith their control – and how much they spend on various types of services. The level of annual per capita spending by local authorities on all services varies widely, from £1,564 in Aberdeen to £4,202 in Shetland.<sup>769</sup> The position of many rural communities at the higher end of this scale bears out the point above (Chapter 5, Section 5) about the difficulty of quantifying unit costs for community justice services – services in rural (especially island) areas being more expensive per capita. It is difficult to say how the system of allocation could be fairer – without significantly greater resources for all parts of Scottish local government, the distribution of resources between local authorities will probably always include shortfalls somewhere.

It is also widely known that section 27 funding is not enough to cover community justice services within an area, meaning that most local authorities have to subsidise them from other parts of their budgets. Audit Scotland suggests that the extent of

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<sup>769</sup> Scottish Government, 2016e: 11

this varies from around £50,000 to £500,000 a year,<sup>770</sup> and also notes that the amount of funding available to CJAs to spend on their own initiatives varies widely between them.<sup>771</sup> As considered further in Section 2, CJAs were meant to reduce inequities between local authorities by redistributing section 27 funding, but the voting system means these inequities have tended to be preserved rather than reduced.<sup>772</sup>

Questions about budgets and resources played a significant part in discussions of which parts of the system should be administered locally, and which at the national level. CJA elected members, particularly from smaller rural areas, emphasised that some local authorities were not adequately resourced to supervise high-risk offenders subject to Multi-Agency Public Protection Arrangements (MAPPA), introduced by the 2005 Management of Offenders (Scotland) Act and implemented in 2007. MAPPA cases are expensive to handle and require specialist expertise and careful coordination; CJAs have been involved in the regional administration of MAPPA in Scotland since 2009.<sup>773</sup> For this elected member, the possibility that responsibility for MAPPA would now fall to their small local authority was troubling:

“[W]e worried about if there’s a very serious violent offender released into the community, and there’s somebody who comes under MAPPA restrictions, these people are very expensive when they’re coming back into the community, and because we’re a wee local authority, we don’t have a lot of resources to look after that kind of person because... we’re just wee... A notorious person comes to live [here], everybody knows about it and everybody knows their door. So if we had half a dozen people like that at the one time, where would this wee authority get all the money to look after that? That was a concern for us.” [CJA elected member]

MAPPA was highlighted in the redesign consultation as “an area [in which] it would be necessary to provide clarity as soon as possible on what future arrangements, especially funding, will look like.”<sup>774</sup> It is also notable that, when

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<sup>770</sup> Audit Scotland, 2012: 17

<sup>771</sup> *Ibid.*: 16-17

<sup>772</sup> Morrison, 2015: 159

<sup>773</sup> Scottish Government, 2014d: 68-71

<sup>774</sup> Scottish Government, 2014c: 11



asked about whether their constituents ever discussed community justice issues with them, the elected members interviewed referred to constituents' concerns about high-risk offenders. These constitute only a tiny minority of people under supervision, but a failure in their supervision could have very serious consequences. Central government was described as a likely and desired source of financial support for local partners as they took on new responsibilities, and the level of support provided continued to be a contentious subject as the new model developed further.<sup>775</sup>

Another common argument in favour of a national element related to leadership and the profile of community justice. As discussed below (Section 6), interviewees were concerned that community justice enjoyed relatively little legitimacy among politicians and the general public, a problem well-documented throughout the recent history of community justice in several jurisdictions (see Chapter 2).<sup>776</sup> As well as potentially inconsistent, the system of local delivery has been described as disunited and unable to speak with one voice; a further problem is that the position of CJSW within generic social work means no one can rise to a high-level position while remaining a criminal justice social worker (the Chief Social Work Officer position is a 'generic' one).<sup>777</sup> The potential for CJS to provide leadership, including a well-respected and coherent 'voice' for community justice, was welcomed as a potential advantage of the new national service:

"[L]eadership is in the government's proposed design but I guess it depends on how that comes about. Yeah, it's possible. It's hopeful." [CJA Chief Officer]

"I'm a great believer in decentralisation and localism, so my natural inclination would be to say that local authorities are the right place to have that responsibility, but I agreed with the analysis that Elish Angiolini had that there was not a champion for criminal justice at a national level, and that the services tended not to be well-resourced or well-understood at a local government level." [MSP]

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<sup>775</sup> Robertson, 2015b

<sup>776</sup> Maruna and King, 2008; Robinson, 2016a

<sup>777</sup> Miller and McNeill, 2013

In this way, CJS was seen as having the potential to contribute to the kind of major reorientation of Scotland's penal culture that tended to be seen as necessary if the goals of community justice were to be achieved.

## The Local-National Gap

A further linked concern had to do less with the specific value of local or national delivery as with the interface and relationship between local and national organisations. This had proved difficult for CJAs, which were meant to bridge local social work departments with national organisations such as SPS. Making functional links between local provision and the relevant parts of national organisations was described as a particular challenge in the context of partnership dynamics which could already be difficult (Chapter 5, Section 4), and one likely to be heightened by the fact that justice responsibilities would now pass to entirely local organisations.

“I think most of the Community Planning Partnerships have really struggled to bring on board local National Health Service organisations and because a lot of the important bodies for CPPs are national bodies, and trying to work with 32 Community Planning Partnerships I think has proved difficult... Because it's very difficult for a large national organisation to work at a local level, but I think a number of organisations have tried to address that, one of them being the Scottish Prison Service, I think they're certainly moving in the right direction.” [CJA Staff]

The centralisation of Scottish policing in particular was used to furnish an example – in this account, the eight regional forces had had good links to local community partnerships before they were merged into Police Scotland.

“[O]ne of the things that has impacted on Community Planning Partnerships is that with the single national police force and the single fire service you now no longer have the chiefs sitting at the table. You used to have someone who had the authority to make a change sitting at the table, you now have a much more junior member of that organisation, and therefore they can't commit the resources of the organisation in the way that the Chief Constable used to be able to.” [MSP, former CPP member]

SPS, Police Scotland and other national organisations are divided up into local subunits, but the nature of the power structures within them makes it difficult for them to work locally. Where good links are developed, these are often informal and

prone to disruption when organisations change or people leave their jobs (Chapter 5, Section 4).

## Concerns about CPPs

Although the policy has since changed to refer to local groups of ‘community justice partners’ which might optionally include CPPs,<sup>778</sup> it was envisaged at the time of the fieldwork that CJAs’ responsibilities would pass directly to CPPs. Many interviewees expressed concerns about CPPs in general and their ability to handle new justice responsibilities, and some of these issues are likely still to apply to the new partnerships.

“CPPs are not working. Haven’t been working for a long time.” [Third sector manager]

“Again one of the problems, I think, I think one of the future issues, and everybody’s aware of this certainly from a Community Justice Authority perspective and also I think from a Scottish Government perspective, has been the ineffectiveness of Community Planning Partnerships, as comments made by John Swinney and the reports from Audit Scotland will show.” [CJA staff]

CPPs developed formally at around the same time as CJAs, with legislation in 2003 and 2005 (although many CPPs existed in some form before this).<sup>779</sup> Several interviewees highlighted similarities – both were intended to promote local partnership approaches to complex problems, and both had been criticised for their failure to achieve their initial promise.

“I think the CPP and the CJA experience is probably the same in as far as we can do what we can do [to promote partnership working] but people’s resources are still set up separately.” [CJA Chief Officer]

“[T]he idea of Community Planning is the same as the idea of the CJA, which is you know, we do spend the wrong money in wrong place, Christie identified that in the report.” [CJA Chief Officer]

However, some interviewees also emphasised that the ‘prevention focus’ of the Scottish Government, which included a renewed focus on community planning (as

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<sup>778</sup> 2016 Community Justice (Scotland) Act s. 13, Scottish Government, 2015j

<sup>779</sup> 2003 Local Government in Scotland Act; 2005 Management of Offenders etc. (Scotland) Act; Pemberton and Lloyd, 2008

emphasised in the 2012 Statement of Ambition),<sup>780</sup> had significantly improved the performance and prominence of CPPs. Audit Scotland similarly described a “strong sense of renewed energy nationally and locally to improving community planning” following the Statement of Ambition.<sup>781</sup> The start of this fieldwork was contemporaneous with the introduction in June 2014 of the Community Empowerment (Scotland) Bill, intended to strengthen CPPs in line with the post-Christie reorientation,<sup>782</sup> but the somewhat delayed development of CPPs had not brought them closer to the CJAs or community justice in general.

“See, Community Planning, ever since I’ve been a councillor I’ve heard about community planning and for years, it never really went anywhere and it’s only really in the last, I would say since the last election, I think, soon after the election the partnership was formed... I think, it’s more organised, you have to say that, it seems to be, it’s the way forward really.” [CJA elected member]

“[T]hat’s been one of the unfortunate effects of the CJA system being set up at the point where community planning through the Single Outcome Agreements was actually getting a kind of new lease of life, and beginning to actually start to deliver more what it was intended to do. Community planning had been kind of fairly weak in its early years, and probably from about 2007 onwards really started to take off. But you had this kind of disconnect that community planning was over here, and anything justice-y was over here with the CJAs and it was very difficult to get a dialogue between the two...” [Third sector manager, ex-CJA staff]

The post-Christie period has included extensive and continued evaluation of CPPs, particularly by Audit Scotland.<sup>783</sup> The overall picture that emerges is one of some improvement, but not across Scotland and not in all the most important areas, or to the extent hoped for in the Statement of Ambition.<sup>784</sup> Participation and leadership of CPPs were found to have improved, but Audit Scotland stated that there remained room for further improvement in these areas; weaknesses remained in governance and accountability and in the absence of a formal performance management

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<sup>780</sup> Scottish Government Community Planning Review Group, 2012

<sup>781</sup> Audit Scotland, 2014: 10

<sup>782</sup> SP Bill 52 2014 [policy memorandum]

<sup>783</sup> Audit Scotland, 2014; 2016

<sup>784</sup> Audit Scotland, 2014

system.<sup>785</sup> Further evaluation in 2016 found a need for clarity about how the 2015 Community Empowerment Act would be implemented, and for national leadership.<sup>786</sup> It seems likely that continued evaluation will be used to develop CPPs further as they take on more power including the new community justice responsibilities.

One CJA Chief Officer suggested that CJAs might perhaps have been saved, if the Scottish Government had followed the recommendations of the 2012 Audit Scotland report more closely and adopted something similar to the 'Enhanced CJA' option in the community justice consultation, with support for CJAs at a similar level to that provided to CPPs:

"I think at one point we thought we would be working with the government to look at how we could enhance CJAs. That seemed to be more the way Audit Scotland were going, you know, let's look at... They didn't really make recommendations, but reading between the lines, I thought they thought we could be improved, much as CPPs have had the opportunity over their 10 years plus, to get support from the Improvement service and the government, from the improvement team... all these people have been helping CPPs to function better, recognising it is a difficult thing to do. And I think at that point, I thought CJAs would be given the same treatment, we'd be given an opportunity to maybe have enhanced resources, enhanced powers, a bit more support. But when it became quite clear that the redesign was really going to be a local versus national argument..." [CJA Chief Officer]

However, the two types of organisation had apparently not connected with each other until the community justice redesign; as a result, there was significant concern about how able and how prepared CPPs were to take on new community justice responsibilities, and the extent of preparation was also described as varying between local areas.

"[T]hey were all telling us how important it was in their field to have reoffending kept low, and what they were doing and how it fitted in with the CPP. And we've had a couple of events like that, and we're going to continue to do it, because there's a fear that the Community Planning

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<sup>785</sup> *Ibid.*: 14-15; 33-5

<sup>786</sup> Audit Scotland, 2016: 21-4

Partnerships won't really tackle reoffending and so it's important to have them work with us. So we've had the people who are in charge of the CPP in this authority make sure we're all on board and we're all enthusiastic about it.

*Have you had that kind of – that kind of buy-in, I suppose, from other CPPs within this area?*

No, I don't think so. Not, when I hear when the other convenors are speaking, they don't seem to be embracing it like this wee authority." [CJA elected member]

As discussed in Chapter 5, Section 6, CJAs had already begun working with CPPs to help them prepare for these new responsibilities at the time the interviews were carried out. Other measures to this end include the 'shadow year' which began in April 2016, in which CJAs and the local partnerships operate in parallel.

"So we will be producing a performance framework which makes very clear the outcomes we expect the CPP to be delivering in relation to people who have offended. There'll be indicators and measurements around how progress is being made around that, so we can see, for example, the use of community sentences, the speed with which people find decent housing upon leaving prison, continuity of treatment between prison and community, that sort of stuff that we'd want to be able to see how that is happening and we'd want to be able to see improvements in performance around that. So, there'll be an absolute transparency over what is happening in performance that allows us to improve and intervene where necessary. As part of that we'll be requiring each CPP to produce a plan and an annual report against that framework, how they're planning to do it and secondly how well they have done against that plan, so again there'll be that transparency over how well this is happening. And then thirdly there will be the national body that's created to look at how well this is all happening, so they are all I guess safeguards, if you like, to make sure that this does all operate effectively rather than just being left to chance." [civil servant]

The measures explained above are intended to minimise the effect on community justice of well-documented operational issues with CPPs. This statement also positions CJS as a body that will, or could in future, have responsibility for holding CPPs to account for failing to meet reoffending targets, in contrast to the assurances given to local authorities that no such accountability relationship would be

created.<sup>787</sup> A further 'safeguard' not discussed above was that CPPs' community justice planning would be kept separate from their other community planning work.

Ultimately, perhaps with a view to safeguarding justice from the problems discussed above, the CPP element of the system was changed to legislating sets of community justice partners, which could include CPPs at local authorities' discretion. These new partnerships are expected to work closely with CPPs in planning, and to share many members with CPPs, while CPPs have a role in assisting with planning and with the transition.

## Discussion

The interviews discussed here took place within a context of a somewhat contradictory approach by the Scottish Government to questions of local governance, in which the government imposes requirements on local bodies but allows them discretion in how they pursue those aims. This somewhat 'dirigiste' approach is exemplified in the 2007 Concordat with COSLA, and the health and social care integration ongoing at the time the fieldwork.

The consensus was that it was necessary to strike some balance between local and national. The new community justice system should be grounded in the communities it served and in which it punished, responsive to local needs, concerns and conditions and able to work in partnership with other local bodies – but it should also be able to provide a consistent level of service across Scotland, to take advantage of economies of scale where available, to support local partnerships and work well with national organisations. Interviewees tended to describe the working relationships between local partners and the new national body as key to the success of the new model.

“Will the divide get it right? Will we get that dynamics where it works in a healthy way, rather than a combative way? We could end up with... the risk people are alert to, is you could end up with a discord between the national focus and the local focus instead of actually bringing them together in

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<sup>787</sup> Scottish Government, 2014c: 21

harmony, and I think that's the greatest anxiety people have." [CJA Chief Officer]

It is likely, though, that there will be further uncertainty as CJS is established and developed in the coming months and years. It is possible that it will provide a strong national voice for community justice while also supporting local partners and ensuring resources are available to them – but there is no guarantee that it will have any significant effect on the success of community justice in Scotland. There is, however, a factor which makes this restructuring different to previous local-national compromises, as a politician involved in the redesign explained:

"I actually think there's good reason for a national agency, it has to be delivered locally, that is the reason that we've got where we are at the present moment, but it's fair to say that the whole purpose of how it's been planned at the present moment is if it doesn't deliver then you can switch it, with a switch of a button, over to a national agency." [MSP]

The 2016 Community Justice (Scotland) Act which establishes CJS grants it very limited powers, but allows for those powers to be expanded in future without necessarily needing further primary legislation. Unless local partners are consistently successful in their community justice work, Scotland could end up getting national administration of community justice 'by stealth'.

