

“Where the position of the appropriate adult is not clearly spelled out the danger is that the role recedes to one involving a passive adult presence where little or no assistance is offered to the detainee.” (Bucke and Brown, HORS 174:11)

A result of this situation is that the appropriate adult scheme is no longer ‘fit for its purpose’.

Critically evaluate this statement in relation to the current use of appropriate adults in England and Wales.

The appropriate adult scheme was introduced into the English Legal System through the Police and Criminal Evidence Act 1984 (PACE) Code of practice C. This Act was introduced following a series of problems concerning juveniles and vulnerable adults when they came into contact with the police. Those groups are very vulnerable when they have to be questioned by the police for any suspicion of committing an offence; as they may not understand the questions admitted to them and consequently may give false confessions. However, any adult is not an ‘appropriate adult’, so as his/her position is not obvious the role may be jeopardised by the presence of a ‘passive adult’ who offers little or no help to the suspect. [Bucke & Brown, 1977:11] Does the role of the appropriate adult ‘fit for its purpose’ or it becomes a routine procedure of the police work? Are those adults who appear in the police stations are actually ‘appropriate’ and carryout their role as it should be for assisting the vulnerable detainees or their presence is ‘passive’? Have the new amendments and measures helped to create an up-to-date ‘appropriate adult scheme’? In order to answer these questions and others in relation to appropriate adults I have to look at different literature; reference books, journals and studies dealing with that subject. I have to look at PACE Code C and to understand what the Act requires from an appropriate adult and who are the ‘appropriate adults’? I have to look at the way different judges treat the appropriate adult regime and to analyse and evaluate their attitudes towards them.

An appropriate adult is a person who is required to come to a police station to advice and assist a vulnerable suspect. [Code C, para. 1.7] The role of the appropriate adult is to assist and advice the vulnerable suspect, make sure that the questioning is fair and

to facilitate the questioning. [para. 11.17] Vulnerable suspects who are in need of an appropriate adult are juveniles, those who are mentally disordered and those who appear to have a learning disability. [para. 3.15] Juveniles may appear less problematic to be identified; as they are those who appear to be under the age of 17 [para. 1.5] however, the mentally handicapped and mentally disturbed suspects are difficult to identify and they may behave in a way which looks suspicious and attracts attention of the police. The way they behave may lead the custody officer to believe that they tell lies and fabricate stories. They may make incorrect admissions as a result of their vulnerability and due to their type of personality or in order to please the investigation officer. [Fennell, 1994: 57]

Most of the literature in criminal justice concentrates on 'serious' mistakes and miscarriages of justice in the Crown Court. They neglect that 'the mass of criminal justice is administered by police and magistrates', that the guilty plea or encouragement for guilty plea is decisive in any criminal justice case. [Dixon: 1999: 81] At the same time Maguire & Norris (1994:10) argue that the 'sheer volume of cases' in the police stations and the way police treats the suspects 'tends to place their rights and welfare low on the list of police priorities'. It can be argued that the role of an appropriate adult is vital in order to challenge these police practices.

When a juvenile or a mentally disturbed or somebody with learning disability arrives at a police station it is the custody officer's duty to call for an appropriate adult before interviewing him. [para. 11.15] There are exceptions to the basic rule to allow the police to ask questions if gaining information from a suspect is urgent. [para.11.1]. An appropriate adult for a juvenile is a parent or guardian, any other person or organization responsible for his welfare such as the social services or any other responsible adult. [para.3.13] However the physical presence of an adult is not sufficient for the role of the appropriate adult. Hodgson, (1997: 789) argues that the person must have some empathy for the suspect; in this case an estranged parent whom the suspect does not wish to attend is not an appropriate adult. [Zander, 1995:187] Hodgson further comments by saying: 'empathy alone, however, is insufficient. The appropriate adult must be capable of giving advice to the suspect'. [Hodgson, 1997: 789] However, as Clark (2004: 475) and Zander (1995: 187) argue it is very rare for an appropriate adult to interfere, and when they do it is mostly against the suspect not in support of him. In this case it can be argued that the appropriate adult is not 'fit for the purpose'. However Judge Auld in *R v Jefferson and others* [1994] held that interventions from an adult for a juvenile to tell the truth in a 'fair interview' environment are not against the role of an appropriate adult, as he says:

"Encouragement by an 'appropriate adult' of a juvenile who is being fairly interviewed to tell the truth should not normally be stigmatised as a failure of the adult to fulfil the first of his duties under note 13C, namely 'to advise' him; nor should it have the consequence of turning him from an 'appropriate adult' to an inappropriate adult for the purpose of these provisions." [*R v Jefferson and others* [1994] 1 All ER 270 at p. 287]

The time scale is another subject. The custody officer may think about releasing or charging the juvenile if an appropriate adult cannot be contacted or he cannot come to the station within a reasonable period of time. [Clark, 2004: 477] Even when he comes to the police station he may not fully understand the importance of his role in

that case. [Zander, 1995: 188] To avoid this problem Zander (1995:188) suggests presenting a form of notice to the appropriate adult 'to specify concretely both his role and his rights.' However, it can be argued that this may not solve the problem as there are illiterate, low-intelligence and mentally disturbed people who may be called to act as appropriate adults for being parents or relatives to the suspect. [Hodgson, 1997: 789] Brown, et. al (1992: 8) argue that the adults called to the station should be 'truly appropriate' and 'aware of what is expected of them.' However, there is no guarantee for this, as Blackwell (1990) argues the police are more interesting in calling parents in juvenile cases because as they are not fully aware of the appropriate adult procedure so they can easily be manipulated. Simultaneously, as Hodgson (1997: 790) argues the police do not encourage those who attend the police station to take an active role, regardless of whoever attends. The reason behind this is that they are supposed to protect the suspect so 'they represent interests which oppose those of the police'. [Hodgson, 1997: 790]

Social workers are supposed to be better than parents in this situation, as they are familiar with some aspects of the procedure. However, based on a training course performed for Wirral Social Services, Hodgson argued that most of those social workers who attended police stations as appropriate adults were unaware about their roles and those of the police. They were not certain where they may intervene and most of them thought that they were even not allowed to do so. [Hodgson, 1997: 790-1, Littlechild, 1995:543] It can be argued that an appropriate adult, in this instance, takes a 'passive' role as he cannot understand his position and is unable to offer the required assistance to the vulnerable suspect.

When a suspect arrives at a police station he has an automatic right to legal advice. [para.6.1] Clark (2004) argues that the role of an appropriate adult is vital for a vulnerable suspect as he, as Clark argues, is the best to regard the suspect's right for legal advice. [Clark, 2004: 472-3] However, as Brown, Ellis & Larcombe (1992: 32) found out juveniles were not always informed of that right before the arrival of an appropriate adult. In this situation some adults may stand against the right of legal advice in order to avoid any delay in waiting for a solicitor. The appropriate adult, it can be argued, who is supposed to advise and assist the suspect may jeopardise the juvenile's right to free legal advice and put him under the control and influence of the police.

Clark (2004: 473-4) pays attention to lack of awareness from those groups, and even the appropriate adults to 'particular difficulties faced by vulnerable suspects.' The Home Office Review Group Report in 1995 advised to call a legal adviser whenever they realized that there is a need for an appropriate adult. However, as Clark (2004) argues, the 'identification' of the 'need' for an appropriate adult itself is complicated, especially in mentally disordered and mentally handicapped suspects. The appropriate adult, wishes or not, may become an agent of the interviewing officer and put extra pressure on the suspect if he does not fully understand his role in the process. [Clark, 2004: 474-5] Hodgson (1997: 789) argues that the way the Code of Practice describes the role of an appropriate adult is 'brief and presented in broad terms'. It is not clear, as he argues, how can they assist in 'communication'? Is it to make sure that the suspect and the police understand each other? Or the adult can answer for the suspect? How they may advise the suspect, is it legal or something else? What actions may guarantee 'fairness'? Hodgson concludes by saying: 'there is no guidance for the

appropriate adult in deciding these issues'. It can be argued that the role of the appropriate adult, according to what mentioned before, is not 'clearly spelled out' and a 'passive adult presence' is a big possibility.

The case is more complicated in relation to those vulnerable suspects who are mentally ill or have learning disability. The police have difficulty in identifying those suspects. They may easily be confused for people being under the influence of alcohol or drugs for those who are mentally disabled, according to the Code 'any suspicion of mentally disorder or handicap' should be treated as such. [Clark, 2004: 480] Clark concludes by saying:

"Psychiatrists regularly disagree over the meaning of mental disorder, yet police officers are expected to recognize it without any diagnostic training." [Clark, 2004: 480]

Police surgeons are called only in cases of mentally disordered suspects as they believe that mentally handicap suspects do not need treatment. [Clark, 2004: 481] Laing (1995:374) argues that police surgeons have little knowledge about psychiatry and they are short of time, at the same time, as he argues, they may rely on physical assessment 'which would not necessarily identify any mental health problems.' Laing concludes by suggesting that as police surgeons are 'inadequate' in relation to mentally ill suspects there is a need for 'qualified psychiatric personnel' to be placed in police stations to make sure that those vulnerable suspects do not 'slip through the net' and to provide the police with a reliable medical advice. [Laing, 1995: 374] However even if the police recognize a suspect is mentally vulnerable this may not guarantee calling an appropriate adult, as in the case of *R. v. Aspinall* [1999] Where two doctors examined the suspect and he asked for such an examination as he stated that he was schizophrenic. However they did not call an appropriate adult and carried out the interview. Judge Bracewell allowing the suspect's appeal remarks:

"This fact compounded the unfairness arising from the breach of the Code of Practice. Not only was this mentally disordered appellant deprived of the assistance, guidance, and protection of an appropriate adult, but was also without any legal advice." [*R. v. Aspinall* [1999] 2 Cr. App. R. 115 at p.122]

However, it can be argued that any adult is not an 'appropriate adult' and finding a reliable adult is not less problematic than the police assessment for the need for such a person. In relation to mentally disturbed and mentally handicapped suspects it is not very common for a parent or relative to attend. Those offenders 'are typically homeless individuals receiving little or no support in the community who may have lost contact with the psychiatric facilities'. [NACRO, 1991] The Code mentions that a qualified person is better than a relative for those suspects who are mentally vulnerable or disturbed, however if they prefer a relative their wishes should be respected. [Code C, Notes for guidance 1D] Hodgson argues that the role of a legal adviser is crucial to provide 'advise and assistance and even protect the suspect from overbearing police behaviour'. At the same time he does not neglect the role of an appropriate adult which should be, as he argues, professional in terms of training, payment and availability, in a scheme similar to that of the legal adviser's. [1997:794-5]

A qualified person to be asked to play the role of the appropriate adult is generally a social worker. Hodgson (1997: 795) argues that for mentally handicapped and mentally disturbed suspects a social worker is not ideal, but 'someone with psychiatric training and experience or someone who works with the suspect regularly' is a better choice. However, it can be argued that in practice this is very far from reality. Whenever a parent or relative is not present a social worker will be called as the nearest possibility, Hodgson comments on this by saying:

"It is not clear that social workers, the profession generally singled out as the most likely candidates, have any such vested interest in appropriate adult work, nor that they are the most suitable body, given the potential for role conflict." [Hodgson, 1997: 795]

Littlechild (1995: 542) argues that 'it may be necessary in the interests of justice to ensure that other independent appropriate adults are present, as well as relatives'. From another perspective, Fennell (1994:67) questions the necessity of keeping the appropriate adult scheme at all, as a result of so many difficulties in finding 'suitable people' and the 'internal contradictions between advising the suspect and facilitating the investigation inherent in the role'. Fennell asks about the possibility of replacing the appropriate adults with fully qualified solicitors who are trained in advising mentally disordered clients; however he soon realized that a solicitor in a 'professional capacity' cannot act as an appropriate adult. [Code C, Notes for guidance F1][Fennell, 1994:67] Clark (2004:477) argues that social workers are not favourable for acting as appropriate adults because of 'lack of resources' especially at night-time, difficulties with availability, lack of required training and they may fall in a 'conflict of interest' in relation to confidentiality issues. It can be argued that in many cases social workers may attend who have not any knowledge about that specific issue, as in the case of *Leach v Chief Constable of Gloucestershire Constabulary* [1999] 1 All ER 215 at p.218, Lord Justice Pill ruled that Leach was not suitable for that role as an 'untrained/unqualified voluntary worker whose experience was limited to the young and homeless' It can be argued that a 'passive' adult presence, as in this case, is not helpful for the suspect and has unpleasant consequences for the adult.

Pierpoint (2006:219) suggests having a voluntary appropriate adult service may solve all the problems relating to appropriate adults in England and Wales. While Williams is in favour of a professional appropriate adult scheme, as he says:

"If appropriate adults are to be effective the role must be professionalized and undertaken by people who are independent of the detainee, the police and social services." [Williams, 2000:919]

It can be argued that, a professional or even voluntary appropriate adult service may help in organising the system and solve the problem of unavailability. However, it may mean managerialism and control and the service may transfer from an informal service to an integrated part of the police and the criminal justice system.

Providing an appropriate adult to advise and assist those suspects who are vulnerable because of their age or disability was considered as a good idea to avoid miscarriages of justice. However, the presence of an appropriate adult without a clear role may mean the physical presence of an 'adult' who is 'passive' and unreliable for the role.

As the continuity of miscarriages of justice show, the appropriate adult scheme is no longer 'fit for its purpose' and may need fundamental changes. Making the system a professional one or forming a national volunteer appropriate service may help to organize the service and to make an 'adult' available for many vulnerable suspects. However, to what extent those 'adults' are 'appropriate' and 'fit for the purpose', is a question for justice in the future.

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## Cases:

- Leach v Chief Constable of Gloucestershire Constabulary* [1999] 1 All ER 215
- R. v. Aspinall* [1999] 2 Cr. App. R. 115
- R v Jefferson and others* [1994] 1 All ER 270

# **An analysis of the history and development of the probation service illustrates a number of key eras and legislative changes that appear to have transformed its structure and purpose**

Probation has a long history; throughout this history it passed many different stages and witnessed significant political and legislative changes which affected its structure and purpose. All these changes did not happen randomly; they occur in the context of social changes and the progress of society. Different social theories have influenced the progress and change of probation service throughout history; starting from religion until the most up-to-date theories of our modern society. These theories and legislative changes are embodied, to a certain degree, in the policies of the political parties which ruled the country in different historical eras. Does the Probation Service lose its principal message of 'advice, assist and befriending' offenders? Does the Probation Service start with a seed and grows until it becomes a tree? How can we analyse and evaluate all these legislative and political changes which altered the structure and purpose of that institution? In order to answer these questions and others about the probation service we have to analyse and evaluate the history and fundamental legislative transformations of the service from the beginning until now.

