

**Designing a System of
Restorative Community Justice
in Northern Ireland**

oooOOOooo

A Discussion Document

**Jim Auld
Brian Gormally
Kieran McEvoy
Michael Ritchie**

December 1997

© 1997 J. Auld, B.Gormally, K. McEvoy, M. Ritchie

Published by the authors.

Copies of this report can be obtained from 3 Lennoxvale, Belfast BT9

**Designing a System of Restorative
Community Justice in
Northern Ireland:
*A Discussion Document***

Auld, J. , Gormally B., McEvoy K. & M. Ritchie

TABLE OF CONTENTS

Chapter One: Introduction	1
Chapter Two: Definition of Crime, its Causes and Ways it can be prevented.	7
Chapter Three: International Examples of Community Justice	11
Chapter Four: Justice Systems in Ireland: The Struggle for Legitimacy	22
Chapter Five: Human Rights, Humanitarian Law and Informal Justice: An International Law Perspective	30
Chapter Six: Crime Prevention in Local Communities	37
Chapter Seven: Notes of the Residential	40
Chapter Eight: A Model for Community Justice	47
Appendix: A Draft Community Charter	59

1. Introduction:

the potential for restorative justice in Northern Ireland

1.1 *A process to seek an end to punishment beatings in republican areas*

This report arises out of our attempts to devise a viable non-violent system of community based justice to replace the existing systems of punishment beatings and shootings in Northern Ireland. While many individuals (including the authors) and organisations have expressed their implacable opposition to such activities, there have been comparatively few concrete proposals as to what could be used to supplant the violent systems which have evolved in Republican and Loyalist areas. Often, critics of punishment beatings and shootings had little to suggest by way of an alternative other than a reliance upon the formal criminal justice system. As critical academics and criminal justice practitioners with a shared view of the limitations of *any* formal justice system, this appeared to us an inadequate response to the clear need for more effective responses to anti-social crime.

While the model proposed here was developed in consultation with community activists from mainly Nationalist areas, (as well as a range of professional bodies and individuals interested in this issue) it is our view that it has the potential for application in any area of Northern Ireland, the Irish Republic or Britain. In Northern Ireland, there is considerable interest in establishing projects based upon the principles of Restorative Justice involving complaint investigation and offender/victim mediation, community service, intensive training and peer education for offenders focused upon their offending behaviour. For example, the Ulster Quaker Service Committee has for a number years been involved in conducting research, promoting discussions and encouraging practical projects based upon Restorative Justice principles. We hope that the model proposed in this report might complement that developed and ongoing body of work.

While we suggest a particular model in this report, we are conscious that any such system will be subject to the exigencies and demands of the particular community in which it is based. We do however set out a series of parameters within which we believe a system of community justice must operate in order to be both legitimate and effective. These include operating within the law, non-violence, respect for the human rights of offenders, accountable community involvement, restoration of both victim and offender, proper training of those involved in the administration of the system and a range of other requirements. Within those parameters, it is only right and proper that local communities themselves should decide upon the detailed operation of the system in their communities.

After an extensive search of the academic literature, and consultation with academic and practitioner colleagues, we ultimately concluded to chose a model based upon the principles of *Restorative Justice* for a number of reasons. Restorative Justice appeared to us a useful framework within which to address the various needs of victims, offenders and the community. It has emerged as one of the most important counter to the punishment or retribution orientated formal justice system in criminal justice debates in the past twenty or thirty years, and therefore it seemed logical to us that it might form the basis of an alternative to the arguably even more punitive informal systems of punishment beatings and shootings.

1.2 What is Restorative Justice ?

Restorative Justice is an approach to dealing with the harms created by crime which views such problems as a breakdown in relationships and seeks to repair those relationships. It views criminal conflict as an injury to personal relationships and the property of those involved (Christie 1977). It seeks to replace the traditional focus of "retributive justice" on the punishment of the offender, what Marshall (1992:26) has described as "...an outdated philosophy of naked revenge, with an approach which seeks to "heal" the injuries caused by crime to all the parties involved. Restorative Justice thus views crime not simply as the violation of rules, but rather a serious form of interpersonal conflict which involves concrete harms to real people (Zehr 1990). The "real people" involved in any criminal act are normally:

- the victim of the crime;
- the offender; and
- the community in which victim or offender live.

Any system based upon the principles of restorative justice must therefore include mechanisms which involve these three key players.

1.2.1 The active needs of victims

The victims of crime have a series of needs created by the harm they suffer as a result of crime. Restorative justice seeks to understand in greater detail those needs and to provide a venue where the material, social and emotional needs of victims are acknowledged and addressed (Mika 1997). Common issues identified by victims as harms caused by crime include the loss of control, the feeling of helplessness, and the inability to understand what has happened to them and why. These are often at least as damaging to a victim as any physical injury or material loss suffered as a result of crime (McCold 1996). They need vindication that what has happened to them was wrong and undeserved, and opportunities to express and have validated their anger and their pain. They also need to be restored to a sense of control and safety to their lives (Zehr 1990). Victims of crime also may need their offender to understand the injury caused to them and their family and friends. If an offender is given an opportunity where he or she can at least begin to develop a sense of accountability and responsibility for the hurt caused by their actions, then this may help the healing process of the victim.

There are a number of practical ways in which the principles of restorative justice may be utilised to deal with these range of victims' needs. The most commonly known are programmes of victim/offender mediation where victims and offender meet in a structured environment, normally with a trained mediator, and address the needs of the parties and the harm caused by the crime/s (Wright 1996). In most such initiatives, participation by both victim and offender is voluntary, offenders have often already made an admission of guilt and resolution is by consent of both parties. There are hundreds of such programmes operating in the USA and Canada (Umbreit 1996), Britain (Marshall and Merry 1990), Japan (Yamauchi 1990), Europe (Galaway & Hudson 1990) and New Zealand (Maxwell and Morris 1995). Other victim orientated initiatives using Restorative Justice principles include victim-meets offender community meetings, reparation based projects, and other types of services provided to victims such as support, advocacy and intervention (Mika 1997).

1.2.2 Real accountability and reintegration for offenders

Restorative Justice seeks to move the emphasis away from a focus on the punishment of the offender towards one where:

- the offender is held accountable for the crime/s committed;
- acknowledges responsibility for the hurt caused;
- seek to repair the damage;
- is offered a pathway to return to a meaningful role in the community.

Punishment of the offender, (whether by virtue of imprisonment or physical beatings or shooting), may encourage offenders to focus upon themselves and the hurt inflicted upon them rather than take personal responsibility for the pain of their victims (Wright 1991). Punishment encourages a cycle of offenders feeling estranged and isolated from their community and therefore more likely to offend against members of that community (Link 1987, Zhang and Messer 1994).

The mechanisms used within Restorative Justice framework (such as victim offender mediation, reparation etc) are all designed to encourage not only personal responsibility but to offer a clear pathway back into a meaningful role in the community (Makai and Braithwaite 1994, Braithwaite 1994, Zehr 1990). For example, Braithwaite (1994), argues that the process of “shaming” offenders, whereby they are forced to acknowledge their responsibility for offending behaviour and undertake to make amends in front of significant peers such as family, friends and community, is often a much more onerous sanction than removal to a prison cell where the offenders feeling that they are “the victim” is reinforced and their lack of acknowledgement for the pain caused to the victim goes largely unchecked. Such a “*shaming*” or “*taking responsibility*” process is accompanied by a clear pathway towards “*reintegration*” back into the community, thereby attempting to break a cycle of offending. Such a cycle of *offending - formal and/or informal punishment - isolation from community - more offending* is a reality in many communities in Northern Ireland.

1.2.3 A sense of ownership and involvement for communities

The third key aspect of Restorative Justice is that it must include mechanisms to give local communities a sense of *ownership* and *responsibility* over the process of justice. The effect of the formal justice system (and in Northern Ireland the informal justice system) is to put distance between the community and the outcomes of what happens to those convicted or accused of committing crimes. The process for dealing with offenders is left to others, either the RUC, courts, prisons etc or the paramilitaries. Restorative Justice seeks to encourage community involvement and ownership over the issues of crime and what happens to offenders but in such a way that the rights of offenders and victims are not adversely affected.

Communities have clear needs with regard to crime. For example, Zehr (1990:194-195) has argued that one of these key needs is that communities regain “a sense of safety” and are reassured that something is being done about crime to try to prevent it happening again. Similarly, communities which have been victimised by “..physical, emotional or economic harm” (Gehm 1992:548) require a means to address the injustice which that anger represents. They need a mechanism to recover from the psychological injury caused by crime, a mechanism which involves “rituals of forgiveness and release from anger” (Gehm 1992:548), which even if they cannot compensate adequately for past injustices, can at least restore a sense of fairness that “everyone is trying” (Harris 1989 :40).

In addition to their needs, communities also however have a right and a responsibility to be involved in the mechanisms established to deal with crime in their areas. McCold (1996) has suggested that such a responsibility requires four concrete actions on the part of the community:

- immediately to protect the victim and others from further harm from the offender;
- immediately to protect the offender from vengeance;
- to set in motion the healing process of restorative justice; and
- to create conditions most favourable to the complete restoration of the victim and the offender.

Community involvement in a process of Restorative Justice can empower local communities and encourage and develop a sense of community (McCold 1996). In addition, it has been suggested that being actively involved in a community Restorative Justice system may have an educative function for those members of the community who are more used to viewing responses to crime solely within a “punishment” or “retributive” framework. In Western societies, *punishment* is often portrayed in popular culture as the *only* or *common sense* way of tackling crime despite its clear ineffectiveness. For example, Mika (1992) suggests that Restorative Justice should include “... a community education component that emphasises an alternative paradigm of justice, for the purposes of literacy in dispute resolution and peacemaking..”. In Northern Ireland, there is clearly a degree of community support and pressure at grass roots level for punishment beating and shootings and some suggestions of dissatisfaction with formal justice system as “too lenient” in dealing with those involved in anti-social crime. Involvement in a Restorative Justice programme may offer an alternative view as well as highlighting the positive aspects of communities prepared to engage in innovative and progressive attempts to take responsibility for dealing with crime in their area.

1.3 *The process of producing this report*

As noted above, we had collectively and individually been giving considerable attention to the practical possibilities for viable non-violent alternatives to punishment beatings and shootings carried out by Republican and Loyalist groups. The process for the production of this report has involved considerable discussion with a wide range of bodies, but perhaps most significantly with grass roots activists who live and work in the communities most directly affected by anti-social crime. It is our hope that the lengthy process of consultation and discussion in producing this document has added considerably to its worth.

In late 1996 we were approached to deliver a training package to a number of community activists from Nationalist areas of Belfast on alternative justice. The discussions which arose as a result of those training sessions considerably crystallised our views, both in terms of developing a clearer critique of the existing formal and informal systems and pointing in the direction of how a non-violent alternative system might operate.

The programme which was ultimately agreed by the participants forms the structure of this report, and together with the model contained in chapter 6, offers an insight into both the process in which the participants were engaged and the considerations which have informed the conclusions and recommendations. The programme structure was as follows :

1. An **introduction to ideas about crime**, its definition, causes and ways in which it can be prevented.
2. An **overview of the international experience** of alternative justice systems, both in jurisdictions which had undergone periods of political violence and others where social and political division were less explicit.
3. An **overview of the historical context of alternative justice systems in Ireland**, beginning with the complex systems evolved under Brehon Law and charting the subsequent variations of alternative justice through the periods of insurrection in the 18th and 19th Centuries, to the more modern manifestations in the Dail Courts of the 1920's, the attempts at peoples courts and street committees in the 1970's in Northern Ireland and the development of the current system.
4. An **examination of the complex area of human rights law and humanitarian law** (the laws of war) with regard to alternative justice. This looked in particular at the stances and reasoning of those organisations such as Amnesty International and Helsinki Watch who have, under the rubric of the standards laid down in the various instruments of International Humanitarian Law, begun to monitor and criticise abuses by non-state organisations including Republicans and Loyalists in Northern Ireland.
5. A **critique of the existing formal system of justice** covering a range of topics from the particular problems associated with the Judiciary and the RUC in Northern Ireland, to the general ineffectiveness of prison, policing and the traditional responses of criminal justice system to preventing crime. This included an introduction and discussion concerning the range of methods employed by statutory, voluntary and community groups designed to prevent crime and criminality or at least to prevent or reduce re-offending amongst those who have already become engaged in crime and anti-social activities.
6. The final week of the discussions consisted in **a review of the progress to date** and the draft outline of a programme for a weekend residential. After discussion, that outline was agreed with the stated agenda of designing a legitimate and practical model of alternative justice in Nationalist areas of Northern Ireland.
7. At the residential, we began to apply ourselves seriously to the task of **drafting a model of non-violent community justice** for wider discussions. An overview of the discussions which took place at that residential are included in Chapter 8. The residential included a series of role plays of the attitudes of the various protagonists¹ who would be involved in the establishment and running of any viable systems of restorative justice. The end result of that day and a half was a series of notes on the components that would be required in order to establish a model of alternative justice.

In July 1997 two of the authors presented the theoretical framework of the report to an academic audience to the British Criminology Conference on Criminology and Conflict

¹ The protagonists to whom roles were assigned included the local communities, community groups involved in diversionary work with young people, Sinn Féin, the IRA, the SDLP, various statutory organisations and the RUC.

Resolution, held at the Queen's University Belfast in July 1997. We felt it important theoretically to "proof" our analysis to a academic audience of specialists in the area of Restorative and Community Justice.

After agreement in principle on the initial draft, the authors discussed the ideas with a broader range of agencies individuals including government representatives. Arising from those discussions, we have made considerable amendments to the original draft and included a discussion chapter (Chapter 9) to address some of the issues which have arisen as part of the consultation process. We hope that the next stage of this process will entail the dissemination of this document as a basis for discussion and debate in order to begin the process for the establishment of a model which meets the needs of all those who have an interest in an efficient and humane way of dealing with local community concerns regarding crime and anti-social behaviour.

Our work on this initiative has been funded by a private charitable donation. While the organisations to which the authors belong support their participation in this process, they do not necessarily subscribe to the detail of every position presented therein.

