# Internet Trolling and the 2011 UK Riots

## The Need for a Dualist Reform of the Constitutional, Administrative and Security Frameworks in Great Britain

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**Abstract**

*This article proposes the need for 'dualism' in the legal system, where civil and criminal offences are considered at the same time, and where both the person complaining and the person responding are on trial at the same time. Considered is how reforming the police and judiciary, such as by replacing the police with legal aid solicitors and giving many of their other powers to the National Crime Agency could improve outcomes for all. The perils of the current system, which treats the accused as criminals until proven not guilty, are critiqued, and suggestions for replacing this process with courts of law that treat complainant and respondent equally are made. The article discusses how such a system based on dualism might have operated during the August 2011 UK riots, where the situation had such a dramatic effect on how the social networking aspects, such as 'Internet trolling', affected it.*

**Keywords:** UK riots, tort law, criminal law, dualism, Internet trolling.

### A. Introduction

At present the United Kingdom's legal structure is made up of a number of legal systems, namely the law of England and Wales, Welsh law, Scottish law, the law of Northern Ireland, and European Union law. All of these legal systems have a wide range of similarities since they are based on statute and case law. Unfortunately for legislative democracies of this kind, the development of a law based on the needs of the people in society at any given time the judiciary is hindered in filling in the gaps where public law (*i.e.* statute) falls short when a case is being heard in a criminal court. The system, at present, is driven by laws made by politicians who want to be 'tough on crime'[1] and to 'protect victims' and 'punish

1 R. Matthews & J. Young, *The New Politics of Crime Punishment*, Willan, Portland, OR, 2003; E. McLaughlin, J. Muncie & G. Hughes, 'The Permanent Revolution: New Labour, New Public Management and the Modernization of Criminal Justice', *Criminology and Criminal Justice*, Vol. 1, No. 3, 2001, pp. 301-318; T. Newburn, '"Tough on Crime": Penal Policy in England and Wales', *Crime and Justice*, Vol. 36, No. 1, 2007, pp. 425-470.

offenders',[2] which leads to an unsatisfactory situation where innocent people are made to feel like criminals. The system therefore needs to be reformed to provide justice for all, where each party to an alleged course of events takes responsibility for their actions, using the legal system for restitution and not retribution.

*I. Learning from the 2011 UK Riots*

The 2011 UK riots commenced following anger over the police shooting of Mark Duggan, which triggered the initial disturbances in Tottenham – an event that was repeatedly mentioned in the media, including social media, even outside London.[3] The story ignited following the publishing on Facebook of an image alleged to be of Duggan, showing police standing over his dead body.[4] The UK riots were seized upon by UK politicians as a way to fuel their political agendas. For most Conservatives it was proof of New Labour's 'broken society'. For most Labour opposition members, riots emerged as a notable proof of the failure of the Coalition Government's policies.[5]The UK riots of August 2011, which started in London, were coordinated by a series of online networks that consequentially organised a number of flash mobs via Twitter.[6] As the coverage commenced, its cumulative frequencies skyrocketed over a range of social networks, and it was not long before the escalating contagion effect took force and others simultaneously got involved.[7] The devastation and destructive effects of the incident should not be overlooked as it not only culminated in burning of numerous ancient buildings but also squandered remnants of coveted treasures that had been guarded jealously over the test of time across the tragic times in London's history. Along with it were many tragic stories, such as that of a musician whose prized possessions of musical instruments engulfed the media equally. Many explanations have been developed to account for the occurrence of the riots.[8] The most convincing include changes made by the new administration to welfare support, which have meant no one under 35 could get enough state help to rent more than a bedsit. The heyday of New Labour's anti-poverty measures were well and truly over. Many young people were stuck in short-hold housing contracts they could hardly get rid of,[9] and many took to the streets in search of goods to sell,

2 C. Blake, B. Sheldon & P. Williams, *Policing and Criminal Justice*, SAGE, London, Great Britain, 2010; A. Burgess, *Victimology: Theories and Applications*, Jones & Bartlett Learning, Sudbury, MA, 2010.

3 P. Lewis *et al.*, 'Reading the Riots: Investigating England's Summer of Disorder', 2011.

4 D. Briggs, 'Frustrations, Urban Relations and Temptations', *in The English Riots of 2011: A Summer of Discontent*, Waterside Press, Hook, Great Britain, 2012, p. 27.