## 5. The Higher Purposes

This section considers some questions to do with the purposes of community justice, and in particular ideas articulated by politicians and other interviewees to do with the intended benefits of the new community justice system for offenders, communities and Scottish society in general. These discussions involved articulating a position about the offenders dealt with by the community justice system, but also a sense that the redesign had to be part of broader cultural and structural reorientations of criminal justice in Scotland, and Scotland's political culture more generally, in the wider context of high-profile public debate over the country's future. This section also highlights the extent to which the 'Kilbrandon philosophy' continues to influence discussions of criminal justice policy in Scotland.



## Reducing Inequality through Equal Access

As discussed further above (Chapter 5, Section 4), many interviewees emphasised the complex and interlinked nature of offenders' needs (criminogenic and otherwise) as a particularly difficult aspect of dealing with offending, and thus a key element of the reasoning for partnership working between various agencies, each able to make specialist contributions to dealing with these needs. Interviewees also sometimes described the community justice redesign in terms of desistance, a strand of criminological theory which focuses on the process by which people who have offended come to form new 'non-deviant' identities.<sup>788</sup> Interviewees in this study were highly aware of the social stigma that accompanies criminal offending and especially involvement with the criminal justice system, and described this as both problematic and unjustified. Interviewees tended to emphasise similarity rather than difference between offenders and other citizens.

“rather than hiving off “this is how we deal with people who’ve offended” and you know, there’s a separate bit of it, it’s almost mainstreaming them throughout all the public sector and recognising that reducing the stigma associated and recognising that they are universal services which means they are available and must be supplied to every citizen, regardless of what they may have done in the past.” [civil servant]

This approach is supported by the significant proportion of the Scottish population who have previously had involvement with the criminal justice system, and for whom the stigma of offending – particularly its bureaucratic manifestation, the criminal record – pose major obstacles to the successful production of desisting identities. Nugent and Schinkel identify the resulting “goal failure” as one of the overlooked ‘pains of desistance’.<sup>789</sup> The Scottish Government has established a consultation on changing the system of disclosure of criminal records to reduce this

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<sup>788</sup> Maruna, 2001; McNeill, 2006

<sup>789</sup> Nugent and Schinkel, 2016: 6-7

barrier to employment,<sup>790</sup> and other jurisdictions are considering similar steps following the success of international ‘ban the box’ campaigns.<sup>791</sup>

“[F]ar too many people, nearly a third of the Scottish workforce, male Scottish workforce, has a criminal record. That’s huge... And more than one in ten of women of working age have a criminal record. That stops a lot of them from getting employment, it’s a huge barrier.” [Third sector manager]

Ensuring access to public services such as healthcare and housing on equal terms with other citizens was often framed as an important way of reducing the stigma of offending. While there are no legal barriers to people with convictions accessing these services, involvement with the criminal justice system – particularly imprisonment – can make this very difficult, disrupting employment, benefits claims and especially tenancies (and, by extension, any services which require the user to have a fixed address). Offenders already have lower levels of engagement with these services before they become involved with the criminal justice system – and in many individual cases, particularly in offences to do with homelessness or addictions, there are direct causal links between this and their offending.<sup>792</sup>

“Making sure offenders have access to the services needed to reduce their reoffending” is listed as one of the main actions of Reducing Reoffending Programme Phase 2 (RRP2).<sup>793</sup> It is not entirely clear how exactly this can be achieved – it is likely that it will be a question of incremental improvements to various aspects of public sector partnership working, with all the challenges that entails, rather than a single clearly defined change in how this work is carried out. This particular strand of RRP2 was probably a factor in practitioners’ thinking about the redesign of community justice, as well as about public service delivery in general. The integration of health and social care was sometimes linked to this as well.

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<sup>790</sup> Scottish Government, 2016c

<sup>791</sup> Henry and Jacobs, 2007

<sup>792</sup> Angiolini, 2012: 75; Sapouna, Bisset and Conlong, 2011: 28-32

<sup>793</sup> Scottish Government, 2016d

“I think it’s important that the offender is treated just like an ordinary person in the integration of health and social care, the same as I would be. Because they’re just, in the [local health and social care] integration board there’ll just be a person who needs medical health. We shouldn’t make a distinction because there’s lots of people who abuse substances who are not criminals and they’re not treated as criminals, so in the health board we should just do that...” [CJA elected member]

Penal populist rhetoric in the news media was sometimes described as an obstacle to this approach, part of the “public relations problem” for community sentences described by Maruna and King;<sup>794</sup> media reporting could perpetuate stigma against people with criminal convictions as well as militating against the development of a more community-oriented justice policy – including through the low media profile of community penalties (see below).

“I think the challenge you have is we’ve got – I do think the government have a good way of looking at it and I think they’re setting out in the right direction, but that’s coupled with a very, very stigmatising impression created maybe mostly by the media – if you compare it to, I think it’s probably comparable to the – all things with welfare reform, it’s this idea of these scroungers, these junkies, these people who don’t deserve our hard-earned money.” [Third sector manager]

“I think there’s not enough champions for this – people are apologetic about it, and they work away quietly and effectively I think, but I think because of the media angle that is always taken on it – you know, ‘soft on criminals’ and that sort of approach – that people shy away from talking about it... not enough of that is said often enough and the strident voices in the newspapers tend to make people very cautious of that.” [MSP]

The argument for using access to services as a way of reducing inequality and reoffending echoes the Kilbrandon principles of ‘generic’ social work and ‘children in trouble’ – that people with convictions should be treated simply as people with various types of unmet social needs. Such an approach is not confined to CJSW, or the public sector – none of the third-sector organisations involved in the project confined their services exclusively to people with convictions, although all were deeply enough involved in community justice to be statutory CJA partners. The focus was generally on the offender at an individual level – only one respondent

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<sup>794</sup> Maruna and King, 2008: 342

described the 'universal service' aspect of community justice in community-oriented terms, but their statement is revealing about their view of the wider social and economic context of the project.

"[T]he biggest single issue with offending – especially in prisons, but marked best in the community, is mental health. It's not people who are, you know, seriously bad criminals – career criminals are dealt with by law enforcement, nobody else can deal with it – it's mental health... They're just, not crying out, they need help and support, they need a CPN – no they don't. What they need is somebody that can say "Jamie, how you feeling today son?" Ah great, we'll say "Actually that's bang out of order, you can't do it." You know? "Just because it's two o'clock in the morning, just because you're not feeling great, doesn't mean you can play your music loud... because you got wee kids next door, you got an old buddy and somebody around? Somebody's going to work at five in the morning!" So putting resources into that is again the thing to do. And again it falls on the best people to do it are Sacro or the Wise Group, not statutory agencies, government, local and national... this comes back to, this is about more – you know, a 'fractured society', not that I like that very turn of phrase, but you know – previously these people probably lived with their parents, or they lived with their big sister, and somebody kept an eye on them, or their brother was round the corner and could look after them. Now they live isolated in a council flat, maybe miles away from family, really, and then – they're not bad people. It's just, when they get stressed they usually self-medicate – when they self-medicate problems happen, and it's the restoration of communities." [MSP]

The description makes an explicit link between two ideological elements of the Scottish Government's approach to community justice, but also sets them in a wider social and economic context. It emphasises the importance of using specialist agencies and resources to deal with social problems that can cause crime (and other types of disruption), and highlights that these problems are connected to offending but not its sole cause, and that offenders are not fundamentally different to other people with health or social welfare needs – in line with the logic of the Kilbrandon Report, *Social Work in the Community* and the 1968 Act.<sup>795</sup> It also sets it in the wider context of social and economic shifts in the last 30 years that had weakened traditional social bonds and left the most disadvantaged and powerless members of

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<sup>795</sup> Kilbrandon, 1995 [1964]; Brodie et al., 2008

society without support. The argument here seems to be that the community justice system is there to provide this support; this has also been part of the justification for the development of 'Third Way' approaches to community, and of the development of community planning in Scotland.<sup>796</sup>

The idea that the restructuring of community justice in Scotland could mitigate both the stigma associated with offending and the destructive effects on communities of recent socioeconomic shifts is an interesting and compelling one. However, and as with the discussion of desistance theory (see Chapter 5, Section 3) there is only a tangential connection between these ideals and the substance of the community justice redesign which is a restructuring of the system of strategic planning of services. It also raises the question of why the criminal justice system should be expected to act as a welfare state of last resort – or, in more 'Kilbrandonian' terms, why it should perform functions perhaps better left to 'generic' social services. Such a 'criminalisation of social policy' also risks widening the net of criminal justice further,<sup>797</sup> and (as noted in Chapter 2, Section 3) even the most supportive community sanction is ultimately backed by the threat of imprisonment.

If the new model can improve partnership working, there is the possibility for more 'joined-up' services in which the partner organisations are more aware of issues to do with community justice and can collaborate more to ensure offenders are able to access various services, but in general, the new structural arrangements for community justice are not likely to have any significant effect by themselves on the stigma of involvement in the criminal justice system, or even on reoffending. In the view of most interviewees in this study, a broader and less narrowly structural sort of change was also necessary.

## The Need for Change

Many interviewees expressed a sense that there needed to be some type of major reorientation of Scotland's penal field, and its entire public sector and national

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<sup>796</sup> Pemberton and Lloyd, 2008; Fernie and McCarthy, 2001

<sup>797</sup> Cohen, 1985

political culture, if the aims of a fair and humane justice system were to be achieved. But it was far from clear exactly what this reorientation would involve, or how it would relate to the redesign of community justice. It is noteworthy that the fieldwork was largely contemporaneous with the Scottish independence referendum, which took place in September 2014. The referendum, whatever its result, was not generally seen by the interviewees as likely to have a direct impact on community justice, since the legal and criminal justice systems of Scotland have always been separate from those of England and Wales. However, the campaigning around this referendum produced an unprecedented level of public debate and discussion about Scotland's future, culminating in a record turnout at the vote itself.<sup>798</sup> This is likely to have contributed to the emphasis in these discussions on a major shift for Scottish politics as a whole, and on Scotland's distinctiveness in penal policy.

Exactly what this grand penal shift would entail in practice varied significantly, but to a large extent tended to involve the wider adoption and internalisation of some of the main principles seen as valuable to community justice practice – evidence-based practice and policy, clear and functioning accountability and an ethos of partnership working and collective responsibility.

“I think the main one again has got to be the scrutiny. The scrutiny just isn't there... But again that's not something that's only community justice social work or for the CJAs. I think if one looks at the majority of the public sector it's a fundamental issue. I think much of the scrutiny/accountability processes currently in place are – frankly – rather crude instruments.” [CJA Staff]

“I think the key question is how do you incentivise a partnership approach to community justice. And delegating community planning might not be enough. It's how do you incentivise a genuine partnership approach to reducing reoffending, through the resources that are available across justice partners, and I think that's a big, big challenge, going forward, and something that a national body will need to be aware of... We need a performance culture in community justice over the next five to ten years. We

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<sup>798</sup> Tierney, 2015

need that developed and the sort of performance culture that brings partners together around shared priorities.” [CJA Chief Officer]

“The biggest problem that we have in Scotland at the moment is that we don’t have strategic commissioning – we don’t link policy, you know, ‘here is a policy, the policy’s thought through, this is what we want to achieve, and we’ll commission on that basis’ – that should be how it works.” [Third sector manager]

It is not entirely clear how much this sort of dramatic reorientation was genuinely seen as possible or even desirable by these interviewees. It is likely that these invocations of a major cultural and political reorientation were, to some extent, vessels for common and long-held frustrations about the operation of Scottish criminal justice and policy. Although local provision of services was seen as important, cultural change would have to take place at a national level – what is common to all these statements is the felt need for a coherent penal policy in Scotland. The goals of partnership working can be hampered by short-sightedness on the part of partner organisations and conflict between their lower-level aims and obligations and those of the partnership (Chapter 5, Section 4), and a similar process can occur at the level of national policy.

“[W]e have all the tools of justice. You know, we have a robust court system, we have a prison service that’s got excellent services in place, we have very professional social work services and the list goes on. But we don’t have a robust toolbox to keep them all in, to make those decisions about when to use what, so the system kind of freewheels on its own will, so why is it that when we see levels of crime and particularly violent crime going down across Scotland, across [CJA area], we see our use of short-term prison sentences going up, when at the same time the evidence is very clear that for the vast majority of people the outcome of a short-term prison sentence has a higher likelihood of reoffending than using community sentences. So how is it that the tools aren’t working very well together?” [CJA Chief Officer]

This reorientation would likely entail a restructuring of how money is allocated within the justice system, requiring – as the Scottish Prisons Commission has argued – a major diversion of resources away from the Scottish Prison Service and towards areas geared towards prevention and rehabilitation, including (but not limited to)

criminal justice social work.<sup>799</sup> As with the interest in reducing inequality and stigma through providing equal access to services, the idea of reorienting spending away from imprisonment and towards other services echoes the response to the Christie Report and its emphasis on reorienting public services towards prevention rather than reaction to adverse outcomes.<sup>800</sup> A notable policy development also contemporaneous with the fieldwork was the surprising decision in January 2015 by Michael Matheson, the new Cabinet Secretary for Justice, not to go ahead with the planned new women's prison at Inverclyde, and instead to follow the Angiolini Report's recommendation of replacing HMP Cornton Vale with smaller community-based units.<sup>801</sup> At the time, Matheson also used the language of radical cultural change and Scottish distinctiveness:

"I've decided that the current plans for a prison for women in Inverclyde should not go ahead. It does not fit with my vision of how a modern and progressive country should be addressing female offending. We need to be bolder and take a more radical and ambitious approach in Scotland."<sup>802</sup>

It was not entirely certain what sort of relationship such a cultural change would have with the structural redesign of community justice, or what was expected or desired by the various interviewees. Some suggested that the redesign was or could be part of this cultural change (but only part of it), while others seemed instead to see the redesign as a somewhat ineffectual and insufficient feint towards its aims that fell well short of making real progress in this area. Although this sense of a need for a major cultural change was typically mentioned in conjunction with the redesign of the community justice, the actual link between them appears to be minimal.

"I feel that every so often they just rejig the structures just to sort of try and do something differently, but there's never any vision or different worldview, it's just piddling about at the edges, to put it frankly, so, yeah, I'm unconvinced it's going to have a positive impact." [CJA Chief Officer]

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<sup>799</sup> Scottish Prisons Commission, 2008: 14

<sup>800</sup> Christie, 2011: 53-60

<sup>801</sup> Angiolini, 2012

<sup>802</sup> Scottish Government, 2015e



For some this major shift would entail CJS playing a strong leadership role, including as a promoter of community justice to the judiciary and the wider public. As noted above, though, there was scepticism about the capability of the national body to do this, given the likely resistance from local authorities.