The origins of probation can be traced back to the early 19<sup>th</sup> Century in America. Brownlee (1998: 63-64) argues that at that time there were individuals who were using the idea of 'recognisance' with young offenders out of their own ambitions, without any formal order or initiative from the courts or official institutions. According to recognisance the offender enters an agreement to refrain from any more criminal activities and promises to behave well under the supervision of a well trusted citizen.

Jarvis (1972: 1) argues that probation and after care service has developed as a result of humanitarian insights of the Christian charities and the increasing knowledge about the sufferings of the masses. England was experiencing a climate of industrialization with all its bad consequences. The problem of heavy drinking was very common, as Jarvis described it as a 'great social evil'. So the Church of England in 1869 had prepared itself to fight that social epidemic by forming their own society; the Church of England Temperance Society. Their immediate target was to save the souls of those people by preventing them from heavy drinking, reforming them and removing the causes of 'intemperance'. [Jarvis, 1972: 2] This humanitarian movement, as Brownlee argues, was a reaction to industrialization and what is called laissez-faire, which

prevents the governments from interfering in commercial affairs. [Word Web Online dictionary, 2006]

The Police Court Missions was the first movement by the Church volunteers to sit in the courts trying to speak to the people and prevent them from committing offences after offences. As Jarvis explains, the problem was not only with drinking but people were involved in other crimes such as violent crimes, theft and child neglect and abuse. [Jarvis, 1972: 3]

However Vanstone (2004) argues that the starting point and development of the probation service is not as simple as it is restricted to religious charity and orthodoxy. Although religion and humanitarian notions have an important role in the origins of probation, he argues, however:

"The emergence of the study of individual psychology, the shift from individualism to individualization in the application of punishment, and political and societal concerns about the maintenance of social order have been neglected or at least underplayed." [Vanstone, 2004]

In this context, probation adopted science and rationalism into the religious and moral dialogues in order to make a transition from individualism to individualization. It tries to provide an alternative to prison for those who deserve it and justifying imprisonment at the same time for those who are not likely to deserve sympathy. [Vanstone, 2004] Conflict and opposition were the main characteristics of probation in that era. The probation service showed that the reform movement of the Victorian period was underlined by a difficult struggle between different political parties and social leaders. The government changed its policy in dealing with the dangerous people by identifying them and then trying to reform them and supervising them through the service. They acknowledge growth of crime as a product of immorality. So, as Vanstone argues: 'the development of probation, therefore, must be viewed in that broader sociological context.' [Vanstone, 2004]

According to Young (1976) the origins of probation are parallel to the middle class reformers' ideological position at that time. They were concerned about what causes social problems, what their natures are, and how they may deal with them; mainly by providing charity giving. When the police court missions appeared, charity was in the hands of the professionals who were using it to 'diminish demoralization of character'. Young argues that probation was part of the social control and class conflict of the time, by saying that:

"Probation emerged as a policy measure generated out of a relationship between classes in the later nineteenth century" [Young, 1976]

The influence of the rise and growth of psychology and psychiatry can not be ignored on probation at that time. Psychiatry looks at criminality as an epidemic disease. The psychological enquiry suggests that young offenders and those who may be in danger of involvement in criminal behaviour in the future are in need of protection from the consequences of 'moral degeneration'. [Rose 1985: 167,174] It can be argued that, offending and criminality entered all the fields of medical, educational and mental health in that period. Probation officers were involved in individual cases and they



had to deal with them from different sides in different social circumstances. They combined together, 'the home, the school, the court and the clinic, the playground and the street' (Rose, 1996:11)

The Summary Jurisdiction Act (1879) has its importance in the history of probation as it allows the use of recognizance as an early form of bail. According to that Act a respectable person can take responsibility for how the offender may behave in the future. [Jarvis, 1972: 11] However the Probation of First Offenders Act (1887) is the first official document to use the term 'probation'. According to that Act probation can deal with some other offences apart from drinking problems. It leads to a rise in the cases the missionaries dealt with from 64 in 1890 to 2,952 in 1900. [Jarvis, 1972: 12]

The 1907 Probation of Offenders Act was introduced to further regularize the work of probation officers. The Act has changed the service from an ad hoc activity towards a more formal and regular one. It gave the courts power to appoint and pay probation officers to 'advise, assist and befriend' those offenders whom they supervise [Davies, Croall and Tyrer, 2005:395]; the Act suggests:

" To visit or receive reports from the person under supervision at such reasonable intervals as the Probation Officer may think fit; to see that he observes the condition of the recognizance; to advise, assist and befriend him and when necessary, to endeavour to find him suitable employment." [Jarvis, 1972: 16]

It is apparent that the 1907 Act has suggested small measures to the service, however its role is significant and vital not only on probation in England but in the whole world; a fact which is supported by the United Nations in a special publication many years later. [Jarvis, 1972: 17] Davies, Croall and Tyrer (2005:395) argue that the 1887 Probation of First Offenders Act was the first major Act and legislation in that field, but supervision had not a place in that Act. For that reason, the Probation of Offenders Act 1907 became the key Act. This Act was followed by the Prevention of Crime Act 1908, which suggested Borstal institutions with a period of licence to follow training. In 1912 National Association of Probation Officers (NAPO) was formed and following it probation became an 'established profession'. [Crow, 2001: 83]

Cavadino & Dignan (2002:220) argue that the probation service in its early days had a great impact on reducing the prison population. However they believe that the probation service has lost many of its original targets through professionalism and bureaucratic developments which have their force on the service since 1912- when the NAPO was created. [Cavadino & Dignan, 2002: 220] It can be argued that as prison was a step forward from brutal killings and torture of the middle ages, probation is a further step forward towards a more humane treatment of offenders. Offenders under probation have a better chance of rehabilitation and reform which has been a major purpose and justification of punishment throughout history. Probation gives offenders a second chance and hope in life and more space to review their behaviour.

By 1925 each court had a probation officer as a mandatory requirement. So, the probation service became more regularized and official. In 1936 the service became more national than local as the Home Office played a more important role in training the officers, inspection and by establishing a Central Advisory Committee. The 1948

Criminal Justice Act (CJA), which repealed all the previous Acts relating to the probation service, made training more powerful and links with the courts more regular and systematic. The Act established new probation committees and offered more public funding for probation hostels and homes. It is the 1948 CJA which transformed the nature of rehabilitation from a religious one to a more secular one, based on scientific evaluation of offenders each on his/her merits. [Davies, Croall and Tyrer, 2005:395-396]

In the 1970s the probation service experienced important changes and new developments were implemented. The so called 'nothing works' movement criticized the medical model which argued that crime such as any other disease can be diagnosed and treated. This new movement argued that the medical model is only a waste of time and resources. [Crow: 2001: 27] Martinson (1974) argues that even if the treatment programme is working to a certain degree, it is difficult to prove it by research findings. Crime, contrary to body illnesses, relates to social problems which are different and more complex than can be dealt with in medical or treatment terms. [Cavadino & Dignan, 2002:37]

Rehabilitation in its basic term means that offenders need state support to 'get the opportunity to be full members of society, with the rights and responsibilities that this entails.' For some people, this may mean going back to one's former state of being and for others may mean getting skills and services formerly denied or 'the establishment of rank, rights and responsibilities previously denied.' [Lewis, 2005] Hucklesby (2004: 210) argues that offenders need treatment not punishment.

The rehabilitation model has been criticized by both left and right. The left argue that it neglects the inequalities of the society that may cause offensive behaviours; treating individuals can not bring any social change and does not contribute to crime prevention. The right also criticize this model because, as they argue, it denies individuals responsibility for their behaviours and acts; they believe that the rehabilitation programmes are only extra expenses on tax payers. [Easton & Piper, 2005: 289]

During the 1970s the independence of the probation service also came under fire by both the right and the left. The left argued that the officers are oppressive towards the clients and stigmatize them, and the right who believed that probation did not prevent re-offending. [Wilson & Ashton, 1998: 141] However, it can be argued that probation always is a better choice than prisons which are 'at best merely lock-ups and at worst colleges of crime.' [Shafto, 2004: 148]

In the mid 1970s the government, which was Labour, had experienced many economic and social problems, ranging from the trade unions to unemployment and the effects of the global market and monetary procedures. All these troubles had their impact on the probation service as the government had to review its way of spending money. At the same time the old methods of community supervision had proved its ineffectiveness, and needed to be changed. [Brownlee, 1998: 75] In 1979 a new conservative government was elected with the first female Prime Minister, Margaret Thatcher.

The Conservatives have combined the traditional conservative theory with laissez-faire liberalism; which means that the state should not interfere in business and economy. The traditional conservative ideology is based on a pessimistic view of human nature. They argue that human beings are weak, selfish and irrational by nature. So, an influential and hierarchical government is a fundamental necessity, as they argue, in order to discipline the society. [Goodwin, 1995: 163-164] [Tame, 1991: 134] The new conservative government, through these reforms and adaptations, has developed a new political position which is known as the 'New Right'. According to the conservatives 'Individuals are responsible for their actions, and these are not determined by inner or outer forces'. [Tame, 1991: 130]

Conservatives argue that as offenders are not basically different from the rest of us, society should reinforce its morals by punishment and discipline. [Tame, 1991: 130] This means that they put a lot of emphasis on punishing offenders as a means to prevent crime. In a just society, they argue, everybody gets what he deserves, so 'the wicked deserve to be punished'. [Berns, 1979: 147 cited in Tame, 1991: 137]

It can be argued that people from the higher social classes also commit crime, and not all the members of the lower classes are offenders. The 'New Right' theorists argue that although there are social forces and the social environment influences individuals, however 'nothing can remove freedom of will'. [Tame, 1991: 131] In this context crime is not a result of different social and economic conditions surrounding the individual, as the left and Labour believe. It is also not caused by a sickness or mental disorder as the medical model suggests. Crime is a business based on benefits and costs, 'professional criminals seem to have made sensible career choices, in other words crime pays'. [Mackenzie & Tullock, 1975: 131, 155 cited in Tame, 1991: 135] Wilson, J., Q. (1996: 307-313) argues that by creating more non-criminal opportunities such as jobs and making punishment more certain, rapid and severe, recidivism will be prevented.

According to the conservative theory the government should concentrate on the private sector more than the public sector. In Margaret Thatcher's own words 'private sector good, public sector bad'. However public sector problems may come to the attention of the politicians more than the private sector problems; that is why they are seen as problematic. [Leach, 2003] Based on these hypotheses the 'New Right' has expanded its punishment scale and begins with a privatization movement including prisons. They introduced new proposals for dealing with crime and disorder, 'had those plans been implemented they would have added an estimated 10,800 to the number of offenders in custody'. [Morgan, 2002: 1115]

The New Right's toughness on crime may automatically mean prison expansion. As Mr. Whitelaw in March 1982 announced that there should be a place in prison for everyone who the judges and magistrates believe should go. [Cavadino & Dignan, 2002: 292] It can be argued that the problem of overcrowding was the biggest law and order problem faced by the conservatives. As building prisons is a slow process, the conservatives think of other ways to punish people outside prison; probation. In the 1979 Conservative Manifesto it is mentioned that prison should be restricted to 'violent criminals and thugs'. [Cavadino & Dignan, 2002: 293]

The conservative government by itself argued that prison is 'an expensive way of making bad people worse.' [Home Office 1990, cited in Stewart et al., 1994: 6] They also believed that the probation service also needed to be developed or utilised. Thatcher provided the probation service with extra funds and resources but at the same time she put it under political pressure. She changed the role of the probation service as the 'criminal's friend' to a more punitive one. [Wilson & Ashton, 1998:142] However, Walker & Beaumont (1985) argue that the New Right's general policy of cut in public funds and attacking the welfare state, high level of unemployment and free market economy, had affected the probation service as well. Although the probation service was protected from major cutbacks, however the consequences of these policies had affected the individual clients indirectly through unemployment, growing poverty and limited access to vital services like housing, education and health. [Walker & Beaumont, 1985: 9-10] Nash (2004: 237-239) argues that contrary to the public view, at that time, that conservative government would abolish probation, they even developed it but they had changed its functions and structure fundamentally.

Hirsch (1996: 320-321) argues that in punishing an offender the seriousness of the crime should be decisive not his need for treatment, his dangerousness or to deter others from committing crime. For Hirsch, less serious punishments should not mean rehabilitation but just less severe punishments. Probation is 'treatment-oriented' so it should not be used, as Hirsch argues. Although the conservatives did agree with Hirsch for tougher punishment, however they utilized probation to become a special method of punishment not a soft option as it was known.

The 1991 Criminal Justice Act (CJA 1991) is a significant piece of legislation in relation to probation. According to CJA 1991 if an offence is 'Serious enough' but not 'so serious' to justify custody 'community sentence' could be imposed. [Raynor, 2002: 1169] In this perspective their policy was to limit prison for those convicted of most serious offences especially violent and sexual crimes and to punish property offenders in the community. [Stewart et al., 1994: 8]

The CJA 1991 introduces what is called 'seamless sentence', which concentrates on activities to reduce re-offending both in prison and outside prison after release. According to this new method a sentence is partly served in prison and partly in the community. The role of the probation officer here becomes more important to supervise those released on license. Serious offenders, those with life imprisonment and some sex offenders, have to remain in long term contact with the probation service. [Davies, Croall and Tyrer, 2005:399] Although this approach has its effects on reducing the prison population, however, it can be argued that those on license may still commit crime. From another perspective, focusing on the offending behaviour may mean neglecting the personal and social circumstances in which that offending behaviour occurs. [Stewart, 1994: 4]

In October 1993 the then Home Secretary Michael Howard announced that 'prison works'. Since this speech until now the prison population is on the rise. [Raynor, 2002: 1181] It can be argued that a huge prison population is not only expensive but it is difficult to control. [Cavadino & Dignan, 2006:74] They put various measures to make non custodial penalties tougher, in order to ensure judges that punishment in the community is a genuine and real punishment and not a soft option any more.

[Cavadino & Dignan, 2006:74] The conservatives tried to divert their attention to other methods of non-custodial punishment; in order to avoid the problems and crisis of mass imprisonment. This policy affects the probation service as the probation officers became uniformed and better trained to be transformed into professional officers not to be merely 'social workers'. [Stewart, 1994: 10] From 1995 they started to recruit people to become probation officers from a different range, particularly from the armed forces. [Cavadino & Dignan, 2006:222]

It can be argued that introducing more professionalism and bureaucratic developments dislocated the probation officers from their initial tasks. They became busy with bureaucratic duties so they did not have enough time to spend in court. [Cavadino & Dignan, 2002:220] It can be argued that they gradually left their original duty of 'advice, assist and befriending' offenders to become part of the Criminal Justice System and deliver another kind of punishment outside prison similar to policing. [Ashton & Wilson, 1998: 144] From a left theory perspective, Cavadino & Dignan (2002: 303) argue that punishment in all its forms and types has a very limited effect in reducing the amount of crime. Solving the social and economical problems, they argue, which cause crime may have better results on crime reduction. It can be argued that the reality that crime did not fall under the conservatives better supports this argument.