5 I. Mugabi & J. Bishop, 'The Need for a Dualist Application of Public and Private Law in Great Britain Following the Use of "Flame Trolling" During the 2011 UK Riots: A Review and Model', *in Transforming Politics and Policy in the Digital Age*, IGI Global, Hershey, PA, 2014.

6 J. Clough, 'The Council of Europe Convention on Cybercrime: Defining Crime in a Digital World', *Criminal Law Forum*, Vol. 23, No. 4, 2012, pp. 363-391.

7 Mugabi & Bishop, 2014.

8 B. Treacy & A. Terlegas, 'Under the Spotlight: Police Retention of Conviction Data', *Privacy & Data Protection*, Vol. 10, No. 3, 2008, pp. 12-13.

9 R. Wilkinson & K. Pickett, *The Spirit Level: Why Equality Is Better for Everyone*, Penguin, London, Great Britain, 2010.

*Table 1 Prosecution figures for the Crown Prosecution Service (2012-2013)*

| | **2012-2013** |
|---|---|
| Prosecutions dropped | 79,466 |
| Acquitted/dismissed after trial | 25,503 |
| Total unsuccessful | 116,705 |
| Convictions | 689,753 |
| Total defendants prosecuted | 806,458 |

others to release pent-up frustration, not seen in the United Kingdom ever since the epoch of peasantry revolt. Threats of shutting down the Internet were made by the UK Prime Minister David Cameron, and the judiciary made sure they "made examples" of the youths who were brought before their courts.[10] Many lay judges in magistrates' courts were faced with their first real test of judgment, beyond being presented each week with the same stereotyped young benefit claimants, targeted by the police who lack the resources and will to take on white-collar crime.[11] But these are not the only inadequacies with the current legal systems in the United Kingdom.

Table 1 shows figures provided by the Crown Prosecution Service on the success or otherwise of the cases that have been taken up by it following investigations by the police. The category of 'prosecutions dropped' refers to those cases where the CPS has "discontinued, withdrawn, offered no evidence or the prosecution or indictment has been stayed and where all charges lie on file". This is most often done in cases where a pre-trial review, or in many cases to do with lack of preparation, the evidence is not of a standard the courts will accept, or the police have acted in such a way that it would not be in the public interest for the case to go ahead.The part of Table 1 referring to 'Acquittals or dismissals after trial' are those proceedings where the defendant "pleaded not guilty and the case was adjourned for a trial", where subsequently the case against the defendant was "either acquitted by a jury or was dismissed by the magistrates".The total number of 'unsuccessful outcomes' shown in Table 1 therefore comprises those prosecutions that were "dropped, administrative finalisations, discharged committals and cases acquitted or dismissed" following a contested hearing. This also includes convictions that comprise guilty pleas, convictions after trial and proceedings that are proved in absence.One might therefore conclude that Table 1 points to a significant need for improvement in terms of the way prosecutions are handled, as between them both the police and the Crown Prosecution Service have taken on 116,705 cases that did not merit legal action and thus will have contributed to an innocent person being criminalised when they should not have been.

10 J. Bishop, 'Representations of "Trolls" in Mass Media Communication: A Review of Media-Texts and Moral Panics Relating to "Internet Trolling"', *International Journal of Web Based Communities*, Vol. 10, No. 1, 2014, pp. 7-24; Mugabi & Bishop, 2014.

## B. Reforming the Legal System to Be Dualist in order to Avoid Bias and Criminalisation of the Accused

Bias was defined in *R v. Mid Glamorgan County Council (ex parte Bishop)*[12] as referring to a situation where a party (such as the police) may unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to an issue under consideration by them. Bias is known to be a problem with the police,[13] meaning reforming the system to eliminate biases against a particular party to a complaint is desperately needed. Dualism as used in this article therefore refers to two important principles that the author wishes to become a commonplace in the legal systems of Great Britain. The first is 'juris dualism', which is where the civil law and criminal law are heard before the same venue, and the second is 'pars dualism', which refers to the complainants and respondents in a case both having equal standing and scrutiny in a court.[14] The author thus contends that to introduce this form of dualism, four steps need to be taken.