None of the interviewees took the view that the redesign would be enough to achieve penal reorientation towards community punishments and away from imprisonment. The redesign can contribute towards the reorientation of Scotland's penal field only in limited and indirect ways. It has drawn at least some attention to community justice, given that there has been coverage in the Scottish news media as well as debate in Parliament.<sup>803</sup> However, it has not been nearly as widely reported as Matheson's policy U-turn on women's imprisonment; as in other discussions, so-called 'alternatives to imprisonment' have mainly been discussed from a perspective of discussing imprisonment rather than from a positively defined community punishment perspective. As the next section will argue, ignorance and lack of interest in community justice remain a very significant problem which the new national body is very unlikely to solve.

In improving the flexibility of funding (through a model that allocates funding further in advance) and potentially improving partnership structures, there is the potential for improving the efficiency of the system and its outcomes, but not for achieving the kind of shift discussed here. The potential for better and more integrated partnership working is promising, but the Audit Scotland evidence on CPPs suggests that this would be unevenly distributed across local authority areas.<sup>804</sup> Crucially, the redesign's effects will be limited to the community justice system, whereas a reorientation of Scotland's penal field towards community punishments would probably require significant interventions in sentencing, including but not limited to the planned extension of the presumption against short

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<sup>803</sup> Naysmith, 2016

<sup>804</sup> Audit Scotland, 2014: 36-8

prison sentences. Whether the redesign will form part of a genuinely cohesive penal policy remains to be seen.

## Discussion

This section has considered political arguments from the fieldwork data about the purposes and value of community justice as an institution and how this relates to certain wider contextual elements in Scottish politics. Interviewees often emphasised the importance of ensuring equal access to services for people regardless of their offending status, and the idea that doing so could reduce not just reoffending but also the stigma associated with past offending behaviour. This argument both echoes the logic of the Kilbrandon Report and sets the redesign of community justice in the context of wider reforms of public services that followed the 2011 Christie report.<sup>805</sup> The Kilbrandon philosophy lives on to some extent in discussions of the purposes of community justice, the links made between it and wider social welfare policies and especially in several interviewees' concern with defining offenders as simply adults with unmet social needs.

The interviewees were also quick to set this and other aspects of the work of Scotland's community justice system in a wider context. They expressed a strong desire for a major reorientation of Scottish criminal justice policymaking, and sometimes of its public sector and politics more widely. The need for more cohesive penal policy in Scotland was emphasised, although Scotland's policy is arguably fairly cohesive already. As well as developing and embedding further the key values discussed in the previous chapter – evidence-based policy and integrated partnership working – it would entail reorienting patterns of spending in a way consonant with the 'prevention focus' called for by the Christie Commission. Although not by itself sufficient for this reorientation, the redesign of the community justice system was sometimes seen as forming part of it. As the next section will argue, the development of a cohesive penal policy which could reorient

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<sup>805</sup> Christie, 2011

Scottish justice policy towards community sanctions and away from imprisonment is seriously hindered by cultural features as well.

## 6. Ignorance and Disinterest

There is a significant obstacle to the kind of reorientation that seemed to be hoped for by the interviewees in the project, and a problem for community justice more generally – both the general public and politicians are ignorant about community justice and often not very interested in it. As discussed in Chapter 2, this has been a problem for community justice in other jurisdictions and other time periods as well, and a particular obstacle to its wider adoption as a sentence – and thus a factor contributing to the continued dominance of imprisonment. This section considers the lack of public interest and ignorance about community justice as a concern for the interviewees in the study, including in particular a lack of awareness about the structure of Scotland’s community justice system. Interviewees also often referred to ignorance and disinterest on the part of Scottish politicians (particularly MSPs). It is far from clear how the problem can be overcome – and this section argues that the community justice redesign addresses it only to the extent of handing difficult and poorly-demarcated responsibilities to the new national body.

### Public Ignorance

Several interviewees referred to a frustrating lack of public knowledge about community justice among the general public, sometimes in the context of general misperceptions about crime and punishment linked to penal populist rhetoric in the media.

*“And do you find you discuss CJA work or community justice with your constituents very much?”*

Hardly ever. Sometimes when I go to a community council and say reoffending’s going down and they’ll be “No it’s not, it’s going through the roof because Mrs So-And-So got her pension stolen out of her handbag when she was walking home last week and that’s the third time it’s happened in the village”, so sometimes people’s perception of crime in the village or the town they live in is really absolutely different to reality.” [CJA elected member]

Even CJA elected members did not report much interest from their constituents in community justice or the work of their CJA; the only aspect of elected members' discussions with constituents that was mentioned in conjunction with CJA activities was the concern expressed on the rare occasions when high-profile, high-risk offenders moved into the local area.

"I think we need some kind of national highlight for community justice, because I don't see it being pulled up there, I think everybody's very aware of the prison service and the work that they do, or at least the work that they appear to do, I think – I don't think people really have a detailed understanding of what goes on behind the walls, but we know it's there and we know what they're doing and we have a concept at least of what imprisonment looks like or should look like. I don't think people have any concept about what community justice should look like." [Third sector manager, ex-CJA staff]

There was a strong parallel with Mawby and Worrall's finding (from England and Wales) that community justice is culturally 'invisible' in comparison to other criminal justice institutions,<sup>806</sup> but the sense that there was little cultural awareness of what community justice 'looks like' is connected to structural questions as well, as several interviewees pointed out. This is likely to be a particular problem in Scotland, where as well as aiming to address a wide range of needs (and thus already involving a wide range of organisations in partnership), community justice is not the responsibility of a national service (as it traditionally was and, to some extent, still is in England and Wales) – which plays into a wider sense that community justice lacks the sort of cohesive national professional identity enjoyed by other parts of criminal justice.<sup>807</sup> Lack of awareness and knowledge about the particular structures and institutions specifically is a particular problem for CJAs, connected to the sense that they lacked a cohesive and distinct institutional identity.

"I would say community justice is quite a difficult beast to get your head around unless you deal with it on a regular basis... It's quite complicated, it involves a number of bodies, from my experience you either get very, very good local councillors on the board, or you perhaps get those that either

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<sup>806</sup> Mawby and Worrall, 2013: 87-102

<sup>807</sup> Miller and McNeill, 2013; Nellis, 2016

don't understand the issues and the problems concerned or are just possibly there to make the numbers up, dare one say." [CJA Staff]

"I mean, there's a great deal of ignorance about it. If we stopped people and said "what's a CJA?", 99 out of a hundred people wouldn't know it. I think if you stopped and asked a lot of politicians, they'd struggle to, you know, "Is it Criminal Justice Authority? Is it Community Justice Authority? What is it?" So there's a remarkable amount of ignorance – they know the local social work department, but they don't know about the CJA, which is a shame...the CJA even when they do good work, they just don't have the profile for people to remember." [MSP]

Lack of public awareness need not be a problem for an administrative and strategic body with no responsibility for service delivery, but a lack of awareness about how these structures worked was highlighted even among people who worked directly with CJAs. CJAs were sometimes misunderstood as being essentially similar to the informal 'Tough Option' groupings that predated them – likely because of the geographic similarity between them and the fact that many of the same people would have been involved in both. As with the transition from informal community planning structures to legally mandated CPPs, the efforts to maintain a smooth transition from one institutional form to the other blurred the lines between them and hindered the development of distinctive institutional identities. There was also uncertainty about the function of CJAs, and several CJA interviewees reported misconceptions, playing further into the sense of professional disappointment implicit in many of their accounts (Chapter 5, Section 2). One apparently particularly frustrating example also described in Morrison's research was the continued misunderstanding of the abbreviation.<sup>808</sup>

"[referring to the first years of operation] Because they'd moved from a situation where they had informal groupings of local authorities, and board members used to meet with neighbouring authorities, so councillors would come together and hear joint reports, and some limited joint work that was being done pre-CJAs. But when CJAs came together formally, there was still an element of people thinking "well, it's still like the old joint boards", and I don't think they really grasped at that early stage that in fact it was completely different organisations."

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<sup>808</sup> Morrison, 2012: 198

“[P]eople who don’t know us have this idea that we’re this huge organisation with myriads of staff and so on, and I think actually we are, as I’ve said, tiny... So I’m quite clear in my role that actually all these massive powers that people think we have don’t exist, you know, we have certain statutory duties and we try to discharge those in an engaging and creative way which gets results, but I have never really felt we’ve had this massive authority that some people might think we have.”

“There’s a historic point which is that we don’t have a professional sense of what community justice is, you know, it’s not an unfamiliar situation to be somewhere and be introduced as the Criminal Justice Authority, who people don’t, don’t quite fully grasp it.” [all CJA Chief Officers]

Several of the politicians in this research also used this incorrect terminology, which has also been reproduced by the Scottish Prison Service.<sup>809</sup> In addition, MSPs in particular did not always seem at the time of the fieldwork to be clear on the details of the redesign policy.

### Political Disinterest

In general, interviewees described a lack of interest among politicians in community justice, and in the community justice redesign. In comparison to higher-profile parts of the justice system, which can attract significant political debate, community justice is

“not a sexy or glamorous side of politics, and I don’t see the Justice Committee getting worked up into a lather about it.” [MSP]

Politicians cannot be expected to have the same sort of knowledge of operational detail as practitioners who specialise in community justice. Even more than the CJA elected members – who do actually have formal responsibilities to do with community justice, although these are only a small part of their work – discussions of community justice form only a small part of an MSP’s job, and are likely to become relevant to them only when there is political or legislative debate in Parliament concerning community justice or when they visit community justice projects in their constituency (as discussed in Section 1). Structural factors may also play a role– the current absence of national organisations which specialise in

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<sup>809</sup> Scottish Prison Service, 2013: 11

community justice and can represent community justice, and only community justice, in political negotiations means that the field lacks a 'voice' that can lobby politicians in the same way that SPS or Police Scotland can.<sup>810</sup> The process of legislation, and the workload placed on MSPs, also means that the implementation of that legislation rarely receives the same level of political scrutiny.

"Thereafter once the legislation was passed, interest from the various groups on – my experience – interest in MSPs and their role in this whole thing wanes overnight as they become more focused on the civil service who are implementing and interpreting what the legislation means, so civil service then gain a great deal of power during that twilight period of implementation, and that's where all the various partners are vying for position in how they administer the new arrangement." [MSP]

A similar process occurred immediately after the 2005 Management of Offenders Act; as Morrison has noted, the CJAs were largely shaped by extensive post-legislative compromise between the Scottish Government, ADSW and COSLA.<sup>811</sup> Even during the Stage 1 debate, the apparently anodyne nature of the community justice redesign was acknowledged by the Convenor of the Parliament's Justice Committee, Christine Grahame MSP:

"The topic might seem to be as dry as dust, but the bill deals with how we set up systems and organise support at national and local levels in order to prevent reoffending, which costs the public purse an arm and a leg but, in the first place, fails society, individuals and their families."<sup>812</sup>

However, the Bill did attract debate – perhaps more than some were expecting. Although not as controversial as some other legislation, the Community Justice (Scotland) Bill was the subject of quite energetic discussion, particularly in the debate stage. As discussed further in Chapter 2, there was disagreement over the definition of 'community justice' which some MSPs argued was too narrow and failed to fully embrace the post-Christie 'prevention' focus to the extent found in other public services.<sup>813</sup> The Minister for Community Safety and Legal Affairs, Paul

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<sup>810</sup> Miller and McNeill, 2013: 8

<sup>811</sup> Morrison, 2012: 125-147; 153-7

<sup>812</sup> SP OR 19 November 2015, Col. 41

<sup>813</sup> *Ibid.*, Col. 60, 70, 85-7

Wheelhouse MSP, was called to give evidence a second time, in an unusual development that resulted from continued uncertainty among MSPs about how the new system would work.<sup>814</sup> An attempt during the last stage of the debate by the Conservative MSP Margaret Mitchell to ensure post-legislative scrutiny by introducing an amendment to add a 'sunset clause' to the Bill,<sup>815</sup> while never likely to succeed, was also an unusual development. Although the Bill ultimately passed with relatively little alteration, there has been a greater degree of scrutiny and interest from MSPs in the legislative process than might have been expected.

There was a methodological issue affecting this project's picture of political awareness of community justice in general and the redesign policy in particular. Although the timing of this fieldwork was fortuitous in some respects, coinciding with much of the consultation and development work on the new community justice system as well as with a particularly prominent political debate on Scotland's future, the fieldwork concluded in January 2015, well before the Community Justice (Scotland) Bill was introduced in May, after which it was considered by various committees. Full Parliamentary debate on the Bill did not take place until November that year.<sup>816</sup>

As a result, the MSPs in this project had had little opportunity to hear about the policy in detail, or in most cases to consider much of the available evidence. Had the interviews for this project taken place later, it is likely that the political interviewees would have had more awareness about the detail of the policy. This would also have meant extending the fieldwork period by many months, which would have been impossible within the scope of the project.

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<sup>814</sup> Robertson, 2015a

<sup>815</sup> Scottish Conservatives, 2016

<sup>816</sup> Scottish Parliament, 2015



## What can be done?

Interviewees tended to take the view that the situation of public ignorance and political interest was something that should be remedied, if possible, but (as also discussed in Chapter 2) this is not an easily solved problem.

“It’s the value – not just the money spent, it’s what you get in return for it. That’s maybe a sort of general point, we need to be better at having that conversation with communities, so that’s understood and people come back into it.” [Third sector manager]

While some CJAs had had a degree of success in engaging members of their local community in conversations about community justice,<sup>817</sup> this success was not easily replicated in other areas:

“We tried [having a community engagement event] in [a town], we had an open meeting in [the] Town Hall about five years ago, and it did tend to force the... well it did tend to attract the type of person that was more interested in kids hanging about street corners and dog fouling and... we never really, it wasn’t very good to be honest with you, we never really got into that discussion about crime and punishment, so very difficult to do...” [CJA Chief Officer]

The earlier policy documents surrounding the consultation and the subsequent redesign, dating from late 2012 to December 2013, show some awareness of the importance of cultural change and of raising the public profile of community justice. Then-Justice Secretary Kenny MacAskill’s foreword to the first of the consultation papers emphasises that “cultural change – what people do and how they behave – is of fundamental importance”.<sup>818</sup> That first consultation included a responsibility for promoting community justice culturally and raising its public profile in each of its three options; notably, it would be in all cases the responsibility of a national or regional agency – the CJA boards under the ‘enhanced CJA’ option, the new single service under the ‘single service’ option and the Risk Management Authority under the ‘local authority’ model. In none of the options would local authorities or their social work departments have responsibility for this task. Even though their new

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<sup>817</sup> Murray, 2014

<sup>818</sup> Scottish Government, 2012: 2

form will ostensibly emphasise democratic engagement with local communities, and despite certain indicators that public misconceptions about crime and justice are best challenged at a local level,<sup>819</sup> the local partners will not be required to do anything to raise the cultural and public profile of community justice.

