POLITICAL PHILOSOPHY AND COMMUNITY JUSTICE:
A CRITICAL INTERSECTION EXAMINED TO
AID IN THE REDUCTION OF RECIDIVISM

by

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ABSTRACT

Political philosophy and criminal justice are fields which seemingly rarely mix. While criminal justice is largely focused on the notion of practical, empirical enforcement methods for creating a safer society at large, political philosophy typically remains in the lofty realm of abstract thinking, virtually inaccessible to the lives of individual citizens. However, a thorough examination of political philosophical thought reveals multiple and strong strands of criminal justice theory. Even strong hints of the relatively new notion of community justice can be found interwoven throughout the entire tapestry of the political philosophical tradition, from Aristotle’s *Nicomachean Ethics* to John Rawls’s *A Theory of Justice*. Why would such a relationship among traditionally disparate disciplines be worth discovering and developing? This paper addresses that question by demonstrating that in order for communities across the world to accept and view the new notion of community justice as relevant, a framework that is historically rich and practically cogent, as well as academically sound, must be established in order to legitimize this new trajectory of executing justice in society. Thus, in order to reduce and prevent crime, diminish recidivism and create overall safer communities, a political philosophical approach to community justice must be pursued.

The form and content of this abstract are approved. I recommend its publication.

Approved: Paul Teske
DEDICATION

I dedicate this work to my bride, Becky.
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CHAPTER I
INTRODUCTION

From Aristotle to Epicurus to Thomas Hobbes to John Rawls, political philosophers have challenged, inspired, and have often acted as interdisciplinary unifying agents between theory and practice. The early Greek philosophers began an enterprise that often focused on attempting to better understand humanity and the implications of actions on virtue, ethics and utility (Durant, 1991). Political philosophers have created, examined and expounded upon a multiplicity of abstract concepts. Yet, the core of their investigations has been to understand the meta-implications of human action on political behavior, social construction, mobility, and even tenets of how best to live (Duignan, 2011a). Specifically, for instance, such abstract concepts include Michel Foucault’s examination of madness and the definition of insanity as exemplified in and through society or Martin Heidegger’s theory of the essence of true existence in a world of weak, traditional ontology (Foucault, 1988; Heidegger, Macquarrie, & Robinson, 1962).

Inversely, criminal justice theory has traditionally honed in on problems of safety within the law. There is a central difference between criminal justice and political theory. This difference lies in the application of theory. Criminal justice theory includes the widely accepted four forms of justice: procedural, distributive, corrective, and retributive (Posner, 1990, pp. 313-352). Inversely, political theory and philosophy delve into to the theoretical and historical underpinnings of why people act the way they do and what are the implications on political and social stability (Hampton, 1997). Thus, given criminal justice theory’s practical foci and political philosophy’s more abstract foci, these two disciplines, outwardly, do not interact frequently. However, narrowing the scope in this
thesis from the broad discipline of political philosophy to specific works referencing and oriented around theories of justice and social cohesion, a new nuance of justice appears that is subtle, yet pervasive. Specific political philosophical traditions, especially those with implicit and explicit threads of criminal justice theory provide assistance in the justifications of this new, subtle form of justice: community justice.

Community justice is premised on respect, responsibility, and cohesion through problem solving.\(^1\) Having been implemented and evaluated in select communities across the world, community justice is just beginning to sprout as a form of justice aimed at addressing crime at a low level\(^2\) in order to create more responsive citizens and safer communities.

Philosophy informs society as the basis of law and policy. It is law and policy, which directly affect each person in society. In light of the inexorability of policy and the subsequent effect on the lives of community members by creating values through deliberation, connectedness and investment in the community, philosophy therefore plays an integral role throughout society (Fishkin, 2009; Gutmann & Thompson, 2004). Thus, establishing that there is an undercurrent of community justice-related ideas within the field of political philosophy is helpful and worth pursuing. This is the case because this interdisciplinary relationship could provide a solid foundation to establish the philosophical legitimacy of the concept of community justice as an innovative form of

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\(^1\) For the purposes of this research, community courts are different than traditional problem-solving courts. While both courts take a similar approach to adjudication and sentencing methods, problem solving courts tend to be more issue specific (e.g. drug courts, domestic violence courts, etc.) while community courts deal with a wide range of offenses in a multiplicity of realms.

\(^2\) Low-level crime tends to be ambiguous given the jurisdictional differences between municipalities and local court systems across the world. Low-level in New York looks drastically different than low-level crime in Milliken, Colorado. Thus for example, low-level crimes include, but are not limited to truancy, minor in possession, or even prostitution and select drug felonies in some jurisdictions (Center for Court Innovation, 2009; Milliken, 2011).
justice worth deploying. Also, this relationship provides a framework for crafting new and successful approaches to reduce recidivism, secure public safety, and create a safer environment one community at a time.

The remainder of this chapter will introduce and operationalize community justice as an alternative to the traditional form of adjudication and then introduce and address the question pertaining to the relevance of the topic of this thesis in examining the intersection of political philosophy and community justice.

**What is Community Justice?**

The first community court began in 1993 as the Midtown Community Court in New York City. The court was formed to address low level crimes in order to catch and stop crime at an early stage. This would, in theory, make communities safer in subsequent years (Center for Court Innovation, 2009). Beyond reducing crime, another goal of the first and future community courts was and is to provide restitution to the community in order to repair the harm done as a result of the offense and also to create an increased sense of citizenship and investment. This ideally reduces the likelihood of recidivists committing similar or other crimes in their community. This will be discussed in great depth in ensuing sections.

Before proceeding further, establishing an operational definition of community justice and more specifically community courts is an appropriate starting point from which to launch into its judicial and administrative execution. Community justice includes all parties who are stakeholders in the citation and prosecution of minor criminal

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3 **Community Justice**: Made up of Community Court and Community Policing. This thesis will focus on community court primarily. This conceptual definition has been adapted from the Town of Milliken’s Community Court Policies and Procedures Manual.
cases, including the defendant, police officers, prosecutors, case managers, and judge (Center for Court Innovation, n.d.; Milliken, 2011). The community court process specifically allows for meaningful involvement⁴ by the defendant. Meaningful involvement in determining the terms of the deferred sentence or deferred prosecution agreement allows for the existence and perpetuation of an atmosphere in which respect is nurtured. Additionally, there is a focus on reasons why the defendant has committed the crime and what steps can be taken to prevent it from reoccurring. As a result, if the defendant successfully completes all terms outlined in the mutually-acceptable agreement, the offense is dropped from the defendant’s record, thus allowing him or her to have no formal criminal record for the offense that led to his or her entry into the criminal justice system (Milliken, 2011).

Essentially there are two key differences between a traditional court and a community court. These differences concern the judicial process and the goals of the court. Traditional court offers general, blanket sentencing options as well as diversion programs outsourced to a prosecutor or district attorney for minor offenses. However, community court offers tailored, defendant-focused sentencing options, with the judge presiding over and engaged in all aspects of the proceedings. Similarly, traditional court proceedings are quicker and often focused on docket-clearing whereby the prosecutor or District Attorney is the central actor through what I reference as, reactionary jurisprudence - reactionem iurisprudentia. Contradistinctively, community court allows for meaningful interaction and communication amongst all stakeholders in the crime, in

⁴ **Meaningful Involvement**: Addresses the active involvement by the defendant in the crafting of the sentencing terms, the defendant’s time in the community justice system and the role the rehabilitated defendant plays in the community upon successful completion of his/her community justice sentence
an effort to address the reasons behind the crime, prevent recidivism, focus on the
damage caused to the community, and the form the restoration process will take. This
process I have dubbed, preventive jurisprudence - *praecaventur iurisprudentia*.

While the practice of diversion is a common one in addressing juvenile and low-
level crime in traditional courts, the difference between diversion achieved through the
court and diversion achieved outside of the court, is central to the community court
process. Diversion for qualified, low-level crime cases adjudicated in a traditional court
happens *outside* of the court. Diversion for qualified, low-level crime cases in community
court is achieved *through* the court, utilizing the court as the most ideal resource to
increase participant accountability from both the court as well as the defendant. As seen
in community court, in-court diversion allows for the court to be able to act and/or react
swiftly for reinforcers and sanctions (Berman & Feinblatt, 2002; Center for Court
Innovation, n.d.; Nolan, 2003). The fact that traditional court offers diversion options to
qualified cases is a strong step in the right direction from a community justice
perspective, given that the background and external factors pertaining to the defendant
and the crime committed are taken into account when crafting the diversion sentencing-
plan. This allows for the underlying motivation, rather than the mere instance to be
addressed in order to increase the likelihood of avoiding future crimes of the same or
greater magnitude. However, the difference of *where* diversion takes place and how it is
monitored is the additional, crucial step taken by community court. Pursuing diversion
programs through the court not only increases accountability and efficiency (as
previously referenced) but also firmly roots the court in the central idea of community
and interconnectivity amongst not only the stakeholders, but all community members.
Traversing the adjudication process as a unit is vital to community court and its ultimate success and effectiveness.

**Why Is Community Justice Worth Pursuing?**

The justice system holds enormous power. Whether in traditional justice, court, or even mandatory minimums, justice in society was intended by philosophers, law-makers and adjudicators to be the great equalizer as seen in the writings of Aristotle, John Locke, and John Rawls (Aristotle, 350 B.C.E./1943; Locke, 1690/2004, Rawls, 1971). Therefore, with this power comes great responsibility: through both implicit and explicit means, court sentencing affects not only the life of the offender but also the entire community. Given this power and responsibility therein, Thomas Hobbes is a useful voice in this discussion in light of his notion of supreme power. Hobbes argued that the supreme power (e.g., court, the executive) holds significant influence. Extrapolating from this point, Hobbes’s “supreme power” in this case is the court. The influential power of the court is in the ability to levy a sentence often based on the recommendation of the prosecutor (Hobbes, 1651/1994). This power lies in a judge’s authority to define the severity of a crime based upon the severity of the crime committed. For example, if the offense is prostitution, there can be a blanket sentence option given to most cases of prostitution. Precedent arising out of rulings in previous prostitution cases establishes this sentence option. However, a court could levy this option without regard for personal background, number of appearances before the court, or socioeconomic status, thereby addressing the instance of prostitution. In this example, the implication supported by Hobbes’s “supreme power”, is that the court is thusly declaring the crime of prostitution to be serious only insofar as it requires a general sentence to address this instance, rather
than the underlying problems leading to the instance (Hobbes, 1651/1994). In this example, the focus of the court is on the *instance* of prostitution rather than on coupling the factors contributing to the defendant’s choice to commit the crime. The sentencing, therefore, is a temporary solution, rather than a holistic approach based on underlying factors in an effort to prevent future occurrences of the crime. And it is *this* temporary solution that acts as a social construction, which reinforces the defendant’s place in society as a criminal, thereby encouraging that pattern of behavior and ultimately resulting in a life of crime (Schneider & Ingram, 1997).

Community justice broadly, and community court specifically addresses that issue, which is rampant in justice systems throughout the world today. Problems of prostitution and other low-level crimes are not the only social problems community justice is successful at addressing. The problem of blanket sentencing that does not fit the crime, such as in the previous prostitution example, is also addressed by community justice, in an effort to prevent not only crime, but recidivism as well to create safer communities.