### *I. Reallocation of Powers of Arrest and Investigation*

One might argue that police constables have too much power in relation to arresting, interviewing and bringing charges against the public. The passing of their investigation to the Crown Prosecution Service, who decide whether to prosecute, is not the best system in place. Putting the power to bring legal action into the hands of publicly funded solicitors would be a better filtering mechanism for determining whether action should be taken in any given case, as the solicitors are more likely to weigh the merits of it on balance in a way the police do not. The power of arrest, where a person is taken into custody, is ineffective in most cases where it is used. Such powers should be used only when it is necessary to interview someone in connection with a complaint that they are not voluntarily participating in. At all times when public disorder occurs there needs to be only the power to detain (*i.e.* to hold someone in custody). Whether this is a serious riot, as happened in August 2011, or a brawl in a bar, people should be detained only to prevent them from committing an offence, and arrested only if they fail to cooperate with an investigation. Investigative powers would need to be given to the solicitors representing the complainant (*i.e.* the accuser) and those representing the respondent (*i.e.* the accused). The power to investigate should involve the solicitors representing both parties having access to the surveillance and other records held by the National Crime Agency that would support each party's truth

11 J.L. Skorinko & B.A. Spellman, 'Stereotypic Crimes: How Group-Crime Associations Affect Memory and (Sometimes) Verdicts and Sentencing', *Victims & Offenders*, Vol. 8, No. 3, 2013, pp. 278-307.

12 *R v. Mid Glamorgan County Council (ex parte Bishop)*, [1995] ELR 168.

13 S. Besemer, D.P. Farrington & C.C. Bijleveld, 'Official Bias in Intergenerational Transmission of Criminal Behaviour', *British Journal of Criminology*, Vol. 53, No. 3, 2013, pp. 438-455; M. Weller, L. Hope & L. Sheridan, 'Police and Public Perceptions of Stalking the Role of Prior Victim-Offender Relationship', *Journal of Interpersonal Violence*, Vol. 28, No. 2, 2013, pp. 320-339.

14 Mugabi & Bishop, 2014.

*Table 2 New tests needed in a dualist system if mens rea is to be removed*

| Concept/issue | Description |
|---|---|
| The concept of 'malum reus' in the law of tort (Malum reus refers to an emerging principle in common law that one is liable for a supposed guilty act only if one causes injury to another). | In most soft-law jurisdictions relating to Internet trolling, such as those covered by the Advertising Standards Authority or the Press Complaints Commission, there needs to have been some 'offence' experienced or some other loss by the complainant in order for action to be brought. It is clear that the existence of some groups on the Internet, like a group on Facebook set up to tell sick 'baby jokes' were never intended to be seen by those who would be offended by them. Applying the case of *DPP v. Connolly*, where it was found that had surgeons who performed abortions received the propaganda showing images of foetuses and not pharmacists who issued the contraceptive pill then no crime would be committed. Therefore this case established that malum reus was necessary in order for articles to be 'grossly offensive'. |
| The concept of pertinax reus in criminal law (Pertinax reus refers to a commonality in criminal law relating to harassment and other legal areas that evidence that the performance of a guilty act took place over a sustained period). | Proving pertinax reus makes a stronger case for an offence being committed than a single guilty act. In the case of the Protection from Harassment Act 1997, there need to be a number of "related" cases of flame trolling in order for someone to be prosecuted under this Act. A similar offence of "persistent misuse" of a communications network, such as for flame trolling is in the Communications Act 2003. In addition it has been a typical tradition in the common law for past offences to be suitable for proving the likelihood of an offence being committed in similar circumstances (*i.e.* actus reus). |

(*i.e.* their version of events). If either party's solicitor thinks there is enough evidence to bring a case to defend the rights of their clients then they could initiate action in the appropriate court or tribunal.

### *II. Unifying Torts and Offences as 'Faults'*

In considering the evidence in the study it would appear that the dividing line between criminal law and civil law is not one the police are best able to make. The Protection from Harassment Act 1997 might be an example of a perfect piece of dualist legislation. Section 2 of the Act contains a criminal fault, and Section 3 contains a tort fault. The system at present puts too much power in the hands of the complainant as the police start their investigations from the perspective of proving the respondent committed a crime, as opposed to establishing the full set of circumstances, including the complainant's role in the events leading up to their complaint. One might therefore find that removing the police's investigative powers in the way described above might lead to more effective law enforcement through specialist solicitors taking on cases where they do not require the sophisticated and specialist support, such as in murder cases, which might best be dealt with by the National Crime Agency.