The result is that this abstract and complex problem will fall to Community Justice Scotland (CJS). The initial consultation emphasised the importance of “a strong and united voice that represents community justice interests with the judiciary, public and media”,<sup>820</sup> and similar formulations appear in subsequent consultation documents. However, the documents give almost no sense of how the national body would bring about this cultural change. The first guidance for the future model, which emerged in April 2014, referred to “engagement with key stakeholders” as the method by which Community Justice Improvement Scotland (as it was then to be called) would “promote the importance of successful community justice and the associated values to deliver such”,<sup>821</sup> but gives very little sense of how this engagement would work or why it could be expected to succeed. In general, the documents explaining the redesign become successively less concerned with this sort of cultural role; by the time the detail of the new system is decided there are only passing references to CJS acting as a “champion”.<sup>822</sup> The meaning of “cultural change” in the policy documents shifts to being, in fact, about structures – the development of an “an improvement culture through the establishment of a National Outcomes, Performance and Improvement Framework against which local partnerships can plan and report.”<sup>823</sup> Cultural change and the raising of a public profile are still a legislative requirement under the 2016 Act, which requires CJS to:

“promote public awareness of benefits arising from—

(i) persons who are convicted of offences being sentenced to community disposals rather than imprisonment or detention in penal institutions, and

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<sup>819</sup> Rethinking Crime and Punishment, 2012; Dzur and Mirchandani, 2007

<sup>820</sup> Scottish Government, 2012: 15

<sup>821</sup> Scottish Government, 2014b: 13-14

<sup>822</sup> Scottish Government, 2014c; 2015j

<sup>823</sup> Scottish Government, 2015j

(ii) managing and supporting persons falling within section 1(3), (6) or (7) with a view to them not offending in future or, if that is not realistic, reducing future offending by them.”<sup>824</sup>

A similar expectation was raised by MSPs during and after the legislative process, with Justice Committee member Alison McInnes MSP remarking that “Many of the judiciary have, until now, been reluctant to use community sentences properly. It is to be hoped that Community Justice Scotland holds the key to unlocking greater confidence in community-based services and innovative approaches such as restorative justice.”<sup>825</sup> Political support, judicial confidence and public awareness have been conflated in this single aspect of the responsibilities of the new community justice system, and this makes both the functions intended for Community Justice Scotland by the Scottish Government, and those functions considered and hoped for by interviewees in this study, even more difficult to grasp. As considered in Chapter 2, these are actually quite different aspects of the same problem. They have different effects on the operation of community justice and Scotland’s penal field, and would likely require different approaches to deal with them.

Judicial confidence in community sentencing is necessary to raise its ‘market share’ among sentencers, and research by Millie and Jacobson suggests judicial legitimacy has to do with how social workers act in relation to the court, and particularly the information they provide to sentencers.<sup>826</sup> It’s unlikely, therefore, that either the restructuring itself or any attempt by CJS to engage either the media or the public directly will have any effect on sentencers’ willingness to use community penalties.

Engagement with politicians and the development of support in Parliament is an altogether different matter, and likely only to be necessary at times of particularly sensitive or important legislative and policy debates. Given the emphasis placed by MSPs on visiting and interacting with individuals as a way of gaining knowledge

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<sup>824</sup> 2016 Community Justice (Scotland) Act, s. 4 (1) (d)

<sup>825</sup> Robertson, 2016c

<sup>826</sup> Millie and Jacobson, 2004

about particular issues, a parliamentary engagement strategy for CJS could centre on encouraging “situated learning” by arranging political visits to community justice projects.<sup>827</sup>

Maruna and King, as well as much of the scholarship about democratic engagement in criminal justice issues, suggest that the best way to engage the public is essentially qualitative in nature, and to do with appealing to values and ideas to do with rehabilitation and ‘second chances’.<sup>828</sup> Much of this work would likely best be done at a local level, emphasising the ‘community’ aspect of community justice and siting it within local democratic structures. These aspects seem to militate against giving this responsibility to a national agency; if the working relationship between the new body and a particular local partnership is poor or (more likely) tenuous or non-existent, the public engagement in that local area could suffer as a result. Engagement with the public through the news media is likely to be a particular challenge for CJS, as it will have no control over which stories the news media decide to report. There is no reason to expect this small organisation to be able to change the tendency in the news media to report community justice mainly, if at all, in terms of high-profile failures of supervision.<sup>829</sup>

## Discussion

Ignorance and lack of interest were highlighted in these interviews as a problem for Scottish community justice, as they have been in other jurisdictions.<sup>830</sup> The Scottish community justice system is particularly affected by this, partly because unlike in many other jurisdictions, community justice work mainly takes place at a local level and within generic social work departments. There was also concern that CJAs in particular were little understood, although this is less concerning given that they don’t work with offenders directly. The lack of cultural profile for community justice in Scotland was seen as a major problem which hindered the development of

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<sup>827</sup> Freeman, 2007: 484

<sup>828</sup> Maruna and King, 2008: 347

<sup>829</sup> Fitzgibbon, 2011

<sup>830</sup> Maruna and King, 2008

a more cohesive penal policy with community justice closer to its heart; it was also linked in many accounts to the lack of national leadership structures for community justice. Through the consultation process, this role has fallen to the new national body.

At the time of writing, CJS has not yet been formally established; this is expected to happen around October 2016, and it must be in place by 1 April 2017. The role of cultural champion is challenging and not easily delineated; the brief discussion above is only a tentative sketch of what such a responsibility might entail. It is likely that if CJS had been established earlier on in the redesign process, it would have been able to partly resist being given this task, or at least push for clarification on the detail. Although undeniably important, the cultural champion role is not currently well-defined enough to be anything other than unenviable and burdensome. As with the crucial working relationship between it and local partners, the question of promoting community justice to the public is an aspect of the new system which will not be certain until the new body is established and has been operating for some time.

## **7. Conclusion: Sidelights on Policy**

This chapter has considered the findings of the project as they relate to the political dimensions of community justice, and the ways in which particular political concerns play into the redesign policy. Two political aspects of community justice and the redesign policy dominated these discussions – the conflict and compromise between local and national organisations, agendas and political interests, and discussions of the ethical ideals of community justice.

The discussions with CJA elected members in particular gave a sense of the ways in which CJAs functioned as institutions of democracy. The way in which they were set up helps to reduce the distraction and disruption that can result from direct political conflict along party lines and instead to produce a decision-making model based on consensus and expert advice. However, this consensus takes place almost entirely behind closed doors and without the knowledge or interest of the wider

public; in addition, the emphasis on consensus serves to preserve the status quo rather than allowing funding to be allocated more fairly between partners. As well as being deeply constitutionally flawed from a practice perspective (Chapter 5, Section 2), the CJAs have structural problems that limit their success as democratic institutions.

Connected to this was a common concern with accountability – a term which can connote both structural aspects and moral or political virtues of that system, and sometimes both at once – was also commonly discussed by interviewees as well as being a major theme in the Audit Scotland criticisms of CJAs. Accountability was seen as important for the new system, and interviewees agreed the redesign would have to resolve the ‘tangled’ lines of accountability identified by the Audit Scotland report.<sup>831</sup> This played into discussions of power dynamics between local and national government, as accountability was a particular source of concern with relation to the new national body Community Justice Scotland (the detail of which had not been entirely worked out at the time of the interviews). The interview data gives a sense that local authorities would view an accountability relationship with Community Justice Scotland as an unwelcome imposition by the national government.

The project includes voices from local and national organisations and levels of government, and as a result emphases tended to differ although some key principles were agreed upon. Local delivery was seen as a key part of community justice, but although the redesign policy provides for both delivery and most administration at a local level, there were significant concerns relating to local-national dynamics, and a desire to make use of national-level resources and coordination where necessary, and to ensure that the local focus would not come at the expense of consistency across Scotland. This was particularly emphasised by interviewees who argued that local authorities had had disproportionate power in the negotiations around the redesign. Interviewees also expressed concerns about the mixed record of CPPs and

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<sup>831</sup> Audit Scotland, 2012: 32-5

a sense that they might not be well-prepared for their new community justice responsibilities – a concern responded to both in the structure of the policy and legislation (in which CPPs’ justice planning will be separate from their other community planning, and the shadow year) and by the CJA staff themselves, who described taking steps on their own to help CPPs prepare for the transition.

There was agreement on the importance of striking the right balance between local and national, and in ensuring that local and national agencies were able to work well together in terms of being able to ‘align’ various aspects of the work and structure to each other – a particularly germane concern given the perceived negative impact of the nationalisation of Scottish policing. The working relationship between the local partners and the new national body, Community Justice Scotland, was described as vital to the success of this balance.

Discussions of community justice as a political entity also set it in the context of wider political discussions in Scotland. Several interviewees suggested that the redesign of community justice would reduce social inequality through ensuring equal access to various types of public service, regardless of offending history, and in doing so aiming to reduce the stigma associated with offending. This links the redesign of community justice to the focus on equal access to services emphasised in the Scottish Government’s post-Christie approach to the delivery of public services, although the redesign stops short of embracing the prevention principle which is arguably the most revolutionary aspect of the Christie approach.<sup>832</sup>

Interviewees expressed a wish for some type of major cultural and political change relating to community justice in Scotland, going beyond the structure community justice to affect potentially the entire orientation of the public sector. This must be considered in the context of the debate about Scotland’s identity and future during the then-ongoing campaigning around the Scottish independence referendum of September 2014, as well as echoing the idea of the cultural shift in Scottish public services that the Christie Report aimed to promote (which also has potential

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<sup>832</sup> Scottish Parliament, 2015

structural implications through the integration of health and social care). Although there was relatively little agreement on the exact nature of such a change and different interviewees emphasised different ideals and putative characteristics, it would entail a much higher public profile for community justice and a more enlightened approach to offending. Some took the view that this process was already happening and that the redesign of community justice was a part of it; others, less optimistically, suggested that the redesign was an unambitious bit of structural tinkering that would fail even to contribute towards such a reorientation, and that much more radical structural and/or cultural change was necessary. A particular problem emphasised by many interviewees and elsewhere in academic literature on community justice is the low profile of community justice in the media, among politicians and the wider public, as well as a perceived lack of judicial legitimacy.<sup>833</sup> This was a challenge to the sort of cultural shift discussed above and something which that reorientation would have to address.

The findings from this chapter cast a sidelight on the (yet to be established) new body, Community Justice Scotland, and on its position in the power relations implicated in the redesign. Without a voice in the consultation process, or at any other time, the national body has been left with some very difficult and complex tasks which it is unlikely to be able to fulfil – the establishment of a successful and productive working relationship with all of Scotland’s 32 CPPs, and the promotion of community justice as a viable sanction to sentencers, politicians and the wider public. At the same time, the organisation will be small (with six to nine members and twenty staff)<sup>834</sup> and will have little power; in particular, the emphasis on avoiding the ‘tangled’ lines of accountability which characterise the current system and hamper the ability of CJAs to carry out their role means that Community Justice Scotland will begin with no accountability powers, and any attempt to develop them would likely damage the relationship with local authorities. In this, there are echoes of the ‘poison chalice’ – the combination of difficult responsibilities and very

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<sup>833</sup> Maruna and King, 2008; Mawby and Worrall, 2013: 83-102; Robinson, 2016a

<sup>834</sup> Scottish Government, 2015i: 6



restricted powers – which was handed to CJAs by the various compromises which followed the 2005 Management of Offenders etc. (Scotland) Act. However, the 2016 Act does enable the Scottish Government to grant further powers to Community Justice Scotland later on (albeit only after consultation and Parliamentary scrutiny).<sup>835</sup>

In discussing the political dimensions of interviewees' accounts of the community justice redesign, this chapter, like Chapters 2 and 3, sets the redesign in the context of conflict and compromise between Scotland's local and national government, bringing out the specific relationship between this aspect and other concerns such as accountability and the role of Community Justice Scotland, as well as the development of approaches to social inequality grounded in the reconfiguration of services and the development of local democratic structures. The final chapter draws these findings together with the findings about practice from the previous chapter, and discusses them in more theoretical terms, to do with Scotland's penal field and the adaptation of community justice habitus, before returning to the research questions introduced at the start of the thesis.

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<sup>835</sup> Scottish Government, 2015j

# Chapter 7: Discussion and Conclusion

## I. Introduction

This chapter concludes the thesis by drawing together some key themes of the findings with insights from theory and literature to make critical arguments about the redesign, before answering the research questions detailed in Chapter 1 and considering the potential implications of this project. As Chapter 4 explained, this thesis has used a combination of literature and historical research, and thematic analysis of qualitative semi-structured interviews with practitioners and politicians, to consider the historical background and political dimensions of the community justice redesign and its implications for community justice in Scotland. Chapter 4 also describes the project's development as it changed from a comparative study to focus solely on Scotland; as was becoming clear, the Scottish community justice redesign alone contained more than enough material for a thesis.

Chapter 2 approached the project's historical background using the theoretical framework of the penal field,<sup>836</sup> a concept which emphasises the role of competition and conflict between different actors and institutions. That chapter also gave an account of the history of community justice in Scotland, with particular reference to its role in the development of a distinctive Scottish penal policy identity, and of the compromises between local and national government that shaped the structure of community justice, before setting out the development of the current redesign. That chapter also considered longstanding legitimacy problems with community justice in general and in Scotland, drawing parallels to other jurisdictions and highlighting the potential harmful effects of the low profile of community justice.

Chapter 3 turned away from these concerns to consider issues connected to the 'community' aspect of community justice. Beginning with criminological theorising about how local democratic structures can affect justice policy, this chapter considered the development of local democratic structures for community

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<sup>836</sup> Page, 2011; Goodman et al., 2014; Bourdieu, 1990 [1980]

partnership approaches to crime control, highlighting Scotland's geographically fragmented and diverse public service landscape. It considered the development of community partnership approaches to dealing with crime, and of Community Planning Partnerships (CPPs), drawing parallels between organisational and political issues affecting crime control partnerships elsewhere and those that affect Community Justice Authorities (CJAs) and CPPs in Scotland. An important critical view of the community partnership approach to punishment was provided by Cohen's *Visions of Social Control*,<sup>837</sup> which argued that apparently benign efforts to weaken oppressive institutions, including prisons, produced a subtle outward creep of social control into the 'community', while still strengthening the old institutions. Chapter 3 closed by arguing that despite the significant potential for radical developments in bridging the community justice and community empowerment agendas, the two were being allowed to converge but not meet (although not without justification).

Chapter 5 drew out the consequences of the redesign for community justice practice, beginning with practitioner views of the CJAs. The chapter considers the perceived importance of research- and evidence-based practice and partnership working in community justice, arguing that the new system is unlikely to make significant gains in these areas; it also emphasises the role budget pressures play and will continue to play in community justice, before giving an account of practitioners' views and experiences of the redesign consultation. Chapter 5 also considered practitioner accounts of difficult or conflictual aspects of partnership working in the community justice field.

Chapter 6 drew mainly on interviews with politicians to consider key political aspects of the system and the redesign policy. Beginning with the ways in which CJAs have failed to function as democratic institutions, with particular reference to problems with accountability and how the redesign aims to rectify this, the chapter then considers issues to do with local and national provision, how the redesign aims

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<sup>837</sup> Cohen, 1985

to balance them and the connection to ongoing struggles between different levels of government. The chapter considers these in light of a widely expressed interest in the purposes of community justice, how these related to the wider Scottish government public service agenda and to the commonly expressed need for a major cultural change in criminal justice and policy more widely. The chapter closed by considering a major obstacle to such a development – the lack of knowledge and interest in community justice – and how the redesign largely failed to respond to it.