But this concept of community justice is new, and very little is available regarding empirical proof of its perceived, theoretical effectiveness. As such, caution should be exercised when pursuing broad implementation of community justice. An example of hasty wide-spread reaction to a perceived yet untested criminal justice program is the infamous Minneapolis Domestic Violence Experiment (MDVE). Based on a seemingly positive result of a report on arrests and non-arrests of domestic violence offenders in Minneapolis, the MDVE found that giving officers the latitude to make an arrest without warrant if a perceived domestic violence offense had occurred would drastically reduce
domestic violence crimes across the board (Buzawa & Buzawa, 1990). As a result of the positive veneer of this report from the Police Foundation, many states implemented the change in police practices (Sherman & Berk, 1984). However, without regard for regional differences in crime trends, types of offenders and the flawed nature of the shortened study time period which likely skewed the results, the MDVE proved to be much less effective for several states that implemented it (Fagan, 1989). This is an apt example of hastily implementing a program lacking substantive, consistent empirical support. Therefore, applying this principle to community courts and their perceived fecundity aside, communities must proceed with caution when pursuing implementation. Also as learned from the MDVE, communities must take an individualized approach to the implementation of community court by crafting a model that most ideally suits the needs, demographics and other regional differences in order to address crime on a local level effectively.

Therefore, this thesis addresses the following questions pertaining to interconnectivity and relevance between the two disciplines of political philosophy and criminal justice: Is it relevant to examine the intersection of these two disciplines? Why would such a relationship between traditionally disparate forms of disciplines be worth discovering and developing? Is community court effective at reducing recidivism? What are the implications for the criminal justice field?

Chapter two focuses on the review of literature in several realms including two key legal theories supporting community justice known as restorative justice and therapeutic jurisprudence. Also, political philosophy is expounded upon as a justification for community justice playing a key role in its legitimization. Chapter three discusses the
methodology represented in this thesis honing in on the primary use of an empirical case study on the East of the River Community Court (ERCC) project in Washington D.C. Chapter four unpacks the previously introduced ERCC case study with analysis and application. Building upon the success of community justice as established and analyzed in the previous chapters, chapter five advocates for the expansion of community court to a nationalized institution in the form of a sample policy memo to President Obama. In this chapter, implementation and evaluation of a national community court system is introduced and discussed in depth. Finally, chapter six concludes the thesis with a return to the political philosophical justification and legitimization of community justice.
CHAPTER II

REVIEW OF THE LITERATURE

Research suggests that community courts are effective in reducing crime and recidivism. The investment into the defendants, victims and community provide substantive support and encouragement of safer, more responsive communities (Crawford, 1995; Dubow & Podolefsky, 1982; Hawkins et al., 1995). In spite of the research available to support the effectiveness of community courts, there is a substantial lack of peer-reviewed literature on the theoretical underpinnings of community courts, being therapeutic jurisprudence and restorative justice. This is the case, merely because of the newness of these theories, as well as that of community courts. Specifically therapeutic jurisprudence was conceptualized circa 2000 by Dr. David Wexler; restorative justice was formalized as an effort to institutionalize peace in the 1970s; and the first community court was implemented as an alternative to traditional court in 1993 (Court Innovation, 2009; Immarigeon, 1996; Suffolk University, 2012; Wexler, 2000).

The review begins with a broad view of political philosophy beginning with some of the earliest writings from Aristotle to John Rawls, relating to general concepts and ideals found in community justice. Then, the review shifts to hone in explicitly on the two theories of justice underpinning community justice, known as therapeutic jurisprudence and restorative justice. These theories aid in the illumination of the theme of community justice both explicitly and implicitly throughout the tapestry of political and judicial philosophy and theory. This examination occurs through historical, theoretical and descriptive analyses (Braithwaite, 2002; Rottman & Casey, 1999; Wexler, 2000). Once the theoretical and philosophical foundation is laid for community justice, in
order to establish its empirical effectiveness as an alternative to traditional court, the final piece of literature to be examined is a case study. The East of the River Community Court project analysis provides an empirical look at the effectiveness of community court as currently implemented. The review briefly transitions to a methodological and descriptive review of the implications these theories of justice have on the implementation of community courts. Finally, the review concludes with a discussion of the current state of the literature and how this research fits in the body of both justice and political theory as well as in the practical application of alternative forms of adjudication.

**Disparate Realms of Literature Explored**

Over the past several decades, traditional juvenile justice and low level court systems and programs have often tended toward isolating offenders by funneling them through a broad, general court which typically does not take external factors into account when determining sentencing (Hawkins et al., 1995). This isolation of juveniles and low level offenders leads to a phenomenon referred to as the “revolving door of recidivism” (Nolan, 2003). The criminal justice system cannot continue down this path due, in part, to a variety of factors such as court sustainability, the goal of reduced crime rates and costs (Sherman et al., 1997).

Fortunately, there is newly emerging research in the realm of a substantive alternative to this problem, through the mechanism of community courts (Berman, 2000). These community courts are propped up on the implicit and explicit foundation comprised of jurisprudential and philosophical theories which aid in justifying community courts as legitimate means whereby low-level crime is addressed (Karp & Clear, 2000).
Political Philosophy

While pragmatism and application are vital pieces to the implementation of community justice, just as necessary for its legitimization is the political theory which buttresses and undergirds most notions of justice known in the world today. This section examines the body of political philosophical literature to determine trends of community justice specifically and justice more broadly. The literature suggests that community interaction is inevitable and necessary in creating responsive citizens; that punishments must be tailored to the fit the crime committed; and also that the justice system must be made equitable, fair and easily accessible if the success of the defendants, victims and community as a whole is to be ensured (Bentham, 1843; Aristotle, 350 B.C.E./1999; Rawls, 1971). The section is organized through examining political philosophy focused around these three key themes, which are vital to the theoretical and practical application of community justice.

Community interaction. Communities play an active role in the adjudication process. Whether or not the results are effective depends not only on indicators of effectiveness, but also on the community and the stakeholders involved (Barzilai, 2003). Additionally, the community interaction aspect is vital to community justice, because when one is invested in and encouraged as an active member within society, one is less likely to commit a crime or act against his or her given community. This phenomenon is

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5 As a point of clarification, while there are many forms of justice in philosophy, the form of justice discussed throughout this paper remains in the realm of restorative justice. There are other philosophical nuances of justice coupled with restorative justice including consequentialism in that justice is forward looking with a focus on maximizing ideal social benefits for broader society (Bayles (Ed.), 1968). Additionally, there is a strong undercurrent of utilitarianism, yet with a more specified view focusing on crime reduction, and the moral worth of an action as determined by its outcome (Mill, 1863/1991; Bentham, 1843).
known as the good-soldier syndrome (Podsakoff et al., 1997). Thus, an exploration of the ideal community engagement on a broad level within the political philosophical tradition is worth developing.

Aristotle’s famous piece *Nicomachean Ethics* was a crusader in the literature of political theory, being the first time in the western world that the term “ethics” was used as theory as well as praxis. Aristotle characteristically stays in the abstract throughout this piece, yet provides uncannily pragmatic practices. Specifically he wrote, “Then do the carpenter and the leatherworker have their functions and actions, while a human being has none, and is by nature idle, without any function? Or, just as eye, hand, foot and, in general, every part apparently has its functions, may we likewise ascribe to a human being some function besides all theirs?” (Aristotle, 350 B.C.E./1999, pp. 99-112)

Through this, Aristotle is highlighting humans’ roles in society, by pondering the ideal that a human’s role is for the broader consequence of society. One’s role cannot be separated from one’s humanity. Through examining the alternative that a human’s roles is merely self-benefitting only within society, Aristotle concludes throughout the chapter that humans impact humans *en masse* based on daily interaction, natural occurrences and results of actions done (Aristotle, 350 B.C.E./1999). Essentially, Aristotle was underscoring a central idea in community justice in that community interaction is inevitable and will never cease, based on the fact that humans live together.

In addition to the minimization of harm caused to one’s self, Epicurus, a prominent philosopher of the axial age, community and living in unity with one another (Epicurus, 1994: circa 300 B.C.E. original; Meister, 2009). While little of his writing remains, these two important aspects of his philosophy (mostly crafted and survived by
the Epicurean School) are foundational philosophical principles underpinning community justice (Duignan, 2011). Specifically the minimization of harm to one’s self is seen in the proactive approach to sentencing of defendants in order to minimize future crimes of greater consequence (Epicurus, 1994: circa 300 B.C.E. original). As a result, all citizens and defendants benefit through safer communities with minimal amounts of harm through crime and recidivism (Malkin, 2003). And additionally, Epicurus’ notion of societal peace and harmony come from being engaged in one another’s lives is seen through the sentencing options in addition to the pursuit of broader community cohesion through a focus on minor offense reduction (Epicurus, 1994: circa 300 B.C.E. original). Addressing and stopping the problem of criminal behavior at an early stage through preventative measures benefits all stakeholders in the crime, including the community at large, thereby increasing the peace and harmony of the given community (Center for Court Innovation, n.d.; Epicurus, 1994: circa 300 B.C.E. original; Fagan & Malkin, 2003).

Immanuel Kant was another important political philosopher in the realms of morals, ethics and community interaction. While he wrote widely on these and other topics, a small piece in his famous piece, *Groundwork for the Metaphysics of Morals*, regarding the inevitable community interaction is unpacked here. Specifically, Kant praised the interaction between many members within a community as the driver behind ultimate community cohesion and success. “Jacks-of-all-trades” leads to barbarism (Kant, 1785/2005, pp. 1-4). Most notably that each person performing his or her given task (or *trade*) in society is the oil with which the machine of productivity in and success are able to flourish (Kant, 1785/2005). He goes on to point to the ultimate goal of reason-guided
tasks as the definition of virtue. Thus, while arriving at a different conclusion, Kant’s
focus on community interaction as central to societal function and success is an important
attribute present in the underpinnings of the process of community court.

An additional important piece of successful community justice and of all forms of
justice is that the arbiter or judge needs impartiality in order to effectively sentence and
cast judgment (Konow, 2003). Essentially, justice needs to have the defendant or
offender’s best interest at the center of sentence crafting and adjudication more broadly
(Fagan & Malkin, 2003; Thompson, 2002). This aids in helping the offender to feel more
“taken care of” of the justice system in a way that encourages success as an active, equal
member in society. The notion that the crime, while wrong and punishable, does not
define the defendant is crucial to community justice (Malkin, 2003).

**Punishments.** The critique of unmet punishment or, “justice-light” is a common
one against community justice. Jeremy Bentham, who had a great influence on John
Stuart Mill in his account and formulation of *Utilitarianism*, shed light on philosophical
justification for punishment in response to criminal behavior, apart from the strictly
physical (Wilson, 2012). In Bentham’s treatise, *The Principles of Morals and Legislation*,
he claimed that,

“The general object which all laws have, or ought to have, in common, is
to augment the total happiness of the community; and therefore, in the first place,
to exclude, as far as may be, everything that tends to subtract from that
happiness: in other words, to exclude mischief. But all punishment is mischief: all
punishment in itself is evil. Upon the principle of utility, if it ought at all to be
admitted, it ought only to be admitted in as far as it promises to exclude some
greater evil (Bentham, 1843, p. 178).