Table 2 presents a list of concepts that can be drawn from precedents in UK law that would be necessary for a legal system based on dualism.[15] Such a system would not be dependent on whether someone intended to perform a particular act (*i.e.* 'mens rea'), but whether they harmed another person (*i.e.* malum reus) and whether they had a history of committing such an act (*i.e.* pertinax reus). It may be appropriate that the concept of 'mens rea' instead be used as a way to rule out cases that do not meet a threshold beyond a 'de minimis' value.[16] It could be that if Acts of Parliament or descriptions of acts in judicial decisions could have mens rea included as part of the wording or description of the fault. That is that if it is required that a person needed to intend to do something, as opposed to only strict liability applying, then the provision should explicitly say so, with actus reus therefore containing mens reus where the word 'intent' or similar is contained within that fault's definition. Equally, in order to direct the judiciary the legislation could have pre-set defences as is becoming more common, such as with the Defamation Act 2013. The courts could also create their own through 'rules of reason' like is done in the case of the Courts of Justice of the European Union in relation to Article 34 TFEU.

*III. Maximising Efficiency of Specialist Services*

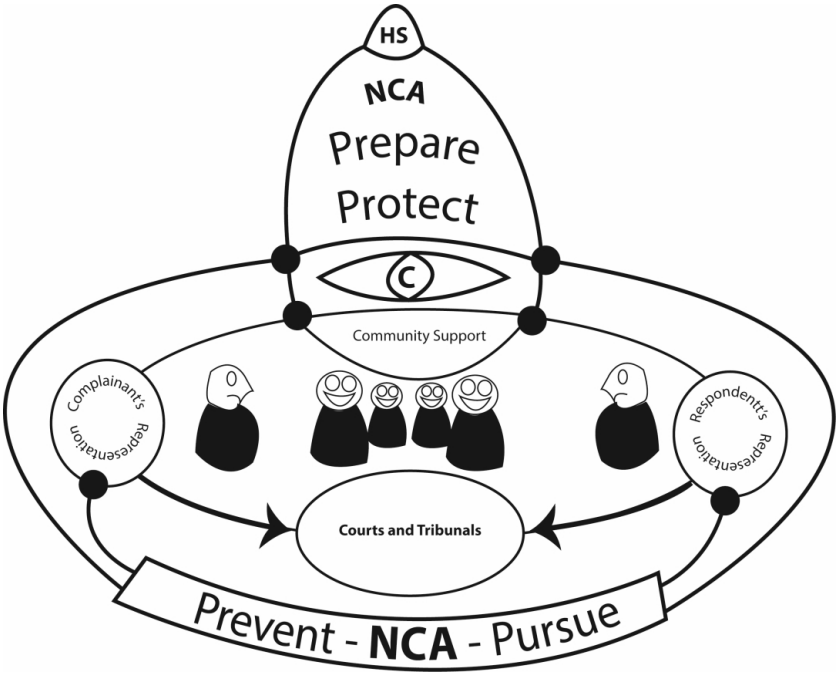
It is clear that in the globalised world we find ourselves in that the 'community bobby' is in practice totally ineffective. There is a collective memory in Great Britain based on this, which means the politicians who say they will put more 'bobbies on the beat' (*i.e.* more street patrols by constables) are most likely to get elected, even though constables cost twice as much as community wardens employable by local government. It would therefore make greater sense for community police to become part of local authorities to form a 'community support' department, which would include other community wardens, litter pickers, etc.

Figure 1 presents a conceptual framework of how making use of the National Crime Agency can enhance community law enforcement. The 'HS' at the top of the diagram refers to the 'Home Secretary', whom all the unelected agencies above community level should be accountable to. The letter 'C' in the eye of justice refers to the existing Command elements of the NCA and a new 'Community Command' element, which would be the Police and Crime Commissioners in England and Wales and relevant democratic bodies responsible for policing in London, Scotland and Northern Ireland. Community Command would work with the 'community support' element and act as a bridge between the interests of the people and the work of the NCA. This is explained further in Table 3.

15 *Id.*

16 J. Bishop, 'Tough on Data Misuse, Tough on the Causes of Data Misuse: A Review of New Labour's Approach to Information Security and Regulating the Misuse of Digital Information (1997-2010)', *International Review of Law, Computers & Technology*, Vol. 24, No. 3, 2010, pp. 299-303.

