

Chapter 11

Can and should the post-riot populist rhetoric be translated into reality? Dr Vicky Heap and Dr Hannah Smithson

The riots that took place in a number of English cities over the summer of 2011 caught police and politicians off guard, but was the disorder that took place inevitable? This Chapter will critically appraise the continually evolving criminal justice and social policy frameworks, which serve as the benchmark for disorderly conduct to be measured against

We will then critique the policy developments from 1997 to present day, in an attempt to explain how the spread of contractual governance and increased legislation around conduct regulation, could have contributed to the societal climate wherein the riots occurred. Finally, we will question how the coalition government aims to respond to the riots, their responses to date and whether their populist rhetoric pertaining to heightened regulation can be translated into effective policy and practice for the future.

A New Era of Deviance?

Politically, policies towards deviant and disorderly behaviour changed when 'New' Labour came to power in 1997. During their years in government, Labour demonstrated a shift away from class politics, becoming more focused on the regulation of conduct (Crawford, 2006). This was achieved by making the conscious decision to focus the crime agenda on low-level disorder (Phillips and Smith, 2003). Arguably the defining feature of Labour's reign, as well as the starting point for increased conduct regulation, was the creation and development of legislation surrounding anti-social behaviour (hereafter referred to as ASB). There are different perspectives regarding the reasons why Labour focused upon a period of legislating around conduct regulation and ASB. Mooney and Young (2006) suggest that ASB issues were exaggerated in order to demonstrate a tough law and order stance in light of the 'crime drop'¹. Whereas Burney (2005) argues that nuisance behaviours were targeted as a result of perceived inefficiencies in the criminal justice system. Overall, these political developments have facilitated changes to what type of behaviours and what types of people are considered deviant and disorderly.

What constitutes deviant and disorderly behaviour has changed in a variety of different ways. Burney (2005) states "once the label 'anti-social behaviour' became current, it was very easy to adopt it as a description of any local irritation or the presence of any persons attracting disapproval in the public domain" (p.4). Perhaps with greater reference towards the topic of this Chapter, Matthews and Young (2003) suggest that there has been in a decrease in tolerance² towards crime and incivilities. This reflects Labour's modified stance on combating anti-social and nuisance behaviour. It also demonstrates a practical application of Krauthammer's (1993) concept of 'defining

1 See Hope (2003) and Farrell *et al.* (2010) for further discussions about the 'crime drop'.

2 For further discussions of tolerance see Bannister *et al.* (2006) and Bannister and Kearns (2009).

deviancy up'. A reflection upon the modern definition of deviancy was initially provided by Moynihan (1993), when he introduced the concept of 'defining deviancy down'. He suggests that "we have been redefining deviancy so as to exempt much conduct previously stigmatized, and also quietly raising the 'normal' level in categories where behaviour is now abnormal by any earlier standard" (p.19). Moynihan explains how deviant behaviour has become normalised and almost expected, with the sense of outrage being lost particularly in relation to acts of violence. This suggests that tolerance has increased, although critics believe this is far from accurate. In response to Moynihan's article, Krauthammer (1993) proposed the concept of defining deviancy up, which suggests "as part of the vast social project of moral levelling, it is not enough for the deviant to be normalized. The normal must be found to be deviant" (p.20). He claims that while the traditional deviancy of criminals is being defined down, ordinary people are simultaneously guilty of new forms of deviancy, such as political correctness. As such, he proposes that while the tolerance and threshold of certain behaviours has increased, whereas others have decreased.

These theories resonate with the idea of nostalgia discussed by Pearson (1983), who suggests that British society holds a deep nostalgia for the way things used to be and that each generation sees their issues as being disconnected from the past. This implies that defining deviancy up or down is a product of social and moral panics, framed within a current period of time. Young (2009) suggests in the modern era, the mass media is "buttressed by scientific experts and other moral entrepreneurs" (p.13), reinforcing the legitimacy of the moral panic to a large audience. As such, deviancy can not only be defined up and down, but can also emerge for an indeterminate period of time as the consequence of a moral panic. However, in reality it must be acknowledged that there is no robust way of measuring a decline in behaviour over time, as there is no baseline available for comparison (Burney, 2005).

