

scottish justice matters

CYBERCRIME



A HUMAN RIGHTS BASED APPROACH TO COMMUNITY JUSTICE



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DECISIONS made in the course of supervising offenders in the community every day, at every level of practice, impinge on human rights. For example:

- ❖ a decision on whether to initiate breach proceedings against a man subject to a community payback order with a requirement to undertake a domestic abuse programme might directly affect, in different ways, both the man's and his partner's human rights
- ❖ how far is it possible to respect a service user's right to choice regarding their recovery within the context of a drug treatment and testing order?
- ❖ does the case management plan for a released prisoner from a travelling background take account of disadvantage in relation to housing, health and employment?
- ❖ how can GPS technology be utilised to support the safe reintegration of high risk offenders into their communities?
- ❖ will new responsibilities given to community planning partnerships lead to more effective engagement of communities in the design and delivery of services?

When the Human Rights Act 1998 was introduced it was assumed that it would have a significant impact on practice in relation to supervising offenders in the community, as it requires all public bodies to act in accordance with the European Convention on Human Rights. After all, community sanctions and measures almost invariably affect ECHR rights, even though rights such as Article 8's right to a private and family life are qualified, where that is necessary "in the interests of ... public safety ..., for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

Yet the impact of human rights legislation and broader rights commitments on community justice has been relatively insignificant, despite the existence of UN and Council of Europe rules

regarding non-custodial measures, community sanctions and probation. There are several reasons for this, mostly linked to a view that community supervision has less impact than imprisonment and so any loss of rights is relatively insignificant and therefore justifiable (Globokar, 2003).

Another concept used is the 'zero sum' calculation, which considers that any rights applied to a convicted offender infers a loss of rights on the part of the victim. In reality this is an entirely false equation and there is no intrinsic relationship between the rights of one person and those of another. Instead, a commitment to universal human rights promotes the protection of victim rights and can reduce the likelihood of future victimisation, and in fact "one of the key strengths of adopting a human rights framework in criminology is its ability to unify the experiences of vulnerable groups" (Silvestri and Crowther-Dowey, 2008).

So while it is well established that human rights principles apply to prisoners, it is necessary to re-state that universal human rights also apply to those subject to supervision in the community. A human rights based approach to community supervision is less about the formal protection of human rights than about the active fulfilment of human rights in its broadest sense, as a means to support reintegration and desistance from crime. To see what this might look like in practice we can look at how human rights based approaches have been applied to public services in general and specifically to social work.

Social work and human rights

The Scottish Human Rights Commission has developed resources on a human rights based approach to public services, founded on the UN's PANEL principles: participation, accountability, non-discrimination, empowerment and legality. The SHRC contends that a human rights based approach:

- ❖ provides a legal and objective basis for ensuring a person-centred approach in practice
- ❖ reflects the rights of everyone involved, not only 'service users' but also workers, individuals and groups
- ❖ helps to balance rights and risks, ensuring that any restriction on autonomy be based on law, pursue a 'legitimate aim' such as protecting the rights of others, and be the least restrictive effective means of achieving that aim
- ❖ helps to reinvigorate a public service ethos among staff, reinforcing the purpose of public service to improve people's lives.
- ❖ helps improve relationships between those who deliver and those who use public services
- ❖ ensures compliance with law and provides a foundation for good practice in relation to equality, freedom of information and data protection. (Scottish Human Rights Commission, 2013)

The Commission has developed several strands of work across the public sector to put this approach into practice, such as the Care about Rights training and awareness raising resources relating to the care and support of older people (see link below).

The Australian practitioner and academic, Jim Ife, has developed a human rights based approach to social work (Ife, 2012). His definition encompasses civil, political, economic, social, cultural and collective rights that are universal, indivisible, inalienable and inabrogable (that is, cannot be voluntarily rescinded), taking account of cultural traditions alternative to the West and offering a critical analysis of disadvantage.

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He argues that social work practice should primarily be rights based as opposed to needs or justice based. Crucially he describes needs as 'contextualised rights' thus challenging the idea of professionally defined needs. Rights should be extended beyond the public sphere into what is sometimes construed as the private sphere, embracing the realms of domestic abuse, child protection, older people and people with disabilities. Ife contrasts traditionally framed professional social work ethics with a moral commitment from the profession to human rights, promoting community participation and 'user voice' in which good practice requires a dialogue between the formal statements of rights and the concrete experience of communities. He locates human rights practice within a postmodern and post-structuralist philosophy: this demands an acceptance of ambiguity, diversity and uncertainty, and such features create challenges for the criminal justice system as well as for the concept of 'evidence-based practice'. The approach "implies a strong element of empowerment: ideas of enabling people to define their rights and to act in order to have them realised and protected are the very essence of empowerment" (Ife 2012, p73). In my view Ife's framework can provide a philosophical basis to intervention in community justice.

Community Justice

While human rights based approaches have been developed across the public sector and across social work practice, what makes the approach particularly applicable in the community justice field is the convergence of common themes between such an approach and desistance focused practice. These themes include:

- ❖ the value of the individual
- ❖ the context of key relationships
- ❖ self-determination
- ❖ the need to address both human and social capital
- ❖ the importance of language that enhances human dignity.

A human rights based approach contributes a set of values, a legal foundation and a concept which has currency in public discourse, to a desistance approach rooted in a strong evidence base, the experience of offenders and the value of narrative. An approach incorporating both human rights and desistance principles can help to balance the legal requirement for objective fairness, with the rehabilitative requirement to meet subjective need. The human rights contribution can underpin desistance practice with an equal focus on the rights of offenders, their partners and children, victims and potential victims, and communities.

The evolving organisational changes in the delivery of the supervision of offenders in the community in Scotland present an opportunity to embed values and learning within the institutional arrangements. While the new arrangements, comprising a national body, Community Justice Scotland, and changed expectations on local delivery through community planning partnerships, will present challenges to the development of an integrated service, it is the government's explicit intention to support principles of both rights and desistance in their establishment (SP Bill 68-PM, paragraphs 5 and 19).

For example, in the drug treatment case mentioned earlier, a human rights based approach leads to a service that respects the right to make choices between treatments (e.g. opiate replacement or detox) and to access community resources (e.g. housing), while taking account of the impact of these choices on victims and communities. This should be reflected in case management planning, compliance measures and dialogue with the court through the review process. This approach, based on patients' rights legislation and the fundamental human right to housing, supports desistance focused intervention.

At a time of increasing interest in the growth of community supervision as a global phenomenon, human rights issues have never been more pertinent. A human rights based approach to community justice can contribute additional legitimacy and credibility to effective desistance focused intervention by reinforcing essential human dignity.

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Globokar, J (2003) Sentenced to Probation: The Compromised Rights of the Offender University of Illinois at Chicago <http://www.uic.edu/depts/cjus/graduate/Students/Julie%20Globokar%20paper.pdf>

Ife, J (2012) *Human Rights and Social Work: Towards rights based practice* Cambridge University Press

Scottish Human Rights Commission Care about Rights <http://scottishhumanrights.com/careaboutrights>

Scottish Human Rights Commission (2013) *Scotland's National Action Plan for Human Rights*

Silvestri, M and Crowther-Dowey, C (2008) *Gender and Crime* Sage

SP Bill 68-PM Community Justice (Scotland) Bill [policy memorandum] Session 4 (2015)