The Lord Woolf's prison reform report (1991) is a good indication about the terrible situation of prisons at that time. He argues that the whole system of prisons should be changed fundamentally. 'Treated like animals, the prisoners eventually reacted like animals, with devastating consequences'. [Wilson & Ashton, 1998: 35] Cavadino & Dignan, (2002:305) argue that what concerns the Woolf report in the first place was justice for the prisoners inside prison. However, justice of imprisonment and justice in the sentencing system and other measures in the Criminal Justice System have the same importance. What supports this argument is Her Majesty's Inspectorate of Probation in 1994, which reveals that:

"Inevitably many of those on probation face acute social problems: over 80% unemployed, more than half are drug or alcohol abusers, and there are significant minorities with mental health and housing problems." [Wilson & Ashton, 1998: 148]

In 1997 a Labour government was elected. The Labour party had to transform itself ideologically and visually in order to become an acceptable party by the middle classes and get their vote. Tony Blair's famous speech: 'tough on crime, tough on the causes of crime' had combined the left and the right together to create a Third Way. From a right perspective 'tough on crime' means crime is a rational choice of people so they should be punished and receive their just deserts. While 'tough on the causes of crime', it can be argued, is a more socialist view of society and individuals. From a left or socialist perspective the social and economic environment in which crime happens should be changed not the individual offenders. As there is always a difference between theory and practice, it is difficult to measure the success of the government in this field. Carlen (1994: 310) argues that state should fulfil its obligation to solve the social problems that cause offending behaviour before imposing its right to punish. Raynor (1997: 258-59) argues that offenders do not only deserve penalties, they should get enough help to overcome the disadvantages that

lead to their criminality. [Lewis, 2005] Based on these two suggestions, Lewis concludes:

"What these arguments have in common is that they recognize that both citizen and state have duties, and that citizens are more likely to comply with the law if the demand that they do so is experienced as legitimate." [Lewis, 2005]

The New Labour, as its known, tries to involve the community much more in the process of law and order and fighting crime. This approach means that citizens should take some responsibility for the safety of their communities and they should not expect the police or the Criminal Justice System to do everything for them as a miracle. According to this policy all the institutions and the public should work together in order to achieve the key aims and objectives. David Garland (2001) in *The Culture of Control* calls this share and partnerships 'preventative partnerships' and 'responsibilisation' and argues that 'it is one of the most important lessons of the twentieth century'. [Skinns, 2003] It can be argued that as this policy on the surface looks democratic and liberal; in the deep structure it means more surveillance and control over the public and limitation of public liberties. Cohen (1985) argues that there is a danger that the boundaries between state and non-state organizations and individuals become blurred and the net of the criminal justice system becomes widened. Here, as Cohen argues the state will reach the deepest point of social fabrics and will result in a more powerful state. [Skinns, 2003]

The 1998 Crime and Disorder Act (CDA 1998) is a good example of what the New Labour wants to bring in. The Act has many measures to deal with juveniles and youth problems; it introduced Youth Offending Teams and Youth Panels and reinforced the Anti Social behaviour Order. The Act also re-emphasised what was known as the right's or conservative's measures of using technical methods such as electronic tagging and CCTV camera surveillance to tackle crime. At the local level, the CDA 1998 has selected local authorities and the police as responsible bodies for fighting crime. Later on, the fire service, probation service, the police and the primary care trust have joined the Crime and Disorder Reduction Partnerships or Community Safety Partnerships (CSP). The New Labour emphasizes on the common moral base of community; known as communitarianism. However Mc Laughlin, (2002:97) argues that communitarianism does not support ruling through communities, but it attempts to govern 'through a community of remoralized, responsabilized and decriminalized local communities'. The CSPs are the best example of New Labour's Communitarian programme. [Skinns, 2003]

The Criminal Justice and Courts Act 2000 is a turning point in New Labour's policy towards probation. According to the Act, probation order becomes community rehabilitation order; community service becomes community punishment order and a combination of the two becomes 'community punishment and rehabilitation order' [Raynor, 2002: 1168] The Act introduces National Probation Service (NPS) for England and Wales. It is apparent that following the Probation Service Act 1993 they formed 54 separate probation services. However they remained disjointed and it was difficult for the Home Office to control them. The NPS has 42 local areas, similar to the 42 police forces of England and Wales, and they are under the control, policy and the influence of the Home Office. It can be argued that this move is another step towards managerialism and control of the probation service. Leach (2003) argues that

the idea of creating a national directorate for the probation service was a good idea. With a national directorate, he argues, the service could have a better influence on the Home Office and would be able to express the needs of the service to the Home Secretary directly. However, his optimistic view for the unified service does not last long as he says:

"Certainly the 2002/03 budgetary settlement is a disaster for a service which is supposed to be implementing a major government policy initiative, since it does not provide sufficient resources to allow even core statutory tasks to be undertaken." [Leach, 2003]

It can be argued that the probation service under New Labour becomes more programmatic and well organized. The probation service in 1997 only could point to a small number of 'evaluative effective initiatives' but after a few years it became an organization able to offer 'quality controlled programmes' everywhere in England and Wales. The probation service in England and Wales is considered as the most successful correction programme in the world. [Raynor, 2002: 1189-1190] However it is arguable how these new arrangements have affected the nature of the service and how they distance it from its original aim as 'advise, assist and befriending' offenders. Nash better explains this argument by saying:

"The probation service at the beginning of the 21<sup>st</sup> century is beyond recognition in its aims and philosophy from the position held by the early pioneers." [Nash, 2004: 236]

However, the probation service could not survive without fundamental changes. The probation service survived and became a national service not only because of its 'chameleon-like character' but also because the successive governments needed to have cheap alternatives to custody. [Nash, 2004:244]

The Criminal Justice Act 2003(CJA 2003) put a lot of weight on the role of probation officers in community and custodial sentences. They have to prepare pre-sentence reports which are planned to provide information about the offender to the sentencing court. This information will help the court in deciding whether community or custodial sentence is suitable for that offender. [National Probation Service, 2005] The report should contain all the information about the offender, his previous history, character and any potential danger of re-offending in the future. The CJA 2003 has combined all the previous community orders in one basic community sentence, which contains all the requirements of the previous community sentences. This new community sentence is variable according to the needs and special characteristics of particular offenders and the seriousness of their offences. However, in this case repeat offenders will get tougher punishment as a result of their criminal record. Von Hirsch criticizes this system, as he argues that there is no way this sentencing system 'can claim to be a fair and proportionate one'. (Von Hirsch, 2002:211-12) He further argues that including previous record with the current offence is 'not a modification of the proportionality principle, but the abandonment of it.' [(Von Hirsch, 2002: 204) cited in [Lewis, 2005]

The Carter review is an important document which highlights the shortcomings of the whole sentencing and probation service. The review found out that although the prison and probation service are working hard, there are gaps in the system. When

people released from prison are not 'followed up in the community.' The magistrates and judges have not sufficient information about the proper use of prisons and probation. There is no good communication between the two bodies; so 'a new approach is needed for managing offenders, to reduce crime and maintain public confidence'. [Carter, 2003]

The new approach suggested by the Carter review is to combine the prison and probation services in a single organization called: The National Offender Management Service (NOMS). This organization will manage offenders through out their whole sentence, in jail or on community sentences. The targets of this new organization are to punish offenders, protect the public, making sure that continual offenders are punished more severely and have more restrictions on their liberties and help to rehabilitate offenders to reduce re-offending. [Carter, 2003] However as Davies, Croall and Tyrer (2005:406) argue, the unification of these two services is not an easy task as each one of them has its own culture. Prison service has been a national service for a long time however the probation service was locally managed until recent years. From another aspect the NOMS may demand the probation service to throw away its traditional 'anti-incarceration' attitude and accept a new view that custodial sentence is an important feature of rehabilitation. [Gough, 2005:91 cited in Davies, Croall and Tyrer, 2005:406] It can be argued that in this respect, this new service may jeopardise the probation service's traditional humane targets in favour of the prison service.

As this service is a new service it is difficult to evaluate its advantages and disadvantages right now. Ursula (2006) argues that success of the NOMS is difficult to be presumed now, by saying: 'We do not know now how NOMS are successful to reduce recidivism of 57% of adult offenders and 78% of young offenders.' [Ursula, 2006: 133] Leach (2003) argues that the probation service should keep its name, its history, its professionalism and its local roots. At the same time Leach is not optimistic about the new system, as he says:

"I have tried to emphasize how crucial it is for the probation service to control its own destiny, and my assessment is that that is going to be much more difficult within the new arrangement." [Leach 2003]

At the conclusion it can be argued that the probation service starts with small and ad hoc activities or with a single seed and grows until it becomes a fruitful tree. It served the community through preventing people from going to jail, rehabilitation and preventing recidivism. This service has experienced different legislative changes and political eras which affected its structure and purpose. Once it was a voluntary organization to 'advise, assist and befriend' offenders and later became a national organization controlled by the Home Office to become a part of the criminal justice system. The last experience of this service is through the NOMS, which combines it with the prison service to put the offender in the centre of its focus. This new service of NOMS needs further follow ups and review to consider its success in the coming years.



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“All unpaid work [is] branded as Community Payback putting focus on the fact that offenders have to make amends to society for the wrong they have done, giving local councils and communities a say in what offenders do, making it much more visible.”

[Home Office, (2006) A five Year Strategy for Protecting the Public and Reducing Re-offending Cm 6717, pp.7-8.]

Critically evaluate this statement in relation to the current delivery of unpaid work in a community order

Unpaid work was introduced in England and Wales through the Community Service orders in 1973 based on the Criminal Justice Act 1972; which was progressed from the proposals of the Wootton Committee, 1970. [Pease, 1985:51] Community sentences have witnessed different eras and legislation changes until in April 2005, according to s.177 of The Criminal Justice Act 2003 (CJA 2003), they were branded as Community Orders. The community orders scheme repeals all the other disperse legislations know as community punishment orders, community rehabilitation orders and community punishment and rehabilitation orders. The CJA 2003, s.199 has introduced the unpaid work requirement of a community order to become the only sanction of community punishment; which was previously known as community service. The Visible Unpaid Work Strategy became an official requirement for the delivery of the unpaid work element of a community order for all probation areas since November 2005. Does the visible unpaid work become an acceptable kind of punishment for sentencers, the public and the local councils and communities? Does the ‘Community Payback’ make the offenders to ‘amend’ the ‘wrong they have done to society’? How far it contributes in delivering the basic messages of punishment: retribution, rehabilitation and reparation? Does the visible element retain public confidence in the regime and deters offenders from re-offending or just humiliates them? Do the expected increase in unpaid work hours and the competition principle participate towards a better community punishment or they make it more business like?

In order to answer these questions and others in relation to visible unpaid work, different periods of the history of community punishment should be reviewed. How the academics, probation officers and professionals evaluate the scheme is vital in understanding how it works. What the government expects form the ‘Visible Unpaid work Strategy’ and to what extent it is successful, is important for understanding the system and answering the relevant questions.

It is apparent that after the brutal torture and killings of the middle ages prison was the dominant type of punishment. Finding an alternative to imprisonment is not new and as Nellis (2001:19) argues, although many penalties such as 'fines and compensation, suspended sentences and disqualifications' are not community penalties in modern terms, they have been traditionally regarded as non-custodial penalties. It can be argued that in comparison to imprisonment, community penalties are many steps forward in the history of punishment. Sahftoe says:

"Prisons now- to many governors as well as most prisoners (but not necessarily home secretaries) - are at best merely lock-ups and at worst colleges of crime." [2004:148]

The Report of the Advisory Council on the Penal System, 1970 (The Wootton Report), it can be argued, is an important document in the history of community service as a sentence imposed by courts for convicted offenders. The Report, as Nellis comments, 'despite its somewhat narrow focus' has created a system of 'alternative to custody' which is considered as the most important one since the foundation of the probation service itself. [2001:21] The Wootton Report has mentioned that beside the 'punitive element' a community service order may contain other targets of punishment: rehabilitation and reparation:

"What attracts us, however, is the opportunity which it could give for constructive activity in the form of personal service to the community, and the possibility of a changed outlook on the part of the offender." [Advisory Council on the penal System, 1970: para: 34]

In this instance, it can be argued that an offender who 'makes amends to society' through his 'unpaid work' is fulfilling his 'community payback' and he may benefit from the rehabilitation opportunity. Worrall argues that community punishment order has a 'chameleon-like ability' as it fits nearly all justifications of punishment:

-Retribution (visible unpaid work); reparation (unpaid work for the community); deterrence (working for no reward); incapacitation (restriction of liberty) and rehabilitation (learning skills and/or achieving something of worth). [2005: 533]

However, it can be argued that, not every visible work is regarded as having the same effects or achieving the same goals. McIvor (1992: 88) remarks that in order for community punishment to be rewarding to offenders they have to be able to 'acquire skills during their placement'. They should have a good contact with those who benefit from their work and 'if they were engaged in work that could perceive as being of considerable benefit to the recipients'. In this context, it can be argued that, picking up litter on the streets and what is called 'clean up week'; which the Home Office states that it 'is a significant part of the visibility campaign', [Home office, 2005: Annex 1, para. 3] has very little, if at all, with skills development. The Home Office's emphasis on 'offenders work, under supervision, on local clean-up campaigns and other improvements to a local area', [Home Office, 2005: 11] is biased towards the middle class 'objectives and values' and has insufficient relation, if at all, with the needs of the working class offenders who have more 'immediate personal and social problems' which are more likely to have priorities. [Pease et al., 1975:62] This point is further supported by Johnson and Ingram in an up to date study, as they say:

"The preferences of working class offenders have again been deemed irrelevant and precedence is accorded to what 'the community' is considered to demand." [2007: 63]

Based on these opinions, it can be argued that 'community', 'local councils and communities' and 'community payback' are biased towards the middle class values; the 'visible unpaid work' in this case may do very little 'amends to society' in a broader meaning. This kind of clean-up 'visible' work, it can be argued, may not also fit with what the Home Office aims at community punishment to 'give us better opportunities to rehabilitate offenders and get them going straight.' [Home Office, 2006: para. 3.1] As it contains no skills to learn and may even humiliate or at least identify offenders with 'high visibility jackets' [Home office, 2005: Annex 1, para. 9] as Johnson & Ingram (2007:66) highlight it as 'occasionally be damaging' to offenders.