Bentham was arguing that punishment is evil in itself. However, it is permissible if it prevents further evil, such as offenses or crimes, from happening in order to reduce recidivism, thereby maximizing the happiness and utility of the community as a whole.

Building upon Bentham’s utilitarian approach to the justification of punishments, Thomas Hobbes is another political philosopher who advanced ideals pertaining to the appropriateness of punishments commensurate with crimes committed (Hobbes, 1651/1994). Though Hobbes’ philosophy typically is known for harsh critiques on human judgment, it is this facet of his philosophy that is actually seen in community justice in a more implicit way. Specifically, his notions of the “poverty of human judgment” point to the need for a multiplicity of counselors and judges. Though Hobbes specifically points to science or logic as the judge to “right” this “wrong” of human judgment, the principle of the necessity for several perspectives to balance the singular human view, is a central tenet of community court (Hobbes, 1651/1994). Thus, the very premise of community court is the collective action of the many stakeholders in the justice system as well as in the community coming around the defendant and victim to ensure successful restoration and reintegration.

Additionally, according to Hobbes, the very violation of the law is a crime. He then notes that crime requires a penalty with a level of severity matching that of the crime committed in order to validate the legitimacy of the supreme powers (i.e. the government) (Hobbes, 1651/1994). The need to legitimize the government, or the
supreme powers, is a central undercurrent within both this research as well as in the expansion of community justice.

The crux of Bentham’s and Hobbes’ views on punishments reveals a prime reality that is not often present in modern misdemeanor adjudication. While the notion of punishments fitting the crimes is more routinely applied in cases involving major offenses and felonies, the vitality of this modus operandi in sentencing cannot be absent from adjudication in cases dealing with minor offenses and misdemeanors (Sherman et al., 1997). Defendants with minor offenses are in vulnerable positions given their lower level of offense. They are confronted with either a life of crime or a life free from crime. If their sentences are intentional, addressing underlying issues of their crimes with a focus on their reintegration into the community, they are less likely to reoffend (Fagan and Malkin, 2003). This creates not only safer communities with less crime, but citizens in the community who are invested and engaged due to the intentional sentences designed to address their social realities as well as their criminal behavior (Indianapolis Community Court, 2013; Nolan, 2003).

From a more abstract application, a central theme throughout Hume’s Essays, Moral and Political and Literary, is that all things known (“things of matter”) are found through cause and effect (Hume, 1758/1986). Thus, extrapolating this principle, punishments not only should fit the crimes committed appropriately, but rather must. Due to the reality that cause and effect drives the logos, or what we know and derive from life in a sensory capacity, we must then respect its power, by encouraging the most ideal outcome (lack of recidivism or reoffending from a criminal) possible (Hume, 1758/1986). If matter is premised upon cause and effect, and likewise recidivism is premised, in large
part, upon general sentences that fail to address reasons behind the crime and aid in the rehabilitation of the defendant, then the justice system is failing to accomplish its primary goal. However, on the positive side of this notion, there is great freedom in the reality that if the justice system can tap into the proper sentences for addressing root causes of crime (cause), then the ideal, projected outcome becomes slightly less ethereal, and far more practical in the reduction of the reoccurrence of similar crimes by the same offender (effect).

With a strong utilitarian approach to punishment being central to the idea of community justice broadly and of community court specifically, it nonetheless receives critiques. One common critique against it comes in the form of an opposing theory of justice: retributive justice, or retributivism. This theory essentially claims that only those who are guilty or commit a crime should receive punishment essentially in a vacuum, without regard to the overall welfare (Nozick, 1981). Essentially, retributivism is focused solely on the ramifications to a crime commensurate with the severity of the given crime. However, while retributivism is partially present in community court punishments, it nonetheless nullifies the other vital piece of sentencing considerations, being the heavy focus on the entire community, rather than solely the offender and the crime. In response to the seeming impartiality to the crime, offender and subsequent sentence claimed by a retributivist, is that it is merely a form of punishment akin to vengeance and malice (Honderich, 1969).

**Equitable & accessible justice system.** Beyond claiming that “[Justice is] a first virtue of social institutions,” John Rawls asserts that liberty (basic rights such as having a home, food, etc…) and equality (equal opportunities amongst all) are presented in order
to reveal his notion of the ultimate fair measure of justice in society. Rawls claims in his magnum opus, *A Theory of Justice*, that these two essential provisions – liberty and equality – cannot be absent from the justice system in place. They are ordered to highlight that liberty is paramount in encompassing the inalienable rights of the citizen. Beyond that however, Rawls’s focus turns to the utter importance of providing a personal approach to justice (and implicitly *executing* justice) in society through ensuring equal access to the justice system in a way that encourages success as an active member within the society (Rawls, 1971). Rawls, belonging to the social contract ethicists, provides that equal opportunities are not first granted based on merit alone, but rather that the opportunities be made equally and readily available for all to at least be able to attempt to enter successfully into the fabric of larger society (Rawls, 1971). In the community justice application, this notion of equal opportunities and leveling the playing field for the offender to rehabilitate and restore the harm done as a result of the offense committed to the community in which the offender belongs, thereby allowing the offender to be able to reintegrate into his or her society stronger, is ubiquitous.

In light of the accessibility of a more personal form of justice, the administrative and judicial process requires exposition. Thus, sacrificial action is a core concept of empathy. The act of making sacrifices by one for another is what makes social existence possible (Hoffman, 2000). This act of sacrifice through administrative and empathetic energy through judicial process is vital to community court in practice and the community justice concept abstractly. Extrapolating Hoffman’s research on consequence, empathy, reward and “prosocial moral development”, a community justice approach must be marked first by mere availability on a personal level to those entering it and also must
be actively engaged in the life of the offender in order to prevent further, more serious
crimes from occurring (Hoffman, 2000).

Taking a step back further into abstraction, in his book, *Enquiries concerning human understanding and concerning the principles of morals*, David Hume presents a portrait of a theoretical world in which nature provides everything necessary that man requires. While seemingly ideal, Hume posits that in such a world there would be no such thing as justice, because there would be no claim to property or personal belonging, because everything just is. As such, in regard to the need for a justice system, if there are no laws based on no claims to anything, then there would certainly be no need for a justice system. And this while seemingly so, Hume concludes, is not an ideal world (Hume, 1777/1975). Therefore by implication, Hume underscores the need for an equitable justice system, given that we do not live in such a world. In the world in which we live, he captures the underpinning purpose of the community justice system through his section subtitle “public utility is the sole origin of justice” (Hume, 1777/1975, Sec. III On Justice, Sub.145). Thus, for Hume, the very nature of justice is comprised of the utility and action of people operating within it. In community justice, and community court specifically, the sentences crafted for defendants are crafted in an effort to maximize their utility in their community. It is this utility and action within their community as a result, which defines their place in the community as well as the worth of the system of justice invoking the sentence.

Additionally, in this piece to further illuminate his central point on justice, Hume goes on to note that in another fictitious society in which the central authority was overly magnanimous, then this too would void justice and the need for a proper system in which
equitable adjudication was necessary (Hume, 1777/1975). Therefore, the strength of a justice system that relies on severe and intentional punishments, yet through means by which said punishment intentionally addresses the crime in the best interest of the defendant rather than a blanket-sentence approach, is the ideal system of justice. In such a system of justice, all parties win: the defendant in having the opportunity to successful reintegrate into his or her community; the justice system having efficiently addressed the low level crime in an effort to reduce or eliminate the potential of future more serious crimes; and the community as a whole for having a justice system that encourages cohesion through interaction and restoration of both the victims as well as the defendants (Berman, 2000; Berman & Feinblatt, 2002; Fagan & Malkin, 2003; Malkin, 2003; Nolan, 2003).

**Justice: Therapeutic Jurisprudence & Restorative Justice**

If injustice is a lack of law and fairness, then justice must be fairness and lawfulness. Justice must be implemented primarily in an effort to correct the ills and unfairness and lawlessness as seen in society (Aristotle, 350 B.C.E./1999). Beginning with this notion that justice plays a role in the balancing of the proverbial scale, an appropriate view of specific nuances, trends and sub-theories of justice can be more uniquely understood. This section details the literature on the two theories of justice explored in this research project – therapeutic jurisprudence and restorative justice. The literature suggests that there is a benefit to the sustainability of the court when adequate theory is buttressing it through thorough comparing and contrasting (Nolan, 2001, Nolan, 2003; Thompson, 2002). Additionally, the literature points to a heavy emphasis on the centrality of both victim and defendant (Dorf & Fagan, 2003) and what the restoration
and reintegratiion processes looks for both (Berman & Feinblatt, 2002; Nolan 2003). Research also points out the role and affect the community has on the process, being a large constituency, by default, of crime (Dubow & Podolefsky, 1982; Fagan & Malkin, 2003; Hawkins, 1995).

After examining complementary attributes of each theory in relation to one another, they tend to diverge in motivation for the given course of action (Braithwaite, 2002; Nolan, 2003; Rottman & Casey, 1999). For example, restorative justice tends to focus heavily on the rehabilitation of the defendant in conjunction with the restoration of the victim and community, while therapeutic jurisprudence has a wider lens taking all aspects of the defendant into account for rehabilitation, but additionally exploring what reintegration into society will look like (Nolan, 2003).

The comparing and contrasting of therapeutic jurisprudence and restorative justice have carried on this tradition within justice theory, in order to reveal ideal attributes of both theories to provide a legitimate and appropriate foundation on which community courts can be established and flourish (Braithwaite, 2002; Nolan, 2003). According to justice literature and community court research, there is a problem with the “revolving door of recidivism” of juveniles and low level offenders (Dorf & Fagan, 2003; Nolan, 2003). Offenders are not being adequately focused on and the terms of the sentences for the given crime is generalized and standardized, and disengages the defendant from the community thereby opening the door to repeat offenses (Fagan & Malkin, 2003; Lee, 2000; Nolan 2003). Thus, research also points toward alternatives to these traditional forms of justice that do little to nothing to curtail crime at the low level, suggesting the pursuit of the implementation of a new form of justice with new theories undergirding
them in order to more effectively address low level crime in an effort to prevent recidivism and future crimes from occurring (Berman & Feinblatt, 2002; Thompson, 2002).

The central trend in the literature, which could be referred to as “option-seeking”, is clearly evident in these two competing theories of justice through looking at all stakeholders in a given crime and taking into account the defendant and how he or she is to rehabilitate and reintegrate into society (Fagan & Malkin, 2003; Nolan 2003). Also, the notion of restoration as a result of the crime, being a central tenet in sentencing options, is a new trend, most clearly represented in restorative justice (Braithwaite, 2002), but also a foundational piece in therapeutic jurisprudence (Crawford, 1995; Hawkins et al., 1995; Rottman & Casey; 1999; Wexler, 2000). Both theories of justice include heavy focus on the victim in the crime and what the relationship victim and the defendant, as the restoration process progresses (Braithwaite, 2002). An example of restorative justice in practice could be the meeting of the incarcerated defendant and the victim (or a representative of the victim) to order to pursue closure, cohesion, respect and civility (Dukakis, 2011).

**Definition, similarities & differences.** Restorative justice and therapeutic jurisprudence are two relatively new forms of justice, especially in comparison to Aristotle’s notion of justice as virtue circa 350 BCE (Aristotle, 350 B.C.E./1999). Thus, why would an examination of these forms of justice be worth developing? The simple answer is that, in order to better understand community courts and ultimately how to decrease crime and recidivism in society, there is a need to start with an appropriate theoretical examination, in order to understand the implementation of said courts. Thus,
unpacking these two theories lend legitimacy to the notion of the broad, new alternative to traditional court systems, in the form of community courts.