2. Definitions of crime, its causes and ways in which it can be prevented

The next six chapters focus on the training course - culminating in a residential for further intensive discussion - which was delivered by the authors to the community activists from Nationalist west Belfast. The text is a combination of information introduced by the facilitator for the particular session and discussion arising during the course of the sessions. The chapters are not intended to be definitive accounts of the issues upon which they focus. Rather they are intended to provide a flavour of the discussions which necessarily inform any discussion of locally based crime prevention, the limitations of the formal justice system in addressing this issue and the principles which will need to underpin any new community-based initiatives. This chapter introduced some basic themes on which any discussion of criminology and criminal justice must be based.

2.1 Definitions of crime

The two main answers advanced to the question, "what is crime?" are normally:

- a breach of the criminal law; or
- a breach against the norms and rules of the community.

Neither however are unproblematic.

As the discussion on this matter highlighted with regard to the first, criminal law and the way it is applied often represent sectional interests both within the legislature where it is drafted and in society generally. For example, the fact that up until the early 1800's there were over 150 capital offences on the statute book in England, many of them concerning property offences such as stealing or poaching, was a clear reflection of the particular interests of those who held and operated political power. Similarly, the toleration of white collar crime, fraud and corruption in the city of London, (Box 1983) which has received judicial approval at various junctures in English legal history (Croall 1992) compares to the sustained attempts by governments of all shades to "crack down" on those scourges of society who are accused of social security fraud..

With regard to the notion of offending against the norms or rules of the community, this too is not without its difficulties. Firstly one has to question by what standards are such norms or rules governed, do they for example include moral as well as legal judgements with regard to an individuals behaviour? Many of the participants recounted instances of periodic demands by the local communities in certain areas for ever more harsh punishments of young offenders. Similarly, for example, the history of most criminal justice systems of the twentieth century has been that law has gradually relaxed controls on matters of morality (such as divorce, homosexuality, contraception, abortion), not least because of the difficulty of finding commonality in increasingly pluralistic societies. If a majority of 51% within a local community wished to exclude or punish a person because they were gay, is that acceptable. If the majority was 70% would that make a difference?

After considerable discussion, drawing upon the history of Northern Ireland, a consensus emerged that law must be viewed as protection for minorities and not simply an expression of the will of the majority. This was held to be true at both the macro level of the state and the micro level in local communities.

Any consideration of an informal justice system must begin with a clear headed awareness of the dangers of assuming unanimity on what is defined as criminal or anti-social and seek to agree ways in which both communities and minorities within communities may have their rights protected.

2.2 Causes of crime

The discussions concerning the causes of crime fell into two broad categories:

- those related to social, environmental or political factors; and
- those relating to individual factors.

2.2.1 Social, environmental and political factors

There was considerable consensus in the discussions that there was a relationship between crime in local communities and external factors such as unemployment, poor recreational amenities for young people, failures in the education system, alcohol drug and substance abuse, peer pressure and harassment by the security forces. Where the consensus appeared more strained concerned the question of the role of parents. While some participants argued that parents should be held responsible (particularly where those engaged in criminal activities were minors) others argued that in some instances parents were incapable of controlling their children because of either the determination of the children or because of their own lack of effective parenting skills and possibly related problems such as alcohol.

One of the aspects of the discussion which was of particular interest was, despite the generally punitive climate in both Ireland and Britain currently on crime related debates, an acknowledgement by most of the participants of the limited effectiveness of notions of deterrence. This acknowledgement included both the formal justice system and notions that long prison sentences or the reintroduction of capital punishment might deter offenders and the current informal system of punishment beatings and shootings currently administered by the Republican and Loyalist movements. Whilst people felt that such measures might be effective in some cases, there appeared to be considerable agreement that the continuing levels of crime in local communities suggested that neither system's deterrent possibilities were having much impact on crime levels over any sustained period of time.

2.2.2 Individual factors

In terms of individual factors relating to offending, whilst there was some discussion of people with mental health problems and others who were described as "evil" (including a number of paedophiles), again there was considerable consensus that such individuals probably represented about 5% of those involved in anti-social crime.

Nonetheless, there was agreement that individual responsibility was something which could not be avoided by offenders in local communities. The question was whether the formal and informal systems actually made those involved in unacceptable behaviour consider whether they needed to change and take responsibility for their behaviour. It was accepted that the answers were very uneven. Generally, both systems had been unsuccessful. Any system which was to work would have to seek ways in which alleged offenders could be encouraged more meaningfully to address their individual responsibility for unacceptable behaviour.

3. How can crime be prevented

Obviously the ways in which participants felt that crime could be prevented related directly to what were considered the causes of crime. Issues of economic and social regeneration such as more employment, better facilities for young people, advice and drop in centres for those involved in alcohol and drug abuse and a range other traditional "progressive" social measures were suggested. While some commentators suggested that a more visibly effective formal criminal justice system could go some way towards reducing crime, (particularly with regard to young petty criminals being used by the security forces - and supported by the judiciary - who receive light sentences in return for becoming informers on Republican and Loyalist activists) there was little general faith in the notion of custody as an answer to the problems. Considerable time was spent discussing the range of diversionary programmes run by Probation, voluntary organisations and others (discussed in more detail in Chapter 6).

The main point of difficulty concerned the 5% of persistent offenders who, for whatever reason, appear unaffected in their behaviour by any form of formal or informal intervention.

3. Academic research on informal\alternative justice\restorative justice

3.1 Introduction

The Informal Justice system which has developed in Northern Ireland is by no means unique to this context, or indeed to the context of explicit political conflict. One of the tasks which we set ourselves as part of the training programme was to attempt to draw out any themes or issues within the academic literature which were relevant in developing either a critique of the existing system or offering insights into a possible non-violent alternative. The descriptions outlined below are considerably simplified accounts geared towards these twin objectives.

In the criminological and socio-legal literature on Informal or Alternative Justice, at least three distinct genres of research can be discerned.

1. Radical Alternative to Capitalist Justice

In the late 1960s and 1970's radical sociologists, criminologists and legal scholars became increasingly critical of the criminal justice systems which had evolved to deal with crime and criminality (Danzig 1973, Christie 1977). Many of these researchers saw crime as a product of the poverty, unemployment and other features of 20th Century capitalism (Taylor, Walton & Young 1973). They viewed the system of the police, judiciary and prisons as institutionally discriminatory, particularly against working class people, women and people from minority ethnic backgrounds. They turned to examples of alternative justice² which were viewed to have evolved within working class communities, often in revolutionary situations such as Portugal, Chile, Cuba and other Latin American countries (Abel 1982). These were often held up as examples of the potential for empowerment of local people, becoming engaged in running a justice system relevant to the needs and wants of the their local community (Abel 1981).

By the 1980's however, in line with broader political changes generally, such international examples were coming under sustained criticism because of issues such as lack of due process, consistency in decision making, the possibility of personal vendettas and favouritism (Merry 1983), usurpation by state agencies (Cain 1985, Fitzpatrick 1992) and a host of other problems concerning the operation of such systems.

2. Informalism as an Adjunct to the Formal Criminal Justice System

In the 1980's the costs of running the criminal justice systems of the Western World became ever more apparent. In Britain and America both Margaret Thatcher and Ronald Reagan had been elected on strong Law and Order platforms which meant radically increased spending on criminal justice. This increase in law and order spending was accompanied, somewhat

² Alternative Justice is variously referred to as Popular Justice, Informal Justice and Collective Justice. There is a related notion amongst some Marxist scholars of Revolutionary Justice, which by and large suggests that aspects of due process may be kept to a minimum because of the context of the ongoing political or paramilitary struggle to defeat capitalism.

paradoxically, by right wing monetarist desires to reduce public spending more generally in areas such as health, education etc. meaning that criminal justice systems were being pulled simultaneously in two directions. The result of this paradox was that considerable attention began to be addressed to ways in which petty offenders might be diverted from “clogging up” the courts’ time by trying to encourage both offender and victims to become involved in reparative or mediation type projects (Harrington 1985, Marshall 1988). Offenders would be asked to apologise, perhaps make some reparation to the victim and in return avoid being processed by the formal court system - the primary objective being to save money.

While such schemes have continued, and indeed the importance of victims in the criminal justice process has increased dramatically in the last decade (Zedner 1994) they remain intricately connected to the formal system, driven primarily by financial considerations and are not viewed as any practical or ideological threat to the formal system.

3. Hidden Indigenous Systems of Restorative Justice

The third genre of research which has come to prominence in the last two decades is an analysis of the systems of justice which have persisted for centuries and which in many cases pre-date the establishment of “Western” formal criminal justice systems. Many of the basic principles of Restorative Justice have emerged from this genre of research (Zehr 1990). These include the highly developed justice system of many of the Native American tribes of North America, the Aboriginal peoples of Australia, various tribal systems in Africa and the Indian sub-continent where there is considerable emphasis on atonement and acknowledgement of the crime against the community as a whole.

Some of these analyses have been marred by a tendency to eulogise the traditional ways (Abel 1981) and a failure to apply the same standards of critical analysis as would be applied to the formal justice systems (Cain 1985). For example as Brogden and Shearing (1993:134) point out in the context of South Africa, whilst the informal justice system which evolved did contain a clear emphasis upon “reintegrative shaming” and healing, nonetheless scholars could not afford to be blind to the ugly spectacles of violence such as necklacing which were also associated with popular justice. It evolved during the era of Apartheid the ugly spectatav nonetheless what is perhaps most interesting is to view the intersection of these traditional forms of justice with the formal justice systems which have evolved in all of the countries under review.

From this literature on informal justice, we sought to draw out a number of themes for discussion in the Northern Ireland context.

1. Informal Justice systems are not “abnormal”, they have traditionally been and continue to be a reality in many countries.
2. The development of alternative justice systems are often stimulated by the political context in which they operate, in particular if there is clear evidence of the contested legitimacy or perceived ineffectiveness of the formal system of justice. While the state may have some ideological misgiving about the symbolic and political importance of an alternative justice system, if such a system is properly presented, and governed by acceptable rules of behaviour, those concerns may be met.
3. The relationship between the formal justice system and the informal justice system is an important determinant of whether or not an informal system would be successful.
4. Alternative Justice systems can, in certain circumstances, give local communities a sense of empowerment and ownership of a justice system which is much more difficult to achieve in the formal system.

Testing the Legitimacy of a Community Based Justice System

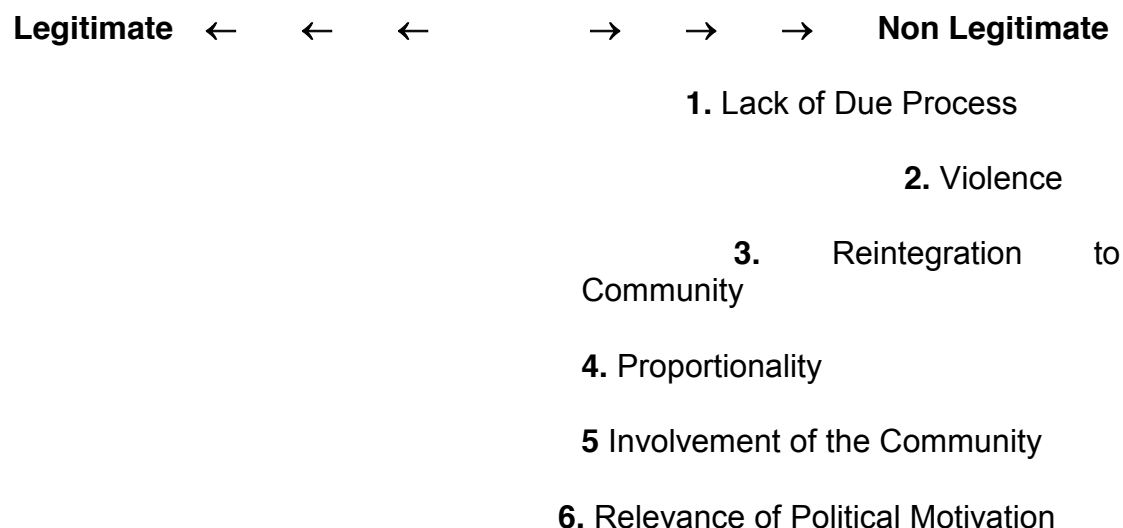
One of the key issues to emerge in our early discussions on the potential for developing a community based justice system was the difficult question of *legitimacy*. It was agreed that for any such system to function effectively, it would have to establish its legitimacy to offenders, victims, the community and, perhaps, a range of professional and voluntary organisations working in the area whose services would be required in order to make the system function. Legitimacy is however quite a difficult concept (Beethem 1991). As was argued strongly during the course of these discussions, the contested legitimacy of the state in Northern Ireland, and by extension the agencies of the criminal justice system, remained one of the key ideological and practical battlegrounds of the political conflict. Some of the community activists felt that it was unfair to criticise the failings (in terms of legitimacy) of the existing informal system without also noting the clear failings (in terms of legitimacy) of the formal justice system. Acknowledging that danger, we sought to use the international experience to draw out the necessary *legitimizing* components for a working system of community justice.

A Spectrum of Legitimacy was proposed whereby the participants were invited to judge where the current systems of Loyalist and Republican punishment beatings and shootings were best placed, identify the legitimating or delegitimizing factors and suggest mechanisms by which a more legitimate system might be devised. It is important to stress that this list should not be considered exhaustive. Rather it is indicative of one stage in the process which lead to this report.

The figure below is used by way of illustration.

Figure 1.

The Spectrum of Legitimacy for the Current System of Republican and Loyalist Punishment Beatings and Shootings



7. Effectiveness

1. *Due Process*

It was agreed that any legitimate system of community based justice would have to include sufficient safeguards of due process for the offenders involved. For example that credible evidence be presented against them, that the individual be entitled to some form of appeal, and that the person has some ability to represent their interest.

2. *Non-violence*

After considerable discussion, it was agreed that the presence of violence as a sanction in a community justice system had a considerably delegitimizing effect. Regardless of the procedural safeguards built into a system, or the use of violence only as a last resort for the most persistent of offenders, we strongly advocated that a resort to violence rendered the desire for legitimacy practically unobtainable. This was despite the fact that several of the community justice systems examined (notably South Africa) had included the use of violent sanctions as punishments for offending.