*Figure 1* *A conceptual framework for implementing a dualist crime-management system using Great Britain's National Crime Agency and network of solicitors*




It can be seen to integrate the four pillars of the National Crime Agency – prepare, protect, prevent and pursue. The first of these two is integrated with local government provision of community safety, and the last two are integrated with the legal representation services (*i.e.* solicitors). As can be seen from it, the only way to access the court is through one of these legal representation services. These agencies may take the form presented in Table 4. The traditional police station would not need to exist in a dualist legal system, as the agencies referred to in Table 4 would have enough facilities to be able to interview people complaining of a crime, and to act on it as appropriate. It might be that local authorities, who would take over the responsibilities of community police, would display a signifier used by the police (*e.g.* a sign saying 'POLICE', or the iconic police lamp) outside their customer service buildings to allow the public to associate it with the police, which would simply become a brand. That is, there would be no police service, but riot, anti-terror or similar emergency response teams may wear police uniforms with the word 'POLICE' on their back, even though they would be under the control of the NCA. There would be a greater involvement of the charity and voluntary sector to provide self-advocacy and specialist services, such as by taking the

*Table 3 Types of Command Centre that would be the eyes of justice for the people*

| Command centre | Description |
|---|---|
| Border Monitoring Command | The BPC is responsible for border security and coordinates and supports the investigation of cross-border serious organised crime. This includes UK Border Force seizures of drugs, firearms and cash, and other imports of prohibited and restricted goods, tackling threats before they reach the United Kingdom. |
| CEOP Crime Command | CEOP works with child protection partners across the United Kingdom and overseas to identify the main threats to children, and coordinates activity against these threats to bring offenders to account. Officers in CEOP and across the NCA who specialise in this area of criminality work side by side with professionals from the wider child protection community and industry. |
| Economic Crime Command | The Economic Crime Command's role is to tackle economic crime and criminals as well as educating those most at risk of attack. This includes sharing intelligence and knowledge with partners, disrupting criminal activity and seizing assets. |
| Organised Crime Command | Organised Crime Command ensures an appropriate response to the threat from serious and organised crime by focusing on individuals, groups and crime types. OCC delivers a coordinated national response to serious and organised crime. |
| Community Crime Command (New) | Overseen by the Police and Crime Commissioners, or relevant democratic bodies in London, Scotland and Northern Ireland, acts as a bridge between the people and the NCA. The PCCs should have the power to direct the community safety wardens in support of NCA operations. |

form of a 'Community Response Grid' to promote a sense of community and reduce social exclusion.[17]

On this basis, the 'Protect' and 'Prepare' part of the National Crime Agency's remit would not be based on the current community policing model, but would make use of resources currently used by the military and other national security bodies. The Army Reserves would become the 'Agency Reserves' within the NCA and would be called on in situations such as the 2011 UK riots. They would not wear Army uniforms, but ones associated with the police, even though they would not be police. The Territorial Army would become the 'Territorial Agency', and would take over criminal investigation department staff, such as forensic teams. This specialised unit would be called upon by a legal representation service provider for non-emergency crime, or directly used by the National Crime Agency for serious incidents such as homicide and organised crime. Table 5 represents proposals of how an extended NCA would work with community agencies to enble dualism. It is derived from descriptions of the NCA in the Crime and Court Act 2013 and those on its website and blended with those concepts expressed in this article based on the knowledge and judgement of the author in relation to existencing agencies.

17 P.F. Wu *et al., Community Response Grids for Older Adults: Motivations, Usability, and Sociability*, Proceedings of the Americas Conference on Information Systems (AMCIS'07), Association for Information Systems, Keystone, CL, 9-12 August 2007, pp. 506-516.

*Table 4 Examples of legal representative service providers*

| Legal representation service provider | Description of role |
|---|---|
| Local authority services (e.g. Trading Standards, Community Care) | Local authority services will serve as a means for people to report difficulties affecting their enjoyment of their rights. They would have the power to make referrals to outside solicitors or to make use of their own, such as against business breaking consumer laws. |
| Charitable and non-governmental bodies | Organisations like Women's Aid, Stonewall and the National Autistic Society are dedicated to specific protected characteristics. They could have at their disposal specialist solicitors to investigate on behalf of one of their service users when they report a crime. |
| Community response grids | Community response grids are made up of groups of people who share a characteristic and seek to support one another through self-advocacy, whether in an emergency or as part of day-to-day difficulties. |
| Insurance companies | Insurance companies already have networks of solicitors and other firms to deal with legal claims under household and other insurance policies. They could be given the powers to investigate insurance fraud and other powers to recover loss or thefts by accessing the CCTV collected by the NCA, for instance. |
| Traditional solicitors and direct-access barristers | The traditional solicitors' practices and the emerging direct-access barristers would be available for members of the public to access as they normally would. Some may be specialised in specific areas or already have a trusting relationship with those calling upon it. |