This final chapter draws together key insights from both the Findings chapters and from the research discussed in Chapters 2 and 3, discussing some of the main findings of the project in theoretical context. It considers the structure of the Scotland's community justice field, arguing that the penal field is a theoretical framework highly applicable to Scotland, and using it to highlight structural barriers to the effectiveness of community justice and to argue that the redesign is likely to remove some of these but create new ones. It considers the dynamics of 'dirigiste' approaches on the part of central government towards local government, before using Bourdieusian theory to argue that attempts to smooth the transition to the new system might have disadvantages. The chapter then considers the long-term problem of the low public profile of community justice, setting this in the context of Scotland's community justice field and arguing that the redesign will do little to change it, before setting the redesign in the context of narratives about Scotland's distinctive penal identity and a wider programme of distinctively Scottish public service reform. Finally, the chapter returns to the research questions posed in Chapter 1, and discusses briefly some implications for policy and research, before concluding the thesis.

## **2. Sketching the Fields**

### **The Community Justice Field in Scotland**

Page defines the penal field as “the social space in which agents struggle to accumulate and employ penal capital—that is, the legitimate authority to determine penal policies and priorities – ... [which] intersects the bureaucratic, political, and

legal fields, and neighbors the economic, academic, and journalistic fields".<sup>838</sup> To this can be added (with some qualification) the "agonistic" approach which emphasises the role of conflict and competition in penal change.<sup>839</sup> The use of field theory also entails consideration of the other parts of Bourdieu's schema: habitus, the system of "the system of structured, structuring dispositions... which is constituted in practice and is always oriented towards practical functions",<sup>840</sup> and capital, the resources used and developed by actors to take positions within fields, which includes money and other resources as well as more abstract forms including 'symbolic power' – "the most effective form of power", which confers the ability to define the field and its principles.<sup>841</sup>

As noted above (Chapter 4, Section 3), Scotland's penal field differs from the American (and particularly Californian) example described by Page, being characterised by compromise more than by conflict. However, the framework has clear value for this project, because Scotland's community justice field (which lies mainly but not entirely within its penal field) is complex for such a small country.<sup>842</sup> Scottish community justice can be considered in terms of competition and conflict between actors and institutions, sometimes with very different values and goals,<sup>843</sup> and this framework highlights the ways in which it has been shaped by its unusual structure (whose two key characteristics are the inclusion of probation work within 'generic' social work departments and within local authorities). This has meant Scotland's community justice field includes not only 'delivery' agencies, but also other social work and local government institutions. The history of this field is largely one of compromise between local and national government, a tendency the current redesign continues. As discussed further below, the significance of 'generic' social work is cultural as well as structural, connected to the 'Kilbrandon

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<sup>838</sup> Page, 2011: 10

<sup>839</sup> Goodman et al., 2014.

<sup>840</sup> Bourdieu, 1990 [1980]: 52

<sup>841</sup> Sallaz and Zavisca, 2007: 24

<sup>842</sup> Angiolini, 2012: 81

<sup>843</sup> Goodman et al., 2014

philosophy' and to notions of a distinctively Scottish approach to criminal justice. The penal field also highlights the complex ways in which the structure of community justice can affect its operation (Chapter 5). The removal of structural problems was a main motive for the restructuring of Scotland's community justice field.

This smaller field is constituted mainly by local authority CJSW departments, although in smaller authorities this workload is too small to be entirely separate, so CJSWs in rural areas might also do other social work. This falls short of the pre-Kilbrandon situation in which part-time rural probation officers "might also be... inspectors of weights and measures",<sup>844</sup> but is still a problem for the development of a distinct CJSW identity. Despite the blurred boundary between CJSW and other social work, there is evidence that CJSW staff experience 'double-marginalisation' from social work and criminal justice.<sup>845</sup> However, its location within 'generic' social work and local authority services brings powerful political organisations into the field, enabling the kind of resistance to change seen in the 2003 reform proposals and the current restructuring.<sup>846</sup>

Third sector organisations (TSOs) are often contracted to provide services to offenders that social work departments are unable or unwilling to deliver. TSOs' flexibility, and ability to provide services which complement those offered by CJSW, are highly valued – but TSOs are also marginalised (Chapter 5, Section 4). Much of their value comes from not being 'full members' of the public sector, but this also limits their influence. Furthermore, while public sector agencies (especially CJSW) enjoy considerable financial security, TSOs do not, and must devote significant time and effort to winning funding.

At the next administrative level up, CJAs are regional organisations which aim to bring together CJSW and the more highly-funded TSO providers, as well as SPS and

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<sup>844</sup> Younghusband, 1978: 254

<sup>845</sup> McNeill et al., 2010: 37-8

<sup>846</sup> Morrison, 2015

other public bodies from inside and outside criminal justice, including the Crown Office, Police Scotland and local NHS boards. This brings these organisations to the edges of the community justice field. The CJAs' elected members constitute a second interface between community justice and local government. However, CJAs are deeply flawed in structural ways.<sup>847</sup>

### **The Structural Barriers**

The setup of CJAs emphasises the importance of partnership, also felt by practitioners to be vital to successful community justice practice. Among CJA staff in particular, partnership was both valued and a key part of their work. As with the development of generic social work,<sup>848</sup> the rationale for this emphasis stemmed from ontological judgements about offenders, and others with social welfare needs – the complexity and diversity of these needs was seen to necessitate partnership with specialist agencies. Partnership has also been emphasised in public service reform following the Christie Report's recommendations.<sup>849</sup>

It was clear from the interviews that not everyone had successfully adapted to partnership working, or to the interposition, nine years previously, of the CJAs into the system. CJA interviewees especially emphasised that their colleagues sometimes had to be convinced of the merits of partnership working, but despite their structural flaws, CJAs were regarded as somewhat successful in promoting a partnership-oriented approach to community justice.<sup>850</sup> But the emphasis on partnership means CJAs have almost no real power over partner agencies, because exercising that power would damage the relationships with partners;<sup>851</sup> the setup also creates 'tangled' lines of accountability.<sup>852</sup> This limits CJAs' ability to function as accountability principals and, hence, their function as institutions of democracy (Chapter 6, Sections 2 and 3). The new system is intended to resolve the

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<sup>847</sup> Morrison, 2012; Angiolini, 2012; Audit Scotland, 2012

<sup>848</sup> Brodie et al., 2008

<sup>849</sup> Christie, 2011

<sup>850</sup> Audit Scotland, 2012; Morrison, 2012: 224-5

<sup>851</sup> Morrison, 2012

<sup>852</sup> Audit Scotland, 2012

accountability issue by leaving lines of accountability up to individual agencies;<sup>853</sup> the new national body will have minimal accountability powers, although the 2016 Act allows for it to gain these later on.<sup>854</sup>

However, the discussion of accountability in the redesign is similar to the policy's approach to partnership. In both cases, the focus has been on structures, but structural change can only partly address the problem. This raises the question of what use a clear accountability structure is, if no one is actually held to account – and, conversely, whether the CJAs' flawed accountability structure *could* have been used to hold CJSW to account if there had been a particularly serious failure. The structure of CJAs drastically limited their ability to hold CJSW to account, but it doesn't necessarily follow that they *would* have used their powers if these impediments *hadn't* existed. It is also notable that there have been no recent high-profile failures of Scottish CJSW supervision of the sort that have drawn calls for more accountability in England and Wales.<sup>855</sup>

Chapter 5's discussion of partnership highlights the essential fragility of partnership in CJAs and similar organisations. Successful partnership working was seen as depending largely on informal relationships between individuals rather than on structural measures intended to facilitate it. This seems to be a common problem in other jurisdictions as well,<sup>856</sup> but Scotland's community justice field is characterised by a large number of very small organisations, meaning the number of interpersonal relationships staff need to cultivate could be very high.<sup>857</sup> The new system may ease this development in some ways, by taking advantage of the connections made by CPPs, but will add further complexity by replacing eight CJAs with 32 local partnerships, and founding a new body which is expected to cultivate strong relationships with all of them.

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<sup>853</sup> Scottish Government, 2014c: 21

<sup>854</sup> 2016 Community Justice (Scotland) Act, s.4 (5)

<sup>855</sup> Fitzgibbon, 2011

<sup>856</sup> Crawford, 1997: 139-40

<sup>857</sup> Angiolini, 2012: 81



The regular meetings of CJAs can also be understood as spaces in themselves, in which various interests – mostly local authorities – compete for power and resources, mainly section 27 funding. Accounts given by elected members portray CJAs as settings for compromise (and rarely conflict) between local authorities over this financial capital, but the CJA structure produces continuity rather than change in the distribution of funding, as spending plans must be unanimously approved and all but one of the CJAs have equal representation for local authorities regardless of population or workload.

### **Dirigisme in the Penal Field**

A further aspect of power dynamics in and near the community justice field is the ‘dirigiste’ character of the Scottish Government’s approach to community bodies.<sup>858</sup> The ‘empowerment’ of communities to deal with social problems has occurred mainly by imposing responsibilities on local bodies while giving them discretion as to the structural approaches by which to fulfil them; as Crawford put it, the state ‘steers’ the boat while local bodies ‘row’ it.<sup>859</sup> This tendency can be seen in the 2003 Local Government in Scotland Act, which required local authorities to set up CPPs but left the detail at their discretion, allowing informal arrangements that preceded CPPs in some areas to continue;<sup>860</sup> similarly the 2007 Concordat with COSLA widened the discretion available to local authorities but limited their fundraising ability.<sup>861</sup> Recently, this approach has manifested in the health and social care integration – local authorities can decide which services are integrated and how (the legislation allows four possible structures),<sup>862</sup> as long as elderly social care and health are combined.<sup>863</sup> Some local authority interviewees described integration plans which would include CJSW, which arguably has just as much potential as the community justice redesign to alter partnership structures.

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<sup>858</sup> Hughes, 2007: 57

<sup>859</sup> Crawford, 2006

<sup>860</sup> Sinclair, 2008

<sup>861</sup> Matthews, 2012; BBC, 2015

<sup>862</sup> 2014 Public Bodies (Joint Working) (Scotland) Act, s. 1 (4)

<sup>863</sup> Scottish Government, 2015d

The dirigiste approach takes on a particular edge in community justice, as shown in the separation of community justice responsibilities from mainstream community planning work (Chapter 3). Similarly to the health and social care integration, local partners will have some discretion as to structure; many are setting up formal 'community justice partnerships' or 'reducing reoffending partnerships' alongside their CPPs. This will result in further structural variation between local areas and a further challenge for development of relationships between local partnerships and the national body.

### **The Field in Transition**

Largely because of the fragility of partnerships, the restructuring of Scottish community justice has already been disruptive. Interviewees described partner organisations becoming less engaged because of the redesign, particularly as the length of the process (nearly five years) was producing a prolonged period of uncertainty – although this long consultation period was partly necessary to avoid the kind of hasty compromise that contributed to the structural flaws in CJAs. The interviews show CJA staff trying to ensure the transition to the new system would be as smooth as possible. Being similar to the 'new partnership professionals' described by Hughes,<sup>864</sup> their approach involved using their partnership skills – building or strengthening relationships with local bodies. Smoothing the transition was also the rationale for the 'shadow year' in which both systems are operating in parallel.

However, a smooth structural transition could also create problems – particularly if it fails to challenge established practices. This is supported by data from interview discussions about the early years of CJAs, which suggests CJSW in particular tended to see CJAs as essentially similar to the regional 'Tough Option' groupings which preceded them. This is probably partly because of a strong structural resemblance – four CJAs used the exact same groupings of local authorities as before, while the others were formed by merging two adjacent groups. As a result, CJAs struggled to

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<sup>864</sup> Hughes, 2007: 82-109; Cohen, 1985: 161-196

develop institutional identities of their own, and their functions – and the crucial differences from the previous groupings – were not always well understood. Interviewees from ‘merger’ CJAs also suggested divisions persisted within the partnerships along the previous lines.<sup>865</sup> A similar issue can be found in the piecemeal development of CPPs, which can partly be attributed to the fact that the 2003 Act aimed as far as possible to preserve pre-existing community planning structures and local partnerships; the structural continuity of longer-established partnerships put them at an advantage.<sup>866</sup>

Interviews in this project suggest a degree of short-sightedness on the part of CJSW, and others have argued that its “double-marginalisation” has led its staff to “look inwards, to identify with their traditions, their teams and their peers, and to hold fast to established routines and practices.”<sup>867</sup> This may partly account for the difficult transition of CJSW to more partnership working and desistance practice.<sup>868</sup> Despite the advantages of a minimally disruptive transition, it is possible that in doing so the redesign might miss an opportunity for challenging and developing CJSW practice. Nellis recently argued that CJSW is the “weak link in Scotland’s [ongoing] penal reimagining”, a process that has already included the decision to halt the construction of HMP Inverclyde,<sup>869</sup> and – by contrast with the structural focus of the community justice redesign – an apparently more paradigmatic shift in discourse by the Scottish Prison Service (SPS).

Traditionally a more punitively-inclined institution, SPS has – particularly since the 2012 appointment of Colin McConnell as Chief Executive – shifted in its language towards more desistance-oriented approaches. McConnell called for “a reworking of the ethos of imprisonment around the principles of parsimony and rehabilitation”,<sup>870</sup> and SPS’ approach to this was crystallised in the 2013

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<sup>865</sup> Morrison, 2012: 210

<sup>866</sup> Pemberton and Lloyd, 2008: 441-3

<sup>867</sup> McNeill et al., 2010: 40; see Fenton, 2014b: 94-5

<sup>868</sup> McNeill et al., 2013

<sup>869</sup> Nellis, 2016: 22

<sup>870</sup> McAra, 2016: 7

organisational review whose title became the SPS motto – *Unlocking Potential, Transforming Lives*.<sup>871</sup> The review set out a new vision for SPS with desistance research at its heart,<sup>872</sup> and recommended more collaboration with other services including community justice.<sup>873</sup> Perhaps unwilling to overstep its remit, SPS has rarely acknowledged the argument advanced in *Scotland's Choice* for a major reduction in imprisonment,<sup>874</sup> referring instead to making efforts to reduce “repeat business”.<sup>875</sup> Whether the apparent shift towards desistance will produce lasting, substantive change is not yet certain. A recent inspection of Polmont Young Offenders' Institution, which found “only just over a third of the population engaged constructively in daily activities”, is perhaps a reminder that discourse may change more easily than reality.<sup>876</sup> Schinkel's research suggests that imprisonment in Scotland does not always support desistance,<sup>877</sup> while Nugent and Schinkel have highlighted that desistance is not without painful aspects.<sup>878</sup> Finally, with ‘agonistic’ perspectives in mind,<sup>879</sup> it is necessary to consider that punitive tendencies may be lying dormant within the organisation, ready to surface if the political mood changes. Nonetheless, the change in SPS still appears to approach the kind of cultural and imaginative reorientation, with some commitment to a defined penal rationale, which so far has been lacking in the restructuring of community justice.<sup>880</sup>

Some interviewees also described the consultation process *itself* as a site in which power relations had played out with consequences for the shape of the field. Local authorities were seen as able to dominate the consultation, particularly the discussion-based events where their representation outweighed that of other

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<sup>871</sup> SPS, 2013

<sup>872</sup> *Ibid.*: 51-101

<sup>873</sup> McConnell, Carnie and Mehta, 2013; SPS, 2013: 164-178

<sup>874</sup> Scottish Prisons Commission, 2008

<sup>875</sup> SPS, 2013: 29

<sup>876</sup> Her Majesty's Inspectorate of Prisons in Scotland, 2016: 3

<sup>877</sup> Schinkel, 2015

<sup>878</sup> Nugent and Schinkel, 2016

<sup>879</sup> Goodman et al., 2014

<sup>880</sup> Nellis, 2016

organisations community justice organisations. This contributed to the compromise between local and national government that has characterised the redesign, especially in the two-tier nature of the new system. This will hand most of the responsibilities held by CJAs over to local partnerships, and form a new national body, Community Justice Scotland (CJS).