Restorative justice is the form of justice focusing heavily on the rehabilitation of both the victim and the offender in the given crime (Morris et al., 2001). The reason for this focus is to approach the adjudication of the crime in a more holistic form, in order to determine reasons why the offender has offended and the steps required preventing it from reoccurring. The latter half of this definition is a central tenet of community court (a type of problem solving court). In community court, the court team, made up of the judge, case manager, defendant, police officer and prosecutor, all work together to focus on behavioral causes of the crime committed and what the restoration process will look like for all stakeholders in the given crime. This notion of restoration for those involved is a key aspect of restorative justice as well as firmly embedded within the foundation of the modus operandi of community courts (Nolan, 2003). Where traditional courts take into account the criminal record of the offender, they tend to focus more heavily on the offense before the court at the moment of arraignment, and determine sentencing based on the momentary information (Marrus, 2003). Thus, blanket sentencing, including fine and/or jail sentence, is typically the result.

Similarly, therapeutic jurisprudence focuses heavily on the victim, offender and the community as a whole during the adjudication process. David Wexler’s notion of Therapeutic Jurisprudence is the intersection of psychological examination and philosophical interpretation. Honing in on the why of the crime and of the outcome of the analysis allows for a platform from which to determine effective sentencing (Casey & Rottman, 2000; Wexler, 2000). The central difference between these theories though, is
in the realm of post-adjudication. In addition to the sentencing process nuanced differences in having a heavier psychological focus than restorative justice, there is another, more crucial difference between these two theories. Where restorative justice focuses on both offender and victim during the adjudication process, therapeutic jurisprudence includes an intentional focus on reintegration of the offender back into his/her community for the sake of creating more responsive, responsible and invested citizens (Nolan, 2003; Wexler, 2001). The notion of creating and encouraging invested citizens is central to reducing recidivism and crime under community courts, in that if the defendant feels more a part of his/her community and has the resources and skills necessary to reenter into the fabric of larger society successfully, then there is a great likelihood and empirical backing (to be discussed in future sections) that the recidivism and reoffending rate will decrease (Fagan & Malkin, 2003; Westat, 2012).

Without these core theoretical tenets comprising the foundation of the implementation and success of community courts, any further examination into community courts is impossible. Therefore, the implications on the implementation of these courts are unavoidable and must be the starting place to realizing their ultimate success.

**Community courts.** This section details literature on community courts. Overall, the literature suggests community courts are an ideal alternative to traditional courts because they take into account the whole picture, including the defendant and associated behavioral issues (Nolan 2003; Westat, 2012; Wexler 2000). Also, the literature suggests that community courts are more beneficial to the defendant as well as the victim, because they focus heavily on restoration during the process and reintegration after the process of
being in the criminal justice system (Karp & Clear, 2000; Lee, 2000; Rottman & Casey, 1999; Thompson; 2002). Finally, research shows that community courts are empirically effective in the bringing down of recidivism and reoffending rates of minor criminal and juvenile offenders (Malangone, 2012; Westat, 2012).

Community courts are new alternatives to traditional courts, designed to be issue specific and provide a holistic approach to rehabilitating both the defendant and the victim in a crime, as well as on reintegration of the defendant in the community (Berman 2000; Berman & Feinblatt, 2002; Kelling, 1992; Kurki, 1999; Malkin, 2003). It is important to note that there are different foci between the varying types of problem solving courts (Dorf & Fagan, 2003). Specifically, there are mental health courts, domestic violence courts, drug courts and community courts. While each type of court offers different services based on the differing foci (Nolan, 2003), a commonality between all of these courts is the theoretical foundation and presence of restorative justice and therapeutic jurisprudence (Fagan & Malkin, 2003; Karp & Clear, 2000; Rottman & Casey, 1999).

An additional difference between traditional court and community courts is a sentencing stipulation known as diversion (Hawkins, 1995; Lee, 2000; Malkin, 2003). While diversion is available in traditional and community courts whereby, the defendant has stipulations to complete and given successful completion, the distinction is that diversion in community court is achieved through the court while diversion in traditional court is outsourced to a prosecutor or district attorney (Karp & Clear, 2000).

Similar to therapeutic jurisprudence and restorative justice theory to an extent, the literature on community courts is young and full of gaps. Nonetheless, there is substantial
research beginning to propagate (Nolan, 2003). This new alternative to traditional courts through involving the community in the adjudication process in order to restore the harm done as a result of the “quality-of-life” offense by the defendant, to the victim and community as a whole (Fagan & Malkin, 2003; Knight, 2007). Research reinforces the need to shift the focus away from traditional court and sentencing options and hone in on what the restoration, rehabilitation and reintegration (Berman, 2000; Kurki, 1999; Nolan, 2001).

Therefore, in light of the trends in the research and the realization of the problems facing the justice system, community courts provide useful alternatives to addressing key issues and behavioral problems behind the criminal (M2 Communications, 2006) as well as the crime committed, seeking restoration and reintegration (Kurki, 1999). Community courts specifically and community courts in general, have continually shown to be highly effective (Westat, 2012) in reducing crime and recidivism in the communities in which they are implemented across the world (Indianapolis Community Court, 2013; see also Knight, 2007; McMartin, 2008).

**Case study: The ERCC project.** This section explores the effectiveness of an implemented community court. The central finding is that community court is highly effective in reducing crime and recidivism of low-level offenders (Westat, 2012). The research suggests that regardless of the size of a community, the community court model is transferrable in that it is effective in reducing crime and recidivism (Westat, 2012). In light of the limited amount of data analysis illuminating the effectiveness of community courts, its empirical legitimization is thin, yet convincing.
A methodological and descriptive case study is used in this paper to explore the empirical reality of community courts through program evaluation, as they are implemented in society. The central findings are that community court is an effective alternative model of adjudication through reducing crime and recidivism rates among misdemeanor and juvenile offenders (Fagan & Malkin 2003; Westat, 2012). Thus, given a facet of the research goal being the determination of the effectiveness of community courts’ implementation, data analysis of crime and recidivism rates is a primary form of text examined. Relying on selected peer-reviewed journals insofar as they support the theoretical foundations of community court and its empirical implementation and evaluation, is also be critical in assessing the effectiveness of community court.

More established community courts have more data and experience in the realms of sentencing creativity, diversion program creation and troubleshooting experience aimed at working out kinks which arise along the way (Fletcher, 2004; Lee, 2000). This length of time and subsequently, increased effectiveness and efficiency as a result is a luxury that younger community courts do not always get to enjoy (Lee, 2000; Thompson, 2002). However, community courts are effective regardless of length of implementation or multiplicity of programs available to defendants based on the motivation of the court, which is to responsive, invested citizens accountable to the community and vice versa (Berman, Feinblatt & Glazer, 2005).

The Washington D.C. East of the River (ERCC) community court project is a formal version of a problem solving court that has been highly effective, based on the empirical analysis of its community court, compiled, produced and analyzed by Westat Inc. (Westat, 2012). The ERCC provides some of the first empirical evidence of the
effectiveness of an implemented community court (Malangone, 2012). The ERCC lowered crime and recidivism rates and produced successful defendants who are half as likely to reoffend when compared with those in similar catchment areas with no community court model (Westat, 2012). There is a specific examination of the empirical outcomes shown in the Westat report of the ERCC in the future Case Study section.

**Current state of literature & next steps.** The literature has demonstrated the potential for a causal link between these theories of justice in providing the foundation for community courts when implemented in society and the creation of safer more responsive communities and thus facilitating community cohesion through restoration, rehabilitation and reintegration (Karp & Clear, 2000; Kelling, 1992; Nolan, 2001). Therefore, it continues to be clear that community courts are highly effective regardless of the size or location of the community (Indianapolis Community Court, 2013; see also McMartin, 2008; Westat, 2012).

In the current literature, there are gaps based on the reality of the newness of both the theories of justice as well as the community courts. These have simply not been around long enough to receive a litany of both criticism and praise that add to the legitimacy or illegitimacy of each. This research paper contributes to filling the gap in the research, by linking theory to the implementation of the courts to the policy process.

While the research available as evaluated on community courts today is thorough, whether a full length analysis or preliminary data measuring early effectiveness, the lack of a multiplicity of analyses and reports on community courts across the world causes the thinness of the current body of empirical literature on community courts. This is the case because the courts are simply new and only roughly 36 have been implemented (Burack,
The justification and subsequent importance of this research is to provide a strong empirical framework with the data available illuminating the effectiveness of community courts, in order to encourage further implementation of them around the world. Thus, examining the implementation and evaluation are central to this research goal and comprises the remainder of this paper.

The importance of this research is clear: providing a theoretical and policy framework for the relatively new alternatives to traditional courts through the implementation of community courts increases an appreciation for these community courts in being avenues to creating safer communities made up of thoughtful and responsive citizens (Berman, 2000; Berman & Feinblatt, 2002; Hawkins et al., 1995; Nolan, 2001).
CHAPTER III

METHODOLOGY

Community court is a new form of adjudication that focuses on the rehabilitation and reintegration of defendants and victims (Lee, 2000). These courts are the judicial wing of the broader, new concept of community justice. The modus operandi of community court is focusing on the impact to and from the community as a player in the restoration process of all stakeholders in the crime. The community portion of community court is bifurcated in that defendants in particular are invested through two goals: so that they may in turn invest in their community and that the community plays an active role in the shaping of its citizens. For example, the defendant hones skills as a part of his/her sentencing that can be used in the community upon successful completion of the program (Milliken, 2011).

Information Utilized

The ERCC project, as has been referenced previously, is a community court recently implemented in the Washington D.C. police districts 1 through 7 for minor offenses. The aim of the need for and implementation of community court was to address and stop crime at a lower level in an attempt to reduce larger, more serious crimes in the future through seasoned criminals and recidivism. The most frequently occurring problems and subsequent charges for defendants in the ERCC were misdemeanor drug charges (Westat, 2012). Additionally, about 72% of defendants entering the ERCC had a prior case history with the D.C. superior court and of those, the amount of prior cases ranged from 0 to 51 per defendant (Westat, 2012).
Methodology

Demarcating and thus appreciating the undercurrent of community justice within the tradition of political philosophy and using that linkage to legitimize this new trajectory of justice, requires a mixed-methods approach. This pursuit is valid because the longstanding, respected nature of the discipline of political philosophy provides additional support for the inversely and relatively young concept of community justice. Regardless of the quality of the empirical data available on community justice discussed in this paper, an additional form of legitimization will prove useful in offering further support for community justice, thereby encouraging its perpetuation. Given the broad scope of philosophical writing pertaining to justice or community theory coupled with the nuanced adjudication method and judicial theory embedding within community justice, the variety of methods used in this project are mixed.

The three methodologies utilized throughout the project are unpacked in this chapter: historical, qualitative and quantitative. The historical methodology is peppered throughout with a heavier discussion in the previous chapter reviewing the literature. An historical perspective of the political philosophy, which undergirds most notions of justice and specifically that of community justice, is the abstract adhesive binding together the discussion and process throughout this project. Without an appropriate view of the implicit and explicit trends of community justice-oriented theory firmly established, any attempt to further expound upon such ideals in an effort to move community justice from abstraction to practical implementation would be futile.