Community punishment, it is claimed, is still not as popular as other methods of punishment, especially imprisonment. Worrall argues that community punishment still has the 'image' problem and public and the media consider it as a 'soft option'. [Worrall, 2005: 528] The Home Office (2006: para. 3.12) claims that community punishments can be tougher than prison, as they entail offenders to work, 'but still they are too often seen as a soft option and they can be hard to understand'. It can be argued that the 'visible unpaid work's rationale is to over rule this problem and to make it not only 'tough' but also 'visible' to 'local councils and communities', in order to make it easier 'to understand'. However, Nellis argues that community penalties are not as successful as prison that is why they are less popular, as he says:

"Even the most ardent supporters of community penalties cannot say that they have been spectacularly successful at reforming offenders, or that it is administratively easy to target such penalties and guarantee that they will be used instead of custody." [2001:31]

The home Office (2006: para. 3.17) declares that their target is to find 'what works best to reduce re-offending'. It can be argued that in this instance the unpaid work should have some rehabilitative effects on the offender to prevent them from re-offending. As for community penalties re-conviction preventing effects, McIvor argues that 'at the very least, community-based disposals are no less effective than imprisonment' [2002:2] McIvor also comments that in her samples the offenders were 'less likely to be reconvicted of serious offences and more likely to be reconvicted of less serious offences.' As for those who re-offend, she argues that they were more likely to be imprisoned after their community punishment. However she mentions that those offenders were either fined, given compensation or cautioned, while they were on community penalties. [McIvor, 1992: 162] In this situation, it can be argued that the 'unpaid work' may have some rehabilitative effects on the offenders as they may feel that they 'make amends to society' through their contribution in 'community payback' via 'unpaid work'. As McIvor says:

"The quality of community service appears to have been most significant for certain offenders who had perhaps had less opportunity than others to make a valued contribution to their communities in the past." [1992: 173]

It can be argued that there is a dichotomy between rehabilitation, reparation and retribution in the Home Office's Five Year Strategy. As the strategy talks about 'tough community sentences' as a good method of punishment, it also states that: 'we know that they can offer the best chance of stopping offenders offending again'. [Home Office, 2006: para. 3.12] In this case, it can be argued that the Home Office is looking at unpaid work as a retributive, rehabilitative and reparative means of punishment. Bottoms et al. argue that in the 1960s and 1970s people lost their belief in the effectiveness of rehabilitation treatment or what was called 'rehabilitative ideal'. This idea was closely linked with Martinson 1974, 'Nothing Works' phrase. They remark that the government was looking for an 'alternative to custody' rather than what was argued as a better way of treating offenders; although, this attempt also failed 'to have the desired impact on the prison population, which continued an upward trend'. (2001: 3-4) The 1970s expansion in using supervisory sentences 'has been an accompaniment, rather than an alternative, to a rising prison population. [Scull, 1984; Cohen, 1985, cited in Worrall, 2005: 528] The re-integrative and rehabilitative prospect of community service was 'part of a larger What Works strategy', [Johnson & Rex, 2002: 190-1] however, it can be argued that the purpose of community penalties have been always tilted towards retribution rather than rehabilitation. The current Home Office strategy's concentration on competition and visibility, it can be argued, is also aiming at punishing offenders 'not only in the community but *by* the community'. [Johnson & Ingram, 2007: 66]

Johnson & Rex argue that putting a lot of emphasis on the 're-integrative and rehabilitative aspects' of doing unpaid work for the community might undermine the punitive or reparative factors of the order; which, as they state, 'have won it a considerable support from sentencers and the general public.' [2002: 189] This may explain why the Home Office put a lot of strength on the 'community payback', 'amends to society' and on top of them all, the unpaid work to be done 'visible to the public, so that they can see offenders paying back for their crime'. [2006: para. 3.17] The work itself, it is argued, can 'offer immediate tangible rewards', through a sense of success in undertaking a useful activity for the community. [Mcivor, 1990 cited in Johnson & Rex, 2002: 192] Through unpaid work, it can be argued, offenders may learn new skills and it may help in improving their employability prospects, which eventually 'might reduce their future offending'. [Johnson & Rex, 2002: 193] However, the type of the work is again coming to attention, as the Home Office Circular gives different ambivalence attitudes towards the type of the 'unpaid work' that the offenders may carry out. It says that it should not be 'humiliating and degrading to offenders' but at the same time it should not 'depriving law abiding citizens of employment opportunities.' [Home Office, 2005: annex1, para. 19] In this case, it can be argued that, it could be difficult to provide 10 million hours respectable 'rigorous, demanding and meaningful' [Home office, 2004:3] 'visible unpaid work' for offenders that meet the expectations of the local communities, the government and the human rights of the offenders. Johnson & Rex argue that the Human Rights convention and the 1998 Human Rights Act support the 're-integrative approach to community punishment order' only when:

"They complement the more pragmatic, evidence-based approach derived from What Works, and help ensure into the future that offenders will be sentenced to a community punishment order as punishment, not for punishment." [2002: 203]

It can be argued that the government is trying to 'promoting confidence in local people that justice is being done', through 'visible unpaid work'. [Home Office, 2005: annex 4] simultaneously, Home Office (2006: 7] makes clear that 'it is important offenders are properly punished for their crime'. In this occurrence, it can be argued that the Home Office's five year strategy is a return to the 'just deserts' philosophy 'regarding the offender as a rational moral agent capable of responding to the experience of being punished'. [Worrall, 2006:539] At the same time, Duff (2001:86) states that 'most of us are to some degree sensitive to moral considerations, but also morally weak and fallible'. Worrall (2006:540) argues that when an offender says, 'I won't have bananas' – or drugs or alcohol or other people's property', does not mean that it relates exactly to what he/she *does*, 'or indeed is *capable of doing* given their circumstances'. Accordingly, Rex remarks that the public are not well informed about the way the criminal justice system works, that is why they have little confidence in the sentencing scheme.[ 2005: 32] Here it can be argued that the 'visible' 'unpaid work' is a good instance of informing the public about the operation of the criminal justice system.

Community engagement is a significant part of visible unpaid work. It gives the 'local councils and communities' an opportunity to have their say in 'what work offenders should do in the community'. [Home Office, 2006: para. 3.17] This view is further supported by Johnson & Rex (2002: 196) as they argue that it is preferable for offenders to carry out their work in their own local communities and where members of the same community 'are directly involved in deciding on the work to be carried out'. However, it can be argued that in order to achieve these targets there should be a lot of contestability and managerialism including multiple requirements to community orders which may set them up to fail from the first instance. It is worth mentioning what Boone (2005: 297) says about the UK experience of community punishments: 'high expectations have led to disappointment in the United Kingdom', and how she evaluates the 'branded' and business like approach to community punishment and probation, and how they affect each other's circumstances:

"Heavy-handed involvement in the probation service with the implementation and supervision of community sentences has been a starting point for growing governmental interference, finally resulting in an organization that is totally guided by production numbers". [2005: 297]

This analysis is well supported by Johnson & Ingram (2007: 68) as they declare that the visible unpaid work's mentality is putting the 'products' on 'pile it high and sell it cheap' policy which will eventually make the 'quality of the products on offer to suffer'. They additionally argue that public expectations may highly go up as a result of their direct involvement in the visible unpaid work scheme, however:

"if the community's 'broken windows' are highlighted, but not repaired, consumer support for the brand of unpaid work might not remain loyal". [2007: 68]

At the conclusion, it can be argued that visible unpaid work is an appropriate method which may contain all the three main justification of punishment: retribution, rehabilitation and reparation; although it is highly tilted towards retribution. It brings offenders to the heart of the 'local communities' and makes them to 'make amends to society for the wrongs they have done'. However the quality of the work

they may get is also insufficient and dull. Its visibility and 'local councils and communities' involvement in the work they do may raise public confidence and expectations to a high level. However, putting high expectations may bring big disappointments and may set it up to fail. The visible unpaid work's multiple requirements and the nature of competition may bring community punishments down to the level of business; where everything is measured by numbers and quantity, not quality.

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To what extent are the needs of victims best dealt with by an individual rather than collective approach? To what extent do the policies around Victim Support currently followed by the Labour Government seek a balance between the two?

Throughout history the place of victims in the UK Criminal Justice System has witnessed several role reversals. Before the 19<sup>th</sup> Century victims had an essential role in the legal process, as focus was on the common law more than the statute law; the victim was initiating the criminal prosecution process. The professional police force, once established, took over the prosecution and brought the role of the victims to the margins of any criminal process [Williams, 2004: 107]. The adversarial nature of trials and the difficulties surrounding the proof of guilt resulted in paying a lot of attention to the offender and marginalising the victim. Williams (2004: 88) argues that in the past officials regarded victims as 'merely a witness in the court case' and researchers looked at them as 'a source of information about crime and criminals'. Until recently there was little information about victims, and even now, as Williams states, the knowledge is, to a large degree, vague, restricted to certain crimes or certain types of crimes [2004: 88]. Crime may affect victims physically, psychologically, economically and socially, in this case victims may need support either from friends and family or from a 'collective approach'. Do the friends and family support the victims of crime in an appropriate way? Can they meet their needs properly? Are the Victim Support (VS), other voluntary organizations and the Criminal Justice System agencies deal with the needs of the victims in a better way? Is the current government's policy regarding Victim Support is capable of creating a balance between an 'individual support' and a 'collective approach'?

In order to answer these questions and others in relation to the needs of victims of crime to overcome the impacts of victimization, the historical background of victimology should be examined. How victims can be supported in a better way by improving the quality and quantity of support they receive and by analysing their individual needs and circumstances is vital for answering the relevant questions.

The early studies of victimology are identified with victim blaming. Mendelsohn (1947) argues that victims are blameworthy because they contribute to their victimization. While Von Hentig (1948) argues that some groups of people are more prone to become victims of crime such as 'young people, women, the elderly, the mentally defective and immigrants' [Croall, 1998: 83]. Wertham believes that there should be a special science to study victims, as he argues that in order to understand the psychology of the murderer; one has to understand the sociology of the victim. 'What we need is a science of victimology' [1949: 59]. Williams (2004: 88) argues that in the beginning of the twentieth century 'many criminologists followed a positivist idea of crime'. In this context certain social or biological factors were responsible for an individual criminal's behaviour. In this situation the criminal 'could

neither control nor understand' the reasons behind his criminal behaviour. Williams concluded by mentioning that the positivists had neglected the victim and regarded the offender as a victim, as she said:

"The notion of offender as victim implies his or her relative lack of responsibility for their criminality, and tends to focus attention on their need for help rather than on the needs of the actual victim." [2004:88]

Traditional Marxists and left wing criminologists have little to say about victims, as they view crime as a product of capitalism and they believe that capitalism is a criminogenic system. By abolishing the capitalist system the entire humanity, as they argue, can be liberated from crime and victimization. Williams argues that Marxists may consider the victim as unattractive for study or research because 'crime is an expression of political opposition to capitalism' [2004:88]. However, their role in widening the scope of criminality and victimization to include white collar crime and corporate crime should not be neglected, as Croall declared that the critical criminologists played a major part in drawing attention to 'victimization from corporate, state and racially motivated crime' [Croall, 1998: 81].

The growth of feminism in the 1970s led to a new era in victimology which brought the attention of the sociologists from the street to 'the home and the private sphere' [Lawson &Heaton: 1999: 245]. It can be argued that women's groups and the feminists declared that some victims of crime need official and 'collective approach' support, as they cannot be merely supported by 'individuals' such as friends and family members. It is traditionally assumed that friends and family members can help and support victims of crime. However, as the feminists introduced, victims of domestic violence and child victims were victimized in the supposed safe haven of home and in the hands of family members or at least acquaintances. As a new development, radical criminologists argued that not only women and children were suffering from 'private and hidden injury' but also those who 'suffered injury at work through the negligence of employers and so on' [Quinney, 1972 cited in Lawson &Heaton: 1999: 245].

The focus on female victims of crime by the feminists led to 'the dichotomy of women as victims and men as perpetrators' [Lawson &Heaton: 1999: 246]. Braithwaite (1989: 44) argues that offenders are disproportionately male, this, as he argues, 'fits any theory of crime'. This view is further supported by the official statistics as in the 2002 survey '81% of known offenders were male' [Home Office, 2002]. Walklate (2004: 99) argues that from the days of Von Hentig (1948) to the 'work of the criminal victimization industry', much of the victimization work alleged that 'victims are not likely to be male'. Walklate concludes by saying that:

"Recasting the 'safe haven' of the home as a place in which much criminal behaviour occurs, and which is perpetrated by men towards women (and children), does mean taking gender seriously." [2004:95-96]

Women's groups and feminists argue that women are easily discriminated against in the criminal justice system and held responsible for their victimization. Kennedy (1993:69) argues that 'within the male stronghold of the court it is all too easy to create the feeling that a woman had it coming to her'. Williams further supports this

view, especially for rape victims, and warns us of the grave consequences of this mistrust in the system, as she says:

"Sometimes they see the system as a second victimization which can be more unpleasant than the original crime. In such cases they may well choose not to report or to cooperate in the future; their experiences may also affect their friends and family, and even the general public, spreading a general reluctance to cooperate." [2004: 88]

In this instance, it can be argued, that victims of domestic violence and specifically rape victims need a sort of support that cannot be provided by individuals such as friends and family members. They should be supported through specialized rape supporters or specially trained VS volunteers. Resick states that rape victims experience 'profound distress' for several months following their victimization and 'many continue to experience problems with fear, anxiety, and interpersonal functioning for years after the event' [1987:474]. Victims of sexual assaults, it is argued, are different from victims of other types of crime, as they recover more slowly and suffer from 'emotional disturbance, sleeping or eating disorders, feelings of insecurity or low self esteem, or troubled relationships for months or years after the event' [Maguire and Corbett 1987, Smith 1989a; Kelly 1988 cited in Zedner, 2002: 429].

However, it can be argued, that radical feminism's focus on 'men's power over women' cannot explain the whole problem of victimization, as women also commit crime and men could be victims of crime, and more interestingly of sexual crimes as well. The problem of crime and victimization is much wider than to be limited to women and sexual assaults only. At the same time, most victimization occurs as a result of criminal offences between members of the same sex or race, as Shaftoe states:

"By and large, it is young working-class white men who attack and rob young working-class white men, and young black men who attack and rob other young black men. If we consider property crime it is clear that, by and large, it is the poor who steal from the poor". [2004: 34]

In the 1980s the position of the victim became more stabilized and more recognized in the official and government institutions. Although the Thatcher governments brought an era of 'public sector cost-cutting', VS gained 'official recognition and funding' [Lawson & Heaton, 1999: 245]. The reason behind that was the nature of VS which was 'less political, especially at the outset', than the women refuge and Rape Crisis Centre (RCC) which played a 'political and educational role', and tried to 'change the law, social attitudes and social policy' regarding women victimization. Contrary to women groups, VS did not 'try to alter the criminal justice system, nor did it attack that system'. VS became a charity in 1979, which reinforced its non-political nature. Since then, VS offered help and support to victims of crime 'on a good neighbour principle', in the beginning as a short term help and now as a long term help [Williams, 2004:115].