The concepts mentioned above suggest an ever-changing, dynamic deviancy-determining landscape. Formal sanctions enacted by the government during the period 1997-2010, align to the idea of defining deviancy up, shifting towards an increased focus on conduct regulation and contractual governance.

Criminal Justice and Social Policy Frameworks 1997-2010

The Crime and Disorder Act (1998)³, marked the beginning of a raft of conduct regulating sanctions. These sanctions took various forms and regulated different aspects of behavioural conduct, with arguably the most high-profile conduct regulator being the anti-social behaviour order (ASBO). This was followed up by the Anti-Social Behaviour Act (2003), which introduced dispersal orders allowing the police to disperse groups of two or more people within a designated dispersal order zone if they are believed to be causing harassment, alarm or distress. The legal sanctions were accompanied by an array of voluntary agreements, such as acceptable behaviour contracts (ABCs). Instances of behavioural regulation via the negotiation of contracts, such as ABCs, have been referred to by Crawford (2003) as contractual governance. An increased application of contractual governance coupled Labour's conduct regulating legislation, which spread the application of contractual governance beyond the realm of those judged to be ASB perpetrators. For

³ Despite examples of ASB being defined in the Housing Act (1996), the Crime and Disorder Act (1998) was the first time the terminology 'anti-social behaviour' had been used.

example, there has been an increased emphasis on the contractual governance of members of the general public, with the increased use of tenancy agreements, particularly within the social housing sector.

A further indication of Labour's disposition towards increased conduct regulation was the spread of enforcement action conducted by civilians. For example, the Police Reform Act (2002) introduced Police Community Support Officers (PCSOs) to the policing family, whose remit was to provide a frontline response to low level community disorder. These officers have been further supplemented by Street Wardens.

One final legislative aspect to consider is the blurring of boundaries between ASB and gang-related violence that occurred towards the end of Labour's tenure. The Police and Crime Act (2009) gave provision to grant gang injunctions, so-called 'gangbos', which bear similarities to the ASBO. These civil orders are designed to disrupt gang-related violence by imposing prohibitions relating to association, geography, gang colours, dangerous dogs and the use of the internet/other technologies (Home Office, 2010). Originally restricted to those 18 and over, the Crime and Security Act (2010) proposed its extension to cover those aged 14-17. This reinforced their commitment to conduct regulation through hybrid law (civil orders becoming criminal upon breach) and the necessity to govern the conduct (and potential conduct) of perceived trouble-makers.

Therefore the culmination of Labour's time in government was to create a society, whose behaviour was heavily regulated through both formal means. The role of informal social control should also be recognised. Stenson (2005) argues there are competing levels of crime control, including the statutory sovereign agencies mentioned above such as the police, as well as other informal sites of governance. For instance, "ethnic, religious and other sites of governance in civil society do more than resist state power. They have their own agendas of governance, forms of knowledge and expertise deployed to govern and maintain solidarity in and over their own territories and populations" (Stenson, 2005: 267). In addition to socially constructed forms of informal social control, private forms of government should also be acknowledged. For example: CCTV, private security firms and gated communities. It is crucial to recognise that none of these three systems exist within a social vacuum (Watt, 2006).

At this juncture it is pertinent to consider the wider policy and societal context within which the above increase in conduct regulation took place. Linking to the proposed motivation for the ASB agenda provided by Mooney and Young (2006), during Labour's first term in government there was ample opportunity to concentrate on crime and disorder because other aspects of governmental responsibility were not causing such concern. This is a marked contrast to the situation faced towards the end of Labour's third term, where the country was in recession and the banking crisis had taken hold. Could it be that once in the habit of increasing conduct regulation, this was resorted to by default?