Quantitative methods prove to be meaningful tools to exemplify the effectiveness, or any desired outcome, of many forms of research projects. The usefulness of
empirically supporting claims of effectiveness diminishes inevitable biases in qualitative exposition and analysis. Notably in this project, the effectiveness of community justice in reducing recidivism among low level offenders is shown through a quantitative look at the rates of reoffending in several case studies. The reduction of recidivism is the key to demonstrating the effectiveness of formally implemented community courts in society. The primary quantitative analysis is in the following chapter on the East of the River Community Court (ERCC) project in the Washington D.C. area. This analysis examines the recidivism and crime statistics in order to strengthen the justification of community court as a practical means by which communities across the world can be safer.

Finally, a qualitative methodology provides an appropriate framework through which to view the effectiveness of community justice beyond quantitative analysis and discussion. Specifically, the qualitative aspects of community court are espoused throughout the paper as the undercurrent of successful adjudication, similar to the abstract application of the historical methodology. The qualitative methodology, for example, examines the sentencing options provided to defendants and extrapolate the subsequent feeling of inclusion and thus the creation of an invested, responsive citizen in the defendant.

A mixed-methods approach can be highly valuable in helping to better understand certain complexities of problems in which a strict qualitative or quantitative approach would be more limited (Mason, 2006). The ability to approach a problem or set of variables from a variety of angles, or methods, is useful in navigating the research process and leading to significant discovery and analysis (De Lisle, 2011).
**Procedure & theory.** The relationship between the longstanding tradition of political philosophy and the relatively new concepts of community justice, policing and court systems create a framework for new community justice paradigms by which communities can more effectively execute justice, reduce recidivism, and create overall safer communities. In order to examine and show the effectiveness of community court specifically, in reducing recidivism and crime rates in society amongst misdemeanor defendants, there is a series of arguments to be made.

First, a political philosophical framework is useful in offering qualitative support beyond a strict reliance on empirical evidence as justification for the relatively new concept of community justice. The application of this framework provides academic support of community court’s proposed expanded implementation. Ostensibly, given the wide, lengthy acceptance of the discipline of political philosophy, establishing the reality of community justice concepts embedded within it lends legitimacy to community justice through the lens of political philosophy.

The second step in legitimizing community justice and court is through the review of classical to modern political philosophy literature. Essentially this project argues for a shift in the entire criminal justice and court processes for minor and misdemeanor offenses. This radical administrative and judicial shift requires legitimacy in order to catch on quicker and more efficiently for the sake of safer communities and more responsive, invested citizens, as well as a more efficient judicial system, which goes beyond docket clearing, mandatory minimums and seemingly *de facto* incarceration. While the implementation of community justice is a relatively new concept, its roots go
much deeper and are woven into the very fabric of society, philosophy and ultimately governance as a whole.

Third to be posited is that in order to have safer communities and reduce crime and recidivism, community justice is the ideal form of justice to implement to more effectively and efficiently address and stop crime at a lower level, thereby decreasing the likelihood of graver crimes in the future. This step is crucial to the procedure of illuminating the empirical effectiveness of this form of justice. The effectiveness is measured in following chapters by examining a central case study in the Washington D.C. area, the East of the River Community Court project (ERCC). This case study is the selected primary case study for illuminating community court’s success due to the fact that it is the first statistical analysis of any community court in the world and also that the community court is comprised of seven, highly criminally populated areas. This second attribute of the ERCC leading to its selection as the primary case study is integral in showing that community justice and court are not effective in small municipalities or districts with minimal crime. Rather, community court is highly effective in some of the most criminally populated regions of the country, and therefore it is suitable for both large and small communities through effectively lowering crime and recidivism rates, thereby creating safer communities.

Finally, as referenced in the introduction, the link is established that in order to reduce and prevent crime, diminish the number of recidivists in society and create overall safer communities throughout the world, a political philosophical approach to community justice must be undertaken.
**Process.** The intended process of the project is as follows: first, establish that there is a need to legitimize this new trajectory of justice in society and that political philosophy is the chosen method through which this is accomplished; second, given the need for legitimacy through political philosophy, a review of broad concepts from classical to modern philosophy takes place; third, in order to show the empirical effectiveness of an implemented community court, a primary case study on the ERCC is examined, thus revealing community court’s effectiveness in adjudicating minor and low level crime; finally, the project is brought full circle in establishing that in order to have safer communities and reduced recidivism and crime rates, a political philosophical approach to community justice must be undertaken.

**Limitations & Assumptions**

A key limitation is the fact that community justice is so new with the first formal community court implemented in 1993 in New York’s Midtown region. Therefore the canon pertaining to explicitly community-justice-oriented theory and research is somewhat limited. An additional limitation is that in community justice in its current-day form is not explicitly mentioned in political philosophy. This is the case because all of the classical philosophy and most of the modern philosophy examples and theories drawn upon as support for community justice are mere extrapolations of similar ideals, rather than the overt philosophical espousing of community justice. Therefore, with this limitation the subsequent limitation of critique and rebuttal is realistic from those who may interpret certain pieces of philosophy drawn upon in this project, differently, often with rather differing conclusions. The majority of the limitations and assumptions
embedded throughout this project lie in the historical methodology in examining political philosophy, rather than the remaining two quantitative and qualitative methods.

For example, in Thomas Hobbes’s *Leviathan*, he notes that humans are evil and depraved and therefore requiring oversight from a higher authority made up, through interpretation at points, a collective, is an exemplary text in this discussion on philosophical justification for community justice (Hobbes, 1651/1994). However, this could be interpreted, in that given the depravity of mankind none are in a position to make authoritative decisions with one’s life in the balance (i.e. the adjudication of “fair” or “just” judicial process from the judge, prosecutor and court team). Thus, while the massive canon of political philosophy is the source of great fecundity and thought-provoking ideals and theories, it nonetheless is accompanied by great sources of critique, disparate interpretation and limited explicit advocacy for any singular theory, such as that of community justice.

Building upon the limitations in this paper in using political philosophy as a key realm of abstract and theoretical support of community justice, the literature provides an interpretation of the ideals of community justice at best, thus relying on a heavy dose of assumption and extrapolation. In addition to the previous example on Hobbes and the wide array of potential interpretation leading to probable critique, while Bentham was a utilitarian and community justice is built heavily on utilitarian aspects, his views on the greatest good for society can be widely interpreted as well. Bentham intimated that an ideal, or greatest, good for society in some form does exist. In its simplest interpretation, Bentham would claim that this greatest good is that which maximizes the total or majority of societal pleasure or good (Bentham, 1843). Some would claim that it is
impossible to aggregate the societal value into an agreed upon sum (Sandel, 2010). Thus, in order to adjudicate fair and balanced sentences for one defendant may be the opposite for the other. And it is this inconsistency and incongruence that leads to the very definition of unfairness and imbalance (Sandel, 2010).

Therefore, these limitations and assumptions challenge the theme of this project. Nonetheless, given that there exists a strong argument to be made or an interpretation to be had regarding these piece of political philosophy, the reality illuminated that there must be a link strong enough to extrapolate and expound upon enough to make the case for an undercurrent of community justice concepts woven throughout the tapestry of political philosophy.
CHAPTER IV
EMPIRICAL APPLICATION AND ANALYSIS

This section examines the first full evaluation of any community court project in the world. The case study to be the primary focus of analysis and application of the community court is the community court project referenced throughout this thesis thus far: the East of the River Community Court Project (ERCC) in the Washington D.C. area. The successes as empirically shown in the ERCC’s final report as compiled, produced and analyzed by Westat Inc., provide strong evidence linking the processes of community court to success in reducing crime and recidivism in communities in which it is implemented.

Upon determining and establishing the formalized and measureable success of a community court project on a larger scale, this section then compares less-substantial measurements from community courts around the world, all pointing toward the success seen in the paradigmatic ERCC case. This comparison helps to establish the effective adjudication processes of community courts in communities both large and small. The communities to be compared to the ERCC are: Manhattan’s Midtown Court (the inaugural community court project), Milliken, Colorado, San Francisco, California, and finally Liverpool, England. Each community court project was selected to compare with the ERCC because they are in disparate communities with varying demographics and crime realities. Therefore, the differences between the communities help to illuminate the transferability of community court. It is an effective model by which crime and recidivism are reduced ultimately creating safer, more responsive communities regardless of size, types of crimes committed or demographic make-up.
**East of the River Community Court Project (ERCC)**

The analysis from Westat was conducted by breaking down the Washington D.C. catchment areas into two main study sections as a sample. Demographic, crime and case data was gathered from two sections of the area. These areas were made up of police districts – one with community court (police districts 6 and 7, *which is the ERCC project*) and the other without community court (police district 5). This comparative case study examined similar catchment areas to determine the reality of the affects, if any, that community court was having (Westat, 2012).

As referenced in the introduction, traditional court systems typically outsource cases to a district attorney or prosecutor and are involved in the cases minimally through periodical review pursuing ultimate successful case closure. Often, the judge may not even see the defendant in the case if the attorney is appearing on the behalf of the defendant. This separation between the court and the defendant is precisely the starting place that community court is focused on adjusting. As a theoretical and foundational aspect of community courts, the judge presides over all aspects of the proceedings (Center for Court Innovation, n.d.). The prosecutor or district attorney though, is still a player in the entire process along with the case manager, court clerk and even the arresting officer.

The ERCC is no different than this theoretical function. A single judge presides over all ERCC cases and hears the phases of each case from arraignment to final disposition. In practice, this reality allows for more informed and intentional judicial decision-making (Center for Court Innovation, 2013; Westat, 2012).
Data overview. The implementation of community courts globally, whether in Washington D.C. or in any communities, does not happen in a vacuum. Implementation of community court requires a multiplicity of stakeholders as well as those involved administratively in court establishment. This includes parties from the civil society in partnership with public agencies and private organizations. Specifically, the Center for Court Innovation, which is a nonprofit community court consultant firm based out of New York City, is an active member in the establishment of each community court throughout the world today. Additionally, government agencies such as the US Department of Justice and the Bureau of Justice Assistance are central players in resource management and funding of and for community court projects in the United States (Center for Court Innovation, 2013). However, apart from the formalized organizations crucial to the establishment and efficiency of community court, the court administrators and the ‘court team’ are the practitioners responsible for daily implementation of community court proceedings. It is the intake of defendants, running of the court, and organization of all court documents and sentencing programs that allow community court to actually occur. The practitioners act as the agents moving the community court concept from theory to practice. With the key players in the implementation of community court introduced, an evaluative discussion of the data and trends of community courts can now occur.

Therefore in the ERCC, the community court model was formally implemented as a case study in police districts 6 and 7, pertaining to the aforementioned sample area to determine its effects on crime, recidivism and community safety at large. This case study compared and evaluated the effects of community court, essentially to determine if it was
worth the expense and shift in judicial administration (Westat, 2012). During the study time period comprised of case processing to final disposition, the average age of ERCC defendants was 35 years old and an overwhelming majority of defendants were African American males. Specifically, 96% of defendants cited into the ERCC were African American and 75% of defendants were male (Westat, 2012). The most common cases to come before the ERCC were misdemeanor drug charges. Additionally, roughly 72% of defendants were had a prior criminal case in the D.C. Superior Court (Westat, 2012). Thus, the need for a new adjudication option for the D.C. superior court was quite apparent. From 2007 to 2009, 4,046 defendants were cited into the ERCC. The initial intake numbers for the study time period are listed in Table 4.1 below.