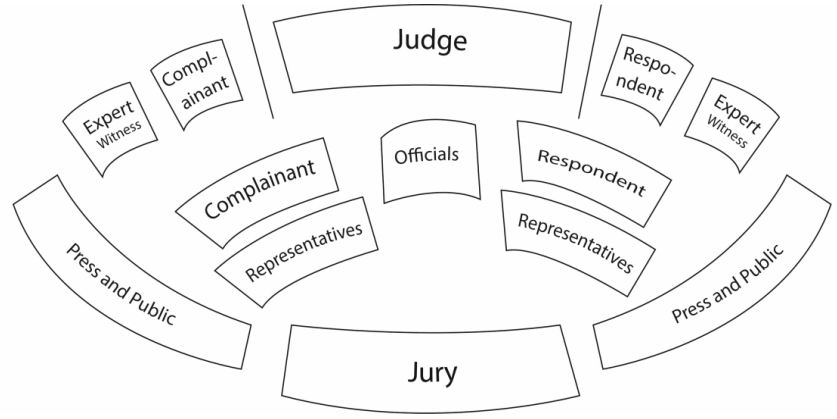
*Table 5 Proposed and/or extended collaborations between National Crime Agency units and community organizations*

| NCA priority | Proposed/extended primary agencies | Proposed/extended collaborating partners |
|---|---|---|
| Prepare | UK Financial Intelligence Unit; Serious Crime Analysis Section; Chemical Suspicious Activity Reports | Community support, Home Office, international bodies |
| Protect | Agency Reserves (riots, etc.); Central Bureau | Community support wardens |
| Prevent | National Cybercrime Unit; UK Human Trafficking Centre | Neighbourhood Watch |
| Pursue | Territorial Agency, including forensic, bomb disposal and other non-day-to-day specialist support; Missing Persons Bureau | Legal Representation Agencies, Neighbourhood Watch |

*IV. Redesigning Courts to Treat Claimant and Respondent Equally*

It is essential that the court service attempt to provide a fair and public hearing to defendants by putting them on a par with the claimants. Such courts would treat complainants (*i.e.* plaintiff, claimant, victim, etc.) and respondents (*i.e.* defendant, etc.) as equal, meaning an inherent 'counterclaim' culture would be inbuilt into the system, rather than the biased one seen in criminal cases where the person being accused is treated like a criminal before being convicted or acquitted.

***Figure 2 An example of a court of law designed for dualism***




On this basis both Complainant and Respondent would have to prove their case using the rules in Table 2 considered earlier. If neither can prove their case beyond reasonable doubt there is no right to conviction against the respondent, and both might have to pay a fine to the court. If either can prove their case on the balance of probabilities it might be that one, the other or both are fined. A so-called 'victim surcharge' might be awarded to the one who convinced the court on balance of probabilities. This should mean vexatious complaints would be unlikely to go forward and the proposed system that would abolish the investigation of offences by police should remove the biases that commonly exist among police officials. An example of how a court of law may be changed to support dualism is set out in Figure 2 below. While it is presented as an idealised oval-shaped structure reflecting an 'eye of justice' those courts based on square room layouts could equally be adapted into a dualist format that functions similarly.

As may be apparent from Figure 2, the Complainant and Respondent are seated next to the witness that their legal representatives have called to testify, either as witnesses of fact or as expert witnesses. There is a barrier shielding the complainant from the respondent and vice versa, to reduce the opportunity for either party to feel distressed by the other, giving them the same security as witness testimony. It would, however, be possible for the judge to see and speak to the Complainant and Respondent, in such a way as to detect affect in their voices. It might also be that organisations such as 'The Witness Service' and 'Personal Support Unit' could be merged to provide assistance to both complainants, respondents and other witnesses equally. The dualist court design would allow for 'concurrent testimony', more popularly known as 'hot-tubbing'.[18] This is where the different experts would be cross-examined by the counsel at the same time,

18 E. Beecher-Monas, 'Paradoxical Validity Determinations: A Decade of Antithetical Approaches to Admissibility of Expert Evidence', *International Commentary on Evidence*, Vol. 6, No. 2, 2009, doi: 10.2202/1554-4567.1081; F.P. Kao *et al.*, 'Into the Hot Tub – A Practical Guide to Alternative Expert Witness Procedures in International Arbitration', *International Lawyer*, Vol. 44, 2010, p. 1035.

something like a presidential debate. This may end up forming an important part of dualism, while at the same time putting pressure on the long-held principle that an expert's duty is to the court and neither to themselves nor to those who requested they attend.Where there is no witness, the respective parties could be next to a family member or 'responsible adult' for moral support, regardless of whether they are the complainant or the defendant. The jury would be able to see all that is going on by virtue of being directly opposite all parties and the judge. The respective parties' counsel would face away from the jury.