Paradoxically, the increased behavioural regulation of the general public was coupled with the simultaneous de-regulation of financial authorities. Therefore already powerful groups, particularly those financially, were able to exercise further power, whilst those in poorer communities who rely on services such as social housing were being increasingly regulated, be they perpetrators of disorderly conduct or not. This imbalance in society was exacerbated by political scandal, with false expenses claims made by MPs exposed in 2009 (Telegraph, 2009). We would argue that the societal climate Labour left behind is significant in terms of some of the possible explanations for the summer riots. According

to Mervyn King, Governor of the Bank of England, we are experiencing the biggest 'financial crisis the world has ever faced' (The Guardian, 2011b). The Conservative-Liberal Democrat coalition government are facing unemployment figures which suggest that youth unemployment will top one million for the first time since the early 1990s (The Guardian, 2011c). Absolute child poverty is also set to rise by 500,000 to three million by 2015, making it seemingly inevitable that Britain will miss its legal target of reducing child poverty to ten per cent or less by 2020 (Brewer et al. 2011).

How did the coalition government set out to respond to criminal justice policy behind the backdrop of growing societal unrest around the recession and the swingeing cuts to public spending? And has this response shifted significantly post-riots?

The Conservative-Liberal Democrat Coalition and Conduct Regulation: May 2010 - August 2011

After coming to power in May 2010, the Conservative-Liberal Democrat coalition government took measures to develop criminal justice policies that distanced themselves from the trend towards heightened conduct regulation. As early as July 2010, Home Secretary Theresa May suggested that it was "time to move beyond the ASBO" (May, 2010). This bold statement was reinforced with a commitment to empower communities and reduce 'top down' Whitehall-driven national initiatives (May, 2010).

Indeed, the promise to streamline ASB sanctions was upheld, with a Home Office consultation document to determine more effective solutions to ASB published in early 2011. The major changes detailed in the consultation document refer to streamlining the existing legislation into five new powers. However, the rhetoric surrounding the aforementioned move beyond the ASBO has failed to come to fruition. The two new headline orders: the Criminal Behaviour Order and the Crime Prevention Injunction, which are set to replace the CrASBO and ASBO, involve little more than a terminological change with the addition of a power to impose positive requirements.

There have also been changes in relation to another flagship Labour creation, Crime and Disorder Reduction Partnerships, having been re-branded as Community Safety Partnerships (CSPs) in 2010. A final area of change relating to crime and disorder is the implementation of locally elected Police and Crime Commissioners (PCCs), with legislation contained in the Police Reform and Social Responsibility Act (2011). This policy reinforces the drive towards a local crime reduction agenda and holding public services to account.

The remaining key policy that deserves our attention is Prime Minister David Cameron's 'big society' plan, as this also pertains to a decrease in conduct regulation. What exactly the big society is, or perhaps more importantly how it will be achieved is a little unclear. In relation to crime reduction, the roots are firmly within the remit of social crime prevention, with plans to; reduce poverty, increase employability, improve parenting, and to move away from top-down centrally driven policies giving more power to communities and charities (Cameron, 2011b). The amalgamation of policies that create the big society plan, suggest a decentralised approach towards governance in general, which includes conduct regulation.

Overall, each of these policy shifts emphasise a renewed attitude towards conduct regulation and a focus on locally driven campaigns to reduce crime, disorder and ASB. Could this new direction have already been muted by the policy response post-riots?

The Post-Riots Policy Response

Many of the policy responses outlined post-riots were rhetoric-laden and hinting towards a return to centralised crime reduction campaigns. These statements were made before many of the plans outlined above had the opportunity to begin.