3. *Reintegration Back into the Community*

It was agreed that if a system was to obtain legitimacy, whatever sentence was imposed upon a person for anti-social crime, must include a pathway to re-integration, a mechanism to bring them back into the community. Some of the community activist argued that the current system of informal justice already contained such provisions in embryonic form with, for example, exclusions from the community often being time limited and conditional upon desisting from further criminal acts.

4. *Proportionality*

Linked to the notions of due process and non-violence, a consensus emerged that the sentence or disposal meted out should be proportionate to the offence committed. References were made to the activities of the Taliban in Afghanistan where petty thieves had had their hands severed and the violent activities of Sendero Luminoso

where violent physical punishments such as decapitations and disembowelments had been used for those adjudged guilty of criminal activities.

5. *The Involvement of the community*

There was unanimous agreement that the systematic and structured involvement of the community was required in order to sustain a legitimate community justice system rather than groups of individuals taking it upon themselves to act as vigilantes. The discussion then developed onto the kinds of training and structures which would be required to ensure that the community involvement was both meaningful and effective.

6. *Relevance of Political Motivation*

A further interesting point raised by the community activists was whether the motivation of those involved in a system of community justice was relevant in assessing legitimacy. For example, it was suggested that the presence of political motivation and a view of informal justice as a responsibility towards to community, rather than for example mob rule or involvement in a system for economic gain, was a legitimating factor. International examples of informal justice systems which involved politically motivated activists were discussed across a broad spectrum ranging from the involvement in the ANC and other liberation forces in South Africa to the "lynch mobs" in the Southern States of the USA and the activities of Brazilian vigilantes involved in the killing of street children in Rio De Janeiro. No firm agreements were reached on this point although it was accepted that the presence of political motivation, without the other checks and balances, could not by itself legitimate a system.

7. *Effectiveness*

The final agreed criteria for a legitimate community justice system was that it must be able to demonstrate that it is having an impact upon crime in order that the local community will have confidence in it. It was generally accepted that the current system of punishment beatings and shootings was by a large ineffective in dealing with anti-social crime.

4. *Justice systems in Ireland: the struggle for legitimacy*

This session looked at the history of non-Common Law justice systems in Ireland and the tradition of local community justice.

4.1 *Brehon laws - prehistory to 17th century*

This must be the starting point for any historical discussion of alternative justice systems in Ireland. Of course, conditions have changed radically since the 17th century, when the Brehon law system was suppressed by the colonising power. The Brehon system was appropriate to de-centralised, rural and hierarchical communities such as existed in Ireland at the time. It represented a legal code but also acted as a social code for the smooth running of communities. It is this aspect which is perhaps of interest, particularly from the point of view of ideas of restorative justice.

There are four main texts which make up the canon of Brehon law. These are:

- | | |
|----------------------------------------|------------------------|
| • <i>Senchas Mar</i> | Munster, c. 725-750 AD |
| • <i>Bretha Nemed Toisech</i> | Munster, c. 725-750 AD |
| • <i>Cain Fuithirbe</i> | Munster, c. 678-683 AD |
| • <i>Collectio Canonum Hibernensis</i> | 8th century |

The mainstay of the system was the solidarity of the *tuath* or *clann*. While there were clear notions of individual culpability, the shame of the individual's act fell on her/his extended family if the offender was unable to pay. Similarly, the *sept* (a subsection of the *clann*) was culpable for crimes committed in their territory (unless committed by an outsider). Accordingly, communities policed themselves rather than relying on an "independent" policing body which derived its authority from elsewhere. Also, there was no concept of equality before the law. Status of victim and offender could make a great deal of difference to the sentence of a Brehon court.

Retribution was far less dependent on physical punishment than was the norm with other contemporary systems. Thus a fine was a possible penalty for every offence, even murder. Interestingly, and in a striking comparison with the current informal justice system, expulsion was imposed for particularly vile crimes or habitual criminality. The tariff imposed was based on a number of factors including:

- the damage done;
- the status of the victim;
- the status of the offender; and
- the accompanying circumstances

It is possible to argue that the Brehon system represents a basic restorative approach to justice. The individual victim and offender are seen in the context of their community. The emphasis of judgement is on restoring the community status quo rather than simply retaliation and retribution. These do not take over until the English consolidation of power in 16th and 17th centuries.

4.2 *Agrarian disputes and revolutionary societies - 18th and 19th centuries*

The next relevant manifestation of informal justice is associated with secret societies which refused to recognise the legitimacy of the British system of justice or worked to subvert that system. Thus rural groups such as the Whiteboys and Ribbonmen represent primitive examples where organising to resist unacceptable landlord practices by physical attacks on property can be seen as an attempt to undermine prevailing and - from these secret organisations' point of view - illegitimate social hierarchies.

More sophisticated - but similarly-inspired - movements appeared later in the 19th century as political and ideological struggles superseded the battle for rural survival. Thus the Land League - with its organised resistance to bailiffs, its boycotting and most significantly its alternative arbitration courts - can be seen in a longer tradition of the establishment of alternative structures for locally administered justice deriving authority from elsewhere than the formally constituted legal process.

The Irish Republican Brotherhood was more explicit about the need to subvert authority from Westminster and British rule. It concentrated on the national question to the exclusion of other social demands. Thus, the Supreme Council of the IRB - formed in 1867 - announced itself (though of course only to its members) as:

"in fact as well as by right the sole government of the Irish Republic".

Its decrees were to be regarded as the laws:

"of the Irish Republic until the territory thereof shall have been recovered from the English enemy and a permanent government established".(O'Broin)³

Similarly, the IRB Constitution of 1873 held that:

"Enactments of the Government so constituted were to be the laws of the Irish Republic...These laws could embrace the levying of taxes, the negotiating of lands and the making of war and peace."(O'Broin)⁴

Thus, the twin elements of future informal or alternative justice systems in Ireland were established:

- the revolutionary desire to take legitimacy away from British authority; and
- the more pragmatic desire to deal with local disputes locally.

These two elements were to come together most emblematically during the War of Independence, firstly in the Sinn Féin arbitration courts and then in the system of courts set up by Dáil Éireann in 1920.

4.3 Sinn Féin arbitration courts: 1919

There is no doubt that the paramilitary repression which existed during the Tan War created the circumstances whereby alternative justice was an urgent requirement. The political movement for independence saw an opportunity to undermine the operation of the court system which bore allegiance to the same power which enacted the Defence of the Realm Act and the Restoration of Order in Ireland Act, recruited and protected the Black and Tans, and condoned reprisals. A well made rehearsal of this argument came from an unlikely source in July 1920:

*"An illegal Government has become the de facto Government. Its jurisdiction is recognised. It administers justice promptly and equably and we are in this curious dilemma that the civil administration of the country is carried on under a system the existence of which the de jure Government does not and cannot acknowledge and is carried on very well. The logical deduction is that profound dissatisfaction with the origin of the law, not with law and order, is the cause of the trouble."*⁵

The occasion for this subversion was the pressure for land which took place in the context of war and led to land disputes which needed to be settled.

Thus, in August 1919, Dáil Éireann established a scheme of national arbitration courts. These depended on the consent of both parties and - though intended to apply to the whole country - was only fully operationalised in West Clare. The arbitration was carried out by Sinn Féin personnel with moral authority in local areas.

This response to land agitation and agrarian intimidation represents a clear thread going back to late 19th century and the Land league. Of course, there was also a desire by Sinn Féin

³ Liam O'Broin, **Revolutionary Underground: The Story of the IRB, 1858-1924**, p. 8.

⁴ *ibid.*

⁵ Lord Dunraven, Irish Unionist, writing to the **Irish Times**, July 1920

leaders to maintain control of a potentially anarchic situation as well as maintaining the integrity of their national movement. They did not wish to see local chaos and intimidation resulting from the attempt to wrest authority from the British.

Despite its intended task of dealing with land disputes with consent of both parties, in the absence of other acceptable courts, the arbitration system began taking on “criminal cases” as well.

4.4 Dáil Courts: 1920 - 1922

Not surprisingly therefore, the Dáil eventually sought to establish a more comprehensive system of justice. The originating mechanism was passed through the Dail on 29th June 1920:

The Minister for Home Affairs moved:

1. *That the establishment of courts of Justice and Equity be decreed*
2. *That the Ministry be empowered when they deem fit to establish Courts having Criminal Jurisdiction*

It is of course easy to pass such a decree and quite another to make it happen. That these courts did take off in a way which the Arbitration Courts did not is a testament to the energy of the legal officers of the fledgling state. Interestingly, the courts were summarily suppressed by the Free State government after the Treaty passed the British Court system over to the Saorstát Éireann. The existence of a dual justice system was too complex for the new state to cope with in the midst of other pressures! One gets the sense that there was some embarrassment about the way in which the system was treated as the system became forgotten about and there has been little written down since then.

Among the offences, disputes and issues dealt with by the Dáil Courts were rowdyism, larceny, licensing laws, property damage, protecting women from abusive language, bank and post-office robberies and assaults. Disposals handed out by the judges included returning stolen property, restitution, making good the damage, fines, banishment, and marooning on an island for a period. Exile to England was used then - as now - as the following makes clear: House of Commons about the practice:

“In more severe punishments, the guilty person was ... banished from Ireland, which caused a protest in the House of Commons on the numbers of undesirable people being deported to England and on the ‘use of England as a sort of convict settlement for men deported by Sinn Féin’. It was felt that the Irish Attorney General did not intervene because it suited him to have such unsavoury persons out of his jurisdiction.”⁶

The courts operated at Parish, District, and Supreme Court level, with the former being most important. These dealt with claims of less than £10, minor crime, evictions from low rent accommodation. The Parish justices took evidence and sent forward more serious cases to District Courts. The 3 justices who comprised the parish panel were elected from a parish convention comprising Sinn Féin, Volunteers, Trades Councils and Cumann na mBán.

Law and precedence was formulated on the basis of that law which existed in Ireland on 21 January 1919. However, Brehon, Roman, French and other law codes could be cited - but not any legal text published in Britain!

While sanctions were available, local parish courts tended to continue operating on the basis of conciliation. This, of course was a reflection of a local need for solidarity and good neighbourliness. Higher courts, however, soon required a “legitimate means of coercion”. This had not been planned for when the courts were first established. Inevitably, it was the volunteers of the IRA who were called on to impose the sentence of the courts. The more constitutionally minded of the Sinn Féin leaders did not wholly approve. However, it was also an irritation to an IRA intent on the anti-British struggle. In fact this phenomenon of enforcement of Dáil Court judgements was to be the means whereby the connection between IRA and Dáil Éireann was forged.

⁶ Mary Kotsonouris, *Retreat from Revolution*, p. 21

The courts were of course repressed by the British. When the whole of Cork was under martial law from December 1920, the Courts couldn't meet. There was also continuous danger of raids throughout the country.

However, as already stated, final suppression was more native in origin. The Third Dáil on 20th October 1922, passed a motion that the decree which established the "native courts" was rescinded. The act for the winding up of the courts was finally passed in July 1923.

While it is clear that the Dáil Court system was a casualty of the Treaty split it is important to remember that the petit bourgeois nature of Free State was also a factor. When minds were concentrated among the solicitors and barristers in the Bar Libraries of the new state, it is clear that the traditional operation of the law as established by the British system (whose legitimacy had been duly passed - by Act of Westminster Parliament - to the new government) was far preferable than the more flexible and less august system which had served the country well during the War of Independence.

4.5 *Peoples Courts - early 1970s*

The Dáil Court system outlined above was a clear inspiration for an attempt at establishing local courts in areas of the north in the early '70s. A paper now lodged in the Linenhall Library - clearly written by and discussed within the IRA - recommended the establishment of People's Courts to deal with local disputes and crime. Panels of justices were envisaged though in the meantime it was expected that IRA volunteers would have to act as judges. Factors to be borne in mind when considering sentences were spelt out including the seriousness of offences, whether the alleged offender was an habitual criminal, whether s/he was capable of responding to treatment programmes. Also considered was the fact that imprisonment was not an option in the context of the early 1970s.

It appears that the operation of these People's Courts did not last for long. A combination of confusion within local communities and repression by the RUC appears to have made the system less successful than that established during the War of Independence.

4.6 *Conclusions*

A number of issues suggest themselves from this brief review of alternative justice systems in Ireland:

- Restitution and restoration rather than retribution has a long tradition in Irish society;
- Land has always been an important catalyst for the development of alternative systems;
- Origin of law - from where the law claims legitimacy - is as important as its content. In other words, the consent of those subject to the law will determine whether it has a chance of working or not;
- There is a strongly local focus of offending and judgement in Irish systems. This may be because of the relatively low levels of crime by comparison with other societies;
- Consideration of appropriate penalty is dependent on either force or moral authority and community cohesion

5. Human rights, humanitarian law and informal justice: an international law perspective

5.1 The development of the international human rights system

The international system of human rights developed in the aftermath of World War 2 when there was a strong impetus towards co-operation between states as a way of preventing such conflagrations from ever happening again. The right of the international community to intervene in the internal affairs of nation states through examining the way in which states treated their citizens was accepted as an important element in securing peaceful co-existence.

The balance to this new phenomenon in international relations was that the intervention and scrutiny involved would be based on treaty agreements between governments. The treaties and conventions would be minimum standards of behaviour by states in relation to how they treated their citizens.

It is important to note that these standards are obligations on governments. They do not apply to other groups or organisations. In certain circumstances (outlined below), there are other standards which can be applied to other groups - generally in situations of conflict - but these are not covered in human rights law. The standards established in UN and European Conventions of Human Rights are only applicable to governments.

A final introductory point to bear in mind is that the UN system generally operates through reporting, scrutiny and goodwill. Committees are established under the various conventions and these receive reports from governments who have opted into the system. These reports are subject to questioning by committee members, but there is no means of enforcement. The only sanction is international embarrassment.

The United Nations has developed a plethora of conventions and treaties whose provisions have become accepted as minimum standards of treatment. Among the most important are:

- **International Convention on Civil and Political Rights (ICCPR)** 1966
- **International Convention on Economic, Social and Cultural Rights (ICESCR)** 1966
- **Convention Against Torture (CAT)** 1984
- **International Convention on the Rights of the Child (CRC)** 1989

Each of these has a committee which periodically examines the record of states which have signed up to the Conventions. There are also a number of special procedures which can seek information from governments on a more urgent basis. These include Special Rapporteurs on torture, summary and arbitrary executions and religious intolerance.