## C. An Application of the Proposed Dualism Model in Cases Related to the 2011 UK Riots

The riots that took place across Great Britain in 2011 provide a rare opportunity to explore instability in the meaning and value of work within contemporary capitalist society.[19] Politicians described the rioters as a "feral underclass" whose actions were "criminality, pure and simple".[20] These words were spoken by Justice Secretary Ken Clarke and Prime Minister David Cameron respectively. This shows the lack of insight that the powers that be have into the reality of this situation, which even led David Cameron to threaten to shut down social networks.[21] Such actions have been taken in other countries with dictatorships, where there has been civil unrest.[22]

### *I. Considering the Case of Marc Reeves*

Marc Reeves (Twitter: @marcreeves), while remote from the burning of the 144-year-old House of Reeves store in Croydon, tweeted on 8 August that his distress at seeing the store his ancestor founded being burnt to the ground was still significant.[23] This shows the consequences that come from the new media society we find ourselves in, where the contagion effect can result in one incident (*i.e.* Mark Duggan's killing) snowballing to the point that a country ends up being attacked by its own people. Had CCTV footage been captured of the persons involved in destroying his store, his legal representative would be able to request it from the NCA, who may also help them identify the suspects. With the cooperation of the

19 J. Chamberlain, *The Unstable Meaning and Value of Work: An Exploration of the Refusal of Work Through the 2011 UK Riots and Public Sector Strikes*, Paper Presented at the APSA 2013 Annual Meeting Paper, University of Washington, Washington, DC, 2013.

20 T. Newburn, 'Counterblast: Young People and the August 2011 Riots', *The Howard Journal of Criminal Justice*, Vol. 51, No. 3, 2012, pp. 331-335.

21 Mugabi & Bishop, 2014; P. Reilly, 'Social Media Didn't Start the Fire: Proposals for the Temporary Shutdown of Social Media During Riots Are Unlikely to Prevent Further Unrest', *British Politics and Policy at LSE*; J.A. Whitehead, 'Relative Surplus Population and British Riots', *New Proposals: Journal of Marxism and Interdisciplinary Inquiry*, Vol. 5, No. 1, 2011, pp. 74-76.

22 P.H. Ang, S. Tekwani & G. Wang, 'Shutting Down the Mobile Phone and the Downfall of Nepalese Society, Economy and Politics', *Pacific Affairs*, Vol. 85, No. 3, 2012, pp. 547-561; F. Montathar, A. Samira & K. Mauri, *Using Circumventing Media to Counteract Authoritarian Regimes*, Paper Presented at the proceedings of the IADIS International Conference E-Democracy, Equity and Social Justice, 2011, pp. 251-254.

23 Mugabi & Bishop, 2014.

NCA in terms of providing contact details for that person legal action could be brought against them. The distress caused to Marc Reeves was done through aided sources, such as the Internet and television, which under current UK law, because of precedents around proximity, may not lead to a successful claim for personal injury in the event that the police fail to take action for criminal damage.[24] This makes it quite clear that there needs to be some alternative measure of proximity, beyond the geographical measure, that is not appropriate in the digital age, where television imagery can capture as much of the reality as being in the location being captured. Proximity may need to be measured on the basis of, say, how many degrees of separation the claimant is from the tort victim that determines it.

*II. Considering the Cases of Various Internet 'Trolls'*

Some of the most notable cases in the August 2011 riots were those of Jamie Counsel and Anthony Gristock, who set up Facebook pages in the heat of the moment that attempted to encourage riots to the streets of Cardiff and Swansea.[25] In the case of Gristock the judge overseeing this case, Eleri Rees, said she had to impose a prison sentence because of his "long-standing disrespect towards authority" and that she regarded herself as important enough to have an "overwhelming obligation" to convict him.[26] This problem of the judiciary following the society fallacy – that their sole opinion will have an effect on a wider population – may not be avoidable in a dualist legal system. The ecological principle – that what applies to one person can only be considered to be relevant to those who are part of the same group as them – applies more in the age of the Internet, where networked individualism means that people's social networks are tied on the basis of uses and gratifications and not geographical factors, as Eleri Rees might have hoped.[27] Even so, it would, however, be difficult to bring a strict liability indictable case of this kind under the community model component of dualism, as there would be no identifiable harm done to anyone to meet the test of 'malum reus'. However, it might be that in the most serious cases within the NCA's competence, such as riots and organised crime, certain strict liability offences might be needed to ensure both justice and national security. Indeed, while Eleri Rees might feel it is her duty to set an example where no harm occurred, it might be argued it is not in the interests of national security to prosecute people for trolling, especially where there is huge media interest, as in the case of those