Within days of the first riots occurring, the Home Secretary addressed parliament, stating: “the violence we have seen over the past five days is the symptom of something very deeply wrong with our society” (May, 2011). Her speech continued to highlight various policy issues such as welfare, education and the police response. However, it was clear that at this early stage the Home Secretary believed that gangs were responsible for the rioting and disorder that took place. To quote May (2011) once more, she said: “Why does a violent gang culture exist in so many of our towns and cities?” proceeding to suggest that many of the perpetrators of the disorder were indeed gang members. These assumptions were reinforced by the announcement of funding totalling £8million to be spent in the cities where rioting has taken place. Furthermore, it was announced that gang injunctions (gangbos) for young people, which were due to be piloted in 2011 as part of the Crime and Security Act (2010), were to be immediately rolled-out on a national scale. This policy marks a shift back towards the conduct regulation associated with the previous government and directly opposes the new streamlined, community-focused stance relating to ASB and crime reduction.

Despite initial concerns surrounding gang involvement, new data released by the Home Office in October 2011 suggests that these concerns were unfounded. Aggregated data for all areas that suffered disorder, show that 13% of all arrestees had a gang affiliation (Home Office, 2011c). This demonstrates that the government’s response to the riots in relation to gang involvement has been disproportionate to their involvement in the events. The report also states that: “in terms of the role gangs played in the disorder, most forces perceived that where gang members were involved, they generally did not play a pivotal role” (Home Office, 2011c: 19). Therefore will the Coalition continue to pursue a gang-based strategy, based on the evidence that suggests they were not a crucial factor? The answer is yes, the obsession with prioritising gangs as the cause and result of societal breakdown is illustrated by the Work and Pensions Secretary, Iain Duncan Smith’s stance on the problem. Duncan Smith said: “I am talking about intervening when the child is conceived, not even when born. The kids we are talking about – half of them are unable to speak, cannot form sentences, they have no sense of empathy, they cannot share toys at school, they watch their mums get beaten up regularly and sexually abused.” (The Guardian, 2011d). Duncan Smith and the Home Secretary Theresa May published the post-riot response to gangs in the recent report ‘Ending Gang and Youth Violence: A Cross Government Report including further evidence and good practice case studies’ (HM Government 2011).

Ending Gang and Youth Violence

The approach to be taken by the Coalition and set out in the above report consists of five key clear aims providing support, prevention, pathways out of punishment and enforcement and partnership working. The emphasis of the report is on identifying and intervening in the lives of ‘troubled families’. It cannot be overly stressed that early intervention is key, through the use of universal parenting classes, family nurse partnerships (FNPs) - targeted intensive home visiting for first time teenage mothers, extending free nursery entitlement to disadvantaged two year olds and recruiting an additional 4200 health visitors by 2015 The overall aim is to “turn around the lives of the

120,000 most troubled families by 2015” (HM Government 2011:22). According to the Department for Communities and Local Government (2012), a troubled family exhibits at least five of the following characteristics: no one in the family is in work; living in poor or overcrowded housing; no parent has any qualifications; mother has mental health problems; at least one parent has a longstanding illness, disability or infirmity; a low income; and the inability to afford a number of food, clothing items.

In the months following the initial reactions to the riots, further indications have been given about the policy direction the government intends to pursue. In October 2011, it was announced that Louise Casey, former ‘Respect’ tsar and Victims’ Commissioner, was appointed as head of the newly formed Troubled Families Team based in the Department for Communities and Local Government.