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<tr>
<th>Action After Initial Citation</th>
<th>Number of Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diversion</td>
<td>847 (21%)</td>
</tr>
<tr>
<td>Transferred to Treatment Courts</td>
<td>379 (9%)</td>
</tr>
<tr>
<td>No Diversion (either from opting out or not being offered the option)</td>
<td>2820 (70%)</td>
</tr>
</tbody>
</table>

As a point of reference, there is a different between treatment courts and diversion programs as achieved through the ERCC. Diversion is available to those with minor crimes or offenses in that they are given an offer to make restitution in the community, accept responsibility for behavior, obtain access to treatment and educational services and divert criminal conviction through the formal process of a deferred prosecution agreement or deferred sentence agreement. Diversion as introduced at the outset of this
thesis and also noted throughout, is different from traditional diversion in which the prosecutor takes on the case outside of the court. Diversion in community court in general and specifically in this ERCC project is achieved through the court. This is the case because in-court diversion allows the court to effectively pursue increased accountability between the stakeholders in the crime and greater respect and interconnectivity amongst all in the community (Berman & Feinblatt, 2002; Center for Court Innovation, n.d.; Nolan, 2003).

Treatment courts are for more serious offenses and address substance abuse issues and more systemic problems in the life of the defendant that may have contributed to the crime committed (Westat, 2012). “A higher proportion of women participated in treatment court programs: 32%” (Westat, 2012, p. iv).

Analysis. Upon completing the full analysis of the ERCC, Westat found that during the entire study time period that the ERCC was increasingly more effective at reducing recidivism, crime and even the likelihood of recidivism as compared with those in the 5th police district. Most notably, those in the ERCC diversion programs had a 60% lower recidivism/reoffending rate with their cases pending and received a nolle diversion disposition, in comparison with those in the 5th police district courts. In addition, after a year of having successfully completed a diversion program, ERCC defendants had a 42% lower reoffending rate compared again with those in the 5th police district courts. The report also noted that defendants who successfully completed an ERCC diversion program were about half as likely to reoffend when compared to 5th police district defendants (Westat, 2012).
Application. In light of these successful outcomes, the Chief Judge of the D.C. Superior Court has recently implemented the community court model for misdemeanor charges in police districts 1 through 7 in an effort to create a safer community and aid in the rehabilitation of defendants. The evaluation discussion section noted of the ERCC that “this promising program could…become a model for other communities” (Westat, 2012, ix).

Evaluation of the ERCC was vital. If the final report of the ERCC would have returned results with higher or unchanged results in recidivism and reoffending rates under the community court jurisdiction, then the likelihood of community courts continuance and legitimization would have been significantly diminished, and could have potentially led to the reversal of several community courts already implemented sparsely around the world, citing that community court may not be as successful as was initially conceptualized. However with the same token, the evaluation phase of the policy process proved immensely helpful for the community court form of adjudication in that in light of the results of the ERCC “test case”, that chief judge of the D.C. Superior courts formally implemented the community court model for addressing misdemeanor crimes at a low level in all seven of police district courts in the Washington D.C. area.

Therefore, the evaluation phase as represented in the case of the ERCC, as well as the entire policy process has broad implications on the implementation of community courts globally.

Comparison: Other Community Court Projects

While the ERCC final evaluation report by Westat is groundbreaking empirical support for community court projects in light of its thoroughness and full analysis, the
ERCC is not the only community court to show signs of success. Other community court projects across the world have illuminated their own brand of success without the benefit of a full statistical analysis of their community court’s output and subsequent effect on the recidivism and crime numbers. This subsection conducts a non-empirical examination of three additional community courts across the United States and one community court oversees in Manchester, England. The U.S. community courts to be examined are Manhattan’s Midtown Community Court, which was the first formal community court project in the world, beginning in 1993 (Nolan, 2003, p. 2); the small, rural town of Milliken, Colorado and its community court; San Francisco, California’s community court project; Liverpool, England’s community court.

**Midtown.** In 1993, the Center for Court Innovation in New York City established the first community court in order to focus mainly around so called “quality-of-life” crimes from prostitution to drug offenses (Nolan, 2003, p. 2). The compliance rate for the Midtown community court is the highest in the City at 75% and the court has been hailed by Mayor Bloomberg as a success and effective in dealing with these quality of life crimes (Center for Court Innovation, 2009). Participants on the Midtown Community court have provided hundreds of thousands of dollars’ worth of work for community-related projects and have helped make their city better by giving back and investing in it, while it has invested in them through this community court process (Center for Court Innovation, 2009; Curtis, Ostrom, Rottman & Sviridoff, 2000).

The coordination between the varying sectors of the administration and judicial stakeholders to provide quality services to the defendant to allow the defendant to pursue successful completion of his/her sentence more efficiently is a key piece to the
community court and justice process (Berman & Feinblatt, 2002; Nolan, 2003). Interconnectivity and cooperation between these players is an additional nuance further supported by the theoretical framework introduced in Aristotle’s notion of community and the effects cooperation has on society as well as the players involved (Aristotle, 350 B.C.E./1999).

**Milliken.** The success of the Town of Milliken’s community court is examined in a slightly different manner. There has been a limited amount of data collected and analyzed on its court. The data collected and analyzed was compared against the projected or ideal outcomes the Town wanted to see from their community court. These goals were set up in tandem with the Center for Court Innovation and their consultants (Shelley et al., 2011). In order to provide a general overview of the Town of Milliken’s community court and what they wanted to see from it, there are five key goals to realizing community court’s success as outlined in the 2011 Needs Assessment as well as in the policies and procedures manual. They are, Goal 1: Respond to defendant, victim and community issues in case selection through enhanced information gathering; Goal 2: Encompass individualized sentences and dispositions that address defendant’s underlying behavioral problems and/or restore the harm of the offense to the community; Goal 3: Provide a Mechanism for Effective Court Supervision and Increase Participant Accountability; Goal 4: Strengthen the connection between the court and the community through problem solving, collaboration and involvement; Goal 5: Promote Public Safety by Reducing Recidivism and Preventing Crimes (Burack, 2011; Shelley et al., 2011).

Based on the limited amount of data by this young community court, goals three and five and selected operational objectives laid out in them that best encapsulate the goal
and its purpose, is examined. For objectives 3.1, 3.4, 3.5 and 5.1 of goals 3 and 5, see the projected outcomes versus the empirical outcomes in Table 4.2 below.

Table 4.2 – Milliken: Empirical Outcome vs. Projected Outcome
Source: Davis & Waggoner, 2012

<table>
<thead>
<tr>
<th>Projected Outcome</th>
<th>Empirical Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% of participants attend mandatory court reviews or have proof of compliance with a non-appearance court review</td>
<td>96% attended court reviews or showed compliance</td>
</tr>
<tr>
<td>80% of the participants completed restorative justice activity</td>
<td>96% completed restorative justice activities in their sentence</td>
</tr>
<tr>
<td>75% of the participants completed their sentence successfully</td>
<td>85.7% successfully completed in 2012 with 9 cases pending at the time of data collection</td>
</tr>
<tr>
<td>50% of the participants did not recidivate by committing similar crimes within the town catchment area at least one year after completion of case</td>
<td>9.3% of community court participants have recidivated</td>
</tr>
</tbody>
</table>

Based on this snapshot of data measuring actual outcomes versus projected outcomes and associated goals early in the program, Milliken’s Community Court is already proving successful in light of the positive goal completion and numbers achieved thus far, to say nothing of success stories that are not empirically driven, but rather

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6 Breakdown: 3.1 – 72 of 75 total cases continued with the program. The remaining 3 defendants moved to other towns thus transferring jurisdiction, or entered the foster system and were closed; 3.4 – the same case is true for this objective as with the previous objective; 3.5 – 36 successful completions, 6 unsuccessful completions totaling 42 cases in 2012. *Data beyond 2012 is not completed and/or available. Thus the data represented for the Town of Milliken throughout this paper is preliminary data and limited.

7 Note: for those who do not successfully complete the program, the ramifications include revoking community court terms and associated plea deals (i.e. DPA or DSA) and reverting to traditional sentencing as delineated by the Judge during a normally scheduled review, as based on prior discussion amongst community court team. Those whose cases were closed were not factored into the final percentage count.

8 Breakdown: 5.1 – 75 total cases with 7 recidivists (33 in 2011; 42 in 2012). *Data beyond 2012 is not completed and/or available. Thus the data represented for the Town of Milliken throughout this paper is preliminary data and limited.
intangible nuances of success (e.g. smiles on faces, personal “thank you’s” from successfully completing defendants, increased self-esteem).

**San Francisco.** The community court project in San Francisco, also known as San Francisco’s Collaborative Court, is farther along in terms of analysis and evaluation than Milliken’s community court, but not quite to the stage of full analysis and evaluation as that of the ERCC, though they will soon undergo an evaluation of their community court project to be conducted by the Rand Corporation (San Francisco Collaborative Courts, 2011).

Underscoring the uniqueness of each community court and its fecundity illuminated through judicial process tailored to the given community in which it operates, San Francisco’s community court is concentrated mostly on drug issues, while also dealing with homeless-related offenses. Similar to the ERCC, the San Francisco’s community court project was initially implemented on a trial-basis as to determine if it is effective or not. Since 2007, the court has been operating fully and is now undergoing the aforementioned rigorous review and evaluation by the RAND Corporation (Knight, 2007, p. D1). This development over several years points to the effectiveness of San Francisco’s model of adjudication. Specifically in the article from the San Francisco Chronicle in 2007, San Francisco’s Mayor, Gavin Newsom, claimed that he was assured this [community court project] “is the right way to go” in spite of the controversy surrounding its initial formulation given that it was merely a departure from the traditional yet broken court system (Knight, 2007, p. D1). Therefore with the initial support and recognition from the top political powers in San Francisco that the traditional court system was not effective enough in reducing crime and recidivism in San Francisco
and now that the community court it is still in operation and undergoing a rigorous
evaluation following in the ERCC footsteps, it is fairly safe to claim that San Francisco’s
community court appears to be a success (Knight, 2007; Nirappil, 2012).

**Liverpool.** Continuing in the common thread of community court establishments,
the Liverpool, England community court is creating its own version of judicial process
aimed at combining communities and judicial administrators to address and end local
low-level crime. Under the guidance of Judge David Fletcher, the North Liverpool
Community Justice Centre has been engaged in “targeting the priorities of a
neighbourhood for low level crime, instead of using the one size fits all method…[which]
means that communities needs are met and justice is served” (Fletcher, 2004; M2
Communications, 2006). Additionally, the community court is dealing with a variety of
low level offenses successfully in that they are seeing a recidivism rate of around 10%
(Fletcher, 2004).

Similar to the ERCC’s expansion of community court to be the primary method of
dealing with low-level crime in all police districts, 1 thru 7, the North Liverpool
community court has been so successful that the government has extended the similar
method of judicial process to around 10 other areas in the United Kingdom.