It was argued that 'many victim's needs were met by friends and family', however almost 40 per cent of those who were interviewed by the British Crime Survey (BCS) 'expressed needs which were not met by any source' [Maguire & Kynch, 2000: 12]. It

can be argued that victims' needs may vary from emotional support to 'practical help, information, financial support, advice on crime prevention and compensation claims' [Zedner, 2002: 432]. Ditton et al. (1999) argue that not only fear of crime is a problem but 'anger following victimisation is too important to be ignored'. Victimization affects different people in different ways, so the 'one size fits all' approach is far from success. Williams (2005: 496) argues that 'criminal justice agencies are not necessarily very good at responding flexibly to individual needs'. Crime may affect family and social relations and 'even lead to their break up'. The consequences of victimization may not only be limited to the direct victims, but other members of the family, especially children, as 'indirect victims' [Morgan & Zedner, 1992: 28-31].

Williams (2004:114) argues that 'Victim needs cannot be easily predicted'. Some victims of serious crimes may have few needs while some victims of trivial crimes might be in need for more help and support, this point is further explained by Shaftoe, as he says:

"An offence with little or no financial loss, such as an attempted burglary in an elderly person's flat or a racially motivated minor assault on an Asian woman, could precipitate the victim into a permanent state of trauma and disability". [Shaftoe, 2004:35]

Simultaneously, Wright & Hill (2004:105) argue that as crime is not in a static position and changes over time, same is true for victims as they 'vary from time to time and from place to place'. The traditional view of crime is that crime is a 'problem generated by lower class criminals' [Shaftoe, 2004: 34]. However many victims, especially from the lower classes, may not even be aware that they are victimized. Box has a better explanation for this issue as he observes:

"People can report having been a victim of crime only if they know they have been victimized. However, in many instances of corporate crime, white-collar crime and other forms of respectable and not so respectable crimes, persons remain totally unaware that they are victims". [1981:62]

It can be argued that, under the New Labour government, support for victims has increased as VS funding rose from '£5,000 in 1979-1980 to over £17 Million in 1999-2000' [Zedner, 2002: 433]. The Home Office Green Paper, Criminal Justice System: Rebuilding Lives supporting Victims of Crime, (2005:3) declares that since 1997 their 'funding of Victim Support, including the Witness Service, has nearly trebled from under £12 million to £30 million'. More than these they spend nearly £200 million a year, as the report announces, as 'financial compensation for victims of violent crime' [Home Office, 2005: 3]. However figures and numbers cannot guarantee a better service, as VS depends on police referrals and it is apparent that not all victims report their victimization to the police and not all those who have been reported are recorded. According to crime victim surveys 'less than half of all known crimes are reported to the police', from these only about two thirds are recorded by the police and about a quarter are 'eventually cleared up' [Lea & Young, 1985, Jones et al. 1986, cited in Shaftoe, 2004:37]. In this context, it can be argued that victims who have been referred to VS are not representing all the victims of crime; by the same token, even those who are referred may not get the proper help and support that suits their individual needs.

Farrell & Pease (1997:101) argue that 'a practical form of support for victims may well be the prevention of repeat victimization'. According to those authors repeat victimization is the worst problem facing victims of crime. It can be argued that this may have a bigger impact when it is related to hate crime; which is much popular for repeat victimization. Victims of hate crime are targeted because of the 'group to which they are seen to belong', which may range from racial hatred to sexual differences such as homosexuality, transsexuality, or other groups such as travellers, asylum seekers and refugees and disabled [Williams, 2004:97]. Mayhew (2000:101) points out that 'some forms of harassment, which may be unpleasant or even frightening but do not meet the legal criteria of a crime', may not suggest that they are genuine crimes, or the police may not record them as such. That is much more likely for hate crime than any other crime. Farrell & Pease (1997: 102) discovered that police officers and VS volunteers in many occasions 'reassure victims that an offence is less likely to occur', This was, as they argued, 'misleading in many cases', as repeat victimization is widespread:

"In general, repeat victimization accounts for a large proportion of all victimization. Often, 3 or 4 per cent of the population (who make up around 10 per cent of all victims) experience around a quarter to a third of all crimes." [Farrell & Pease, 1997: 103]

It can be argued that what Farrell & Pease state as the best method of supporting victims through preventing re-offending is the best way to reassure victims that they are less likely to be victimized again [1997:106]. However, from a pragmatic perspective, it looks like a far and difficult mission for VS, as it depends on volunteers and its service is mostly on the basis of 'good neighbour principle'; which may bring 'individual and collective approach' together in an ad hoc relationship. At the same time VS also refers to the government '*Crime Reduction Policy*' as the ground of its 'practical support for victims', [Victim Support, 2007] at least theoretically and in written. The government strategy is outlined in its document: *Building on Progress: Security, Crime & Justice, 2007*, as declares its targets as:

"Intervene early to prevent criminality from developing, tackle the underlying causes of crime and address social exclusion, dysfunctional families, drugs and alcohol abuse". [Home Office, 2007]

At the conclusion, it can be argued that, victims of crime have a better position nowadays than a decade ago. However, their needs are still not met in most occasions as victimization is as complex as criminality itself. Victim Support offers help and support to those victims of crime who are referred from the police, which represent about half of the actual number of victims. Although victims can contact VS directly, however, it can be argued that, it is rare for a victim who does not report his/her victimization to the police in the first place, to contact VS directly. In this instance, it can be argued that the VS scheme now, under the New Labour government, tries to make a balance between supporting victims on an individual basis and as a 'collective approach'; as they offer their help and support on a voluntary and one to one basis on the one hand, and get a better funding and support from the government and become more centralized and formalized, on the other. However, it can be argued that in order to have an appropriate system to support a greater number of victims of crime, more research should be carried out and the system should be better supported and developed.

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“While there is no agreed definition of anti-social behaviour, residents know it when they see or hear it. It can be anything from low-level, persistent nuisance to serious violence and other criminal behaviour.”

(Tackling Anti-Social Tenants- A Consultation Paper, April 2002)

**Critically discuss the implications of this statement**

In both housing law and policy, Anti-Social Behaviour (ASB) is mentioned as a persistent problem. Definitions of ASB are continuously changing in both research and policy. In its present state, the government equates it with criminal or sub-criminal acts. It can be anything from nuisance neighbours, rowdy behaviour, yobbish behaviour, vandalism, graffiti and fly-posting to people dealing and buying drugs on the street. [Home Office, 2007] The list is far reaching, as there are so many acts and behaviours that can be listed as ASB: from low-level, persistent nuisance to serious crimes, such as drug related crimes. Consequently, the government introduced probationary tenancies, (recently known as introductory tenancies) after the Housing Act 1996, section 126, in order to control and manage new tenants and ‘to reduce nuisance and anti-social behaviour among new tenants’ [Ashworth, 2006]. The Anti-Social Behaviour Orders (ASBOs) were introduced through the Crime and Disorder Act 1998 (CDA 1998), to tackle ASB in the neighbourhoods and communities. Is the definition of ASB in the CDA 1998 clear and strict or is it ambiguous and problematic? Is ASB strictly limited to ‘neighbours from hell’, or is it mostly directed against young people and children? Is evicting a perpetrator of ASB bring any reform or displace the problem somewhere else? Do the ASBOs mix criminal and non-criminal behaviour which may result in criminalizing the non-criminal and decriminalizing the criminal behaviour? Are ASBOs successful in reducing ASB and making neighbourhoods a better place to live?

In order to answer these questions and others in relation to ASB, the legislations, approaches, researches and policy relating to this subject should be reviewed. How ASBOs are structured and how they are applied in practice should be analysed. Critically discussing the relationship between ASB and housing, on the one hand and its relationship to young people on the other, is vital for answering the relevant questions.

ASB is a ‘social construction that can and does vary over time and space’ [Card, 2001:208]. As a result, its definition is constantly changing in research and literature and there is no single definition to describe and limit its boundaries. What is seen as ASB in a particular time or place may be seen as a normal acceptable behaviour by another group or individual in a different place or time. [Card, 2001:208] People’s understanding of what composes ASB is determined by a number of factors including ‘context, location, community tolerance and quality of life expectations’. This subjective concept results in remaining the definition of ASB indefinite and blurred.

[Home Office, 2004:3] Jack Straw (then Shadow Home Secretary) said that 'serious anti-social behaviour by neighbours is perhaps the best example of chronic crime' [Labour Party, 1995]. It can be argued that, this definition is very simplistic as it brings down the whole problem of crime or 'chronic crime' to ASB 'by neighbours'. The Chartered Institute of Housing (CIH) has defined ASB as 'behaviour that opposes society's norms and accepted standards of behaviour' [CIH, 1995:3]. This definition again, it is argued, is a moral judgement as it defines perpetrators of ASB as outsiders to the norms of society, as those who do not accept the 'norms' of the civic 'society', and they should be excluded or marginalised. It can be argued that the Labour government is always talking about social inclusion, but they exclude people by their policy and legislation. The government should seek a solution for the causes of ASB not only blaming individuals for their 'unacceptable behaviour', as Burney puts in:

"The well-documented features of neighbourhood decline are mainly correlations, not causes, with a common root in poverty, structural weakness, and lack of social cohesion. It becomes increasingly hard for government rhetoric to blame individual nastiness for the destruction of communities" [2004a:473].

The governments tried to make ASB equal to criminal behaviour through changing the definitions all the time. They constantly try to 'apply more restricted qualifications criteria to services provided by them, employ stricter enforcement measures and attach tougher penalties' [Card, 2001, 209-210]. The Housing Act 1996 has introduced some measures to deal with tenants who cause, or likely to cause 'nuisance and annoyance' to 'a person residing, visiting or otherwise engaging in a lawful activity in the locality'. However, the Labour party claimed that according to their consultations with 'the police, local authorities, councillors and MPs' [Macdonald, 2006:183], they had realized that there was 'intense dissatisfaction with the extent and speed of existing procedures' used to tackle anti-social behaviour. They described this situation as a 'system failure' [Labour Party, 1995: 6] which meant that 'new remedies [needed] to be developed' [Labour Party, 1995: 8]. The labour party's document *A quiet Life* proposed a remedy which amounted to a 'special form of injunction' [Labour Party, 1995: 8] which was to be punished with criminal penalties when breached. That 'remedy' was called The Community Safety Order [[Macdonald, 2006:183]. The Community Safety Order was renamed as ASBOs in section 1 of the CDA 1998, which defines ASB as a person acting 'in a manner caused or likely to cause harassment, alarm or distress to one or more persons not of the same household'. The ASBOs were introduced as civil orders with the civil law standard of proof, the breach of which can acquire criminal punishment of up to five years. It can be argued that, this is a problematic point of law, by bringing someone under the civil law and punishing him/her under the criminal law if he/she breached the order:

"The unusual nature of the ASBO as a civil order, the breach of which can incur substantial punishment, led critics such as Gardner to argue that it was inappropriate that the civil law standard of proof should apply in determining whether the order should be made. Critics also argued that the nature of the order raised serious doubt as to whether it is compatible with the various provisions governing criminal proceedings in the European Convention of Human Rights" [Jones, 2003].

Since Tony Blair's well-known statement 'tough on crime, tough on the causes of crime', the Labour Party has always promised that they will deal not only with crime



but the underline causes which lead to crime. They declared that they should address these 'causes' by 'a raft of social and economic, as well as legal measures' [Muncie, 2004:229-230]. In the consultation paper, *Tackling the Causes of Crime* (1996) the key social and economical causes of crime were considered as parenting, truancy, drug abuse, lack of facilities for young people, homelessness, unemployment, low income and recession [Straw & Michael, 1996]. These measures looked promising, objective and optimistic, however in 1997, just a year later, in the White Paper *No More Excuses* the 'causes' were specified to parenting, truancy and peer group. The key factors of involving in crime and ASB were now considered as being male, being brought up by criminal parents, living in a family with multiple problems, poor parental discipline, school exclusion and having delinquent friends. [Home Office, 1997:5] The CDA 1998 formalized these issues by introducing ASBOs which can be applied to children as young as ten, and prioritizing 'the principle of preventing offending by children and young people' [Muncie, 2004:230]. It can be claimed that, nowadays not so many people go to prison that they have to and there is early release and community penalties; however, the government is getting tougher and tougher with children and young people. Hunter (2001:223) states that 'problems of definition clearly lead to problems of solutions'. It looks impossible, as Hunter claims, to define a solution for a problem when you have not identified its nature. The legal response to ASB is two fold, according to Hunter, as the Housing Act 1996 Part v deals with ASB as a problem of social housing or more specifically with those people who live in social housing, while the CDA 1998 demonstrates a response which 'does not link the problem to housing (social or otherwise) and is not linked to any particular tenure or place' [Hunter, 2001:223]. It is based, it can be argued, on a mixture of civil and criminal law cases, with criminal punishment for those who breach the orders. In this case, individuals and their families are held responsible for ASB instead of looking for the wider causes of the ASB in broader social and economical environment, as it was promised. Presdee (2005:192-3) argues that Tony Blair's 'war on anti-social behaviour' is a continuation of John Major's 'back to basics' policy in the 1990s.

One of the most important leisure arenas for young people has ever been public space, and specifically the street. It is there where they 'can 'hangout' relatively free of direct adult supervision'. However, they do appear on the street as trouble makers, and it is there where the 'relationship between young people and the police are forged' [Muncie, 2004:230] Corrigan (1979: 139) declares that 'the boys' believe that trouble is something related to the police, or other social agents only. They do not notice that they do wrong or break the rules without the presence of one of these groups. According to Corrigan, for the boys 'the streets are a 'natural' meeting place' so they do nothing wrong by walking around the streets. Jeffs & Smith (1996:11) further support this view by arguing that 'to select young people and criminalize them for doing what the rest of the population can freely do is doubly discriminating'. It is argued that, the Home Office typology of ASB includes a mass of activities which are primarily associated with young people. As Presdee (2005:194) puts in, 'the playing of loud music, joyriding, graffiti, hooliganism, playing games in inappropriate places, skateboarding and cycling in pedestrianized areas', are of that sort of activities. According to this view, the 'war' on ASB, as Hughes & Follett (2006:163) declared, has shifted from (adult) 'neighbours from hell' to young people, and the Anti-Social Behaviour Act 2003 made it 'simpler and speedier'. It can be claimed that, those in power cannot understand the social life of the youth and those who are marginalized; as Presdee (2000:7-8) states, they cannot 'even 'read' it as real life, but only as

immoral, uncivilized, obscene and unfathomable social behaviour'. The government tries to control not only individuals through behaviour orders, but sections of society such as 'youth', 'the homeless' and the 'poor' [Presdee, 2005:196] On top of these all, it can be argued that the government tries to 'control' ASB, or more specifically youth ASB, without looking for the underline causes of such behaviour:

" 'Community' becomes a setting in which only the interests of adults are identified, interests which underpin a moral authoritarianism which operate to exclude marginal groups such as 'dangerous' youth. 'Safety' becomes a notion to be secured by blaming, isolating and silencing youth" [Hill & Wright, 2003: 291].