The European system by comparison has developed more authoritative mechanisms which can pass judgement on states who are members of it. The key document is the **European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR)** which is the oldest of the international treaties. It is in fact showing its age and could be updated. Of more importance are the mechanisms which allow individuals to take cases under the ECHR to challenge state decisions. These are the **European Commission on Human Rights** and the **European Court of Human Rights**. These have elaborated on the ECHR and have pushed forward international human rights protection.

The Council of Europe has also established the **European Convention on the Prevention of Torture (ECPT)** which visits and comments on national places - and standards - of detention.

5.2 International humanitarian law: the laws of war

As opposed to human rights law which applies to states, international humanitarian law is the body of principles and standards which can be applied to non-state bodies in situations of conflict. While the previous section outlined the way in which governments can be involved in negotiating minimum standards and opting into the system, humanitarian law seeks to operate without the necessary agreement of warring parties. The laws of war, however, are the only standards which can be applied to Loyalist and Republican groups in Northern Ireland. There is, however, considerable controversy over which of the relevant texts are applicable.

They represent absolute minimum humane standards to be applied by all sides in situations of conflicts. They are intended to be binding on all warring parties but, by definition, there is no means of enforcement. They spring from:

- a sense that some limits should be accepted in how parties to a conflict treat their enemies and uninvolved civilians; and
- a recognition that conflict has a propaganda element by which hearts and minds can be won. If parties to the conflict refuse to abide by minimum standards of treatment, their cause can thereby be undermined.

The standards spring from the four **Geneva Conventions** which were promulgated by the International Committee of the Red Cross in 1949. States can sign up to the Conventions and the **Additional Protocols I and II**. These further elaborate procedures whereby wars of various descriptions can be conducted. The second protocol, interestingly, contains provisions for the release of prisoners of war after the end of conflicts. Legislation whereby the UK would accede to this protocol has been enacted but not yet brought into force by British Government. Some commentators have speculated that the delay is in part because of the Irish situation. The British Government would be opposed to the suggestion that prisoner release should be part of a post-ceasefire or post-settlement package under the Second Protocol.

Another key aspect of the humanitarian law system is the attempt to define different levels of conflict and appropriate standards for each. These include the following:

- Inter-state conflict
- Internal conflict, including:
 - Civil war;
 - Wars of liberation - including anti-imperialist struggles; and
 - Where insurgents control territory.
- Civil unrest

Clearly there will be great debate as to which level the conflict in the six counties is most appropriately located. Republicans would of course assert that it is a war of liberation. The British government, on the other hand, hardly accepts that it amounts to internal civil unrest.

5.2.1 Common Article Three

In the absence of agreement, it is possible to assert that **Common Article Three** of the Conventions (so called because it is the same in each of the Geneva Conventions) must - at a minimum - apply to any conflict however defined. Common Article Three has become so widely accepted that it has reached the status of "customary international law". It calls for the humane treatment without discrimination of non-combatants and prohibits - among other things - killing, torture and the taking of hostages.

One commentator has suggested that:

"The primary principle in humanitarian law is that those not involved in combat must be treated humanely. Thus torture or inhuman or degrading treatment are outlawed on all sides, and sanctions (as distinct from preventative measures) can only be imposed following a fair trial. While the imposition of residence restrictions is not specifically prohibited, the more recent law in this area makes clear that threats of corporal punishment are outlawed, and to that extent, exclusion based even on a threat of a beating is prohibited." (Campbell in Deehan 1996)⁷

⁷ Extract from **Re-entry Research Project Report** produced for NIACRO by Terry Deehan

5.3 Governments and non-governmental-entities (NGEs)

This area of international law has been controversial since the 1980's. This is partly due to the success of the human rights community in limiting governments' room for manoeuvre. As a counterpoint to the scrutiny of governments, states have claimed that similar standards should apply to groups with which they have to contend. The international focus of attention centred on Sri Lanka - where the government had to contend with the Tamil Tigers - and Peru - where Sendero Luminoso was the armed opposition to government. Some of the tactics employed by these NGEs were particularly brutal and allowed the governments to say that it was unfair for their own activities to be monitored so closely by the human rights community when the appalling actions of their opponents were not similarly monitored.

In the context of this discussion, human rights NGOs have been subjected to strong pressure to monitor such NGEs. Though Northern Ireland was not the cause of this pressure, the activities of NGEs such as the IRA and loyalist paramilitary groups have come within the ambit of scrutiny by human rights NGOs. The first example was the Helsinki Watch report in 1991. Amnesty International, the most respected of the international human rights organisations changed its remit at its Tokyo assembly in 1993. Its 1994 report began to document paramilitary activities and called on Northern Irish NGEs to stop killing civilians, to stop torture and the taking of hostages. Much of the focus of this NGE scrutiny was on punishment beatings and shootings arising from the way the IRA and loyalist groups dealt with both internal disciplinary matters (such as non-payment of dues or informing) and with anti-social crime in local communities. In conducting such scrutiny, the relevant human rights NGOs have relied on the standards of international humanitarian law and, in particular, the absolute minimum standards embodied in Common Article 3.

5.4 Tentative conclusions

5.4.1 Situation of conflict in the North of Ireland

There is of course much in the international human rights system which is applicable to Northern Ireland. For example, all the UN standards spring from the right of self determination though whether this applies to the 6 counties which were established before the UN is contested. However, the importance of the humane rule of law is beyond dispute. Similarly it is widely accepted that inhumanity on the part of governments is an understandable impulse behind resort to violence. Thus the Preamble to the **Universal Declaration of Human Rights** states:

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law..."

The other relevance of humanitarian law concerns the definition of the conflict. There have of course been times when the IRA has had something approaching control of territory. Perhaps as a response to such a dangerous situation from its own point of view, it has been clear that the British government has sought to smash no-go areas and establish outposts in districts such as South Armagh.

5.4.2 For informal justice system in Northern Ireland

The implication of humanitarian law, which does apply to groups which carry out punishment beatings, shootings and expulsions as sanctions of the informal justice system, is as follows:

- "arbitrary" killing of civilians (i.e. without a fair trial and without the authority of legitimate statehood) is prohibited;
- there is an absolute prohibition on torture, cruel, inhuman or degrading treatment or punishment;
- there is an implicit prohibition on expulsions which are based on the threat of torture, cruel, inhuman or degrading treatment or punishment;

The other relevant factor is the way in which contravention of basic principles of humanitarian law play as a propaganda issue in the national and international sphere. To the extent that those groups involved in punishment beatings are seeking to win international recognition and

legitimacy, the contravention of Common Article 3 principles will make their propaganda task the more problematic.

6. Crime prevention in local communities

6.1 Crime prevention is not primarily about policing

The limits of policing have been discussed earlier; anti-social crime will not be significantly reduced by any policing strategy other than a hugely repressive crack-down which would do the community more harm than good. In general terms, the only strategies which have worked in reducing anti-social crime have been community based crime prevention projects.

6.2 The different forms of crime prevention

Broadly speaking, crime prevention schemes can take three forms:

- situational crime prevention;
- environmental crime prevention; or
- social crime prevention.

Situational crime prevention can also be termed “target-hardening”. It is about improving physical security through better locks and security systems but may also involve changes to housing structure, better lighting, road calming and so on. The aim is to make the commission of anti-social crimes more difficult or less appealing.

Environmental crime prevention is really part of a general drive to improve the standard of living of a community. It is a process of community development allied with inter-agency co-operation amongst those statutory bodies providing services to a given neighbourhood. Generally, the idea will be to improve the physical structure and facilities of the neighbourhood, to localise control over the delivery of services (by e.g. Housing Executive, Roads Service, Social Services, Youth Service, Education) and to involve local people in taking responsibility for the well-being of their neighbourhood. The principle behind this form of crime prevention is that if social problems are ameliorated and if the estate becomes a desirable place to live, anti-social crime will reduce. However, such a general project may also contain particular elements of both situational and social crime prevention.

Social crime prevention is about working with people, primarily young people, in order to help prevent them getting involved in crime. This work ranges from nursery education to intensive work with multiple offending young adults. There is therefore a spectrum of intervention, from broad preventative work to “last chance” attempts to reform the behaviour of “deep end” offenders. This spectrum has often been represented as a pyramid (see below). Clearly, the greatest numbers of young people are represented at the bottom of the pyramid and require the least intensive (in crime prevention terms) intervention. The small number of young people towards the apex of the pyramid are those who are involved in a pattern of offending and who require intensive work. It is they who tend to be the biggest social nuisance and on whom demands for punishment are centred.

6.3 What works with “deep end” offenders?

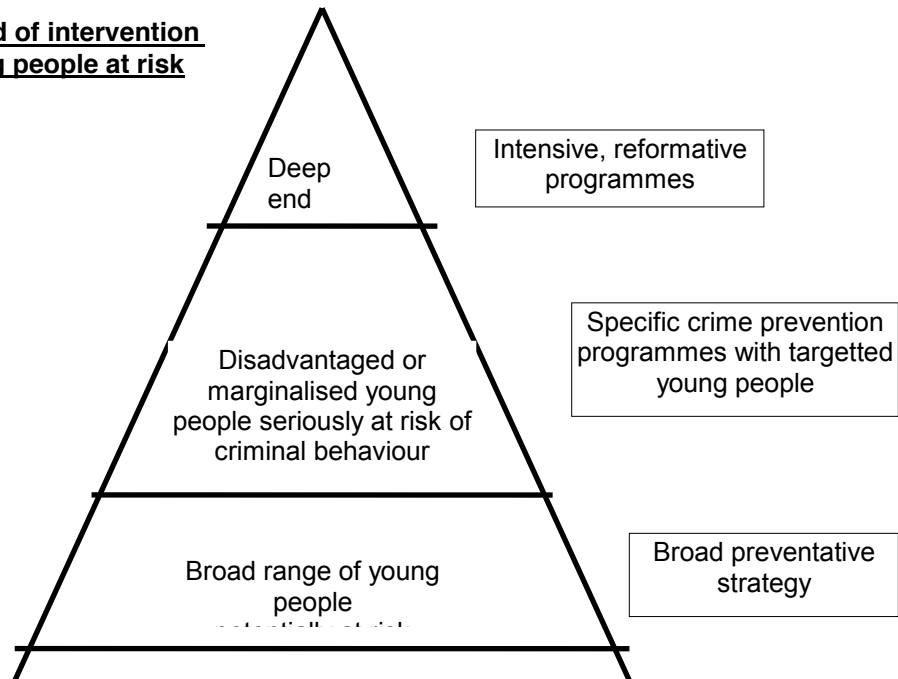
It is recognised that any system of community justice must have access to programmes and projects which work with deep end offenders. Those seriously involved in anti-social behaviour are rarely efficient illegal operators making a good living from crime. More often, they are alienated from their family, school and community, with low self-esteem and a lack of any sense of a productive future. There is no programme which works one hundred per cent, no panacea for anti-social behaviour. Experience has demonstrated, however, that programmes which can be effective in changing behaviour are likely to have the following characteristics:

- they are interesting and challenging;
- they give a sense of achievement;
- they encourage the achievement of new skills;
- they encourage the forming of positive relationships with responsible adults;

- they develop trust amongst participants and give the experience of teamwork; and
- they offer channels into a future productive life in the community.

Such programmes are likely to be professionally-run and to have adequate resources. It is important that a system of community justice is able to refer young people to such programmes and to receive reports on their progress. One of the problems in the past is that such programmes have tended to be set up as isolated projects. A community justice system could act as a linking mechanism between them and as a working channel of communication with the community at large.

**The pyramid of intervention
with young people at risk**



7. Notes of the residential

7.1 Introduction

After the series of discussions on related themes, there was an interest in continuing the debate about what might work in eradicating the system of informal justice which involved violent punishment and deal more effectively with the particular problems of Nationalist west Belfast. The residential was spent, therefore, endeavouring to agree the shape, structure and working process of a workable alternative model of community justice. This involved working through a checklist of issues, dealing with who should be involved and what anti-social/criminal activity would be dealt with (see Chapter 8).

7.2 Strengths and weaknesses: a participant perspective

One of the participants began by outlining some strengths and weaknesses associated with the current informal justice system in operation in nationalist/republican areas of Northern Ireland. He began by emphasising that no policing system in the world is completely successful in dealing with crime and achieving 100% acceptability.

Given this general *caveat*, a number of weaknesses were acknowledged in relation to our own situation as follows:

- there is **an inconsistency in the way with which individuals are dealt** - some are punished more than others. This may be because of individual variations in how those who deal with issues approach the alleged offenders. It may be because the victim's approach is different. It may be because the alleged offender is at a different stage in the "tariff" - first, second offence or warning etc. The different approaches cannot be explained to people and these therefore are perceived as inconsistencies.
- a **lack of training** of those involved in the informal justice system makes consistency difficult. Often people are simply making the best of a bad job rather than building on the experience of others in a structured way.
- there is a **lack of resources for alternatives**. Often it may be that those involved in the alternative system would like to refer an alleged offender to a youth project or some other facility but places are simply not available. Or it may cost to send them to the project and the funds are unavailable.
- a more philosophical weakness is the fact that the justice system is **carried out by a paramilitary as opposed to a civilian** system. Paramilitary discipline therefore operates as opposed to a system of accountability which can involve local communities affected. Thus paramilitary units take responsibility for local crime away from the community. This has the effect of disempowering the community and makes them simply rely on the IRA to deal with problems rather than taking responsibility for dealing with the problem itself.

On the other hand the system had a number of strengths which have to be acknowledged:

- there is no doubt that **the system is based in local communities** and could not function without the approval of large sections of those communities. In many cases that approval is active; in other cases it may be tacit. But the experience of participants in the residential is that communities wish the informal justice system to operate.
- there is a **mistrust of statutory organisations in local communities**. This links in to the underlying nature of the conflict as one concerning the legitimacy of the state in Northern Ireland. Given this, there will always be a suspicion that statutory organisations have a hidden agenda of entryism into republican areas. Such concerns and suspicions are most deeply felt in relation to organisations and systems related to criminal justice. In this context, even very serious criminal behaviour is often reported to the IRA rather than to relevant statutory authorities in the confidence that the matter will be dealt with effectively and people will not have to "sully themselves" by reporting the matter to the RUC.