**The Effectiveness of Community Court in Light of Political Philosophy**

Therefore, with this snapshot of the effectiveness of a community court as
formally implemented in a highly criminally populated community, it is clear that
community court does bring down the rates of reoffending among misdemeanor
offenders and thus is, by implication, more effective than the traditional approach to
juvenile and low level crime. Its effectiveness in highly criminally populated areas is not
the only arena in which community court has been seen to flourish. Based on the previous comparisons of varying types and forms of community court as implemented in diverse locations throughout the world, its effectiveness has remained relatively consistent. Therefore, it continues to be clear that community justice is a form of justice not only highly effective in some of the largest, most criminally-populated in the country and world, such as Washington D.C, but as well as in small communities such as Milliken, CO.

Given the effectiveness of community court in many different communities throughout the world, a political philosophical framework is crucial to understanding the efficacy of the theoretical underpinnings of community justice. A move from the theoretical and abstract of philosophy to the practical effectiveness of community court illuminates the pervasive nature of these principles embedded within western culture most notably beginning with the classical philosophers of Aristotle and Epicurus. Reverting back to Aristotle’s notion that interconnectedness within society is inevitable and therefore must be pursued and maximized in order to have the most efficient society is seen within community justice from sentencing options involving all stakeholders in a given crime, to the reintegration of the defendant back into society. This principle of inevitable interaction amongst humans in society is the binding force of community justice.

Community court has been shown to be successful as an alternative form of justice in addressing and reducing crime at a low level through the ERCC project examination as well as the other case study overviews. However, there are still few community courts implemented in the world today. With the link between community
court and its effectiveness at reducing crime and recidivism in communities, more community courts would mean safer communities everywhere and a generally safer world. Therefore, in the following chapter I posit a model for implementing community courts nationwide in the United States. I do this in the form of a fictitious memorandum to President Obama advocating for a national community court system. The justification is simple: with more community courts, there would be less crime and communities across the world would be safer. The implementation of such a system is perhaps another story.
CHAPTER V

A SAMPLE POLICY MEMORANDUM

TO: President Obama
FROM: Philip Waggoner, MPA Candidate
SUBJECT: National Community Court System

Executive Summary

Crime is ubiquitous. In light of this reality, the traditional justice system is doing little to adapt to meet the needs of unique situations represented in disparate communities. The alternative known as community court is an ideal form of justice aimed at addressing and reducing crime and recidivism among misdemeanor and juvenile offenders. In spite of its high level of effectiveness in bringing down recidivism rates in the few communities in which it is implemented though, it is not implemented broadly enough to affect the nationwide issues of high crime and recidivism rates. This lack of widespread implementation of community court could be attributed, among other things, to the reluctance to change often seen in the criminal justice and legal systems. Thus, in order to bring these rates down and pursue safer more responsive communities throughout the country, a national community court system must be implemented. While there are many avenues through which this national community court system can be implemented, I recommend a combined centralized and decentralized approach for the implementation of community court. A centralized community court agency to oversee the many district community courts across the country allows each district court to pursue a tailored form of adjudication commensurate with its community’s given needs.
The Current Reality

According to the Office of Juvenile Justice and Delinquency Prevention, the juvenile (persons under 18 years of age) arrest rates since 2000 through 2010 have been hovering between 2.2 million and 1.6 million each year (Justice Programs, 2010). These are juveniles who could be in school; juveniles who could be looking toward community or four-year colleges; juveniles who may need to provide for families and/or siblings; juveniles who have dreams. These arrest and subsequent crime rates are much too high for this vulnerable population.

Additionally recidivism rates, according to a 2008 juvenile recidivism study from the Office of Children and Family Services (OCFS), are around 70% among males 24 months after their release and at 43% for females 24 months after their release from incarceration or detention (Children and Family Services, 2011). Thus these numbers reflect high crime and recidivism rates among a population for whom this should not be the case.

These high numbers are a political problem, a social problem, a domestic policy problem, a fiscal problem and moral problem. While juveniles are most often responsible for their actions, they should not be alienated and thus implicitly encouraged to continue in this life of crime. There is, however, a form of adjudication known as community justice, and more specifically community court, which is currently implemented sparsely throughout the world to address such issues relating to juvenile crime and recidivism, illuminating highly positive results in decreasing these rates among juvenile offenders.

Given its success, this new idea of community court is the answer to addressing juvenile crime and recidivism effectively for the good of the offenders, victims and the
communities across the country. However, the current piecemeal approach to the implementation of community court is simply not enough to address this problem. A broader, national system aimed at reducing juvenile crime and recidivism must be pursued in order to truly make a dent in these high rates of arrests and continual offenses of and from juveniles.

Criteria

In weighing the policy alternatives, the measurements of effectiveness as measured by rates of crime and recidivism, efficiency as measured by time spent in the criminal justice system and feasibility as examined through economic and political feasibility are specifically discussed.

The first criterion used to select the policy alternative is to examine the effectiveness of community court as it is formally implemented today. This examination occurs through measuring the recidivism and crime rates of a community court as compared to a non-community court in a similar region. This provides an ideal view of the effectiveness of community court in addressing the recidivism and crime rates among juvenile misdemeanor defendants. The effectiveness criterion provides guidance as to whether or not a community court is worth the costs and expense – politically and economically (to be discussed below) – of pursuing implementation nationwide.

The second criterion to be examined is the efficiency of community court as compared with non-community courts. This is measured through the time the defendant spends in a community court versus a traditional court. This is accomplished, again, through observing and measuring similar regions with and without community court in
order to determine a rate of effectiveness for the proposed community court implementation. Efficiency is closely linked with the previous criterion of effectiveness.

Thirdly, the economic feasibility of community court is vital in determining its proposed nationwide implementation. Economic feasibility is measured through prosecutor time, court and judge time, case manager time, and the amount of cases in each court coupled with the necessary staff time to ensure the aforementioned goals of effectiveness and efficiency.

Political feasibility is the final criterion in discussing the policy alternatives aimed at addressing this problem. It is measured through congressional support of the given alternative (through votes, funding, informal and formal support), executive support and help in pursuing the passage of the alternatives to ensure successful implementation of the alternative and additionally judicial support from the judges, attorneys and case managers who are responsible for the adjudication of community court. The key to crafting politically feasible policy, though, is the successful marketing of it to the public. In light of this reality and also that no politician wanting to appear soft on crime, the argument must focus on the investment into judicial alternatives now will reduce crime and rates of reoffending in the future, thus reducing costs and lowering crime in the future, thereby creating sustainably safer communities.

Alternatives

With the intricacies and nuances of the problem at hand, there are a variety of possible alternatives aimed at addressing and reducing juvenile crime and recidivism rates through community court. There are four proposed alternatives discussed in this section. Specifically they are: a centralized national community court system; a mandate
for the establishment of federal district community courts; to continue with traditional
courts and do nothing; or a combination of the first two alternatives through the creation
of a central national community court to act as the administrative wing of the district
community courts established under a federal mandate.

The first policy option to establish a centralized, national community court in
Washington D.C. is an alternative which takes the model of the United State Supreme
Court, being the single centralized authority established to adjudicate all community
court eligible cases. Any and all community court eligible cases are processed and
overseen at this centralized court, thereby nullifying the current community courts seen
around the country today. The centralization of the community court alternative provides
a national focus on misdemeanor crimes and offense in an effort to address crime at a low
level to aid in the wide-spread reduction of crime and recidivism.

The second policy alternative is the mandate to establish district federal
community courts. This model provides a similar adjudication process currently seen
today through the federal district courts in all American states. However, the current
federal district court system does not include or participate in community court-type
sentencing options or process, and is therefore not a community court system. Thus, this
option transforms the current federal district court system where juveniles or low-level
offenders are traditionally tried in regular court, to federally funded and run district
community courts.

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9 Community Court Eligibility is determined based in part on: lack of extensive criminal history, lack of
sexual criminal offenses, lack of felony record, and a variety of other stipulations ensuring quality
participation from qualified defendants in the program (adapted, in part, from the Town of Milliken’s
Community Court Policies and Procedures manual).
The third alternative is to simply do nothing. This option is to continue adjudication of minor and juvenile offenders through traditional court and sentencing options, thereby allowing the recidivism and crime numbers to remain relatively unchanged.

The final alternative is a combination between the first two policy alternatives. This alternative allows for the benefit of a centralized federally-run court for juvenile and low-level offenders to have access to a community court at a local level (federal districts as are currently seen today with traditional court) than that of a single, centralized community court only in Washington D.C. Additionally, the centralized governance structure of the district community courts around the country is achieved through administration and top-to-bottom federal jurisdictional processes. Again, this alternative provides the benefit of centrality and oversight from Washington D.C. yet with the local access and resources tailored to different communities through the district federal courts.

**Projected Outcomes & Tradeoffs**

Based on independent and growing research, evaluations and analyses showing the effectiveness and success of community courts as they are formally implemented today, it is projected that a national community court program for low-level and juvenile offenders reduces both crime and recidivism throughout the country on a broad scale. This aids in creating safer communities. For example, in the East of the River Community Court project (ERCC) evaluation, participants in the program had a 60% lower recidivism rate while their cases were pending and a 42% lower recidivism rate upon a year of their case completion, as compared with defendants not in a community court but a similar region (Westat, 2012).
However, as is the case with many policies and alternatives to traditional policies, there are tradeoffs associated with community court. The clearest tradeoff, to be further discussed in the following section, is that of financial feasibility. The move from traditional court to community court requires significant infrastructure shifts both administratively and judicially. Thus, the tradeoff would be higher crime rates for initially comparatively lower costs or initially higher comparative costs for lower crime and recidivism rates and ultimately safer communities.

An additional tradeoff is that of time in the realm of training and re-training current court employees (primarily administratively). Shifting from one policy or form to another requires time to adapt and includes varying degrees of learning curves for those judicial practitioners charged with community courts implementation. This learning curve and time spent training in new and adaptive judicial and administrative processes is a relatively significant tradeoff compared with that of doing nothing and remaining on the current, traditional trajectory. Similar to the previous financial tradeoff, it is either higher crime and no learning curve/time spent training or lower crime and acceptance of lost time training/retraining and the administrative costs associated with this new trajectory of executing justice.

**Recommendation & Discussion**

President Obama, my recommendation for you is to pursue alternative three. We can no longer sit and do nothing forcing municipalities to piece meal a solution with sparse community court implementation around the country. At the same time, we do not need to hold so much control over the adjudication of minor and juvenile offenders as to force all low-level crimes through a singular Washington, judicial bottle neck. Thus in
light of the administrative and judicial hurdles facing our country’s criminal justice system as well as the high levels of crime and recidivism, it is time for action through implementation of community court nationally. We need to be the leaders on this front and to implement a centralized community court system, with lower level, federal district courts set up to only handle these issues, thereby front-loading the criminal justice system to avoid more and increased crime in the future. The pace currently is too slow given its proven effectiveness. It is time to implement this on a broad scale.

Based on the aforementioned evaluation of the ERCC as well as numerous popular and academic journal articles illuminating community court’s success as implemented on a community-by-community basis, it is estimated that implementing community court brings down rates of reoffending among misdemeanor and juvenile offenders. This causes communities to be safer across the country.