Akin to most of the policies highlighted in this Chapter, there is little detail about exactly how this will be achieved. However, the focus on ‘problem’ families is not new, having first been mentioned in the Respect Action Plan (2006), based on the success of the Dundee Families Project in 1995. Family Intervention Projects (FIPs) have been utilised since the Respect agenda as a means of providing support, be it in relation to offending or more generally through the co-ordination welfare services. Two pieces of recent evidence published by both the Department for Education (2011b) and Action for Children (2011), suggest that FIPs have been successful at reducing crime and ASB, as well as improving health risks and educational attainment. This provides a useful indication of successful practice. Potentially one of the biggest challenges facing the Troubled Families Team is the scale of the problem and the ambitious figure of 120,000 families to be assisted. Figures from the Department for Education (2011b) report show that 5,461 families accepted help from FIPs in the 2010/11 financial year. This is a small proportion of the Prime Minister’s target and although it is not anticipated that all 120,000 families would be helped in one year, some innovative thinking around economies of scale is required if the 120,000 target is to be met by the end of this government’s term in office. According to the Department for Communities and Local Government website (2012), £448 million pounds has been allocated to the Troubled Families Team, which requires match-funding from local areas and will be based upon payment by results (exact details of how this will work in practice are yet to be detailed). Will payment by results increase the extent of intervention in family’s lives, if funding for the Troubled Families Team is reliant not only upon the numbers of families they engage with but also the rates of success of keeping these families out of ‘trouble’? It is a substantial financial commitment, particularly in times of austerity. However it is difficult to determine whether this will be enough, as the costs of providing these services is not readily available. Overall, this is a further example of a centrally driven approach to riots response.

The second opportunity for the government to provide an insight into their preferred method of dealing with the disorder fell to Prime Minister David Cameron. In his speech at a youth club in Whitney, Cameron returned to his ‘big society’ agenda and claimed a renewed interest in what is one of his defining policies. He said, “we’ve got to be tough, we’ve got to be robust, we’ve got to score a clear line between right and wrong right through the heart of this country” (Cameron, 2011c). Such heavy rhetoric was followed by few tangible examples of how this could be translated into reality. Although these included: providing a stronger police presence, reducing police bureaucracy, improving parenting, improving educational standards, increased community and social

responsibility, and getting people into employment.

A further populist policy was also highlighted, namely National Citizen Service (NCS). This is an eight week, voluntary programme for sixteen year-olds that helps to develop their personal skills in preparation for adult life. The scheme is being piloted in 2012, with places available for 30,000 young people (Department for Education, 2011a). This scheme is supposedly akin to National Service but despite the best intentions of the government to create a value driven programme of development for young people, there are obvious differences between these two schemes. The difficulty in implementing the voluntary NCS effectively will be the accurate targeting of at-risk young people to be involved, particularly when young people are being encouraged to apply themselves (Directgov Website, 2011). We shall return to issues of implementation later.

A final key issue emphasised by Cameron in his speech was punishment. He promised “proper punishment” (Cameron, 2011b) for those involved in gangs, criminality and disorderly behaviour. This neat sound-bite was not reinforced with any policy direction, but it hinted towards a draconian sentencing regimen of imprisonment. Indeed Cameron said whilst addressing the House of Commons, that “anyone charged with violent disorder and other serious offences should expect to be remanded in custody not let back on the streets and anyone convicted should expect to go to jail” (Cameron, 2011c quoted in The Daily Telegraph, 2011). May’s earlier speech to the House of Commons had also alluded to this strategy, suggesting that the disorderly tide was “turning because the thugs are being arrested and locked up” (May, 2011). More recent rhetoric from the Work and Pensions Secretary alludes to the idea that if you can prove someone belongs to a gang, then their prison sentence could be doubled. (The Guardian, 2011e).

It appears the notion of proper punishment has been embraced by the Metropolitan Police, who have named and shamed those convicted of offences connected to the riots. In December 2011, under the auspices of Operation Withern, they posted photographs and personal details of sixty-four convicted offenders on the website Flickr. The details included the offenders’ name, date of birth, street where they live, the sentence they received and the crime they committed. A further two-hundred photographs of those they wish to speak to regarding the riots have also been posted. This demonstrates one way the rhetoric surrounding punishment has been translated into reality.