- there is no doubt that some **people are comfortable going to the IRA** with their problems. Matters will get dealt with speedily. People are happy to trust IRA activists to deal appropriately with community difficulties in the area of petty criminal behaviour or even serious assaults on the local community.
- finally, under this system, **people can see that justice is done**. The nature of the punishment means that there is speedy and visible retribution administered locally. In the formal system, it may take months and months before an offence is dealt with; the victim may not be aware of what happens; and in the meantime, the alleged offender may be free to cause further difficulty. Local informal justice has the benefit of being able to respond flexibly and inform relevant parties more easily.

7.3 *Role play*

With this context in mind the group moved on to carry out a role play where each participant adopted the role of one of the “players” involved in the debate around informal justice. These were as follows:

- Local community
- Youth projects
- Probation Board
- Health and Social Services
- Sinn Féin
- NIO
- SDLP
- RUC

The aim of the discussion was to examine whether a justice system based in the community and involving all relevant parties can operate effectively within the law and therefore attract the legitimacy of the wider society.

The following points/issues emerged from the discussion:

- Despite the propaganda aspect of some of the complaints made by the RUC, there would probably be unanimity even from some RUC personnel that **police forces in any situation have difficulty in dealing with anti-social behaviour**. The need for a separate tier of policing at a local level and differently organised from formal policing structures is overwhelming.
- The political and propaganda dispute around questions of policing do not take away from the fact that **there is a need for communities to organise themselves to deal with locally based criminal activity**. There need to be new ways for communities to be involved in creating safer societies. This new ways need to:
 - be inclusive of all;
 - operate within the law;
 - display financial accountability; and
 - have clear and transparent structures of control and authority.
- There is a **need for effective youth projects** which can intervene with young people. There are problems in relation to a lack of resources and lack of co-ordination and communication between projects that do exist and agencies that have a responsibility for this area of work. In addition, it must be clear to the community that there are facilities for “good” children and young people. We have to get away from the “goodies for baddies” syndrome.
- Allied to the question of resourcing, there is also the need to **identify who controls any finance that does come into areas** to deal with these problems. In relation to this, it is important that the British government acknowledge that republicans are part of the community and not engage in political vetting, claiming that some organisations are simply fronts for republicans.

- Any new system will have to **negotiate the assumption of more traditional elements of the British state which see dealing with crime as being the sole preserve of the state**. It is likely that the NIO, for example will say that the RUC exists to deal with anti-social behaviour. At the very least, it would be important for the RUC/NIO to give any new initiative a fair wind. Legally, of course, if a new system operates within the law, then it would be difficult for the RUC to intervene openly. The more widespread the support is for a new system, the more difficult it would be for the RUC to seek to smash it.
- It is likely that no **statutory services would wish to be involved in any system which involved referral to paramilitaries for children** who do not respond to projects and any alternative system which might be put in place. It will be important that parents are encouraged to take responsibility for their children.

7.4 Context, structure and process of new system

A new system of informal justice would have to be located within a community. A definition of relevant community interests for the purposes of a new system might include organisations such as:

- community groups of various sorts;
- statutory agencies;
- ex-combatants;
- political and church groupings;
- businesses.

It would have to involve a broad range of community interests and representatives.

In this context, it is important to recognise that, in local Nationalist areas, there is already a thriving community organisational infrastructure which has built itself up into recognised community fora. Therefore, to start thinking about electing street committees would be delegitimising to these already existing groups. Rather, these groups should be the basis of any new system.

Of course, it would be difficult for republican activists to be involved in any new system in any explicit way. But it was generally accepted that without their involvement, any new system wouldn't work as there would be a danger of continuing violent interventions from those who did not buy in to a new system.

This ties in to questions regarding the sanctions which would apply. Sinn Féin is trying to get statutory agencies to accept responsibility for cases before pressure builds up for punishment beatings. This proves difficult because statutory bodies pay lip service by providing partial funding for projects but not actually taking responsibility for particular cases. Tying statutory organisations into a process was a way of making them more accountable.

Clearly the community has to be involved in decision making in an alternative system. The structures would have to reflect this. But this also requires that the community be educated into the need to move away from physical punishment to a more humane approach.

There was strong disbelief expressed that it was possible for an alternative system - even with adequate resources - to deal with the 5% of cases which are not amenable to any intervention. Perhaps if other cases are taken care of, more intensive engagements can be made with this difficult group.

There will of course be a political battle to have a new system accepted. However, if it involves and has the support of statutory organisations, then it will be more difficult for it to be dismissed. It was also pointed out that if statutory services are involved, then they might be encouraged to deal with the 5% mentioned earlier.

It was suggested that it might be appropriate to test a new model of informal justice in a local community where there is a good level of community cohesion. Mention was made of certain communities where work has started on a community charter. This is an idea which was

welcomed as a way of establishing acceptable standards of behaviour to which people might sign up (See Chapter 8).

While it was accepted that the wider political significance of Republicans ending punishment beatings could not be over emphasised, it was important to be realistic about what could be achieved.

7.5 Conclusion

At the end of the residential, it was agreed that the system which was discussed would be written up for further consideration. This has been done in the next section.

8. *A model for community justice*

8.1 *Specification*

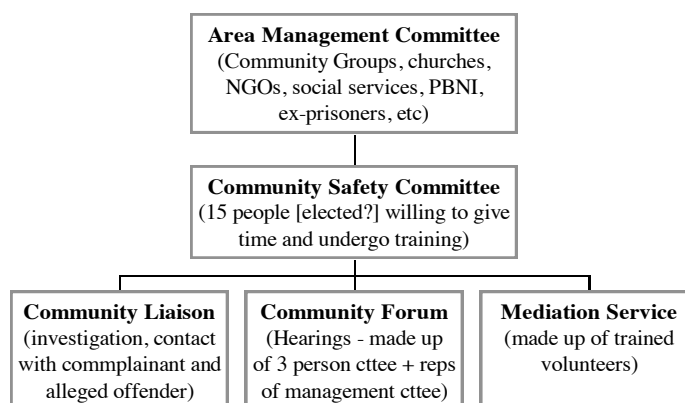
The foregoing discussions generated a list of issues which can be combined to create a specification for a model of community justice. The model must incorporate the following characteristics:

- **Community involvement and support.** This was seen as one of the primary constituents which lend legitimacy to any system of justice and is, in any case, an absolute prerequisite for any serious level of effectiveness.
- **No use of violence.** One of the points of this exercise is to end the use of violence against anti-social elements, which can be brutalising for the punished and punisher alike. This is also necessary in order to comply with international humanitarian law. Further, if it is to counter any potential police harassment, the system would have to be able to demonstrate that it operates within the law.
- **Proportionality.** Any legitimate alternative system of justice must ensure that the sanctions imposed are proportionate to the seriousness of the offence committed. The most serious sanction should only be used in the most serious cases.
- **Due process.** The legitimacy of a system of justice partly depends on granting certain basic rights to those accused before it. These include: the right to hear evidence and to refute or contradict it, the right to confront the accuser, the right to bring witnesses and to cross-examination, the right not to incriminate oneself. These rights clearly have to be interpreted in the light of the necessary informality of a community-based process.
- **Consistency.** The lack of this is seen as one of the failings of the current system. It can only be ensured by an open system of hearings, which allow the community to see its fairness. Furthermore, the system should involve all sections of the community and not bear allegiance to one particular segment.
- **Engagement in the community.** The need for any system to be able to investigate alleged offences, to issue warnings, to practice informal mediation - in general to have an active "executive branch" - was implicit in many of the discussions. Without this a system is passive, reliant on other agencies to make referrals and is likely to wither on the vine.
- **Contact with community programmes.** A system must have access to the resources deployed in community based and specialist programmes relevant for anti-social offenders. In fact, to be effective, it should be the linking mechanism in co-ordinated programmes designed to tackle anti-social crime.
- **Adequate resources.** An effective system cannot rest on voluntary effort alone. Sufficient resources must be made available to allow for proper training and administration and, where appropriate, for the costs of programmes directly run by the system.

8.2 *Structure*

The chart below outlines a structure, at a neighbourhood level, which could meet the specification described above. Each element of this requires explanation and elaboration.

STRUCTURE



8.2.1 The Community

The magnitude of what is being attempted with this model of community justice should not be underestimated. It is nothing other than the community taking responsibility for dealing with a significant proportion of the anti-social crime which is perceived as being a major assault on its well-being. As such, it can only be part of a major initiative in community development. It makes no sense to divorce it from the existing efforts designed to create integrated and inclusive communities which take responsibility for tackling a wide range of the problems which face them. The implication is that a community justice system be seen as a particular element of the general drive towards community development and that it be bolted on to the co-ordinated structures which are emerging in many areas. Precisely how this might be done is a matter for detailed discussion and might differ from area to area. It is possible, however, to make a number of observations.

First, such a system has to be located within an identifiable neighbourhood of a manageable size. We are probably talking about areas with populations of between 3,000 and 10,000 people and which are recognised as distinct communities by the people living in them. Since the first draft of this report was circulated, it has become clear that the preference is for this model to be applied throughout Nationalist Belfast. There would therefore need to be some over-arching, co-ordinating structure. Some ideas for this are discussed below. The structure outlined would be one element of such a whole.

Second, our concept of "the community" is not an undifferentiated mass with identical interests. Rather, it is made up of diverse groups of people with different incomes, interests, political affiliations, housing types and views on anti-social crime. The implication is that any representative body, such as what we describe as the **Area Management Committee**, should be made up of groups and associations which represent as many of the diverse elements and interests as possible. (Of course, as suggested above, such a Management Committee could either be identical with, or drawn from, an existing structure such as Area Partnerships or Community Forums). These would ideally include statutory, voluntary and religious organisations which are obviously organised on a wider basis than the particular neighbourhood concerned. If not, some other linking mechanism would be necessary to bring in those organisations who are likely to have a direct contribution to make towards the community justice system.

Third, we are not sure that any form of "direct democracy", such as specially elected street and neighbourhood committees would be workable. While this is the pattern in some South

African models and has been tried in Belfast (see international and historical sections above) we believe it would be hard to implement in today's modern, differentiated communities. Nonetheless, this system of community justice would involve a major effort of community development and this model does remain a possible option for its structuring.

Fourth, we recognise a special role for those who have been combatants in the political conflict of the past quarter century. Not only are these people concerned for the welfare of their communities, but they also have a particular interest in combating anti-social crime. Further, the concept of social inclusion demands that they be given their place. A possible way of representing them on the management committee would be through ex-prisoner organisations.

8.2.2 The Community Safety Committee

This is the core of the proposed model. It would have to be made up of people who were dedicated to working for safe and peaceful communities, who were willing to give up significant time to the project and to undertake training, who enjoyed wide respect in the community and who, together, represented as wide a range of the community as possible. They could be elected or appointed, based on agreed selection criteria, by the Area Management Committee. The functions of the Community Safety Committee would be to:

- manage the system, including its administration, finance and any employees;
- provide panels of (say) three people for Community Hearings;
- provide the leadership for and oversee the Community Liaison and Mediation sections;
- maintain liaison with both agencies which might refer persons to the justice system and agencies which provide programmes to which "offenders" are referred by the system;
- oversee the carrying out of agreements reached at mediation or solutions imposed by community hearings.

8.2.3 Community Liaison

The point of a community justice system is to use the knowledge, ability and interest of the community to answer the community's own demand for a safe and peaceful life. A mechanism is required to put that aspiration into practice. We suggest a Community Liaison team, made up of trained volunteers who are prepared to act in a disciplined and responsible way to provide the main link between complainants from the community, the structures of the Community Justice System and programmes associated with it and both alleged and adjudicated offenders.

The functions of this Community Liaison team would be to:

- receive and investigate complaints of anti-social behaviour from the community;
- practise informal mediation where appropriate;
- issue informal cautions where appropriate;
- refer more complex cases to the Mediation Service;
- refer contested cases to the Community Forum for hearing;
- communicate requests to attend hearings to complainants and alleged offenders;
- if and when requested by the Area Management Committee, organise community patrols for the purposes and within the limits set down by them;

- oversee the implementation of agreed or imposed solutions decided upon by the Community Forum or Mediation Service, including tracking and supporting the progress of offenders referred to associated programmes;
- where the final sanction of boycott by the community is decided upon, organising support in the community for this measure;
- offer support and advice to victims or refer them to any local victims support organisation.
- This is clearly a difficult and potentially controversial area of work where discipline and clear line of reporting would be necessary. It might be useful to develop a code of practice for Community Liaison volunteers, as well as high standard training.

8.2.4 Community Forum

The idea of “hearings”, implying the existence of some kind of court and the imposition of “solutions” or sanctions, is clearly likely to be controversial. Some of the issues around this concept are raised in the Chapter 9. However, it is precisely in this structure that the main focus of the legitimacy of a system of community justice lies. Of course, if the system limited itself to mediation, then its legitimacy would lie simply in the necessary consent of both parties to take part. Such a limited system, however, could only deal with a relatively small element of anti-social behaviour. The aspiration of this system is to demonstrate sufficient legitimacy that it can be justified in using the power of the community to impose the sliding scale of solutions on disputing parties discussed below. Of course, the only “power” involved here, as a final sanction, is the right of the community to refuse to have persons living in its midst who consistently and seriously flout the norms of tolerable behaviour (these norms, we suggest below, should be codified in a community charter). To make that power effective, in the context of non-violence, is fundamentally a community development issue but the *right* to exercise it is an issue of legitimacy.