In regard to economic feasibility, the short answer is it would initially cost more than doing nothing. However, the means by which the alternative is economically covered is through rechanneling funds currently being funneled to traditional juvenile court programs, which have historically been less effective, to community court programs. This is in lock-step with the broader move toward the eventual transitioning of all traditional courts to community courts. Pursuing community court includes carrying out and monitoring sentences for juveniles through the court, rather than outside of the court. This is currently how the traditional court system functions: juveniles are essentially outsourced to prosecutors or district attorneys to complete their sentences set by the court. Community court achieves sentencing through the court under the guidance of the judge as well as the case managers thereby increasing accountability and reducing
the funds spent on additional legal expenses. Case managers are much more affordable than lawyers. Additionally, the increase in program costs could come from state justice expenses a categorical mandate. By front loading the criminal justice system with increased funds now to decrease future crime and also create invested citizens out of offenders rather than giving them blanket sentences, and then sending them out to do the same thing again, we are stopping this revolving door of recidivism. Thus the defendants, when more invested members of the community, gains skills as a result of sentences and give back to the community through not only committing less crimes (saving money and creating safer communities) but also by working in and for the good of the community, rather than a life of crime, which hurts everyone in the long term.

The political feasibility also creates hurdles initially, compared with taking no action to increase the effectiveness and efficiency of our criminal justice and court system. The clearest political hurdle is convincing both legislators as well as the general public that a change is in fact needed; especially change that comes with a price tag. An avenue to overcome this hurdle is to espouse community court, not as a financial or political obligation weighing people down, but rather a fresh alternative increasing public safety, through techniques proven to reduce crime and recidivism while simultaneously creating more responsive, invested citizens out of defendants who give back to their communities. Investment in defendants encourages them to actively engage in their community rather than staying in a life of crime thereby costing the community more money in the long run.

Again, though, it would not be an easy road. It would require serious political capital to achieve a greater good for all community members. The key is to constantly
keep the focus off of the money and the partisan politics that would inevitably arise, and focus on the public safety, by getting police officers and judges on board. This aides not only in pursuing the implementation of this policy alternative, but by also in fostering cooperation between sectors of the criminal justice system, as well as getting both sides of the aisle on board. Opposing public safety and public service provider cooperation would not play politically well in most, if not all, districts throughout the country.

**Memo Appendix 1: Implementation Strategy**

The first step in implementing a national community court system is setting up the office as a sub-cabinet agency within the Department of Justice. It is the Division of Community Court (hereafter *DCC*). The DCC acts as centralized community court administration and resource support for the district courts around the country. This provides the necessary oversight at the federal level to allow the local or districts to have the utmost freedom in the administration of their courts.

Upon creation of the DCC, the statistical wing of the Department of Justice, which is the Bureau of Justice Statistics, will contract with Westat Inc. (the statistical analysis firm who provided the first holistic community court evaluation and analysis for the ERCC). This contractual relationship would provide the funding to conduct a crime rate study for types of crimes in districts with current federal district courts. Pre-evaluation data provide the necessary statistical starting place to determine the funding brackets of each district court. Thus, funding amounts for each community court are based on types and rate of crimes committed. For example, the districts with high rates of crime receive more funding in order to appropriately and efficiently address the crime in their given district.
Apart from funding, a crucial step in the implementation of the national community court system is the crafting of general operating procedures or bylaws under which each district community court operates. Bylaws and operating procedures developed through the DCC allows for standardized implementation from district to district. However, each district and state is uniquely outfitted with varying types of crime potentially foreign to another district. Also the levels and severity of the crimes can fluctuate, making a standardized formula for the implementation of community courts across the board difficult. Thus, the centerpiece of the bylaws for all community courts is the subsection allowing each district court to have greater license in determining administrative and sentencing procedures that work for them and fit their location and needs. For example, districts with high rates of harassment charges require a community court focused more on that as reflected through sentencing options tailored to those with harassment issues. Likewise, districts with high prostitution rates require sentencing options for defendants caught using or engaging in prostitution. And districts with higher truancy rates, but less harassment and prostitution rates need the freedom to craft sentencing options focused in and around the schools to increase both school attendance as well as in-school performance

Finally, the implementation of a national community court system is a large, bureaucratically arduous process. Thus, to ease this inevitable burden, transition teams established through the Division of Community Court, Bureau of Justice Assistance and the Center for Court Innovation travel around the country and aide in the move from traditional court to community court. These teams provide necessary training and retraining of current court administrators. Additional transition teams include those made
up of judges currently engaged in community courts who coach other judges in the processes of the new form of adjudication. This piece is crucial given that a key difference between traditional court and community court is that all cases are monitored and tracked through the court under the judge’s supervision and oversight rather than outside of the court where the case is outsourced to a prosecutor or district attorney.

Memo Appendix 1: Implementation Strategy (continued)

Table 5.1 – Implementation Strategy
Memo Appendix 2: Evaluation Strategy

The evaluation phase of the implementation of the national community court system is the bedrock of ensuring the long-term sustainability of the project. In order to justify its continued existence, its effectiveness in reducing crime and recidivism rates must be proven. The evaluation begins by considering crime and recidivism rates pre-and post-evaluation. This provides a foundation against which the actual outcomes of the program can be measured, in order to determine immediate successes and failures of the program as implemented nationwide. Second, the employee satisfaction rates among those administering the courts are vital to determining the success of the program from an internal perspective. Also, this measurement allows for a meaningful starting place to determine what changes in administration need to occur or be tweaked, ensuring efficiency and the utmost effectiveness. Thirdly, the evaluation of funding mechanisms and strategies is integral in determining the long-term financial sustainability of the national community court system. Finally the long-term effects on costs, crime and recidivism rates are the culmination of the evaluation process. This would be considered and conducted several years after the program has been formally implemented to allow for time to work out kinks and then to determine the success of the program both economically as well as procedurally in meeting the goal of reduced crime and recidivism rates among misdemeanor and juvenile offenders.

The pre-evaluation phase occurs first, prior to community courts formalized implementation. As previously noted, this provides a foundation against which actual program data can be measured. This is in an effort to determine effectiveness. Effectiveness of the program as it is implemented will take place during the programs
first several years. The second evaluation phase provides an early look at the
effectiveness or shortcomings of the national community court program. Finally, the third
phase of evaluation will take place several years after the program has been implemented.
This final phase of evaluation provides a long-term, substantial look at the outcomes of
community court, both internally amongst administration and externally in examination
of the data on crime and recidivism rates.

As referenced in the previous flowchart, the evaluation will be accomplished
through a combination of public and private organizations. The primary organization will
be Westat Inc., given their familiarity with community court as represented in their final
report and evaluation on the ERCC project in Washington D.C. Additionally, the research
group CNA will be utilized in data compilation and analysis given their long-standing
record of government data and statistical analyses of programs in disparate agencies and
organizations including the Department of Defense, Department of the Army,
Department of Homeland Security and the White House. The Bureau of Justice
Assistance will be a central player in the evaluation process given their relationship with
community courts currently implemented around the country through funding and
resource support. The Center for Court Innovation is the company who first established
community courts in society. Thus, they will be central actors in the implementation and
evaluation of the national community court system, given their knowledge of community
courts around the world. Finally, the Department of Justice will be involved in an
oversight capacity due to the aforementioned structure of it being the central location for
the administration and resources of the national community court system.
CHAPTER VI

CONCLUSION

Problem solving courts in general and community courts specifically are the keys to addressing and stopping crime at a low level in order to pursue not only reduced crime and recidivism rates in the short term, but to ultimately reduce the eminence of more serious crimes in the long term, often as a result of alienation of the offender early on in the criminal justice system. Therefore, the problem solving courts seek to invest in the offender, victim and community simultaneously in order to promote community cohesion and investment across the board between all stakeholders in the crime.

When the entire idea of problem solving courts is examined through a theoretical jurisprudential lens of restorative justice and therapeutic jurisprudence theory and then through the lens of policy implications linked to the implementation and ultimate long term success of implementation of these courts, it is clear that the problem and proposed solutions are not easy and require substantial work. This work is seen through the roughly 37 community courts currently implemented in throughout the world. The ultimate goal, however, is to pursue the widespread implementation of community and problem solving courts, in order to increase and strengthen public safety and allow for tightly-knit communities to flourish through investment in one another.

Community Court is Effective at Reducing Recidivism

Based on the findings, it is clear that implemented community courts in both small and large communities are successful at reducing crime and recidivism, as seen through the evaluation of each case study. It is these analyses, specifically the ERCC, that have led to the encouragement of other community courts to follow suit in pursuing
formal evaluations to empirically prove the successes they are seeing in their communities every day. For example, the San Francisco community court project is next in line through a current evaluation of their community court project conducted by the Rand Corporation (San Francisco Collaborative Courts, 2011). Also, in the United Kingdom, there is a network of community courts currently producing positive results illuminating the effectiveness of the courts there in reducing crime and recidivism, with plans to expand (Fletcher, 2004).

Therefore, in communities large or small, domestic or foreign, with wide variations of crimes committed and demographics represented, community court is effective. Community court is effective because the sentencing is focused on the defendant, the victim and the community. This collaboration makes community court an immensely effectively model of executing justice.

In the words of Judge Fletcher of the Liverpool Community Justice Centre when asked about the status of the program, he stated that, “We’re the only court in the country that has an inter-agency problem-solving team…Things are going extremely well. The work we’ve been doing is exciting and interesting. We’ve been working hard to forge links to the community and develop this project” (Fletcher, 2004, p. 1). The community court system is now spread across the UK in several municipalities and no longer contained in Liverpool. Community justice is spreading; the process and subsequent establishment globally though is too slow.

An Intersection Worth Examining: Political Philosophy and Criminal Justice

Our philosophical forefathers were espousing the precepts of community justice in various forms from the outset of ancient philosophy implicitly to current threads of
political philosophy in, at times, explicit advocacy. Aristotle claimed that humans are interconnected in society and thus must work together for the greater good of society at large. Each person has his or her respective role and that role cannot be separated from the essence humanity. We must pursue virtuous lives and actions, therefore, through interconnectivity and cooperation. Jeremy Bentham argued that punishment is only permissible in society as long as it is to prevent some greater offense and if it leads to the maximum happiness and utility. The utility of a community is based upon the appropriateness of the sentence. And the sentence must fit the crime, and ultimately fitting the crime requires taking external factors into consideration in order to most adequately serve justice for the defendant as well as for the entire community. Finally, John Rawls stated that in order to make the justice system equitable and fair, the same opportunities and access to a more personalized form of justice must be made available to all in society. Thus by pursuing the implementation of community justice, we are merely acting on the ideals set forth long before community justice’s formalized inception. Being responsive to the rich, revered tradition of political philosophy through the implementation of community justice, is not only an effective way for executing justice, but an obligation that researchers, criminologists and those with influence have to all communities as well as fellow colleagues.

Cooperation and the Future of Sustainable Judicial Reform

However, this is no small task: the notion of reorienting the criminal justice field and fostering cooperation among all sectors of this field. There is a problem in the criminal justice system with intercommunication and cooperation as well as drawn-out bureaucratic red tape and the revolving door of recidivists (Nolan, 2003). In short, there
is a lot to repair. The starting place and keys not only to reduce recidivism and crime, but also to create safer, more responsive communities, are that we in the criminal justice field must work together to remove the institutional walls and increase our communication with one another in order to work together for the good of our communities and citizens.
REFERENCES


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