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## What? Do you mean no prisons?

### Book Section

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## **PUTTING THE COMMUNITY BACK INTO PAYBACK**

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*Dave Nicholson*

If someone robs me, I want my money back; plus a bit of compensation for the pain and inconvenience caused. What I don't want is to pay thousands of pounds to keep them in prison. That way I pay for their crime instead of them. They should just pay me back and give me some compensation and that'd teach them not to do it again.<sup>1</sup>

JAY, EX-CELL JUSTICE SOLUTIONS

People who commit criminal offences should pay back: not through a just measure of pain in prison but through a just measure of payback in the community. They should pay back, not in the currency of pain, but in the hard cash of compensation and the hard work of rehabilitation.

The idea is not new. Compensation for the victim and rehabilitative payback to the community, in ways decided by the community, was the default position for dealing with most people who committed criminal offences in many pre- and early modern societies, including our own.

Now it's on the way back – we see it in Restorative Justice schemes as well as the more mainstream Community Payback and compensation orders. But in order to realise payback's full potential as a just and credible alternative to prison, there are three radical changes we need to make to the existing system – changes that will put the community back into payback and back in control of justice. These changes are already underway in an embryonic but uncoordinated way in this country, as well as many other parts of the world, so it would be more

a radical change to the way the system delivers justice than a radical change to the system itself. It would mean creating a system that delivers justice for victims through compensation and rehabilitation for the people who commit crime to teach them not to do it again.

Firstly, we need to fully implement the recommendations of the 2008 Scottish Prison Commission throughout all the jurisdictions of the UK. Secondly, we need to build into the court and sentencing process the principles of community sentencing seen in the American Teen Courts. Thirdly, we need to bring an overhauled Community Payback service out of the wings of the criminal justice system and make it the default position for dealing with most people who commit criminal offences. To do that it needs re-designing and re-branding as ‘Community Custody’ – putting most people who commit criminal offences in the custody of the community rather than the custody of prison.

The Scottish Commission recommended that prison should be reserved for people whose offences are so serious that no other way of dealing with them will do, particularly those who pose a significant threat of serious harm to the public. Secondly it recommended that paying back in the community should become the default position for dealing with most people who commit criminal offences.

Payback for the Scottish Commission means finding constructive ways to compensate or repair the harms caused by crime. It involves making good to the victim as well as to the community. This might be through financial payment, or work to enable financial payment to be made, unpaid work of benefit to the victim or the community, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for people who commit crime to pay back is by turning their lives around and not committing crime again.

The Scottish Commission recommended the payback process should involve a three-stage approach to sentencing. In stage one, the judge makes a judgement about the level of penalty required by the offence

with information from the prosecution and defence. By implication, this is no business of Probation or Community Payback staff or any other criminal justice professionals or community representatives; rather, it is a legal judgement about the appropriate level of penalty. But stage two considers what kind of payback, what form of reparation, is appropriate and this requires a dialogue not just between the judge and Probation and Community Payback staff, but also one that actively engages the offender and any other relevant community stakeholders in the original offence, including, where appropriate, the victim themselves. In other words, it involves the wider community more fully in deciding the sentence – taking the law into their own hands. Stage three involves checking up on the progress of paying back through the establishment of a particular kind of ‘progress court’ where judges who are specially trained to understand issues around compliance and around desistance from crime would have mechanisms at their disposal for handling setbacks and lapses without undue recourse to prison. This court would also have the power to reward compliance and positive progress through early discharge or the lightening of restrictions.

The American Teen Courts take this community sentencing process a stage further by involving a judge-facilitated panel of the guilty party’s peers in considering what form of payback and reparation is appropriate – community sentencing by the community as the way of dealing with people who commit criminal offences. These Teen Courts (sometimes called youth courts or peer courts) are problem-solving courts within the juvenile justice system where teens charged with certain types of offences can be sentenced by a jury of same-aged peers, literally taking the law into their own hands. Their purpose is to provide an alternative disposition for juveniles who have committed a delinquent act, have committed a minor offence, or have been charged with a misdemeanour, and are otherwise eligible for diversion. Depending on their training, community support, and agreements with traditional court systems, most teen or youth courts are recognized as valid, legal venues for the process of hearing cases, sentencing and sentence fulfilment.