Many interviewees took the view that this was insufficient, and that what was necessary was a cultural reorientation, not a restructuring, of Scotland's penal field. As Coyle remarked of the *previous* restructuring, there is no evidence that the structure of community justice has direct effects on its stated objectives – reducing reoffending and imprisonment.<sup>881</sup> The imagined reorientation described by many interviewees would entail a more humane system in which community penalties had far greater prominence, and – perhaps reflecting frustrations with partnership structures – there was more agreement and cohesion about goals and methods. It would be wider in scope than the current restructuring, and would entail embedding welfarist and desistance values into the wider penal field. Some versions of this idea were more grandiose than others, and there was often vagueness about exactly what it would involve. To some degree it was likely an imaginative response to longstanding frustrations with the existing system. However, the theme was too widespread, and often expressed in too much detail, to be dismissed – the desire for major and more cultural change was genuine and deeply felt among the interviewees. This thesis has shown that there is a legitimacy problem for community justice in Scotland, as in other jurisdictions, which limits its value as a diversionary measure. As *Scotland's Choice* and the Angiolini Report have argued,<sup>882</sup> there needs to be major cultural change in Scotland's penal field if the promise of community penalties is to be realised. Cohen describes a “schizoid split” in justice reform efforts, between the potential for radical change and the more short-term and tangible promise of minor, more achievable reforms.<sup>883</sup> The redesign

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<sup>881</sup> Coyle, 2003, quoted in McNeill, 2005: 24

<sup>882</sup> Angiolini, 2012; Scottish Prisons Commission, 2008

<sup>883</sup> Cohen, 1985: 272

is clearly the latter type, but it was the former that came often to mind in discussions of how the redesign and Scotland's penal field related to key political questions about Scotland and community justice.

### 3. The Right Profile

A common problem for community justice, discussed in both the academic literature (see Chapter 2) and in the interviews for this project, was the low profile of community justice among politicians, sentencers and the wider public.<sup>884</sup> This seems to be common across a number of jurisdictions and for much of the history of this part of criminal justice; it is ironic that prison – a mode of punishment which isolates from the wider public – should enjoy more public awareness. This deficit is a complex cultural and political problem, but when it has been acknowledged by the Scottish Government, it has been discussed only briefly and in simplistic terms (Chapter 6, Section 5 and 6). It is necessary instead to consider it as combining several distinct but interlinked issues – a lack of interest or awareness on the part of politicians, and a low level of awareness and legitimacy for community sanctions on the part of the wider public. There is also an apparent unwillingness on the part of some sentencers to impose community sanctions.

Within the Scottish penal field, community justice occupies a position of little prominence, with little cultural and symbolic capital in the penal field or awareness in the wider public sphere. It enjoys little public awareness and a minimal presence in popular culture and in the news media (where what coverage does appear tends to concern high-profile failures of supervision).<sup>885</sup> The news media tend also to report the most serious (and rare) crimes,<sup>886</sup> which almost always receive prison sentences, reinforcing the cultural predominance of prison. The lack of cultural representations of community punishments compared to other elements of the

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<sup>884</sup> Robinson, 2016a; Maruna and King, 2008

<sup>885</sup> Fitzgibbon, 2011

<sup>886</sup> Jewkes, 2011: 39-71

justice system (as highlighted by Mawby and Worrall in England and Wales)<sup>887</sup> means this area of criminal justice lacks cultural resources through which it can represent itself to the wider public in Scotland.

The deficit may have the effect of weakening public trust in community penalties, but this is not certain – research from England and Wales suggests that most members of the public believed probation was performing well, but would not be as quick to name it as a punishment.<sup>888</sup> Its effect is also not immediately clear; while there is no reason to suppose that low public awareness would affect the efficacy of community punishments, there is a democratic argument in favour of raising their profile – that citizens should be more aware of the punishments carried out in their name, and that this awareness could be valuable in raising political and civic awareness (including of the causes of crime).<sup>889</sup> Other research suggests that more democratic engagement, particularly deliberatively and at the local level, could help build public support for community justice and promote a more empathetic view of offenders.<sup>890</sup> There may be the potential for Scottish community justice to become part of a wider public conversation about criminal justice, as was attempted by at least one CJA.<sup>891</sup> Where deliberative democracy research has discussed criminal justice, this has tended to focus on restorative justice and problem-solving courts, arguing for their value in promoting ‘civic accountability’ and public deliberation.<sup>892</sup> The core activity of Scottish community justice – CJSW supervision and writing court reports – would perhaps not be as well suited to public engagement (and is subject to strict confidentiality rules), although the existing CPP framework offered an opportunity for more democratic engagement by the community justice system. The potential for such engagement is especially interesting in Scotland, where the Kilbrandon philosophy, and hence the structure of the system itself, are geared

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<sup>887</sup> Mawby and Worrall, 2013: 83-102

<sup>888</sup> Maruna and King, 2008

<sup>889</sup> Dzur, 2012: 63-83; Rowan, 2012: 52-3

<sup>890</sup> Hough, 1996; Barker, 2009

<sup>891</sup> Murray, 2014

<sup>892</sup> Dzur and Mirchandani, 2007; Dzur, 2003

towards responding to complex social needs – as was emphasised, nearly 50 years after the 1968 Act, by interviewees in this project.

As discussed further in Chapter 2, the low public profile of community justice can contribute to the so-called ‘paradox of probation’, wherein community sentences intended as diversions from the prison system become feed lines into it;<sup>893</sup> one way in which this happens, ironically, is through attempts to gain public legitimacy by ‘toughening’ the system’s approach to people who breach community sentences.<sup>894</sup> Without a strong profile of their own, community sentences become – at policy and individual sentencing level – merely ‘alternatives to imprisonment’. There appears to be little academic research on public perceptions of community justice in Scotland specifically, and this could be a fruitful area of future research.

### **Invisibility in the Scottish Penal Field**

Although the problem is common across a number of jurisdictions, the low profile of Scottish community justice is exacerbated by its structural characteristics. Because it is locally delivered and managed, and part of ‘generic’ social work, community justice in Scotland lacks a voice that can represent CJSW (and only CJSW) at the level of national government and politics,<sup>895</sup> and in the national media. However, this structural situation has also afforded connections to powerful social work and local government bodies (ADSW and COSLA) which enabled CJSW to resist forced integration with SPS and reorganisation along national lines.<sup>896</sup> Arguably, the involvement of such powerful bodies in the debate about the future of community justice counterbalances the lack of everyday awareness among politicians.

SPS and Police Scotland do have leadership and a political voice at a national level. The continued predominance of prison is particularly relevant for community justice, and highlights further complexities of Scotland’s penal field. From one perspective, SPS is the main ‘rival’ to community justice in the ‘marketplace’ of

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<sup>893</sup> Phelps, 2013

<sup>894</sup> Robinson and Ugwudike, 2012

<sup>895</sup> Miller and McNeill, 2013

<sup>896</sup> Morrison, 2015



punishment, and the success of community justice, particularly in the current context, is measured in how much it can reduce imprisonment (although as noted above the number of custodial sentences has increased at the same time as that of community sentences).<sup>897</sup> However, SPS under its new leadership has emphasised partnership and interdependency with community justice,<sup>898</sup> acknowledging that:

“It is an uncomfortable truth that providing opportunities in custody to build strengths, skills and abilities will be ineffectual if not accompanied with the development of positive networks, resources and opportunities in the community.”<sup>899</sup>

Partnership approaches between SPS and community justice services (sometimes involving CJAs) have been developed with this in mind, seeking also to bridge the ‘gap’ in supervision between custody and community.<sup>900</sup> Still, the position of SPS as the large and well-funded national organisation, in partnership with smaller and less well-resourced agencies, has tended to tip the balance of power.<sup>901</sup> SPS has arguably begun to encroach on the natural territory of community justice – it is now likely, for instance, that the ‘Community Justice Centres’ recommended by the Angiolini Report as a replacement for Cornton Vale will be run by SPS rather than partnerships of social work and health as originally envisioned.<sup>902</sup> SPS has symbolic capital in Scotland’s penal field linked to the position of prison in popular culture, and to more abstract characteristics – prisons are clearly spatially delineated and in some senses understood by the wider public.<sup>903</sup> SPS also has more resource capital – over three times the budget of the community justice system while dealing with fewer people.<sup>904</sup> The boundaries between the organisations and systems of community justice and prison are complex, and sometimes contain contradictory impulses. Both are influenced by extrinsic factors such as sentencing and financial

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<sup>897</sup> McNeill, 2016

<sup>898</sup> SPS, 2013: 20

<sup>899</sup> McConnell et al., 2013: 11

<sup>900</sup> Strachan, 2014; Young, Ayala and Buchan, 2016; SPS, 2013: 164-178

<sup>901</sup> Morrison, 2012: 211-14

<sup>902</sup> Nellis, 2016: 22; Angiolini, 2012: 29

<sup>903</sup> Mawby and Worrall, 2013; Robinson, 2016a

<sup>904</sup> Scottish Government, 2014e: 76

constraints. These aspects of this part of Scotland's penal field are likely further to hinder efforts to promote community justice as an alternative to prison, when the two seem (perhaps increasingly) to share some objectives.

One of the main themes in the interview data was a deeply felt desire for cultural change (Chapter 6) which would include a much higher profile for community justice and its institutions. This change can be understood as a reorientation of Scotland's penal field towards community justice – a question not just of structures but of culture and values. The historically very different values of criminal justice institutions are a potential obstacle to this, as they have also been to partnership approaches.<sup>905</sup> The restructuring of Scotland's community justice system will abolish the CJAs and create a new national agency (CJS), while handing most of the CJAs' former responsibilities to local partnerships. Although ostensibly at the centre of the post-Christie reorientation of Scotland's public services, and intended to work closely with the new local partnerships, CPPs also suffer from a lack of public awareness.<sup>906</sup>

Because of the structure and timing of the redesign consultation, and particularly the fact that CPPs already existed at the time – and thus could have some say about new responsibilities for local partners – the duty of raising the profile of community justice has fallen to CJS. Its position as a national agency could be advantageous in engaging with MSPs and the media, but less so in engaging locally with the wider public. The new body will be small and likely to have little in the way of resources. It will also have very little power over local partnerships, being unable to hold them to account or to direct outcomes, meaning that – as several interviewees remarked – it will be difficult for CJS to defend community justice or to be seen to hold agencies to account in the event of a major failure of supervision.

The way in which the burdensome and hard to understand 'champion' role has been dumped on a body that cannot refuse it, and the extremely limited explanation

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<sup>905</sup> Crawford, 1997: 105-11

<sup>906</sup> Audit Scotland, 2013

of the role given by the Government, suggest that the 'champion' role has not been properly worked out through the process of the redesign. There has been a failure to imagine what it would entail, and there is no reason to expect CJS to succeed in it. Increasing the use of community punishments by sentencers, meanwhile, would likely require further intervention in sentencing rather than alterations to community justice.

All of this leaves the prison still in a dominant position in Scotland's penal field. There is currently little sign that the 'paradox of probation' is unfolding in Scotland,<sup>907</sup> although the number of community sentences has increased sharply, mostly at the expense of fines.<sup>908</sup> The continued emphasis on social work values within the system would likely serve as a source of resistance against it becoming a feed line into imprisonment, but the lack of public profile and national leadership for community justice robs the Scottish penal field of a structural defence against such an eventuality.

## 4. Penal Distinctiveness and Prevention in Scotland

### A Distinctive History?

Chapter 2 considered the history of community justice in Scotland with particular reference to its connection to Scotland's distinct criminal justice identity. The current redesign policy is set in this context, but also considered in terms of what many interviewees described as the need for a major cultural change in Scottish criminal justice and policy. This is connected to the wider context of Scotland's development of distinctive approaches to other social policy.

Much of the historical work on penal policy in Scotland has highlighted its difference from that of England and Wales. Particularly since devolution, Scottish criminologists have charted policy convergences and divergences with England and Wales, with devolution leading counterintuitively to 'detartanisation' as the new

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<sup>907</sup> Phelps, 2013

<sup>908</sup> McNeill, 2016

Labour-led Parliament adopted increasingly punitive policies, followed by a period of ‘retartanisation’ from 2007 as the SNP government sought to reaffirm Scotland’s distinctiveness in this area.<sup>909</sup> Central to this distinctive ‘penal identity’ is the 1964 Kilbrandon Report and the associated ‘Kilbrandon philosophy’.<sup>910</sup> As well as producing the Children’s Hearings System, Kilbrandon led to the 1966 report *Social Work in the Community* and thence the 1968 Social Work (Scotland) Act. The 1966 report’s development of the Kilbrandon philosophy hinged partly on the idea that an approach which minimised the stigma of offending could help to reduce social inequality in Scotland.<sup>911</sup> There is not a straightforward relationship between Scotland’s penal identity and the redesign of community justice in Scotland, but both are connected to bigger questions about Scottish policy and national identity.

One distinctive feature of Scottish penal policy – although one also considered in England and Wales around the same time<sup>912</sup> – has been the structure of community justice. The inclusion of probation in generic social work enacted the Kilbrandon ethos in the structure of Scotland’s penal field, making an explicit statement of intent – to treat people with convictions as people with unmet social welfare needs. Although now over fifty years old, and not without problems of its own, this idea continues to shape Scottish practitioners’ perceptions of the function of community justice,<sup>913</sup> as the interviews in this project also show. As McNeill and colleagues found, the CJSW habitus is characterised by welfarist and Kilbrandon-derived principles, which produced a ‘hysteresis’ effect of late and mismatched adaptation to the increasingly risk-based discourse that began to emerge in the early to mid-2000s. This fed into the sense of alienation from other parts of the system,<sup>914</sup> although Fenton (more recently) has found this starting to change as younger staff, who experience less ethical stress in relation to such ‘neoliberal’ developments in

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<sup>909</sup> McAra, 2008; Mooney et al., 2015

<sup>910</sup> Kilbrandon, 1995 [1964]

<sup>911</sup> Brodie et al., 2008

<sup>912</sup> Nellis and Goodman, 2009: 205

<sup>913</sup> Fenton, 2012: 952

<sup>914</sup> McNeill et al., 2009: 434

practice, enter the CJSW workforce (as Mawby and Worrall also found with their ‘offender manager’ ideal type in English/Welsh probation).<sup>915</sup> The Scottish restructuring is unlikely in itself to affect CJSW practice or habitus, although CJSW could potentially do so through the development of national staff development programmes, for which it will have responsibility.