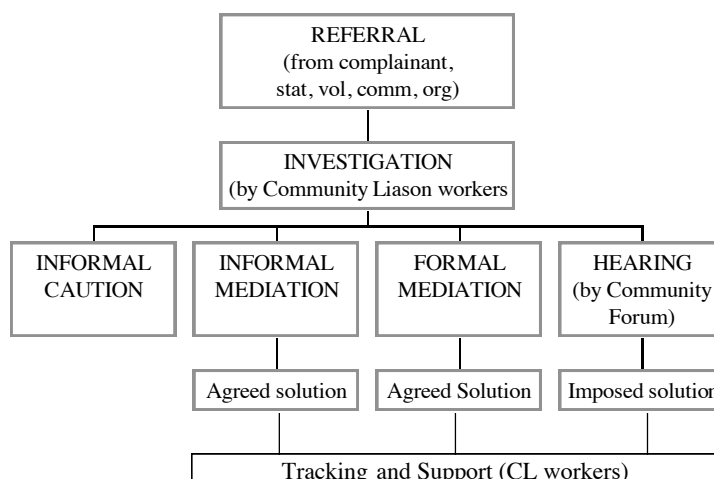
Legitimacy rests on such aspects as due process, transparency, proportionality and consistency. These can only be achieved in the context of relatively formal hearings conducted by respected members of the community. Rules of process would have to be developed which gave due credence to established legal principles (such as admissibility of evidence) but without developing into a mini-magistrates’ court, tied up in process arguments. Transparency, proportionality and consistency all require, to one degree or another, a watchdog function. In the official legal system, most trials are held in public, which answers this need to a certain extent. In this case, however, it is suggested that open hearings might lead to problems and that appointed representatives of the community form the “public” element of hearings. These could be members of the Area Management Committee or people appointed by them. They would be mainly spectators but would, of course, report any abuses they identified.

It should be stressed that hearings by the Community Forum would be the exception rather than the rule. Most cases should be settled by formal or informal mediation and a hearing should only be the last resort. It may be felt necessary to put some kind of appeal mechanism in place, the details of which would have to be worked out.

8.2.5 Mediation Service

A Mediation Service, made up of well-trained volunteers and, perhaps, with employed support workers, would be an important part of this structure. Concepts of restorative justice and community mediation are now fairly well-known, though not practised to any extent in Northern Ireland. As part of this overall structure, such a Service could be significantly more effective than if it were free-standing. Not only would it have the organised backing of the community, but it would also be part of a community-wide, and relatively comprehensive, referral system. More research of existing models would be necessary to identify the best form that this Service could take.

PROCESS



8.2.6 Process

The above chart shows the main elements of the process which this structure of community justice would operate.

8.3 Solutions

Below is a list of possible “solutions,” which are seen as the equivalent of “disposals” in the official legal system.



Some of these are unproblematic and all, except the last, could be the result of either mediation or imposition. However, in one sense, even when these solutions are the result of a contested hearing, they will require the agreement of the “offender” to carry them out. The only pressure to agree to a solution which this system envisages is the threat of a community boycott. This concept requires further elaboration.

8.3.1 Community boycott

The question of whether it is legitimate to use this power has, to an extent, been discussed above and is further aired in the Chapter 9. It is in the community acceptability AND in the extent of due process of the system that the legitimacy of such a power lies. Were it the case that the official criminal justice system was regarded as legitimate and acceptable then, where an offender refused to accept the solution of the community justice system, referral might be made to the state system. It is envisaged that appropriate statutory agencies would be involved: reference would always be made to Social Services where a child was involved as victim or perpetrator and the Probation Service would be, at least consulted, in cases where they had an interest. In present circumstances, however, where, in Nationalist Belfast at any rate, the legitimacy of the police and courts is, at least, questioned, this community system is designed to be capable of operating on a self-contained basis. The issues arising from this factor are further examined in the Chapter 9. The system must, therefore, have an option of

the use of non-violent and morally-based coercive power where there is a refusal to accept the solution it presents. Given the commitment to non-violence, community boycott is the only such power available.

A community boycott means all relevant elements of the community, especially neighbours and traders, as well as the organisations represented on the Area Management Committee, mobilising themselves to refuse to allow the individual concerned to live normally within the community. This would mean, in effect, an organised denial of access to goods and services in the local community, such as pubs, off licences, shops, etc. It is a practical closing of ranks against the person who has offended against the community in a serious way and refused to make any sort of reparation to the victim or the community as a whole. Where an individual or family had consistently flouted the terms of the Community Charter, it is highly likely they would also be in contravention of the Housing Executive's Tenants' Charter. This agency might well have a role to play in such circumstances. As noted above, to make this power effective is a task of community development. It would require the whole community to support the community justice system and to be prepared to back it in practice. This would be a difficult but, it is suggested, not impossible task.

8.4 Central Support Unit

This unit would support all of the community justice projects throughout the city. It would have a number of functions:

1. To ensure that high standards of practice, including observance of due process, child protection and human rights, are observed. Contacts will be made with international human rights organisations which monitor human rights abuses by "Non-Governmental Entities," with a view to seeking their advice and assistance as to how conformity with human rights could be guaranteed.
2. To train the volunteers and committee members in the local areas involving, if possible, respected international human rights organisations.
3. To monitor the success or otherwise of individuals projects and the overall programme.
4. To maintain a database of all individual cases.
5. To maintain a flow of information about best practice in community justice elsewhere and also to disseminate the practice and policy of the Belfast Community Justice Programme.
6. Administrative support for the projects.
7. To maintain overall liaison with relevant voluntary and statutory agencies.

This centre could be under the direction of an overall management committee for the new system which would need to include representatives from the individual local projects as well as from community fora and the relevant statutory and voluntary agencies.

8.5 Community Charter

As part of the range of safeguards, we are proposing that the model incorporate a Community Charter which is outlined overleaf:

A Draft Community Charter

37

Accepting that recognition and acceptance of the collective, and individual, rights and associated responsibilities of all the members of our community is the foundation of freedom, justice and peace for all of us and acknowledging the need to consistently promote and advance a supportive social and physical environment as essential to the development of the potential of all in our neighbourhood we, the residents of "....." commit ourselves to the promotion of a new spirit and infrastructure designed to build a better community.

In keeping with this commitment we agree to work collectively, jointly and separately as appropriate to ensure and reaffirm the dignity and worth of all who live here regardless of gender, race, religion, language, disability, sexuality or age and to strive to the best of our abilities to promote social justice, supportive relationships and an associated physical environment for all who live in our community. This dignity and human worth is enshrined in a combination of rights and linked responsibilities.

We affirm that everyone in our community has the right to:

- Be free from torture, inhuman or degrading treatment;
- Right to fair trial;
- Shelter, warmth and basic living necessities;
- Freedom from externalised fear and anxiety;
- Privacy;
- Own property alone or in association with others;
- Free Association;
- Freedom of opinion and expression;
- Choice of sexuality;
- Education and Learning opportunities and resources;
- Appropriate care and support;
- Open expression or celebration of their religious, cultural or political affiliation;
- Information;
- Political participation;
- Equal protection under the law;
- Equality of access to public service;
- Work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;
- Rest and leisure and to share in the cultural and artistic life of the community.

We also hold that we each have a responsibility to:

- Ensure that we do not create, or enhance, any condition, relationship or situation which may prevent our neighbour from exercising or enjoying their rights as outlined.

Given that a major factor in the negation of the rights of our residents is crime and the fear of crime, we believe our community must address this issue, its causes and its consequences, with humanity, consistency and as a matter of urgency. Ensuring that our model of justice includes both restorative elements and proportionate treatment, recognising that we must distinguish between the various criminal, deviant and anti-social behaviours and differentiating between crime against the person, against property and that which can be generally classified as nuisance, we commit ourselves to confronting crime and its effects on our community.

Each signatory to this charter pledges to respect the rights of their neighbours in the community and to appropriately exercise their own responsibilities.

In keeping with this pledge **we reject violence** as a tool for resolving disagreement between individuals or families and as an alternative we will initiate and / or will co-operate in any agreed community systems or processes involving informal or formal mediation to resolve disputes or respond to crime, and to criminal or anti-social behaviours within our community.

Should such extensive processes of mediation prove not to be effective in resolving a dispute due to the unwillingness or refusal of any of the parties to the dispute to co-operate or meet their responsibilities we will further commit ourselves to participating in any non-violent activity collectively agreed in open discussion within the community. Such activity should be designed to ensure that those who refuse to comply with their responsibilities are subjected to the collective disapproval of the community expressed if necessary through boycott or any other non-violent process as may be necessary to protect the rights of individuals or groups in our area.

9. Reflections, reactions and concerns:

a discussion of arguments for and against the proposal

9.1 Introduction

This chapter arises out of discussions which have been held with a range of individuals and agencies around the ideas contained in the original draft of this report. We considered that it might be useful to include as many of the concerns raised as possible and suggest possible responses. This whole document is, of course, a means of raising discussion and we hope that this section will particularly assist in that process. This chapter should be read in conjunction with the previous chapter in particular which outlines the proposed model of restorative community justice.

One general reaction to the ideas in this report has been that this is a new and radical departure from traditional notions of the criminal justice system. In fact, as we have previously argued, notions of community, informal and restorative justice and mediation have a long-standing pedigree in criminological literature and practice. Furthermore, these kinds of discussions are currently amongst the most actively debated amongst theoreticians and practitioners both here and abroad. Far from being exotic, these ideas now form a new mainstream within criminology and the sociology of law. In addition, at a policy level, such ideas are being actively considered, both in Britain and Northern Ireland.⁸

One of the key issues identified in this debate is the extent to which initiatives are led by the state or emerge from the community. The most respected scholars in the area stress that where such a system emerges from the community, rather than being imposed by the state, it has much more chance of success (Zehr 1990, Wright 1991). Professors Howard Zehr and Harry Mika, both acknowledged leaders in this field over the past two decades, have recently visited Northern Ireland and stressed the potential for innovative models of community and restorative justice here (Mika 1997). Their view would appear to be that the existing community infrastructure, the clear pressure in working class Republican and Loyalist areas for effective measures to combat anti-social crime, and an apparent desire amongst the paramilitary forces in those communities to desist from violent punishments and try non-violent alternatives, offer a unique opportunity for grass roots systems of non-violent community justice.

The structure of this Chapter is as follows:

- Firstly we address broadly issues concerning the relationship between the state and the proposed community justice system.
- Secondly, we discuss concerns relating to the system as a possible expression of a "totalitarian community".
- Thirdly, we examine a range of other concerns.
- Finally, we address the current peace process as an important context within which the establishment of a community justice system should be seen.

⁸ For example, this year the Northern Ireland Criminal Justice Conference (October 1997), which brings together chief executives and senior personnel of criminal justice agencies in Northern Ireland, took restorative justice as its main theme.

9.2 Relations with the state

In discussions, the overall question of the relationship between a non-violent community justice system and various manifestations of the state has arisen as a key concern. This concern can be viewed on at least four levels.

- At a theoretical and symbolic level, the importance of the state's monopoly of justice and punishment and the rule of law.
- Particular elements of the proposal which may be seen to subvert or undermine the role and functions of the State.
- The relationship of such a system with the Royal Ulster Constabulary - the agency charged by law with policing in Northern Ireland.
- The relationship with a range of other statutory organisations which have a role in the criminal justice system or the prevention of crime.

These are discussed in turn.

9.2.1 The importance of the state's monopoly of justice and punishment and the rule of law

Some academics would argue that one of the key components in the evolution of the modern state has been the monopolisation of the functions of justice and punishment (Ignatieff 1978, Garland 1990). An argument may therefore emerge that any system which adjudicates on and punishes criminal activity usurps those functions and therefore challenges the legitimacy of the state. In the context of the aftermath of a violent political conflict, where the legitimacy of the state and its criminal justice apparatus (e.g. police, prisons, courts) has been one of the key areas of contention, such issues take on a particular sensitivity.

The response to this argument can be made on a number of levels. First, the past twenty years in particular, have seen most Western criminal justice systems progressively devolving criminal justice functions to a range of quasi and non-state bodies (Mathews 1989). Examples of this process include the privatisation of prisons and the supervision of a range of community disposals administered by voluntary and community organisations (Ryan & Ward 1989). Normally, such schemes are administered within a statutory framework which guarantees, amongst other things, compliance with the rule of law and certified guidelines. A view of the state as a monolith, with exclusive control over the delivery of punishment and justice no longer corresponds with reality (Sparkes 1994).

Furthermore, the current government is explicitly committed to affording greater community ownership over such processes as the prevention of crime and the control of its own anti-social elements. In their recent consultation document "Getting to Grips with Crime : A New Framework for Local Action" (September 1997), the Home Office argue for mechanisms "...to ensure that local people are given every opportunity to contribute to the process" of cooperation to maximise the prevention and reduction of crime.

In general, modern governments tend to argue for a partnership between the state and the community as the way forward in a whole range of circumstances. Such an approach is informed by notions of community empowerment, a recognition of the limited effectiveness of any formal justice system (Audit Commission 1997) and an understanding of the exorbitant cost of attempting to process all offenders through the formal system.

It can be argued that this process of devolution requires an equivalent initiative from the community in order to be effective. This is not a matter of simply responding to an initiative from the state, but of the community taking a pro-active role in beginning to solve its own problems. Such processes cannot be subject to unnecessary detailed control and regulation by state agencies, if the community is to be properly empowered. So long as communities are acting within the law, their operations are properly monitored and they accord with recognised standards of human rights, it is difficult to argue that they are contesting the rule of law or usurping the legitimacy of the state.

It is clear that the legitimacy of state institutions has been contested during the violent political conflict which has afflicted this region for the past quarter decade. This has not resulted in an absence of work by statutory agencies in those areas where the conflict has been most acute. On the contrary, statutory agencies and organisations which receive government funding have

developed innovative and pragmatic techniques which balance their statutory responsibilities with the sensitivities of the communities in which they work. This is as true of the area of criminal justice as of the delivery of social, youth and educational services. It would be ironic, and highly counter-productive if, when the violent political conflict appears to be moving towards a solution, this sensitivity and pragmatism were to be abandoned.

9.2.2 Particular elements of the proposal seen to undermine or usurp the functions of the state

As has been stressed throughout this document, it is envisaged that the proposed system of community justice would be required to operate within accepted international standards of human rights and due process. In discussions regarding the implementation of the proposed system, a number of features have been the focus of attention. In particular there appeared to be some concern that the functions of investigation, patrolling, adjudication and enforcement usurped the functions of the police and the court system.