However, is the Conservative proportion of the coalition therefore reverting back to traditional right-wing ideologies of punishment to gain a populist advantage? There is evidence to suggest that they are. Data from the Ministry of Justice suggest that those brought before both the Magistrates’ and Crown Courts as a result of being involved in the riots, faced harsher sentencing in comparison to similar offences committed in the previous year. For example, “at the Crown Court, 89 people have been sentenced of whom 79 (89 per cent) received immediate custodial sentences, the average length of custodial sentence was 18.5 months compared with 11.3 months in England and Wales in 2010” (Ministry of Justice, 2011: 4). Official figures were reinforced by stories in the print media recounting disproportionate sentences, for example: a student from London was jailed for six months for stealing water bottles worth £3.50 (The Guardian, 2011f). This harsh attitude towards sentencing sparked criticism from the Howard League for Penal Reform who issued a statement suggesting that sentences “should be balanced against a key principle of criminal justice, that of proportionality” (Howard League for Penal Reform, 2011). Perhaps the Conservatives have always favoured a return to their right-wing punishment ideals, but prior to the rioting had no tangible excuse to heavily invest in such a plan during difficult economic times? It is worth briefly reflecting upon

why the government would take this stance, considering the parallels which can be drawn to traditional conservative policies. Are these populist policies a means of fuelling public confidence in the government in light of the swingeing public spending cuts? How long will the rhetoric surrounding the riots last? And, will it be translated into mainstream criminal justice policy on a more long-term basis?

During the above policy announcements the Liberal Democrat aspect of the Coalition has remained relatively quiet. However, Deputy Prime Minister Nick Clegg used the platform of his party's annual conference to announce the creation of summer schools for young people, as a way of dealing with some of the perceived causes of the riots. Summer schools will involve at-risk young people attending school for two weeks of the summer holidays prior to them attending secondary school, with the remit of them catching up on key skills in English and Mathematics. The scheme will cost £50million to run for one year (Clegg, 2011). This is another Whitehall-driven policy that reverts back to previous 'top-down' style of government.

Much has been written about the criminalisation of social policy that is perceived to have taken place since the early 2000s⁴. Perhaps post-riots we are moving into an era where welfare policy has an undertone of riot prevention, which suggests an unsubstantiated causal link between welfare dependence and disorder/criminal behaviour? In that sense, are we witnessing a new phase of defining deviancy up, where those who are welfare dependent are further stigmatised and considered as deviant by default? This would be in addition to the marginalisation this group of people already contend with by being labelled as the 'underclass' (Murray, 1990).

Conclusions and Implications for the Future

The social implications of the riots and the ensuing policy pledges are beginning to unfold. Will the fear of crime increase? How will confidence levels in local authorities be affected, if at all? How will this affect frontline crime reduction practice? Many of the policy directions announced post-riots revert to a top-down agenda; the focus on gangs, early intervention, NCS, punishment and imprisonment, 'summer schools' and the new Troubled Families Team. This notion contradicts the de-centralised approach promised by May back in 2010. Time will tell as to whether any of these headline policies will be able to be adapted and implemented effectively at a local level. Issues surrounding the targeting of at-risk individuals will be key, particularly if the NCS, 'summer school' and gang initiatives are to serve their purpose. The notion of responsibility is crucial here. CSPs will undoubtedly have a key role to play in co-ordinating what is delivered at local level, but with the impact of reduced public sector budgets will these authorities have the physical and economic capacity to do this effectively? The introduction of local PCCs may be the beacon of hope for the localism agenda, but this relies heavily upon the quality and experience of the candidates selected.

The key issue remains; can and should all the populist rhetoric be able to be translated into reality?

Translating criminal justice policy into effective crime reduction practice is no easy task. From the recent Coalition policy announcements it appears that a cycle of legislation is occurring. This existing legislation is being streamlined (ASB sanctions), while new conduct regulating legislation is being brought in (gangbos for under eighteens). This

⁴ See Gilling (2001) and Squires (2006)

cycle suggests that the Coalition also appear to resort to conduct regulation as a default legislating framework. Does this cycle really provide tangible conditions for societal change and/or progress? Or, is the past simply being repeated?

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