24 *Id.*

25 J. Bishop, 'The Art of Trolling Law Enforcement: A Review and Model for Implementing "Flame Trolling" Legislation Enacted in Great Britain (1981-2012)', *International Review of Law, Computers & Technology*, Vol. 27, No. 3, 2013, pp. 301-318; J. Bishop, 'The Effect of Deindividuation of the Internet Troller on Criminal Procedure Implementation: An Interview With a Hater', *International Journal of Cyber Criminology*, Vol. 7, No. 1, 2013, pp. 28-48.

26 J. Bishop, 'The Effect of Deindividuation of the Internet Troller on Criminal Procedure Implementation', pp. 28-48.

27 J. Bishop, 'Networked: The New Social Operating System', *International Journal of e-Politics*, Vol. 4, No. 2, 2013, pp. 64-66; J.A.G.M. Van Dijk, *The Network Society: Social Aspects of New Media*, 1st edn, SAGE, London, Great Britain, 1999; J.A.G.M. Van Dijk, *The Network Society: Social Aspects of New Media*, 2nd edn, SAGE, London, Great Britain, 2005.

tried by Eleri Rees.[28] Others faced similar overemphasis to Gristock, such as Jamie Counsel, 24, Thomas Hughes, 19, and Jack Johnston Lewis, 18. Comparably, Labour MPs faced no action for similar faults. John McDonnell said on Twitter that the riots "just shows what can be done when people get angry. We must build on this". And his Labour colleague, Alex Cunningham, said, "[W]ell done our students – thousands outside the office getting stuck into the LibDem/Tory government." Labour's Kerry McCarthy who in 2009 was announced as Labour's "Twitter Tsar", said about the behaviour of Labour MPs: "People like to know that MPs are human and have interests outside politics." In a dualist system what was good for one would have to be good for another.

## D. Discussion

This article has reviewed the concept of dualism in terms of how one might reform the constitutional and administrative set-up of the United Kingdom to support a fairer and more effective justice and security service. The article shows how greater use of the new National Crime Agency (the 'NCA') can mean that the concept of policing would focus not around the criminality of the so-called 'victim' and 'criminal', but 'complainant' and 'respondent' respectively, similar to that found in the civil courts. The change in language will mean both parties will need to have equal access to legal representation. This would likely remove much of the social exclusion caused by the current policing system treating respondents like criminals. The NCA, which would be a like a hidden police force using high-tech evidence gathering mechanisms would be able to supply the evidence needed by both sides, or indeed to joint expert witnesses, which would help create a system where there is no 'us' (*i.e.* the 'plebs') and no 'them' (*i.e.* the 'police'), but the system would be there for all and treat all equally without inherent biases that exist in police forces in the form of value systems that treat one group or person more benevolently than another.If the set-up of courts were changed to the dualist model set out in this article, then those who should be treated as innocent until proven guilty would be less likely to feel criminalised and be put onto the wrong path by the authorities. It may also mean that those who might bring vexatious complaints would be less likely to as they would undergo equal scrutiny. The use of so-called 'hot-tubbing', where one side's expert witness takes on the other's side might be extended into other contexts. In victimless crimes, like those careless social media posts by Anthony Gristock and Alex Cunningham MP made during the UK riots, someone representing the 'plebs' like Gristock could be tried at the same time as someone representing the 'toffs' like Cunningham. This would mean that if it is in the public interest for a fault to be tested where no victim existed but was nevertheless putting others at serious risk, then dualism as applied in the United Kingdom could mean hot-tubbing of this nature would ensure that there is not one rule for the poor and a different one for the rich.It is clear from this article that the concept of dualism could play a greater part in con-

28 Bishop, 2014, pp. 7-24.

temporary society in ensuring that all parties to a situation where faults may have occurred are treated fairly and equally. The change needed to achieve such a legal system is not something that could happen overnight, but would be incremental. That is because the shift required would not just be legal and structural, but would also need a change in the blame culture that currently underpins British society and the Western world at large.

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29 Mugabi & Bishop, 2014.