Burney (2004a:470) argues that local authority pressure was partly responsible for introducing 'exclusionary' ASBOs in the CDA 1998. This follows concerns, as Burney argues, from councillors and housing managers who dealt with growing complaints of 'un-neighbourly and predatory behaviour' mainly from poor council estates in areas of high unemployment which were controlled by the Labour Party. Accordingly, it can be argued that, the problem of ASB can be seen as a classic 'moral panic', strengthened by politicians who seek voting and 'mass media campaigners chasing improved readership figures by trading on the politics of fear' [Burney, 2004a: 473]. This fear, argues Hughes (2005 cited in Hughes & Follett, 2006: 161) is targeted at a stranger from outside, i.e. asylum seeker, or the ASB of the domestic 'underclass'. Within that 'underclass', states Burney (2004a:473) the 'out of control' youths who are 'hanging about' have become nearly the universal symbol of disorder and menace'. Politicians, mentions Innes, are 'causally attributing' the rises in recorded crime between 1960s and mid 1990s to the increase of single mothers and families without fathers. They, for ideological reasons, as Inns puts in, find this a more appetizing explanation 'than to look at the structural inequalities caused by their liberation of free market mechanisms' [2003:57]. It can be argued that the state brings the individualistic and subjective symptoms of ASB and identifies them as causes of ASB. As Presdee states, the state argues that bad parenting is behind the identified rise in ASB, however, they do not want to see 'changes in the alcohol industry and the changing social and spatial dynamics associated with the late modern night-time economy' as the cause of alcohol-related crime and disorder. [2005: 198] The economic restructuring, it can be argued, is behind social injustice and intolerance towards young people and the marginalized groups:

"The growing expressions of intolerance towards young people and other marginalized groups are deeply rooted in the social divisions and inequalities which flow from economic restructuring. These conditions replicate, re-work but always sustain the 'cultural injustices' that have been perpetrated against the urban poor since the emergence of the modern city in the 19<sup>th</sup> century" [Hancock, 2006:183].

From another perspective, ASB is a wide spread and increasingly urgent problem, according to ministers, Home Office and its special ASB units. Winning this problem, 'along with the 'war on terrorism', viewed by the government as one of the greatest challenges facing 'our' communities' [Hughes & Follett, 2006: 162]. Accordingly, Lund (2006: 185) argued that, a Housing Development Directorate Survey (Wilson & Burbridge, 1978) revealed that what is now known as ASB was 'cited by managers and tenants as a cause of houses being hard to let more than any other reason'. ASB is

mentioned by Social Exclusion Unit (SEU), as an issue which 'destroys quality of life' and 'contributes to fear of crime'; as it may cause people not going out or preventing their children from playing outside (2002:5). From this perspective, it can be argued that, ASBOs are necessary to control ASB and help to restore 'the quality of life'. Simultaneously, Campbell states that the general view of ASBOs among those who 'have actually used them' is positive. If ASBOs are used effectively, Campbell argues, they are a 'useful tool to deal with anti-social behaviour and can deal effectively with particular groups, such as juveniles and private tenants' [2002:97] Campbell further insisted on this view by mentioning that the majority of those who were interviewed, in her research, had regarded the outcomes of the ASBOs as positive. According to Campbell, ASBOs helped to reduce ASB in the targeted communities and to improve the community's 'quality of life' [2002:97]. However, it can be claimed that, it is difficult to prove the success of a project from a limited study and a particular area only, as ASBOs alone may deal with the symptoms of the ASB not the causes. Eviction, for example, may displace the problem to another place without making any reform to the perpetrator and it will exacerbate homelessness and child poverty [News, 2003]. Shaftoe further supports this view by saying:

"Without understanding what motivates some people to commit offences and what causes crimes to occur, we risk treating only the symptoms and this will fail to prevent the problem occurring in the first place [2004:44].

From a psychological perspective, 'crime is about individual difference and that psychology holds the key to understanding that difference' [Hayward, 2005: 109-110]. Without understanding 'that difference', it can be argued, many perpetrators may breach the ASBOs, one after the other and they may be charged for criminal offences as a result. Hayward (2005:114) argues that traumas and deprivations during childhood may cause 'buried internal (mental) conflicts', which in turn may be expressed as criminal or ASB. The National Autistic Society Scotland has reported the case of a 13 year-old autistic boy who was served with an ASBO 'after neighbours complained about the noise the boy was making when jumping on his trampoline'. According to the National Autistic Society's report, the local authority was aware that the boy had autism and that 'trampolining has been found to be therapeutic for people with autism' [Macdonald, 2006: 198]. In this situation, it can be argued that, ASBOs against people such as that autistic boy are not successful and the boy needs help and support not ASBOs in the first place. Another example is the case of a 23 year-old woman who had personality disorder and attempted suicide in many occasions. They put an ASBO to ban her 'from jumping into rivers, canals or onto railway lines after she had attempted suicide on four occasions' [Macdonald, 2006:199]. It is apparent that suicide and attempted suicide are not criminal offences according to Suicide Act 1961, s 1. In this instance, it can be argued, that the ASBO was used to criminalize no criminal acts. More specifically, a person who has personality disorder may not understand the consequences of an ASBO or a breach of it. At the same time that person with personality disorder needed 'help and that legal sanctions could in fact be counter-productive' [Macdonald, 2006: 199]. From the instinct theory perspective, a criminal or aggressive behaviour is a result of 'an inner force which desires aggression and violence' [Williams, 2004: 196]. According to this view, it can be argued that an individual who has personality or mental disorders cannot be held responsible for his ASB and needs to be referred to specialist agencies for help. It is

vital to find the causes of ASB not only dealing with the symptoms, as there are different motives for ASB. Williams concludes by saying that drive theory assumes that:

"When individuals are prevented from getting what they want, they become frustrated. This frustration leads to aggressive or violent behaviour, which may be aimed at the obstruction to their desire or may be used on other targets [2004:196].

Macdonald (2006:213) agrees with Lord William (1998) that ASBOs were a carefully crafted response to a 'real social evil'. However, at the same time he acknowledges the growing opposition to the remedy. According to Macdonald (2006:213) the main reason for this is that, they were 'neither designed nor suited and in situations where other more constructive forms of intervention are possible'. In this context, as Macdonald argues, the definition of ASB in CDA 1998 section 1(1) (a) is problematic as it gives permission to be used in such inappropriate ways. The definition is so flexible that ASB is defined as 'behaviour which caused/was likely to cause harassment, alarm or distress' [Macdonald, 2006: 205]. Lord Falconer (1997) remarks that, 'although it is difficult to define, one is certainly able to recognise such behaviour when one sees it'. At the same time, Alun Michael (1998, cited in Macdonald 2006:190) claimed that, like an elephant on the doorstep, anti-social behaviour is 'easier to recognise than to define'. However, Macdonald argues that 'clarity and tightness of definition are needed to protect those undeserving of an Order from having one imposed on them' [2006:191]. Accordingly, it can be argued that ASB cannot be defined easily and what residents 'see' and 'hear' may bring wrong charges on wrong people. Jones (2003) argues that ASBO is a civil order that needs civil grounds of proof, which do not qualify for bringing criminal charges. Accordingly, as Jones (2003) argues, ASBOs may have 'serious consequences' to the perpetrator, for this reason 'it is appropriate that the criminal standard of proof be applied in determining the veracity of the allegations'. Macdonald is pointing to another issue which is criminalizing non criminal or at least non- imprisonable acts, such as loitering and soliciting of prostitutes in particular areas [2006: 208]. Jones and Sager (2001) revealed that in case of prostitution ASBOs might bring some temporary relief for the locals, however, they noted that 'what research there is indicates that exclusion will not deter street prostitution but simply relocate or bury the problem'. Relocating or displacement, it is argued, cannot bring any rehabilitation to the perpetrator neither in case of beggars or prostitutes nor in evicting 'undesirable tenants' but just push the problem to another 'unfortunate area' [Mimmack, 2003]. At the same time, it can be argued that, by applying the ASBOs, the government tries to control the poor and marginalized and hide other serious crimes. The nationally orchestrated crusade against the antisocial is:

"Not going to be directed at those who pollute our environment for profit, those who recycle foodstuff and inject meat with additives or those involved in multi-million pound pension swindles. This is an offensive aimed at the feckless, the marginalized and the poor" [Matthews, 2003:6].

Talking about a past 'golden age' that 'law and order' were followed by everybody and 'the British way of life' was maintained was considered as a myth, according to Goldson (2004:222). Cohen argues that societies 'appear to be subject, every now and then, to periods of moral panic'. In a period of moral panic, Cohen argues, 'a

condition, episode, person or group of persons' appear as a threat to the accepted values of the society [1972:9]. In this situation, 'public anxiety and political calculation demand that 'something must be done about it' ' [Goldson, 2004:222]. It can be argued that, ASBOs are a kind of reaction to that (moral panic) from the youth or the other marginalized groups. Crawford (1997:153) argues that community is 'cleansed of any negative or criminogenic connotations and endowed with a simplistic and naïve purity and virtue'. In this case, it can be argued that any behaviour which does not match the normal or agreed values of community is strange and odd; which deserves marginalization or exclusion. Young (2003:26) argues that ASB is considered as a 'malaise' of community and the solution is in the 'regeneration of community'. Young goes on to state that there is a relationship between such a perspective and modernity, especially the 'social engineering of the post-war period'. At that period, rational communities were constructed following slums clearance and town planning [Young, 2003: 26]. In this occasion, it can be argued that there is a close relationship between housing, crime and ASB. It is argued that ASB is associated with poor people residing in council housing or disadvantaged areas. Yet, Young argues that in the past 'many poor communities were carriers of strong norms which stressed honesty and responsibility... hence crime, despite severe deprivation, tended to be low in those communities' [Young, 2003: 33]. Hood and Jones argue that crime in the past was regarded as an activity outside 'the margins of everyday relationship', something a few isolated people did to outsiders. It was now supposed to be an internal threat, as it was described by many young men and women, which is all-encompassing within the neighbourhoods [1999, 154-5]. Crawford argues that people believe that there is an association between lack of 'organized' community and crime. The rationale behind this assumption is that more community equals less crime. However:

"In some instances, 'community', i.e. its communal normative values, itself may be the source of criminogenic tendencies. Recent British research into criminal subcultures has reiterated the long established criminological truism that the collective values of a community may serve to stimulate and sustain criminality" [Crawford, 1999:153].

From this perspective, it can be argued that crime and ASB are not specific to special sectors of society or particular individuals. Chambliss, from a left realistic perspective states that 'everyone commits crime', no matter how poor or rich they are they are 'involved in a way of life that is criminal; ... no one, not even the professional thief or racketeer or corrupt politician commits *crime all the time*', [2003:253 (italic from the source)]. Social rules are created by specific social groups, argues Becker, as a result they are highly differentiated along 'social class lines, ethnic lines, occupational lines, and cultural lines' [2003:246]. It can be argued that, in this conflict between different groups and sectors of the society, a group always 'tries to impose its rules on other groups in the society', the lower classes must obey the rules made by the middle classes in the schools, the courts and elsewhere [Becker, 2003:247]. Consequently, it can be argued that ASBOs are rules imposed by the middle classes against the lower classes and poor. Hughes & Follett argue that ASB is a 'political crisis associated with blighted communities and the ever-widening divisions between the socially and politically included and the excluded and marginalised' [2006:161]. They further expand their view by stating that ASBOs are part of a crime control policy which is a result of 'translating' and 'deploying' of Wilson and Kelling's (1982) 'Broken

Windows' within 'local policing and safety strategies across many western societies', and the UK is no exception [2006:161]. According to the 'Broken Windows' thesis, if you allow the cultures and climates of disorder to 'take root', more serious crime and disorder will follow, as night follows day [Hughes & Follett, 2006:162]. Matthews (2003) further supports this view by saying that 'disorder leads to neighbourhood decline'. However, it can be argued that policing and control are not sufficient for dealing with ASB, without addressing its causes and looking at it in its social environment:

" The 'anti-social behaviour' associated with ASBOs, is very often behaviour influenced by a matrix of underlying problems that include lack of suitable educational provision, strained parenting, social exclusion and drug dependency' [Krudy & Stewart, 2004:11].

The effectiveness of the ASBOs was enhanced by The Anti-Social Behaviour Act 2003, the Police Reform Act 2002 and the Criminal Justice Act 2003 [Macdonald, 2006: 183-4]. Hughes and Follett (2006:160) further support this view by confirming that the problem of ASB has become more centralized following these Acts. The 2003 White Paper- *Respect and Responsibility: Taking a Stand against anti-social behaviour*. (Home Office, 2003) extends police and local authority powers to include many other 'unacceptable behaviours' and 'significantly, it grants groups other than the police, including private security guards, the power to issue fines' [Muncie, 2004:237]. Hughes & Follett argue that the central government tries to involve local partnerships in its desire to create a climate 'to be seen as 'tough', not just on crime but on disorder and 'anti-social behaviour' also' [2006:160]. It can be argued that centralization and tougher law and order regulations may not guarantee a better system. The Conservative leader, David Cameron commenting on the Labour government's policy towards ASB, mentioned that 'Labour's "knee-jerk" reaction to any problem was to bring in new laws which often discouraged people from taking action themselves'. He further comments by mentioning that the Labour's policy is abducting people from responsibility instead of making them responsible [BBC News, 23 April 2007]. However, the Conservatives can also be criticised as they put a lot of responsibility on the individuals and families and neglect the wider causes of crime and ASB. It can be argued that the most encouraging element of the new developments is the multi-agency forum because it includes an element of solution. Burney (2004a:481) argues that once a multi-agency looked at a case 'solutions at times emerged that rendered it unnecessary to pursue on ASBO'. In many instances, the causes of the problematic behaviour were discovered to arise from social and health-related problems, which needed addressing to special agencies. As drug and alcohol abuse, it is argued, play a key role in many ASB cases, harm reduction initiatives may be developed by the professional or practitioner bodies working within the crime and disorder reduction partnerships. Burney concludes by declaring that the professional/practitioner bodies 'remain unimpressed' by criticisms from the central government concerning the 'perceived failure to impose ASBOs'. The local partnerships, she argues, are now dealing with their own problems by developing their own ways 'exactly what the partnership structures were to be intended for' [2004a:482]. A study by Thomas et al. about 85 Youth Offending Teams and the use and effectiveness of ASBOs has revealed that:

"Officially ASBOs are not considered as to be a measure of last resort but many practitioners do view them as such and in turn prefer

to employ other approaches first. The most common alternatives offered were ABCs, warning letters, interviews and referrals to youth inclusion and support panels" [Thomas et al. 2004/5:25].