The redesign, as a number of interviewees noted, is a structural change and has little to do with penal philosophy. Unlike in the previous restructuring, where the possibility of a Correctional Service for Scotland raised the alarming spectre of a prison-dominated service and a ‘detartanising’ move towards ‘correctionalism’,<sup>916</sup> the current redesign has not been viewed as a danger to the social work values of community justice in Scotland, at least not since the decision, early in the process, that CJSW will keep its place in the community justice field. In community justice restructuring, it is in fact England and Wales that has diverged the most – from Europe as well as Scotland – in the part-privatisation of its probation services.<sup>917</sup>

As discussed above, interviewees often claimed that there needed to be major cultural change in Scotland, which would include the reorientation of Scotland’s penal field away from imprisonment and towards community penalties. This dramatic shift also had to do with the need for a cohesive penal policy – one in which all parts of the system worked together to achieve the same high-level policy aims (reducing reoffending and imprisonment), rather than fulfilling their own proximate short-term goals and obligations. This perceived need for cohesion also had to do with geography; the fragmentation and inconsistency of service provision in Scotland, which is partly a function of (without being necessitated by) its geographical diversity, was a further hindrance to this.<sup>918</sup> However, a major tension exists between cohesion at a national level and the perceived need for a system that is responsive to the local needs and conditions, and the nationalisation of Scottish

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<sup>915</sup> Fenton, 2014a; Mawby and Worrall, 2013: 33-6

<sup>916</sup> McNeill, 2005

<sup>917</sup> Robinson, 2016b

<sup>918</sup> Miller and McNeill, 2013; Angiolini, 2012

policing was seen by many interviewees as a cautionary example of the dangers of overcentralisation and disengagement from local communities (Chapter 6, Section 4).

### **Austerity is the Mother of Prevention**

The current redesign of community justice cannot be constitutive of Scotland's penal identity in the way that generic social work has been, but it is implicated in complex ways with other distinctive aspects of recent Scottish social policy. Scotland has been described as having a distinctive social welfare tradition, with roots in the Reformation, continuing through the Kilbrandon Report and appearing in the present day in policies such as *Getting It Right for Every Child*.<sup>919</sup> Recently this has been expressed in Scotland's response to public spending cuts imposed by a Conservative-led (and, latterly, Conservative) Westminster government that is unpopular in Scotland, and in the campaigning for Scottish independence leading up to the 2014 referendum.<sup>920</sup> As a Scottish nationalist party with comparatively little experience in power, the SNP has sought to assure voters of its "managerial competence" to run Scotland since its Holyrood election victory in 2007 – including but not limited to in criminal justice policy.<sup>921</sup> The SNP government – which had an overall Parliamentary majority between 2011 and 2016 – has been both empowered and required to demonstrate this competence, while also mitigating the impact of the cuts in a distinctively Scottish way which also seeks to reduce inequality. This has led the Scottish Government to pursue the reorientation of public services following the recommendations of the 2011 Christie Report: community empowerment, integrated service provision, the prevention of negative outcomes and more efficiency through shared resources.<sup>922</sup> It is likely that the Christie Commission will come to be seen as a distinctive model for Scottish public service delivery.<sup>923</sup> The reforms entail placing CPPs at the centre of reform efforts and

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<sup>919</sup> Smith, 2014: 1-3; Mooney and Scott, 2016; McAra, 2008

<sup>920</sup> Mooney and Scott, 2016

<sup>921</sup> MacLennan, 2016

<sup>922</sup> Christie, 2011: 1

<sup>923</sup> Smith, 2014: 3

attempting to strengthen them through the 2015 Community Empowerment Act.<sup>924</sup> The integration of health and social care within local authorities under the Public Bodies (Joint Working) Act has been a flagship policy for prevention and integrated resource-sharing services. The prevention principle is potentially of enormous value, morally and financially, and a full shift of Scottish public services towards prevention could be a revolutionary – and distinctive – step for Scotland.

Community justice is an unusual position in relation to prevention, an issue raised in the debate leading up to the 2016 Community Justice (Scotland) Act. The Government has taken the line that community justice services should be defined, fairly traditionally, as secondary or tertiary prevention – concerned with preventing *further* offences after conviction – despite arguments from some MSPs that the system should become involved with ‘primary prevention’ of crime.<sup>925</sup> By contrast, England and Wales has distinguished itself by using the need to reduce costs as a rationale for marketising probation services.<sup>926</sup> Despite the potential value of applying community justice expertise to the primary prevention of crime, this would likely entail significant additional costs, without the degree of control over outcomes that the National Objectives and Standards have brought; given the pressures on social work budgets, money allocated for prevention could easily be diverted to core CJSW business. In addition, prevention savings are not easily quantified and this is perhaps especially true of crime (Chapter 5, Section 5). Critical perspectives on community approaches to crime control, particularly Cohen’s *Visions of Social Control*,<sup>927</sup> have highlighted the fact that the movement of criminal justice work ‘out’ into the community means the stigmatising effects of contact with the justice system are more widely spread. This ‘net-widening’ would be a significant potential disadvantage of involving community justice in primary prevention.

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<sup>924</sup> Audit Scotland, 2013

<sup>925</sup> SP OR 19 November 2015

<sup>926</sup> Robinson, 2016b

<sup>927</sup> Cohen, 1985

As Chapter 3 has argued, the new justice responsibilities for local partnerships will be kept separate ‘mainstream’ community planning, in what is both an understandable effort to shield community justice from the failings of CPPs and a missed opportunity to bring together the community justice and community empowerment agendas. However, the new framework could be an opportunity for community justice to develop valuable links to relevant ‘primary prevention’ services such as Community Safety Partnerships, from which CJAs were isolated.<sup>928</sup>

As McAra notes, “Scotland is a country of many contradictions”,<sup>929</sup> and its penal policy is not as straightforwardly distinctive or welfarist as the importance accorded to the Kilbrandon philosophy might first suggest.<sup>930</sup> Its imprisonment rate is close to that of England and Wales,<sup>931</sup> and the prison population has mostly continued to grow during this time.<sup>932</sup> Scotland continues – despite its famously enlightened approach to youth justice – to have one of the lowest ages of criminal responsibility in Europe,<sup>933</sup> although this will soon change.<sup>934</sup> The apparent ‘retartanisation’ of the SNP years has been marked by some illiberal justice policies,<sup>935</sup> including the proliferation of stop and search of young people on a scale sometimes well beyond the better-known excesses of English police.<sup>936</sup> In reference to wider questions about social welfare and equality, Mooney and Scott argue that “While much is made of Enlightenment ideas of progress, universality and rationality, in the context of a hugely unequal, polarised and class, gender and ethnically divided Scotland, such ideas will remain simply as rhetoric if these social inequalities are not challenged.”<sup>937</sup> A reorientation of Scotland’s penal field towards community justice and away from imprisonment would be a dramatic step for the further development

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<sup>928</sup> Henry, 2009b

<sup>929</sup> McAra, 2008: 500

<sup>930</sup> Croall, 2006

<sup>931</sup> Walmsley, 2015

<sup>932</sup> Scottish Government, 2015f

<sup>933</sup> McAra, 2008: 483

<sup>934</sup> McAra, 2016: 7

<sup>935</sup> MacLennan, 2016

<sup>936</sup> Murray and Harkin, 2016

<sup>937</sup> Mooney and Scott, 2016: 250



of Scotland's 'penal identity' as a jurisdiction with more welfarist and community-oriented approaches to crime and punishment than England and Wales. Although this was an idea expressed by many interviewees, it is not what the current redesign will bring about. This structural reconfiguration represents a failure of imagination in Scottish penal policy that is at odds with the idea of a distinctive, welfarist penal identity.

## 5. Conclusion

This chapter has described the composition of Scotland's community justice field, and how the redesign will alter it, drawing on two overarching concepts from the fieldwork interviews: first, the idea that the structure of that field is implicated in the effectiveness of community justice, and that the redesign was intended to improve it, and second, the idea that a more ambitious and conceptual shift in Scottish criminal justice was needed, or at least desirable, and that the current restructuring did not provide this. These informed the discussion about a major issue for community justice in this and other jurisdictions – its low public profile – and how this is connected to the unique structure of Scottish community justice. This thesis has argued that, while a higher profile for community justice is both necessary and desired by many, the current restructuring has avoided the question of how to raise that profile.

A further key aspect of any discussion of Scottish justice policy is the idea that Scotland's political culture and penal policy are distinct from other countries, particularly England and Wales – with the 'Kilbrandon philosophy' seen as emblematic of this distinction. As well as continuing to influence much of the content of the discussion about community justice and its purposes, the structural legacy of Kilbrandon – generic social work within local authorities – is something the redesign both responds to and continues. This chapter has highlighted connections and similarities to other elements of Scottish social policy which can be described as distinctive, particularly the decision to mitigate the impact of austerity cuts by reorienting social services towards prevention and community partnership.

This chapter has considered some key findings from both the empirical and the literature research parts of this project, connecting themes from the interview discussions to the wider literature and setting them in the theoretical framework of the penal field. It now returns to the original research questions:

1. What historical processes have structured the Scottish community justice field?
2. What are the likely effects of the reforms on the structures of this field?
3. How will the habitus of people working in different parts of community justice adapt to these structural changes?

This final section answers these questions, drawing on the range of research detailed in the thesis.

## **Historical Processes**

The main historical processes that have structured Scotland's community justice field are the dynamics of local and central control, the development of Scotland's 'distinctive' penal identity, the growth of community- and partnership-oriented approaches to crime and other social problems in Scotland and elsewhere in the UK, the imposition of austerity policies from Westminster following the financial crisis and the longstanding legitimacy problem of community penalties.

As Chapter 2 argued, the main structural features of Scottish community justice – the position as part of generic social work, within local authorities, rather than part of a national criminal justice institution, were laid by the 1968 Social Work (Scotland) Act. This is a structural expression of the 'Kilbrandon philosophy', and thus a major part of Scotland's distinctive penal identity. The empirical part of this project found evidence that the Kilbrandon ethos – the idea that offenders should be treated as adults with unmet social needs – continues to inform practitioners' views of their work.

It should be noted that local control had been a distinctive part of the Scottish system since its inception,<sup>938</sup> and that a similar generic social work system was considered in the 1960s in England and Wales.<sup>939</sup> In this, as in other areas, Scotland was perhaps less distinctive than it might appear, but the idea of forging and restating a distinctive penal identity for Scotland – especially a less punitive and more communitarian one than that of England and Wales – continued to inform the development of community justice in Scotland.

More recently, Scotland has – like some other jurisdictions – responded to high imprisonment rates by trying to increase the use of community penalties. In 1989, prison disorder connected to overcrowded conditions led the Scottish Office to ring-fence funding for social work with offenders.<sup>940</sup> Since 2007, the SNP government appeared to be attempting to reemphasise Scottish penal distinctiveness by reversing the ‘detartanisation’ of the Labour years (although not completely or straightforwardly).<sup>941</sup> The publication of *Scotland’s Choice* brought a new impetus to reduce the prison population, then at its highest.<sup>942</sup> The result was the simplification of community sentences, creating the Community Payback Order, shortly followed by the community justice redesign. However, evidence from Scotland’s history and other jurisdictions suggests that community sentences do not function well as a ‘lever’ for reducing imprisonment rates, the current restructuring is anyway disconnected from sentencing. This is connected to a general, long-term cultural problem – a lack of legitimacy for community justice in general, especially compared to prison. Although community sentences are more common and in many respects preferable, prison enjoys more public awareness and legitimacy. By allocating to CJS a difficult ‘champion’ role, without any explanation of how it would be fulfilled, the redesign has made it very difficult to address this issue.

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<sup>938</sup> City of Glasgow, 1955

<sup>939</sup> Younghusband, 1978: 104-5

<sup>940</sup> Rifkind, 1989

<sup>941</sup> MacLennan, 2016

<sup>942</sup> Scottish Prisons Commission, 2008

Although the public profile of community justice probably has little connection to its effectiveness or to sentencing practices, it is of democratic value.

Since ring-fenced CJSW funding was introduced – a period which has seen the reorganisation of Scotland’s local authorities, and the creation of its national Parliament – conflict and compromise between local and national government has been vital in shaping the structure of the field on three occasions: the creation of the Tough Option groupings in 1998, CJAs in 2005-7 and now the development of the two-tier system. This compromise also affected the length of the recent consultation, which was identified in empirical data as contributing to the disengagement of partners from the system.

The imposition of austerity cuts by the Westminster government – both unpopular in Scotland – has required the SNP to develop a distinctive approach to public service reform. Austerity has also heightened the need to reduce the costs of reoffending and imprisonment, and entailed further financial pressures on community justice, especially TSOs. The wider reform programmes have also been an important contextual factor: culturally, through the emphasis on partnership and the idea of community justice as a preventive service, and potentially structurally, through the integration of CJSW with health and social care in some areas. As part of the reform, CPPs are to take a more prominent role in general, while also potentially becoming involved with community justice, although community justice is being kept separate from the community planning framework (Chapter 3). Consideration of CPPs has also highlighted issues common to community justice partnerships and other community partnership approaches.

The primary structural characteristics of Scotland’s community justice field were established in 1968, and continue to exert major structural and cultural influence. More recent pressures have produced several restructurings, but all have fallen short of the kind of major cultural change hoped for by many practitioners in the system – including the most recent redesign.

## Restructuring the Field

After lengthy consultation and refinement, the details of the policy are now clear and the necessary primary legislation has been passed.<sup>943</sup> The CJAs will close at the end of March 2017, after just over a decade of operation. Their responsibilities will have passed by this point to 32 local partnerships, which include local authorities as well as other justice and public sector organisations.<sup>944</sup> While the initial intention was to pass these responsibilities directly to CPPs (but with separation from their main community planning work), it now appears local authorities will instead set up justice-specific partnerships which *might* connect with CPPs – the Government’s ‘dirigiste’ approach allowing a degree of discretion which will probably increase local variation in community justice structures. As part of efforts to smooth the transition to the new system, the 2016-17 financial year is a ‘shadow year’ in which CJAs operate alongside the new partnerships, building relationships with them to familiarise them with key issues and ensure their outcomes are aligned to those in CJA plans.

The restructuring will remove the element of political and electoral accountability that the CJA system aimed to inject into community justice through the inclusion of elected members.<sup>945</sup> This novel aspect was not very successful in increasing political accountability or awareness, but can be seen as a step towards resolving a question about the role of politics and democracy in the justice system – which the redesign will reverse rather than building on.

One of the Angiolini Report’s criticisms was that Scotland’s community justice field was a “cluttered landscape” of many small organisations.<sup>946</sup> However, by switching from eight CJAs to 32 new partnerships, the redesign will increase the number of small organisations and partners in the system. Partnership working will therefore require more links between individuals in different agencies and areas, particularly

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<sup>943</sup> 2016 Community Justice (Scotland) Act

<sup>944</sup> *Ibid.*, s.13

<sup>945</sup> Morrison, 2012: 203-05

<sup>946</sup> Angiolini, 2012: 81

if projects that work across local boundaries are to be continued. It is likely, as one interviewee remarked, that at least some of the relationships between local authorities that developed under the previous systems will persist, and old divisions could also remain. The proliferation of agencies involved is seen by third-sector providers as a particular source of concern, because it will increase further the significant time and effort expended in negotiation with public sector contractors.