9.2.2.1 Investigation

As noted in the section on the structure of the system, it is envisaged that investigative functions would be carried out by the Community Liaison Teams. In the context of community justice, it could be argued that carrying out the functions of discussions with complainant, offender and witness has clear connotations of the criminal investigation department of a state police service. However, there are major differences between this function and that of the RUC. On the one hand, those investigating on behalf of the community justice system would not have powers of arrest, detention, carrying arms, compulsion to answer questions or give evidence, the right to enter premises, search and seizure and the range of other powers vested in the police under the ordinary and emergency laws. Similarly, it would lack ancillary support services such as forensic science and surveillance equipment. On the other hand, this system would deal with a range of behaviour which for a variety of reasons, including levels of seriousness and the difficult relationship between the police and working class Nationalist community previously discussed, might not come to the notice of the RUC. It would have the greater potential for effectiveness which is derived from being an organic part of the community and thus capable of winning the support of victims and offenders.

9.2.2.2 Patrolling

Similar discussions arise with regard to the proposal that members of the Community Liaison Teams would be involved in patrolling their areas as a deterrent against particular forms of anti-social crime, in particular car crime. The reality is that there is currently, and has been over a number of years, spontaneous patrolling and this has, in the past, led to violence, injuries to both alleged perpetrators and innocent community members and damage to property. It could be argued that it is important that such activities operate within a framework of non-violence, training in respect for human rights, due process, accountability and the other considerable checks and balances built into the proposed system of community justice. The need for such patrolling may diminish with increased co-operation between communities and relevant statutory organisations with regard to the introduction of such measures as traffic calming.

9.2.2.3 Adjudications

The hearing of contested cases at community level, as noted elsewhere, is a common feature of the developments in restorative and community justice in the USA, South Africa and other jurisdictions. The development of such systems have often come about as a result of the limited ability of the state to adequately protect the rights of communities to be free from anti-social crime and related quality of life issues. Whether such an inability derives from a community's political conflict with the state, or an over loading of the formal criminal justice system or indeed the desire of the state to empower and develop such forums at a local community level, the community has a right to take measures within the law to protect their quality of life. The limitations of the formal criminal justice process and the considerable political impetus towards affording greater ownership of community safety issues would appear to encourage the involvement of local people in the operation of community justice systems. Providing an adjudication system operates legally, with respect for due process and international human right standards, it could be argued that a community should not be denied the right to operate it.

For example, Article 40, sub-section 3. of the UN Convention of the Rights of the Child, provides that

“State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognised as having infringed the penal law, and, in particular....whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully protected.”

Furthermore, the UN **Guiding Principles for Crime Prevention and Criminal Justice** (UN 1985) encourages states to allow the development of:

“more readily accessible methods of administering justice, such as mediation, arbitration and conciliation courts.”

Similarly, other UN documents insist that while governments establish a general framework of order, communities must be engaged in crime prevention:

“...in establishing social justice, instilling prosocial values in its members, and becoming actively involved in the criminal justice system. Furthermore, the Universal Declaration on Human Rights notes that not only do individuals have rights within the community. but they have responsibilities to the community as well.” (Van Ness 1996)

The above represents a recognition in international law and debate that the formal, state judicial process is not always the most appropriate mechanism to deal with offenders including those under 18.

However, the suggestion of community hearings adjudicating contested cases involves a decision making model which is not based entirely on agreement and consent and this does raise issues of due process. Due process requires that a system of justice applies the same procedures to all individuals. It involves notions of fairness for all individuals, processed by the system and therefore independent of those running the justice system. Therefore, it can be argued, the model would require complex formal rules, which are not as yet developed. We have considered it appropriate that the development of formal rules, using existing international human rights standards and models developed elsewhere in the world as a starting point, and with the technical assistance of experts wherever appropriate, should be carried out by the communities involved as part of the process of encouraging community ownership and empowerment with regard to the system.

9.2.2.4 Enforcement and community boycott

As was noted in the section on the structure of the proposed system, a system of sanctions is envisaged for those adjudicated culpable by community hearings. In the same fashion as state non-custodial disposals are, in the final analysis, only enforceable by the threat of custody, the only power of compulsion envisaged to back up the sanctions within this system is the threat of community boycott. In effect, this would be a recognition at the end of a process of engagement, mediation and persuasion that the community could no longer accept the persistent infringement of their rights by the behaviour of a particular individual or group of individuals or, as the Home Office recently put it, “...people who make others’ lives a misery through anti-social or disorderly behaviour” (Home Office 1997). The use of such a sanction as a last resort might, of course, also imply a failure on the part of statutory organisations such as the Housing Executive, Probation Board, Social Services and others to take effective action with these individuals.

This is a contentious aspect of the model, particularly when examined in the context of the principle of non-violence, which is part of the specification of the model. It could be argued that the sanction of community boycott could not be enforced without the use of physical force or violence. It would require a very high level of agreement within the community as a whole as to how individual cases should be dealt with. In the absence of such agreement or consent (which does not exist at the moment) there may be a risk that violence would be deployed against individual offenders.

However, the model is clear that the only compulsion which could be exerted upon people to either attend community hearings or to comply with any sanctions they may determine is

social pressure. In conformity with the clear fundamental pre-requisite of this model that human rights be protected, such social pressure must be completely non-violent. Of course, it could be argued that those engaged in anti-social activities may already be subject to such pressure with for example local shop owners or publicans being unwilling to serve those suspected of anti-social crimes. However, such pressure is currently unorganised, it may extend to those only suspected of rather than convicted of anti-social activity, it may be fragmented and, to a certain extent, factionalised. The moral pressure which a united community can bring to bear around those who have been through every stage of a fair and legitimate non-violent restorative community justice system should not be underestimated.⁹

It may be argued that the denial of goods and services within the community would amount to a de facto exclusion from the area. It could be argued that this presents profound difficulties for the model. Where are offenders to be excluded to? How long will they be excluded for?

One key feature which we would stress in any model of restorative justice is that any sanction (such as de facto exclusion) must be accompanied by a pathway to reintegration, a mechanism by which the offender can clearly see a pathway to full membership of the community providing that he or she desists from their offending behaviour. In discussions with voluntary and statutory agencies with an interest in this subject, it has been pointed out to us that the current reality is that there are hundreds of exclusions from Nationalist and Loyalist communities every year. This process is unregulated and can be inconsistent. It could be argued that a regulated, consistent and minimalist alternative is preferable, if it is estimated that a complete halt to exclusions is unlikely in the medium term.

Looking at the issue more creatively, if imprisonment is a custodial disposal involving removal from the community, is it feasible to consider managed, non-custodial placements outside the community? It may be that, where the combined efforts of the community justice system, community-based programmes for offenders and the various relevant statutory agencies have failed to control the behaviour of an individual within his or her own community, a placement outside the community could be considered. This would clearly involve a multi-agency approach supplying accommodation, relevant education, employment and training and any specialist programme designed to modify offensive behaviour. It could also be time limited. It may be that such a “respite for the community,” as it has also been termed, would only be undertaken on the basis that a negotiated “re-entry” into the community would be attempted after a given period of, say, six months or a year. These are clearly matters which would have to be discussed in detail during the development phase of the implementation of any community justice model.

9.2.3 Relations with the RUC

The relationship between the RUC and a community justice system is one of the most complex issues which must be addressed. It has to be remembered that the discussions contained within this document centred on Nationalist West and North Belfast where there is a clear lack of consensual policing. The following should be read in that context.

On the one hand, the RUC has, since its inception, had the dual function of policing political protest and violence and providing a normal police service (Brewer 1992, Ryder 1997). The RUC, with its associated special militias, the A, B and C Specials, was structured and organised to police on behalf of the Unionist majority. Despite sporadic recruitment drives at various stages of its history, it remains and overwhelmingly Protestant and male institution. (O’Rawe & Moore 1997) The A and C Specials were disbanded in 1925 leaving only the B Specials in support. They too were disbanded in 1969 following the recommendations of the Hunt Commission which questioned their ability to police impartially.

⁹ It is not, of course, possible to exclude the possibility that people unconnected with any new community justice system would take intimidatory action against individuals they allege to be incorrigible offenders. However, the point of a community justice system in this respect is to marginalise such behaviour, deny it any legitimacy in terms of supposed broad community support, ensure that such people are unconnected with the restorative just system and to offer a non-violent alternative.

The RUC has been heavily criticised by academic commentators and human rights organisations for interrogation techniques used to extract confessions in Holding Centres such as Castlereagh and Gough Barracks (Taylor 1980, Walsh 1983, Hogan & Walker 1989). In 1978, Amnesty International concluded that *"...maltreatment of suspected terrorists by the RUC has taken place with sufficient frequency to warrant the establishment of a public inquiry to investigate it."* While the government refused to concede to Amnesty's demand for a wide-ranging inquiry, even the more narrowly-focussed committee under Lord Justice Bennett refused to accept that all of those injured while in police custody had injured themselves as claimed by the RUC (Bennett 1979, para. 19, 63).

More recently, the RUC has been criticised for the operation of an alleged shoot-to-kill policy and collusion with loyalist paramilitaries (Stalker 1988, Lawyers Committee for Human Rights 1993, Amnesty International 1994). There have also been persistent allegations of harassment particularly against young working class males, both Protestant and Catholic (McVeigh 1994). In addition, there have been further allegations that the RUC use petty criminals as "informers" on suspected loyalist and republican activists in return for financial inducements and more lenient treatment (Connolly 1997). This combination of serious allegations of human rights abuses has led to an acknowledged failure to achieve full acceptance in its "normal" policing functions, particularly in working class, Catholic areas (O'Mahoney et al. forthcoming). Even sympathetic commentators would acknowledge that the RUC's responsibilities with regard to the policing of political violence have clearly impacted upon its ability to carry out policing of ordinary crime (Ryder 1997).

On the other hand, during the conflict, the RUC has been liable to attack, (and perhaps still are, from Republican splinter groups). 297 officers have been killed and 8,168 have been injured during the conflict. Republicans have used police call outs for the policing of "ordinary" crime to set up attacks on the RUC and there has been some community resistance to RUC Community Affairs involvement in educational and other community based initiatives.

It is clear, therefore, that "normal policing" has not been possible in many working class Nationalist communities during the violent conflict. In consequence, an argument could be made that the proposed community justice system is in effect the establishment of an alternative police force. This could be viewed as perpetuating the isolation of working class Catholic communities from the RUC and thereby continuing an artificial unacceptability of the force. Linked to this is the view expressed by some police officer that the majority of the working class Catholic community would welcome their involvement as a legitimate police force but are prevented from so doing by Republicans (Mulcahy 1997). This system could be seen as another way of maintaining the same kind of pressure in a post cease-fire situation.

In response to these and related questions, the general argument is that, first and foremost, the development of a non-violent legitimate system of community justice must be seen as an attempt to supplant the existing system of violent punishment beatings. That was the objective of the process which produced this discussion paper. It was never an objective of this process to supplant an official criminal justice system.

More specifically, there is a strong view that it would be unwise to imagine that an unchanged RUC will become immediately acceptable in working class Catholic communities simply by virtue of the cease-fires. The choice is not, therefore, between the "old" informal system and the RUC playing a full, normal policing role in Nationalist areas. In any event, as we have previously noted and as is continuously asserted by senior police officers, "normal" policing cannot, of itself, effectively tackle anti-social crime. The realistic alternative is between the existing system based upon violent punishment and a new non-violent system based in the community. Although there would appear to be a near-moratorium on the use of violent punishment beatings and shootings in light of the renewed IRA cease-fire, until an agreed system is put in place there will be continuing pressure for a return to violent punishments either by Republicans or other elements within the community.

In terms of the potential for links between a community justice system and the official, formal police force, it has been argued that the proposed model fails to address adequately the way in which it would interact with the formal criminal justice system in general. This failure leaves

important questions unanswered, makes a definitive assessment of the model difficult and creates a space in which suspicions of narrow political motivation can grow.

In response, a number of arguments can be made. First, these questions are open for discussion and need a wide debate which cannot be pre-empted. Second, given the sensitivity of policing questions, it is impossible to be prescriptive about how the community, structured in such a new system, would organise relations with the formal system. Third, to make explicit and detailed proposals for links with the formal system would be either to assume the full legitimacy of the current system, which in fact is hotly contested, or to argue that a community justice system can only work in the context of a fully legitimate, fully accepted formal policing and criminal justice system. Given that the process of creating such an acceptable system is likely to be both problematic and time-consuming, to take this latter view is to delay the project of creating an effective non-violent alternative to violent punishments indefinitely.

However, it is possible to sketch some tentative connections with statutory agencies, some of which are part of the criminal justice system, and these are discussed in the next section and elsewhere. Statutory agencies have, quite appropriately, developed continuous connections with the existing informal system in order to carry out their professional functions. These should develop and become more transparent if a broad-based community structure can be established.

Furthermore, the general issue of policing is high on the political and public agenda. After the 1994 cease-fires, there were a wide range of community initiated debates about the future of policing. There are currently a range of discussions, both in the talks process and as a result of various government initiatives, which will determine the future character of policing. Whatever the result of these, there will be a need for the development of an active partnership between the future police service and the community. All effective policing requires such a partnership (Reiner 1992). A partnership must rest upon the action and initiative of both groupings (Fielding 1995). The community, therefore, needs structures by which it can be proactive in taking responsibility for its own problems. The structure envisaged here could be one of the mechanisms for both reducing anti-social crime in the community and engaging with an overall police service. If policing is to change, the process needs to be both "bottom up" from the community as well as "top down" as a result of any political settlement.

There is also an argument (as the references to UN documents cited earlier indicated) that community based systems of justice are needed, irrespective of the particular character or role of the police. This position stresses the limitations of the traditional notions of policing. As noted above, it has become an axiom of the academic literature on policing and the policy and practice of police professionals that such methods of policing are highly ineffective in the prevention of anti-social crime. The reality is, it is argued, that, given such limitations, we have no choice other than to engage in ways in which the communities in Northern Ireland can take greater responsibility for the prevention of crime in their areas. Once that principle is accepted, it then becomes a matter of ensuring that whatever mechanisms are put in place, operate within accepted norms of domestic and international human rights standards, are staffed by properly trained individuals, accountable to their local communities and subject to rigorous and ongoing monitoring by independent experts.

9.2.4 Relations with Other Criminal Justice Agencies

In terms of relations with other statutory organisations, the Probation Service for Northern Ireland, Social Services, Youth Services, Training Schools and other organisations are explicitly tasked by statute to deal with young people at risk, young offenders and the prevention of crime. A community justice system could be seen at one level to usurp these functions.