The Anti-social Behaviour Act 2003 has introduced Child Safety Orders. These orders enable local authorities to request from a Youth Court to impose an order on a child below the age of ten, who is convicted of an offence if she or he were over ten, would constitute a crime. In this context, it can be argued that they deny children's childhood and treat them as adults when they bring them to court. At the same time, they held children and parents responsible for all ASB and forget about the other causes of ASB such as lack of facilities, education and poverty. The Perry project which was carried out in Ypsilanti (Michigan) by Schweinhart and Weikart (1980) at a sample of 123 African American children had revealed that those children who received support were more successful and less likely to convict. The children were attended a daily pre-school programme, backed up by weekly home visits, in order to increase their intellectual abilities and school achievements. Berrueta- Clement et al. (1984) discovered that at the age of 19 those who attended the experiment were more likely to have graduated from high school, more likely to be employed, more likely to enter college or further training and less likely to be involved in ASB. This study supports the view that children, especially from the disadvantaged areas or groups, are in need of support not control. The children are not to be blamed, it is argued, they do not have proper resources or they are not educated. It can be argued that, any success in dealing with ASB should be in the results not in the ASBO statistics, however, unfortunately:

"In the eyes of politicians, and increasingly, the public at large, "success" in dealing with perpetrators of "anti-social" acts tends to be seen entirely in terms of ASBO statistics" [Burney, 2004b:4].

At the conclusion, it can be argued that ASB is a real problem and needs something to be done about it. However, the definition of ASB is problematic and may include different acts and behaviours from 'low-level, persistent nuisance to serious violence and other criminal behaviour'. Bringing all these behaviours, as 'residents know them when they 'see or hear' them under one legislation is much more problematic, as it may bring criminalizing non-criminal behaviour and decriminalizing criminal behaviour. ASBOs were first introduced to deal with what was called 'neighbours from hell', however; they later reversed to become a crusade against young people and children. Evicting an 'unwanted neighbour' from a neighbourhood, a prostitute or a beggar from a street or area may bring a temporary satisfaction to that area, however it displaces the problem to the next 'disadvantaged area' and may worsen other issues such as homelessness and child poverty. The behaviours which are known as ASB, it is argued, are symptoms of a social problem which has many causes that need to be identified and treated in order to avoid ASB. Children who behave in an ASB need help and support not control, which can be obtained through better education, family support, better housing, not policing and ASBOs only.

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# Juvenile delinquency is a social and historical construction

What evidence is there to support such a view?

Whenever people mention juveniles they generally connect them to delinquency. Some people argue that juvenile delinquency is a new and modern phenomenon while others believe that it always exists. The media create moral panics about juvenile delinquency and 'youth gangs' as 'devils' that are threatening our civic life. Why or to what extent those youths commit crime or delinquency is a matter of research for sociologists and criminologists for many decades. Are they really as bad as they are known or there are other reasons behind their criminalization? Does juvenile delinquency has been constructed by the society throughout history or it just comes into being recently? Are juveniles committing more crime than others? Who is responsible for the behaviour of those who are regarded as pre-mature and innocent in other matters but responsible in front of law? Is juvenile violence on increase in the UK or it is a matter of media interest?

In order to answer these questions and others in relation to juvenile delinquency I have to look at different literature; reference books, journals and studies dealing with that subject. I have to study the history of juvenile delinquency and to assess and evaluate it in different historical periods. I have to weigh up the way society constructs juvenile delinquency throughout history; how society defines juvenile delinquency and how they differentiate it from the acts of the adults.

Childhood and youth are not recognized as universal biological conditions, but they are social constructions in precise historical circumstances. [Muncie, 2004: 55, Springhall, 1986] Newburn (2002:531) argues that 'youth is an elastic concept' its meaning changes according to the difference in time, place and purpose. The very name of youth is a very general word and there is no specific English noun which defines a period of 'youth' in the same natural way as 'child' or 'adult'. [Springhall, 1983-4:20] This argument is supported by Aries (1962:28) as he mentioned that in the middle ages there were many languages which did not even have specific words distinguishing between infants, juveniles and adults. It was argued that at that time children were generally treated with neglect as small and trivial creatures. [Aries, 1962:28] However when they made a mistake they were treated even harsher than adults; 'on one day in 1814 five children between the ages of 8 and 12 were hanged for petty larceny.' [Pinchbeck & Hewitt, 1973:352 cited in Muncie, 2004:55] Pollock (1983) mentions that 'some conceptions of childhood has always existed', however, as Muncie argues 'there could be no conception of childhood as a social problem in itself'. [Muncie, 2004: 53]

The relationship between youth and crime is so widespread that many people accept 'youth-crime nexus' as common sense. [Muncie, 2004:2] Society has a negative view for juveniles and this notion is reinforced by the media, politicians and academics. Muncie (1997) argues that young people should be defined as those who represent any possible positive and creative images for the future; however they are 'defined only as a social problem'. This negative attitude towards juveniles leads to treating the minority who come to the attention of the criminal justice system as a 'legitimised target' for the most harsh and destructive impulses. [Haines & Drakeford, 1998: 1] Jeffs & Smith (1996) support the same argument by saying: 'A wide spread belief is circulating in America and Britain that young people are in some way turning feral.'

However, all over history violent juvenile offending has been one of the major social problems in relation to the behaviour of young people. [Pearson, 1983, Davies & Pearson 1999, cited in Estrada, 2001: 639] Pearson (1983, 1985, and 1993-4) argues that complaints about juvenile delinquency exist since the 17<sup>th</sup> Century. Young people are considered with fear. Talking about youngsters who are out of control, who do not know how to behave and who have no respect and consideration for adults can be found in the literature of all ages. It can be argued that juvenile delinquency is an obvious and apparent issue and there is evidence to support its increase:

"Since the early to mid-1980s, an increase in youth violence has been apparent in the United States and in ten European countries... In most of these countries rates of youth violence have been increasing even though youth crime rates overall appear to be stable or declining slightly." [Pfeiffer, 1998: 255]

However, as these assumptions depend on official statistics, it can be argued that their reliability and validity are under question. Estrada (2001:644-5) argues that fatal violence is more reliable as it is mostly reported to the authorities. In this context, as Estrada argues, since the 1970s fatal violence or violence leading to death has not increased 'in terms of youths who are perpetrators or the number who are victims'. This may suggest that the increase in juvenile violence that mentioned in previous studies 'have not affected the levels of the most serious forms of violence'. [Estrada, 2001:645] It can be argued that official statistics are very sensitive and subject to change according to legislative changes, police powers and the improvement of crime reporting by the public. As far as juveniles are concerned, Muncie (2004:40) argues that the media and official statistics which are regarded as main sources of information about youth crime are 'social constructions'. Muncie concludes by saying that:

"They {the media and official statistics} identify **certain** people as criminals and reproduce **recognizable** criminal populations, but tell us little about the extent and meaning of crime **per se**." [Muncie, 2004:40 (emphasis from the original)]

In the middle ages the main concern was about sins, but in the beginning of the nineteenth century this was replaced by worries about the working class population and especially the young people. The young generation were considered to be in need of 'moral guidance' and 'civilized order'. [Muncie, 2004: 58] There were many factors which brought juvenile delinquency into attention in the Victorian era. They range from humanitarianism and control of child labour to need for moral guidance;

grow and expansion of industry; expansion and tighten of criminal law; fear of social disorder and finally change in the 'legal status of the young'. [Muncie, 2004: 64] However, linking the exact origin of juvenile delinquency to the Victorian era is a matter of debate. King and Noel (1993) argued that juvenile delinquency was rarely regarded as serious and specific problem between mid seventeenth century and the late eighteenth century. At the same time this is also not a well agreed conception about the starting of juvenile delinquency. In London itself, as King & Noel (1993:28) argued the problem of juvenile delinquency arrived a long time after urbanization and before 'the city's economy was affected, by anything that could be termed an industrial revolution'.

In the seventeenth century the apprenticeship had an obvious importance. According to that system young men and women at the age of puberty were placed with masters to teach them 'trade skills and industrial habits'. [Muncie, 2004:65] Smith (1973) argued that apprenticeship was a special subculture which had its own standards, heroes and sense of fraternity. Through the seventeenth century as demand for more 'flexible work patterns' developed, 'indoor' apprenticeship gradually declined. This new development had its impact on juvenile delinquency, as when apprentices freed from the control and strict regulations of their masters 'they were routinely condemned as idle, violent and profligate'. [Muncie, 2004: 65] Newburn (2002:532) argued that childhood from the seventeenth century onwards 'was progressively extended and increasingly separated from adulthood'. It can be argued that this shift has participated not only in creating a generation of juveniles who offend or become delinquent, but also in constructing a social perspective about those people.

A willingness to prosecute rather than ignore juvenile offending became apparent from 1810s. The urban working class family was unable to impose its control over the young generation. By now the working class youth have got own money, through wages, to buy freedom from parental control. [Springhall, 1986] The working class adolescences were involved in street-based leisure hunts such as street gambling and football. These activities eventually led to delinquency and criminality. The term 'Hooliganism' itself was appeared in that period. [Muncie, 2004:67] Working class girls were also subject to 'specialist youth work' because people believed that too much freedom and independence from family and home was socially unacceptable for girls. [Dyhouse, 1981:113] although most crime is committed by males, or as Newburn & Stanko argue: 'the most significant fact about crime is that it is almost always committed by men.' [Newburn & Stanko, 1994:1] However delinquent girls, as Worrall (1999) argues are regarded as double deviant: offenders for breaking the law and 'abnormal for contradicting dominant feminine roles'. [Worrall, 1999, cited in Muncie, 2004:32-33]. From this perspective, it can be argued that social and historical occasions have constructed a twofold juvenile delinquency for girls.

It can be argued that juvenile delinquency is an ambiguous and blur term. An act cannot be classified as a crime regardless of how 'immoral or damaging it may be', unless identified as such by the law of the land. [Michael & Adler, 1993, cited in Muncie, 2004:39] In relation to young people, this legal definition cannot include all those 'behaviours widely considered to be troublesome'. Criminologists use 'juvenile delinquency' in order to include behaviour that regarded as a nuisance and is 'liable to criminal sanction' at the same time. [Muncie, 2004:39] Craine & Coles (1995:20) argue that for young people involving in deviance or criminality is not 'a major moral

dilemma' rather it is 'a series of incremental choices to access the alternative opportunity structures around them'. It can be argued that what is known as juvenile delinquency is a rational reaction to 'lack of opportunities available to them'. [Muncie, 2004:28] Simultaneously, there are no absolute and universal standards for delinquency. Some societies in different historical periods have not defined 'almost all forms of behaviour that we now call "Criminal" ' as undesirable and deviant behaviours for the purpose of functioning of their own types of societies. [Wilkins, 1964: 46] It can be argued that this argument is valid in terms of how the media present juvenile delinquency in nowadays Britain as:

"...Many of the 'crimes' that we attribute to young people-vandalism, joyriding, mugging, hooliganism- are media-inspired terms are not specific offences recognized by the law." [Muncie, 2004:39]

Muncie (2004: 3) argues that the murder of James Bulger in 1993 has introduced a 'reconsideration of social construction' of 10 year olds as 'demons' rather than as 'innocents'. It reinforced adult fear and created a 'moral panic' about youth in general. Jenks (1996) argued that the murder of James Bulger was 'an event which seemed to signify the demise of 'childhood innocence' ' The murder and the media presentation of it were also good excuses to legitimate new tough law and order measures to deal with young offenders. It can be argued that this is very ridiculous as the share of adult and patriarchal world in violence, brutality, wars, famines and destruction is immeasurable. [Scruton, 1997:164] Muncie (2004) after comparing what British Medical Association (BMA) said in 1996 about young people's behaviour to what *daily mail*, 1996 wrote 35 years later and *Daily Mirror* in 2002, concerning the same everlasting issue, has concluded that: 'the very idea of 'youth' seems increasingly certain to attract adult fear, concern and censure'. [Muncie, 2004:8-9]

Haines & Drakeford (1998:3) argue that the fear which is attributed to young people produces suspicion, hostility and oppression. These worries will lead to a notion that 'these young people are dangerous. They need to be avoided or, better still, kept away'. However, it can be argued that different factors are involved in creating these suspicions and fears ranging from the media to politicians and academics. Stenson & Factor (1995) argue that the left and the right in Britain are competing in claims for producing a formula for 'remoralizing of the young'. It is argued that the conservatives 'toughness' on crime and the 'short sharp shock' were targeting juvenile delinquency before any other crimes and offences. New labour's popular slogan 'tough on crime, tough on the causes of crime' was also pointed on the same social group as main causes of concern, although 'tough on causes of crime' means creating some measures to prevent juvenile delinquency through reforms and family support. *The Big Issue* magazine in 1997 asks Tony Blair if he agrees with zero tolerance in which 'every minor law break is clamped down on hard by police'; his response was 'yes, I do'. [Rogers, 1997] Zero tolerance, as Haines & Drakeford (1998:18) argue, when applied to young people in trouble it will label them as an enemy within who do not deserve understanding, assistance or the primary elements of tolerance.