The new national body will be established in October 2016. With a board of 5-8 members and a staff of approximately 20, it will be about the size of the eight CJAs put together.<sup>947</sup> The board's composition is not yet known; there is potential for it to promote more desistance-oriented approaches if it includes voices from academic criminology and/or former service users as well as the justice sector. CJS will have little power over the local partnerships – it was agreed during the consultation that there would be no accountability relationship<sup>948</sup> – but will be able to report on partnerships' progress against their reducing reoffending plans and provide support and advice. The Act enables CJS to compel the partnerships to publish its reports on them, and to require partnerships to notify CJS of their responses,<sup>949</sup> and for CJS to gain further powers in future.<sup>950</sup> CJS will be able to commission some services at nationally, but it is expected most will be commissioned locally by the partnerships.<sup>951</sup> CJS will also be the closest thing this part of the system has to a national 'voice', although with less power and less connection to 'frontline' work than the leadership of prisons or police. This and other factors (Chapter 6) are likely to hinder its role as a 'champion' for community justice. The body will also contain a new 'Hub for Learning, Innovation and Development', which will have the role of sharing best practice, staff development and carrying out some research in accordance with the national strategy.<sup>952</sup>

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<sup>947</sup> Scottish Government, 2015j: 12

<sup>948</sup> Scottish Government, 2014b: 7

<sup>949</sup> 2016 Community Justice (Scotland) Act, s. 26 (3)

<sup>950</sup> *Ibid.*, s. 4 (5)

<sup>951</sup> *Ibid.*, s. 31

<sup>952</sup> Scottish Government, 2015j: 14-15

The redesign was meant to rectify some of the structural problems with Scottish community justice considered above; it can be expected to eliminate some of these problems, but also create some of its own – while failing to address some longer-term and more important issues.

## Habitus and Adaptation

Although a national CJSW service was briefly considered,<sup>953</sup> it soon became clear that CJSW would remain where it was in local authority structures. It is not likely that the redesign will dramatically affect the habitus of CJSW practice. There is, though, the potential for some change to occur through the national training programmes for which CJS will have responsibility. At this stage, it is too soon to determine how these programmes will affect frontline practice, and the extent to which it will be possible for them to do so; it certainly could not be considered a necessary consequence of the redesign *per se*.

For all parties involved, the essentially fragile nature of partnerships in Scotland, and the multiplicity of small agencies, will mean that adapting to the new system will require developing new working relationships. Third sector staff have already had to adapt to the shift to more conditional funding, and to additional financial pressures resulting from public sector budget cuts; the redesign will require further adaptation in this direction as the number of contracting bodies increases (and the financial pressures are unlikely to lessen).

For CJA staff the picture was different – they will no longer have jobs after the CJAs close. For some time, they have been using the partnership-oriented practice developed through working in CJAs to make links with local partners and prepare them for their new responsibilities, in order to minimise the disruption of the transition. Local partners will have to take on CJAs' responsibilities for planning community justice in their areas; some will have to build new working relationships with justice bodies. However, by keeping justice planning separate from community planning, the redesign avoids much change to mainstream CPP practice. For

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<sup>953</sup> Scottish Government, 2012a: 30

partners, the process of community justice planning will mostly be similar to the types of work they already do with CPPs – meetings between different organisations.

In relation to the redesign, there is less to say about adaptation and practice than about historical developments and the structure of the penal field. For the most part the new system will entail more of the same work rather than anything qualitatively different. As was argued above, the redesign has aimed to minimise disruption and in doing so has limited the possibility of changing community justice practice.

### **Final Remarks**

When this project began, it was far from clear what the Scottish community justice reforms would involve, or where exactly the research would lead. This project, the only empirical study of the current redesign of Scotland's community justice system, has set the policy in the context of the system's history and of power dynamics in Scotland's community justice field, as well as considering the relationship between criminal justice, local democratic structures, community partnership approaches to crime control, and the redesign policy. Using thematic analysis of qualitative interviews with practitioners and politicians, it has highlighted structural problems with Scotland's community justice field, while arguing that the redesign will only solve some of these problems, and is likely to create its own – it will be at most a step towards a resolution.

A key argument in the interview data, connected to Scotland's distinct penal identity in the context of debate about Scotland's future, was that a major cultural change is needed in Scottish criminal justice. The thesis has drawn on this and other evidence to argue that such a change is necessary to fulfil the potential of community justice and reduce Scotland's reliance on imprisonment. This is connected to the project's most important implication for Scottish community justice policy – the importance of imagination. Despite the initial rhetoric of a new vision



for community justice,<sup>954</sup> the restructuring policy rapidly became mired in structural questions.<sup>955</sup> Future community justice policy should proceed with the possibility of “penal reimagining” in mind;<sup>956</sup> consideration should be given to asking questions not just about structure but about what the system *should* do and why.

The thesis has also highlighted particular aspects of the redesign with more concrete lessons for future policy. The length of time involved in the redesign consultation process has produced a long period of uncertainty, which has had disruptive effects – particularly for CJAs, which will have spent nearly half their operating lives dealing with the policy by the time it takes full effect. The slowness of the redesign is understandable, given that hasty compromise contributed to the structural problems with CJAs;<sup>957</sup> however, the current policy has arguably made the opposite error, keeping the field in a long, disruptive period of enforced uncertainty. This research has also highlighted that despite the emphasis on developing robust structures for partnership working, partnerships in Scotland remain essentially fragile and contingent, and the restructuring is unlikely to ameliorate this.

This thesis also has implications, and raises potential areas and questions, for academic research on community justice in Scotland and elsewhere. It has demonstrated the theoretical value of the ‘penal field’ as a way of thinking about penal change in Scotland, a jurisdiction notable for its complex network of institutions involved in community justice.<sup>958</sup> Future research could make use of the penal field in researching other areas of Scottish criminal justice, or community justice in other jurisdictions, with particular reference to policies intended to restructure these fields. As suggested above, the boundaries and interfaces between community justice and SPS could be one fertile area for this work. The thesis has also demonstrated the methodological value of gathering data from multiple perspectives – by bringing together accounts from practitioners, policymakers and

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<sup>954</sup> Scottish Government, 2012a

<sup>955</sup> Morrison, 2015: 162

<sup>956</sup> Nellis, 2016

<sup>957</sup> Morrison, 2012: 148-157

<sup>958</sup> Angiolini, 2012: 81

politicians, it has been able to offer views of different parts of Scottish community justice, and to consider key points of similarity and difference. This thesis has also traced connections between the restructuring of community justice and other policies affecting the structure of local public services. Future research could consider other interfaces between Scottish local government, prevention and criminal justice, particularly in light of recent arguments for giving local authorities more control of policing.<sup>959</sup>

The thesis considered the structural functioning of CJAs, and the experiences of CJA staff. These institutions are still fairly new, and serve as an interesting example of new justice institutions which do not work with offenders, but have complex administration and planning responsibilities. CJA staff, particularly Chief Officers, exemplify in some ways the new partnership professionals described by Hughes,<sup>960</sup> and their accounts chimed with Cohen's description of technocratic and privileged managerial crime control professionals, who nonetheless have somewhat critical views of criminal justice and innovative ideas about resolving the problems and contradictions within it.<sup>961</sup> Future research could take a similar approach, although perhaps with a more ethnographic method (similar to Souhami's work on youth justice agencies),<sup>962</sup> to the new community justice system. This could include studying local partners' adaptation to new responsibilities, but would perhaps be especially fruitful in studying Community Justice Scotland, where it would be possible to observe the creation of the organisation from scratch. It could consider how the body approaches its challenging work and the process of developing a distinct institutional identity (which data from this project suggest was an early challenge for CJAs).

In discussing the problem of legitimacy and awareness, this thesis has highlighted the need for further research on public perceptions of community justice in

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<sup>959</sup> Whitaker, 2016

<sup>960</sup> Hughes, 2007: 82-109

<sup>961</sup> Cohen, 1985: 164; 161-196

<sup>962</sup> Souhami, 2007

Scotland, beyond the limited work on this by the Scottish Government when developing the CPO.<sup>963</sup> Such research could be particularly valuable in investigating whether and how perceptions about justice are connected to perceptions of national identity in post-referendum Scotland. This is connected to another potential area of future research – this thesis has shown a need for cultural change that goes beyond restructuring community justice to reorient Scotland’s penal field. Some jurisdictions have succeeded in reorienting their penal field away from imprisonment – in particular, Finland and other Nordic countries have been cited as examples of successful penal reorientation in polities similar to Scotland.<sup>964</sup> While there is significant comparative research on why some countries have experienced the ‘penal turn’ more than others,<sup>965</sup> and a growing body of comparative community justice scholarship,<sup>966</sup> there is not presently any academic comparative research examining the reasons why Scotland specifically has not had the same success, and what specific lessons it could learn from other jurisdictions.

The above is a non-exhaustive selection of potential implications of the research for policy (particularly justice policy) in Scotland, and for future academic research in and around this field. Ultimately, this thesis has shown that the circumscription of Scotland’s penal field has created missed opportunities to reimagine structurally and culturally the potential of community justice, and these are likely to limit its future usefulness in reducing reoffending and imprisonment. In doing so, the thesis has argued that the redesign is a structural change – its direct significance limited, its direct results likely impermanent<sup>967</sup> – but that it is closely connected to a range of questions about justice, policy, government and national identity in Scotland.

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<sup>963</sup> Scottish Government, 2007

<sup>964</sup> Scottish Prisons Commission, 2008: 23

<sup>965</sup> Savelsberg, 1994; Lappi-Seppälä, 2008

<sup>966</sup> Robinson and McNeill, 2016; McNeill and Beyens, 2014

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## Appendix A: Glossary of Abbreviations

ADSW: Association of Directors of Social Work  
ASBO: Antisocial Behaviour Order  
CAQDAS: Computer-Aided Qualitative Data Analysis  
CCPOA: California Correctional Peace Officers' Association  
CDRP(s): Crime and Disorder Reduction Partnership(s)  
CETS: Church of England Temperance Society  
CJA: Community Justice Authority  
CJS: Community Justice Scotland  
CJSW: Criminal Justice Social Work(er)  
COPFS: Crown Office and Procurator Fiscal Service  
COSLA: Convention of Scottish Local Authorities  
CPO: Community Payback Order  
CPP: Community Planning Partnership  
CRC: Community Rehabilitation Company  
CRP: Crime Reduction Programme  
CSO: Community Service Order  
CSS: Correctional Service for Scotland  
DTTO: Drug Treatment and Testing Order  
EM: Electronic Monitoring  
ESRC: Economic and Social Research Council  
HMP: Her Majesty's Prison  
MAPP: Multi-Agency Public Protection Arrangements  
MSP: Member of the Scottish Parliament  
Nap: National Association of Probation Officers  
NHS: National Health Service  
NOMS: National Offender Management Service  
NPS: National Probation Service  
OASys: Offender Assessment System  
PSP: Public Social Partnership  
PSR: Pre-Sentence Report  
RLO: Restriction of Liberty Order  
RMA: Risk Management Authority  
RRP: Reducing Reoffending Programme  
RRP2: Reducing Reoffending Programme, Phase 2  
SAO: Supervised Attendance Order  
SER: Social Enquiry Report (see PSR)  
SNP: Scottish National Party  
SOA: Single Outcome Agreement  
SPS: Scottish Prison Service  
SWSG: Scottish Office Social Work Services Group  
SWSI: Social Work Services Inspectorate  
TR: Transforming Rehabilitation  
TSO: Third Sector Organisation

## Appendix B: Sample Letter of Approach

*This is a skeleton letter which was tailored to specific people and agencies.*

Dear [name],

I'm a PhD student in Criminology and Criminal Justice at the University of Edinburgh, supervised by Professor Richard Sparks and Dr Richard Jones. My project is about the current restructuring of the community justice system in Scotland. In particular, I'm concerned with the historical and political processes that have led to this policy, with the ways in which people who work within different parts of the community justice system are experiencing them and how their practice is changing and adapting to new structures.

Following an extensive literature review, I recently began the empirical phase of the project. This is intended to consist of a series of semi-structured interviews with people working in various parts of community justice about their views and experience of these policies. So far I've spoken to [some people from particular institutions], and these interviews have been really interesting and informative.

However, I'd be keen to speak to [others] to get more of a range of perspectives. [One of my previous participants suggested that you might be a good person to contact about this.] I would be really interested in speaking to you and/or members of your team, particularly given [certain details of particular interest about your organisation]. My interviews involve asking participants about their day-to-day work, how they have experienced the Scottish Government's consultation process and their experiences of practice and partnership working, in relation to the restructuring of community justice and preparing for the abolition of CJAs after only a few years in place.

I have full ethical approval from the University, and I would of course make sure that nothing that could be used to identify you or any other participants would appear in the final thesis. I would also be happy to provide a feedback summary of my research to [your organisation], once the empirical stage is complete. I fully understand, of course, that you and your staff must be very busy and might not have time for an interview. In either case, I would really welcome any advice you might have about [the project].

Many thanks for taking the time to read this - I'm very much looking forward to hearing from you.

Best wishes,

Jamie Buchan  
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## Appendix C: Sample Interview Guide

*This interview guide was used when conducting my interview with the civil servant in the study. As this was the last interview conducted, this is the most well-developed of the guides.*

### **Interview Guide for Justice Directorate/Civil Service Staff in Scotland**

#### **About the Respondent**

- Name (for purposes of consent form only)
- Job title and how long held.
- Previous jobs within and outside organisation, where relevant. Policy/justice background?
- The participant's job and what it involves on a daily basis. What their time is spent doing, what the core responsibilities are.

#### **The CJA Model**

- Feelings/opinions on CJA system in general – strengths and weaknesses.
- Success/failure in terms of partnerships and accountability. Angiolini/CWO report findings.
- Particular CJA governance issues (see Morrison, 2012):
  - o Divided political/CJA loyalties of councillor members
  - o Funding/control discontinuity
  - o Power imbalance (between CJSW and SPS)
  - o Performance management and assessment (Audit Scotland, 2012)
- (If relevant) talk about participant's experiences of implementation of/transition to CJA system, and subsequent 'bedding in'.
- Transitioning to the Community Payback Order? (if relevant)
- The decision to redesign community justice –
  - o When and how did this come about? How long was it on the agenda?
  - o The reasons for this.
  - o Participant's own involvement and input?

#### **Redesigning Community Justice**

- The Reducing Reoffending Programme – thoughts/opinions on this.
- Talking about the restructuring process – was the participant involved in the consultation and what they were doing. Expected outcomes.
- Different organisations in the consultation – representation?
- Discussions with CJA staff?
- Expectations for the new CPP/national system – advantages and disadvantages. Expected effects on issues discussed above.

- Community Planning Partnerships – the interface between these and RCJ?
- What kind of preparations are being made for the changeover?
- Public Social Partnerships. Thoughts/ideas/experience to do with these? What role for them in the new system?
- Ring-fenced funding – opinions about and experience with of. Help or hindrance to partnership working? The funding project within RRP2 – progress, reasoning, relevance.
- Decision to maintain the RMA alongside national body – reasoning and process of decision.

### **Policy and Legislative Context**

- Process of drawing up legislation – relationship to policy cycle?
- Relation to other policies in justice sector (Police Scotland, CPOs, prisons, court reform?)
- Community Empowerment Bill – CPPs, criticism of them (Audit Scotland) and response to this. CJ redesign and the effect on CPPs?
- Health and social care integration – possible effect on CJSW?

### **Adapting Practice**

- Experience of working here – *whether and in what way it is like or unlike it used to be.*
- Preparations within workplace for the redesign.
- How individuals from different partners might be feeling about the restructuring.
- Has there been much in the way of change in terms of everyday work?
- Communicating differently? Have official targets/aims changed?
- Working hours – any changes and possible reasons for this. How much time does this project take up, in comparison to other activity?

### **Future Plans**

- Future plans – staying/going/changing position within the same organisation?
- The future of criminal justice social work/community justice? Further reforms?

### **Anything else the participant might wish to discuss.**

## Appendix D: Acknowledgments

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