Arguments in response to this would be, first, as noted above, many of these agencies have commendably developed innovative and pragmatic techniques of carrying out their statutory duties in communities most adversely affected by the conflict. These techniques have necessitated contact with the existing system of informal justice. This work would be even more effective if they could act in liaison with a properly structured and effective community justice system.

Second, the limitations of formal policing without effective links to the community have been discussed above. This applies *a fortiori* to these other agencies.

Third, this model explicitly recognises the function and expertise of such agencies. It is argued that this model would make referrals to the appropriate agencies where their responsibilities were involved. For example, the community justice system would be expected to involve Social Services, in the first instance, wherever a child (under 18) was engaged either as perpetrator or victim. Co-operation with the Probation Service in the control of anti-social crime is already an established and flourishing feature of working class communities. There is every reason why such co-operation should increase and become more effective. The details of operation are a matter for the development phase of the implementation of any new system.

9.2.5 Conclusion

It can be argued that, in so far as this system represents a challenge to the notion and agencies of the state, it is a challenge to develop a more participative criminal justice system. Such a challenge is being faced by all Western democratic societies. It may be the case that meeting such a challenge is given particular impetus in a contested society, but the principles apply more widely. This discussion has resonance with the concepts of citizenship and participative democracy which have formed the ideological platform of the current government.

9.3 The “totalitarian” community

One of the obvious concerns with any system of community justice is that it may represent an opportunity for elements within the community to impose their views of conformity and acceptable behaviour upon all of those who live there. In terms of discussion upon the proposed system of community justice, this argument might take two particular forms:

- Formalisation of Republican Hegemony
- Formalisation of Community Intolerance

9.3.1 Formalisation of republican hegemony

The IRA has been involved, for most of its history, in systems of informal justice which have involved punishment shootings, beatings, and a variety of other punishments. In the past three decades, such activities have lead to the death of some victims, others being seriously maimed and wounded and there is considerable evidence of psychological damage (Kennedy 1995). Moral and political outrage at such activities, in some quarters at least, has lead to a deep distrust of Republican motives and future intentions with regard to this issue. This suspicion is bound to extend to any system in which Republicans are involved. Even though the proposed system is premised absolutely and exclusively on non-violent responses to anti-social crime, it may be viewed as a strategy to extend and solidify Republican control of the areas in which it operates by more politically acceptable means. This may be viewed as a totalitarian attempt to exclude or marginalise the state, rival political parties and any critical elements of the community.¹⁰

It has been put to us that these arguments are deeply offensive to Republicans. Republicans argue that they have demonstrated their democratic *bona fides* over the past number of years and have specifically demanded that any new community justice system must be completely transparent, broad-based and democratic. They have further condemned, as a continuation of a politics of marginalisation, the assumption that their involvement in community structures somehow pollutes the latter with political manipulation and factionalism.

However, the reality is that these views exist, both within the state apparatus and amongst broader sections of the community. These concerns must be engaged with if a community justice system is to have the breadth of support necessary to make it effective and legitimate. The following arguments have been put in answer to these anxieties but these issues, like many others, require broad discussion amongst all interested parties.

¹⁰ It perhaps needs to be noted that these disparaging views of the involvement in the community of Republicans are also held, by some people, about Loyalists. Clearly, the legitimacy of ex-combatants, and the political parties which they support, working peacefully and democratically in the community is still contested in some quarters.

9.3.1.1 Broad involvement in management and operations of the system

Whilst the origins of this report lie in a process involving a small number of criminal justice specialists and community activists, it has always been accepted that it will be crucial to involve much broader elements of the community in the management and practical implementation of any new system. Specifically, as broad a range of political parties as possible, representatives of Community Fora, business interests, the Churches and statutory and voluntary agencies who work in the communities affected, should be included. In fact, this redrafted report follows initial discussions with many of these elements. It is hoped that those organisations which have been rightly critical of violent punishments will co-operate in a practical alternative to them. As well as being a necessary contribution to the effectiveness and legitimacy of a community justice system, the practical involvement of broad community interests should offset the notion that the system would operate as an extension of Republican hegemony.

It has also been strongly argued that the election of, say, the Community Safety Committee, raised as an option in the model, should be vigorously promoted and be by secret ballot on the basis of universal adult suffrage in the area concerned. This would require a good deal of organisation and planning, as well as adequate finance, but would materially increase the transparency and legitimacy of the system.

9.3.1.2 Complex character of community politics in working class nationalist areas

Individuals or agencies who have worked in working class nationalist areas will be aware of the complex, fluid and diverse character of community politics. First, there are well-supported competing political ideologies within these communities. Second, there are a range of challenging and dynamic organisations and movements, large and small, at work which, by no stretch of the imagination could be seen as supinely accepting political directives from Republicans. These include Church based organisations, major sporting and charitable groups, the women's movement, significant community development organisations, the cultural and language movements and groups working with young people. Third, even with regard to those who would regard themselves as broadly Republican in sympathy (for example, those who are voters for, rather than members of Sinn Féin), there is no question of them being under the day to day direction of any Republican structure. Finally, we understand that members of Sinn Féin may be pursuing a common political direction but will be subject to the democracy or management structures of the organisation in which they work.

9.3.1.3 Necessary inclusion of republicans

It is difficult to envisage any attempt to supplant the existing system of violent punishment shootings and beatings which does not specifically involve the Republican movement. Such involvement is necessary for at least two reasons. First, IRA activists have been the individuals involved in administering the system of violent punishments. Their support is required for the development and continuance of an alternative non-violent system. Second, Sinn Féin have a considerable mandate of political support from these working class Nationalist areas. It is argued that it would be nonsensical and unworkable to exclude the largest political party in many of these areas from such an exercise in community development.

9.3.1.4 The dynamics of involvement in community development

The notion of Republican hegemony suggests a one way process of control and direction by the political movement. In fact, involvement in community development is a complex two way process whereby the community influences the policies and directions of the political movement as much as the other way around. For example, in the case of violent punishments, it is clear that there is considerable pressure from some elements of the community on the Republican movement, especially those who have been the victims of anti-social crime, to respond in this fashion. That pressure has not abated in the context of the apparent near-moratorium on such activities since the 1997 cease-fire. Indeed, in recent times there have been a number of examples of members of the community picketing the houses of prominent Republicans in protest over their perceived failure to respond adequately to

continued anti-social activities. In this context the Republican movement must be involved in a non-violent and effective system which can respond to this pressure from the community.

9.3.1.5 The Republican Perspective on Informal Justice

As criminal justice specialists, it is not our role to speak on behalf of Republicans as to their view on the rationale for involvement in community justice. However, they have argued to us and other commentators (eg. Human Rights Watch 1992, Kennedy 1995), that their involvement is as a response to community pressure and their perceived responsibility to defend Nationalist communities. Furthermore, they have suggested that their historical control of these activities has disempowered local communities and to some extent absolved those communities of their responsibilities of tackling anti-social behaviour. Whatever the perceived veracity of these claims to outsiders, it appears to us that their actions are guided by such an analysis. For them, it could be argued, a broad ownership of a non-violent system of community justice is a deliberate attempt to spread the responsibility more widely for tackling crime and related issues rather than tightening hegemony over their own areas.

9.3.1.6 External monitoring

It is our view that in order to achieve widespread legitimacy of the system, it is important to build mechanisms for external monitoring and evaluation (see above under Structure). Such monitoring would be designed to ensure not only accordance with internationally recognised human rights standards in the treatment of those who came before the system but also sufficient elements of transparency and accountability in the management of the system.

9.3.2 Formalisation of Intolerant Community

A further major area of concern is that the introduction of such a system would involve the formal empowerment of some of the most intolerant and punitive views in the community. Some commentators would argue that popular views on crime and punishment are reactionary and vengeful, thus underlining the need for an objective, formal criminal justice process, containing appropriate safeguards (Walker 1985). Furthermore, this view is often most strongly expressed by minority groups whose behaviour, lifestyle or political beliefs may lead to marginalisation by elements of the community. The spectre of vigilantism, unchecked by notions of due process, the rights of individuals and minority groups, must be ensured against by any community justice system.

In response to these important concerns, it can be argued that the proposed system has major safeguards against abuses built in to it. These are:

1. The system would be overseen by broad-based management committees, involving representatives of responsible organisations, both at local and central level.
2. A system of external monitoring would ensure that human rights were respected and that any "punishments" were proportionate to offences and consistently applied, as well as, of course, being completely non-violent.
3. This system would operate within the law.
4. All personnel involved in the system would undergo systematic and rigorous training in relevant legal and human rights standards as well as community awareness and sensitivity to minority concerns.
5. All personnel would be required to sign up to a code of conduct, breaches of which would lead to exclusion from the system.
6. The draft Community Charter gives explicit recognition to minority rights, freedom of expression, the right to privacy and the principles of human rights and due process.
7. The whole process is one of community development which will involve education and discussion on issues of crime and punishment.

Given these safeguards, the acknowledged benefits of communities taking responsibility for their own affairs and the limitations of formal policing, it is argued that a community justice system can be both fair and effective.

9.4 Other concerns

9.4.1 The fears of community groups

One of the key issues to be addressed in the implementation of a scheme will be to engage with the concerns of community groups and activists. Their concerns may include: the ability of the system to effectively tackle anti-social crime without the use or threat of violence and the protection of members of the community, willing to take on responsibility for working with the system, from attack by organised anti-social elements. In addition, for those groups who are currently involved in diversionary and other work with “at risk” young people, there may be a concern that a system on this scale may be a drain upon their funding.

In terms of the effectiveness of the system, this has been extensively discussed above. The power of an organised community justice system remains to be tested in practice but the argument is that it can bring a material reduction in anti-social behaviour. It is admitted and recognised that there is, currently, a very difficult situation for those speaking out against the behaviour of anti-social individuals and groups. Individual members of the community, and their houses, have been targeted by organised groups of “hoods,” who have threatened and intimidated them, occasionally with arms, and destroyed property. The establishment of a community justice system is unlikely to immediately solve this problem. However, if a model such as that proposed were working properly, the united efforts of members of the community, statutory, voluntary and community agencies could have the effect of fragmenting organised criminal networks and dealing much more effectively with individuals involved in anti-social crime. For example:

- more young people would be dealt with by more effective and co-ordinated community-based programmes,
- the statutory agencies, which, in any event, are developing stricter and more controlling methods of working with offenders, would work closely with the community in supervising anti-social elements and
- the solidarity of the community against disruptive activity would be increased.

With regard to the concerns of those groups currently working with young people at risk that the system would be a competitor for resources, it is argued that their services would be required for the system to operate effectively. Existing community services would be the first line in the referral system. This model would act as a focus for the more systematic use of their acknowledged skills and expertise in this area.

9.4.2 Concerns of Republicans

In addressing the concerns of all those whose support for this model is necessary to make it work, it has become increasingly clear that there are some significant issues for Republicans. Such issues would include:

- the potential for increase legitimisation of the RUC, a force to which, in its current form, they are implacably opposed;
- the prospect that they would be seen to be abdicating their perceived responsibility for protecting the Nationalist community from anti-social activity;
- the possibility that their involvement in a system which allows for co-operation with statutory agencies, allied to the ending of the existing informal system, would be used by other republican groupings as a focus for political mobilisation against them.

To an extent, this model can operate as a self-contained system but it certainly allows for the potential for co-operation with whatever policing service emerges from the present political process. The character of such a service nor the extent to which the communities would wish to interact with it cannot be predetermined. This will be a decision which will be taken, in practice, by the communities themselves as the process of the development of a community justice system unfolds.

With regard to the question of “abdicating responsibility,” it could be argued that this process represents a recognition of the limitations of viewing community justice as an exclusively Republican concern. This system is designed to afford the community the opportunity for

broader ownership and responsibility, avoiding the dangers of a militaristic and elitist response to what is a civil and social issue.

As regards the possibility of negative political mobilisation around this issue by those opposed to the current political process, it can only be recognised that this may be a continuing problem for Republicans which they will have to respond to in a political manner.

9.5 Community justice and the peace process

“Accordingly we recommend that the parties to such negotiations affirm their total and absolute commitment to ...urge that ‘punishment’ killings and beatings stop and to take effective steps to prevent such actions”

- *Principle (f) The Report of the International Body*, Senator George J Mitchell, Chairman, 22nd January 1996.

Following the 1994 cease-fires, it became apparent that the continuation of punishment beatings and drug related killings were increasingly used as evidence of the lack of commitment by Republicans to the use of exclusively non-violent means. After the 1997 cease-fire, where the IRA reinstated their 1994 “complete cessation of military operations”, there would appear to have been a near complete de facto moratorium on violent punishment beatings and shootings. Exclusions of alleged anti-social elements of the community have, however, continued at an increased rate. It can be argued that such exclusions are a result of the current lack of a process which would amount to what the Mitchell report referred to as “...effective steps to prevent such actions.”

As recognised in the Mitchell report, there is a fundamental relationship between an ending to punishment beatings and the prospects for overall success of the peace process. This report represents an attempt to contribute to the peace process by offering a model which could operate as an effective alternative to violent punishments. It is one view that given the community pressures, continued levels of anti-social crime and the difficult relationship between working class Nationalists and the RUC, it would be naive and dangerous to assume that state agencies alone can now be relied upon to deal with the problem. Similarly, the current status quo, whereby the IRA would appear to have ceased punishment beatings but where an effective alternative is not yet in place, can be seen as unstable and demoralising for the communities involved.

The authors accept that the proposals suggested in this report may be controversial for some people in Northern Ireland although we would again stress the centrality of these themes in criminal justice circles in the late 1990's. We would reiterate strongly our view that the proposed system is designed to afford an alternative to violent punishment beatings and shootings - it is explicitly not designed to usurp the functions of the state criminal justice process.

In conclusion, we hope that this document is a contribution to the debate on policing and therefore to the peace process as a whole. However, we regard the proposed system as a contribution to a broader agenda concerning community development, community responsibility and participation in the justice process. If properly implemented, it could have significant impact in affording greater protection to the rights of communities and alleged offenders, as well as compensating for some of the acknowledged limitations of any state criminal justice system.