Young people are more prone to victimization at home or outside than to offending. They rarely report any crime to the police and when they do they are mostly not believed by the police. [Haines & Drakeford, 1998:21] In all times there were some

kinds of stigma attached to young people: 1950s folk devils; 1960s student revolt, hooliganism and drug use; 1970s black muggers; 1980s youth riots; 1990s joyriding, alcopops, ecstasy and girl gangs; 2000s mobile phone theft and bail bandits. [Muncie, 2004: 8] However, it can be argued that they turn a blind eye on the victimization of children and young people and other crimes of authority and powerful in general. [Furlong & Cartmel, 1997:93] Chambliss (1975), from a Marxist perspective, argues that when the ruling class has an interest in defining some acts as criminal they will be defined as such. A lot of behaviour that cause the most injury, suffering and loss such as political atrocities, fraud, embezzlement, illegal arms dealing, domestic violence and child abuse are rarely considered within discourses of crime. Even when they are, they are unlikely to attract the same degree of moral disapproval. [Box, 1983; Cohen, 1993; Muncie & McLaughlin, 2001, cited in Muncie, 2004:41] The World Youth Report confirms these arguments as it declares:

"The majority of studies and programmes dealing with juvenile delinquency focus on youth as offenders. However, adolescents are also victims of criminal or delinquent acts." [World Youth Report, 2003:190]

The World Youth Report (2003: 190) also talks about the circumstances that put young people in danger of delinquency and offending such as wars, famines, drugs and alcoholism, family breakdown and growing HIV/AIDS scourge. It can be argued that most of these problems, if not all, are produced by the acts and omissions of adults, so adults are responsible for the delinquency of juveniles. Haas, et al. (2004) argue that family disruption is a major cause of juvenile delinquency. Accordingly Marxists argue that the very capitalist regime is criminogenic and the social and economical disadvantages which surround this system produce juvenile delinquency. From a right perspective, Murray (1990) argues that single mothers, teenage pregnancy and lack of moral disciplines lead to juvenile delinquency. Brown (2005) has summarized his answer to all these assumptions, as he says:

"'Youth crime problem' as it has conventionally been approached is neither more nor less than a product. It is not a product of absent fathers or single mothers, nor a product of unemployment or lack of discipline, but a product of the production and consumption of knowledge". [Brown, 2005: 215]

At the conclusion it can be argued that throughout history the adult population has looked at the acts of the juveniles with fear, suspicion and disgrace. Whatever caused juvenile delinquency and in whatever shape it is identified it remains ambiguous and it is more an adult perception than a reality. Juveniles are subject to sanctions and oppression, and are more victims of crime than perpetrators. The crimes of the adult world and patriarchy are much more serious and destructive than the acts known as juvenile delinquency. Juvenile delinquency is a historical and social construction. It is a product of 'our' expectations of the 'young generation' more than a growing problem of our society, as the media portrait it.

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To what extent are the needs of victims best dealt with by an individual rather than collective approach? To what extent do the policies around Victim Support currently followed by the Labour Government seek a balance between the two?

Throughout history the place of victims in the UK Criminal Justice System has witnessed several role reversals. Before the 19<sup>th</sup> Century victims had an essential role in the legal process, as focus was on the common law more than the statute law; the victim was initiating the criminal prosecution process. The professional police force, once established, took over the prosecution and brought the role of the victims to the margins of any criminal process [Williams, 2004: 107]. The adversarial nature of trials and the difficulties surrounding the proof of guilt resulted in paying a lot of attention to the offender and marginalising the victim. Williams (2004: 88) argues that in the past officials regarded victims as 'merely a witness in the court case' and researchers looked at them as 'a source of information about crime and criminals'. Until recently there was little information about victims, and even now, as Williams states, the knowledge is, to a large degree, vague, restricted to certain crimes or certain types of crimes [2004: 88]. Crime may affect victims physically, psychologically, economically and socially, in this case victims may need support either from friends and family or from a 'collective approach'. Do the friends and family support the victims of crime in an appropriate way? Can they meet their needs properly? Are the Victim Support (VS), other voluntary organizations and the Criminal Justice System agencies deal with the needs of the victims in a better way? Is the current government's policy regarding Victim Support is capable of creating a balance between an 'individual support' and a 'collective approach'?

In order to answer these questions and others in relation to the needs of victims of crime to overcome the impacts of victimization, the historical background of victimology should be examined. How victims can be supported in a better way by improving the quality and quantity of support they receive and by analysing their individual needs and circumstances is vital for answering the relevant questions.

The early studies of victimology are identified with victim blaming. Mendelsohn (1947) argues that victims are blameworthy because they contribute to their victimization. While Von Hentig (1948) argues that some groups of people are more prone to become victims of crime such as 'young people, women, the elderly, the mentally defective and immigrants' [Croall, 1998: 83]. Wertham believes that there should be a special science to study victims, as he argues that in order to understand the psychology of the murderer; one has to understand the sociology of the victim. 'What we need is a science of victimology' [1949: 59]. Williams (2004: 88) argues that in the beginning of the twentieth century 'many criminologists followed a positivist idea of crime'. In this context certain social or biological factors were responsible for an individual criminal's behaviour. In this situation the criminal 'could neither control nor understand' the reasons behind his criminal behaviour. Williams concluded by mentioning that the positivists had neglected the victim and regarded the offender as a victim, as she said:



"The notion of offender as victim implies his or her relative lack of responsibility for their criminality, and tends to focus attention on their need for help rather than on the needs of the actual victim." [2004:88]

Traditional Marxists and left wing criminologists have little to say about victims, as they view crime as a product of capitalism and they believe that capitalism is a criminogenic system. By abolishing the capitalist system the entire humanity, as they argue, can be liberated from crime and victimization. Williams argues that Marxists may consider the victim as unattractive for study or research because 'crime is an expression of political opposition to capitalism' [2004:88]. However, their role in widening the scope of criminality and victimization to include white collar crime and corporate crime should not be neglected, as Croall declared that the critical criminologists played a major part in drawing attention to 'victimization from corporate, state and racially motivated crime' [Croall, 1998: 81].

The growth of feminism in the 1970s led to a new era in victimology which brought the attention of the sociologists from the street to 'the home and the private sphere' [Lawson &Heaton: 1999: 245]. It can be argued that women's groups and the feminists declared that some victims of crime need official and 'collective approach' support, as they cannot be merely supported by 'individuals' such as friends and family members. It is traditionally assumed that friends and family members can help and support victims of crime. However, as the feminists introduced, victims of domestic violence and child victims were victimized in the supposed safe haven of home and in the hands of family members or at least acquaintances. As a new development, radical criminologists argued that not only women and children were suffering from 'private and hidden injury' but also those who 'suffered injury at work through the negligence of employers and so on' [Quinney, 1972 cited in Lawson &Heaton: 1999: 245].

The focus on female victims of crime by the feminists led to 'the dichotomy of women as victims and men as perpetrators' [Lawson &Heaton: 1999: 246]. Braithwaite (1989: 44) argues that offenders are disproportionately male, this, as he argues, 'fits any theory of crime'. This view is further supported by the official statistics as in the 2002 survey '81% of known offenders were male' [Home Office, 2002]. Walklate (2004: 99) argues that from the days of Von Hentig (1948) to the 'work of the criminal victimization industry', much of the victimization work alleged that 'victims are not likely to be male'. Walklate concludes by saying that:

"Recasting the 'safe haven' of the home as a place in which much criminal behaviour occurs, and which is perpetrated by men towards women (and children), does mean taking gender seriously." [2004:95-96]

Women's groups and feminists argue that women are easily discriminated against in the criminal justice system and held responsible for their victimization. Kennedy (1993:69) argues that 'within the male stronghold of the court it is all too easy to create the feeling that a woman had it coming to her'. Williams further supports this view, especially for rape victims, and warns us of the grave consequences of this mistrust in the system, as she says:

"Sometimes they see the system as a second victimization which can be more unpleasant than the original crime. In such cases they may well choose not to report or to cooperate in the future; their experiences may also affect their friends and family, and even the general public, spreading a general reluctance to cooperate." [2004: 88]

In this instance, it can be argued, that victims of domestic violence and specifically rape victims need a sort of support that cannot be provided by individuals such as friends and family members. They should be supported through specialized rape supporters or specially trained VS volunteers. Resick states that rape victims experience 'profound distress' for several months following their victimization and 'many continue to experience problems with fear, anxiety, and interpersonal functioning for years after the event' [1987:474]. Victims of sexual assaults, it is argued, are different from victims of other types of crime, as they recover more slowly and suffer from 'emotional disturbance, sleeping or eating disorders, feelings of insecurity or low self esteem, or troubled relationships for months or years after the event' [Maguire and Corbett 1987, Smith 1989a; Kelly 1988 cited in Zedner, 2002: 429].

However, it can be argued, that radical feminism's focus on 'men's power over women' cannot explain the whole problem of victimization, as women also commit crime and men could be victims of crime, and more interestingly of sexual crimes as well. The problem of crime and victimization is much wider than to be limited to women and sexual assaults only. At the same time, most victimization occurs as a result of criminal offences between members of the same sex or race, as Shaftoe states:

"By and large, it is young working-class white men who attack and rob young working-class white men, and young black men who attack and rob other young black men. If we consider property crime it is clear that, by and large, it is the poor who steal from the poor". [2004: 34]

In the 1980s the position of the victim became more stabilized and more recognized in the official and government institutions. Although the Thatcher governments brought an era of 'public sector cost-cutting', VS gained 'official recognition and funding' [Lawson & Heaton, 1999: 245]. The reason behind that was the nature of VS which was 'less political, especially at the outset', than the women refuge and Rape Crisis Centre (RCC) which played a 'political and educational role', and tried to 'change the law, social attitudes and social policy' regarding women victimization. Contrary to women groups, VS did not 'try to alter the criminal justice system, nor did it attack that system'. VS became a charity in 1979, which reinforced its non-political nature. Since then, VS offered help and support to victims of crime 'on a good neighbour principle', in the beginning as a short term help and now as a long term help [Williams, 2004:115].

It was argued that 'many victim's needs were met by friends and family', however almost 40 per cent of those who were interviewed by the British Crime Survey (BCS) 'expressed needs which were not met by any source' [Maguire & Kynch, 2000: 12]. It can be argued that victims' needs may vary from emotional support to 'practical help, information, financial support, advice on crime prevention and compensation claims' [Zedner, 2002: 432]. Ditton et al. (1999) argue that not only fear of crime is a problem

but 'anger following victimisation is too important to be ignored'. Victimization affects different people in different ways, so the 'one size fits all' approach is far from success. Williams (2005: 496) argues that 'criminal justice agencies are not necessarily very good at responding flexibly to individual needs'. Crime may affect family and social relations and 'even lead to their break up'. The consequences of victimization may not only be limited to the direct victims, but other members of the family, especially children, as 'indirect victims' [Morgan & Zedner, 1992: 28-31].

Williams (2004:114) argues that 'Victim needs cannot be easily predicted'. Some victims of serious crimes may have few needs while some victims of trivial crimes might be in need for more help and support, this point is further explained by Shaftoe, as he says:

"An offence with little or no financial loss, such as an attempted burglary in an elderly person's flat or a racially motivated minor assault on an Asian woman, could precipitate the victim into a permanent state of trauma and disability". [Shaftoe, 2004:35]

Simultaneously, Wright & Hill (2004:105) argue that as crime is not in a static position and changes over time, same is true for victims as they 'vary from time to time and from place to place'. The traditional view of crime is that crime is a 'problem generated by lower class criminals' [Shaftoe, 2004: 34]. However many victims, especially from the lower classes, may not even be aware that they are victimized. Box has a better explanation for this issue as he observes:

"People can report having been a victim of crime only if they know they have been victimized. However, in many instances of corporate crime, white-collar crime and other forms of respectable and not so respectable crimes, persons remain totally unaware that they are victims". [1981:62]

It can be argued that, under the New Labour government, support for victims has increased as VS funding rose from '£5,000 in 1979-1980 to over £17 Million in 1999-2000' [Zedner, 2002: 433]. The Home Office Green Paper, Criminal Justice System: Rebuilding Lives supporting Victims of Crime, (2005:3) declares that since 1997 their 'funding of Victim Support, including the Witness Service, has nearly trebled from under £12 million to £30 million'. More than these they spend nearly £200 million a year, as the report announces, as 'financial compensation for victims of violent crime' [Home Office, 2005: 3]. However figures and numbers cannot guarantee a better service, as VS depends on police referrals and it is apparent that not all victims report their victimization to the police and not all those who have been reported are recorded. According to crime victim surveys 'less than half of all known crimes are reported to the police', from these only about two thirds are recorded by the police and about a quarter are 'eventually cleared up' [Lea & Young, 1985, Jones et al. 1986, cited in Shaftoe, 2004:37]. In this context, it can be argued that victims who have been referred to VS are not representing all the victims of crime; by the same token, even those who are referred may not get the proper help and support that suits their individual needs.

Farrell & Pease (1997:101) argue that 'a practical form of support for victims may well be the prevention of repeat victimization'. According to those authors repeat victimization is the worst problem facing victims of crime. It can be argued that this

may have a bigger impact when it is related to hate crime; which is much more popular for repeat victimization. Victims of hate crime are targeted because of the 'group to which they are seen to belong', which may range from racial hatred to sexual differences such as homosexuality, transsexuality, or other groups such as travellers, asylum seekers and refugees and disabled [Williams, 2004:97]. Mayhew (2000:101) points out that 'some forms of harassment, which may be unpleasant or even frightening but do not meet the legal criteria of a crime', may not suggest that they are genuine crimes, or the police may not record them as such. That is much more likely for hate crime than any other crime. Farrell & Pease (1997: 102) discovered that police officers and VS volunteers in many occasions 'reassure victims that an offence is less likely to occur', This was, as they argued, 'misleading in many cases', as repeat victimization is widespread:

"In general, repeat victimization accounts for a large proportion of all victimization. Often, 3 or 4 per cent of the population (who make up around 10 per cent of all victims) experience around a quarter to a third of all crimes." [Farrell & Pease, 1997: 103]

It can be argued that what Farrell & Pease state as the best method of supporting victims through preventing re-offending is the best way to reassure victims that they are less likely to be victimized again [1997:106]. However, from a pragmatic perspective, it looks like a far and difficult mission for VS, as it depends on volunteers and its service is mostly on the basis of 'good neighbour principle'; which may bring 'individual and collective approach' together in an ad hoc relationship. At the same time VS also refers to the government '*Crime Reduction Policy*' as the ground of its 'practical support for victims', [Victim Support, 2007] at least theoretically and in written. The government strategy is outlined in its document: *Building on Progress: Security, Crime & Justice, 2007*, as declares its targets as:

"Intervene early to prevent criminality from developing, tackle the underlying causes of crime and address social exclusion, dysfunctional families, drugs and alcohol abuse". [Home Office, 2007]

At the conclusion, it can be argued that, victims of crime have a better position nowadays than a decade ago. However, their needs are still not met in most occasions as victimization is as complex as criminality itself. Victim Support offers help and support to those victims of crime who are referred from the police, which represent about half of the actual number of victims. Although victims can contact VS directly, however, it can be argued that, it is rare for a victim who does not report his/her victimization to the police in the first place, to contact VS directly. In this instance, it can be argued that the VS scheme now, under the New Labour government, tries to make a balance between supporting victims on an individual basis and as a 'collective approach'; as they offer their help and support on a voluntary and one to one basis on the one hand, and get a better funding and support from the government and become more centralized and formalized, on the other. However, it can be argued that in order to have an appropriate system to support a greater number of victims of crime, more research should be carried out and the system should be better supported and developed.

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