Putting the community back into payback would involve incorporating these community sentencing principles and practices into the Scottish Commission's proposals. But it would also involve redesigning and re-branding the delivery of Community Payback as a form of 'Community Custody'.

If I have to fight for custody of my kids, I'm not fighting for the right to lock them up, I'm fighting for the right to bring them up and keep them safe on the straight and narrow ...

DEE, EX-CELL JUSTICE SOLUTIONS

The community should similarly act in *loco parentis* with most people who commit criminal offences. Prison is not the only form of custody. Historically many people who have committed criminal offences have been put into the custody of the community in a variety of ways – the custody of their family 'to keep them safe on the straight and narrow', the custody of a voluntary organisation to 'advise, assist and befriend' them, or the custody of an employer, enabling them to payback their victims and live a 'good and useful life'.

It is the custody of an employer that concerns us. Existing Community Payback practice involves unpaid work placements with voluntary sector employers, charities, social enterprises and co-operatives. The sentence is thus served in the 'custody' of those employers. The wider community is also currently involved in suggesting work that might be done by people sentenced to Community Payback. In Italy this is taken a stage further by providing unpaid work placements in the custody of social co-operatives that are directly owned by the community and which offer paid, transitional employment on successful completion of the unpaid work. These community-owned co-operatives enable people sentenced to payback both to pay back to victims and the community as well as to turn their lives round and become much less likely to reoffend by getting back into meaningful employment. By 'owning' the sentence in this way, the community takes payback and the law into its own hands by taking those who have committed criminal offences into its own custody.

But why a co-operative? Co-operatives with membership of all the stakeholders involved in dealing with crime (including those who have committed it) can generate the social capital that research suggests supports desistance from future offending. At the heart of the concept of co-operation is participation by individuals in a common endeavour, through membership of an association. In the context of supporting desistance, that very participation is itself an ingredient of the therapeutic process: being a member of a bespoke ‘society’ for individuals aimed at promoting desistance becomes a step along the pathway towards, and preparation for, a more successful membership of the wider society itself.

In a UK context this opens up possibilities of widening the scope of Community Payback to include unpaid work in such a bespoke ‘society’ or community-owned co-operative, where the monetary value of the unpaid work is paid direct to victims as reparation for the original crime (or to victims’ charities or even as a contribution to the costs of the rehabilitation of people who have committed crime). On successful completion of the payback, paid employment in the co-operative would then be made available to those who need it, together with support for entering mainstream employment, thus providing a rehabilitative role for community payback as well as a reparative role and adding value to its punitive bite as a ‘fine on time’.

But why a specifically *community*-owned co-operative? Why a community-owned bespoke ‘society’? There are different relevant groups, or constituencies in the community who all have a legitimate, if sometimes competing, interest in the successful delivery and outcomes of Community Payback:

- those sentenced to payback,
- those who have sentenced them,
- those supervising their payback,
- victims, and the families,

- friends and communities of both those sentenced to payback and their victims.

In a number of other public services, such as health, social care and housing, a similar range of different voices needs to be heard in order to work out what is best for the wider public and community benefit and to resolve issues for the organisation. A multi-constituency community-ownership approach has been adopted in these other public services to fundamentally change the way the service operates for the better. The same should apply to Community Payback.

Community Payback, and before that Community Service, has long been the Cinderella of the Probation Service. To bring it centre stage at yet another time of Probation reorganisation will require reorganisation of its ownership, management and delivery along such multi-constituency, social co-operative lines of community ownership – putting the community back into payback and in so doing take the law into its own hands.

Moreover, the efficacy of prison, particularly short prison sentences, is increasingly called into question by both the Ministry of Justice and Parliament. Calls for ‘tougher community sentences’ are seen as the best alternative as they are thought to have greater credibility with the community and to be more effective in reducing reoffending. But they are rarely designed with payback to victims in mind and it’s seldom spelt out exactly what ‘tougher’ means. Community sentencing of people who commit criminal offences to the custody of community owned co-operatives would provide the hard cash of compensation for victims and the hard work of rehabilitation for perpetrators. This would spell out much more clearly what ‘tougher’ means and would be much fairer for both victims and those who have committed offences.

So, what should happen to most people who have committed criminal offences? They should pay back to their victims and to the community in a way, and to an extent, determined by their victims and the community,

and through a system owned and run by the community. That way we can all take the law into our own hands and put the community back into payback.