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ENFORCEMENT, REHABILITATION AND PUBLIC PROTECTION: DEVELOPMENTS, ISSUES AND TENSIONS IMPACTING ON THE WORK OF THE PROBATION SERVICE

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Introduction

Probation in England and Wales was formally established under the Probation of Offenders Act 1907. It was in this Act that the 'release' of offenders into the community under the 'control' of officially appointed probation officers was made a matter of statute (National Probation Service, n.d). This Act also clearly defined the duties of these probation officers; primarily to 'advise, assist and befriend' offenders (Prison Reform Trust, 2006). This motto would come to personify what has commonly been referred to as the 'treatment' phase or era of 'penal welfarism' (Garland, 1985) which existed from 1907 up until the 1970s within the probation service. However, this motto has now been replaced by the more punitive 'punish, help, change and control', thus suggesting a paradigm shift in which probation has moved from a humanitarian service towards that of a correctional one (Raynor and Vanstone, 2007). As such, it can be argued that the National Probation Service has, above all other agencies within the criminal justice system, undergone the most frequent and radical changes. It has been suggested that these have resulted in 'depersonalisation', 'deprofessionalism', and 'responsibilisation' within a climate of 'punitive controlism' (Burnett et. al., 2007). However, the extent to which this is true is a highly contested area. This article will examine this contested area by establishing the issues and tensions that have arisen from some of the more 'recent' developments, in order to determine to what extent they have impacted upon the work of probation with offenders. This will be achieved through focusing on the outcomes of the 'What Works' movement, and the emergence of risk assessment and risk management within probation.

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1 The Key Aims of Probation

While probation's key aims have always included 'rehabilitation', it is arguable that recent fundamental developments within the service have seen this concept not only displaced by those of 'enforcement' and 'public protection', but that its meaning has changed drastically in terms of probation's work with offenders. In order to examine how probation's key aims have changed, it is first necessary to briefly outline how they were prioritised historically. During the 'treatment' phase there was a strong emphasis upon psycho-social rationales within the criminal justice system; consequently, probation positioned itself within a social work ethos. Within this psycho-social rationale, prominence was placed upon the belief that criminogenic behaviour was the product of individual dysfunctions; as such, much of what constitutes this criminal behaviour was beyond the control of the offender (Hollin, 2007). During this era, the notion of rehabilitation was fundamental in correcting individual dysfunctions. As a result, attention was placed upon the individualisation of punishments through one-to-one work with these offenders (Worrall, 2006).

The decline of this social work ethos and the emergence of the concepts of 'enforcement' and 'public protection' can be traced back to the 1970s and the election of the Thatcher Conservative government, with its emphasis on punitive New Right ideologies. These principles rejected the notion that crime could be rationalised based upon positivist psycho-social causes in favour of the idea that criminality was a life choice made by rational individuals (Robinson and Crow, 2009), and subsequently replaced the concept of welfarism with those of individualisation and privatisation. This resulted in the emergence of a managerialist ethos within the criminal justice system, in which private sector approaches were implemented within public sector industries (Cockcroft and Beattie, 2009) in a manner whereby criminal justice agencies had to prove they were economic, efficient and effective (Wilson, 1998). Additionally, emerging empirical studies identified high recidivism rates, which, as a result, led to strong criticism of the 'treatment' rationale (Raynor, 2007); this was epitomised by Robert Martinson in 1974, who boldly stated that 'nothing works' (Crow, 2001).

2 'What Works'

What emerged from this 'hardening of the political context' (Nash, 2005: 19) was that crime became an act requiring punishment and control rather than rehabilitation (Nash, 2004). Subsequently, both the prison and probation services undertook a mass of ad-hoc experimental schemes (Robinson, 2001) which, over time, moved on to develop into what is now commonly referred to as the 'What Works' agenda. Mair (2004) suggests that the

primary reason for the probation service's active engagement in the 'What Works' movement stems from an increasing pressure on the agency to adopt a more control orientated standpoint with offenders, and thus justify its purpose in terms of effectiveness. Subsequent research carried out in the mid 1990s as part of this 'What Works' movement identified that the most successful sentences were those which attempted to change, not only the offender's behaviour, but also their attitudes toward their offending (Hollin, 2007). This resulted in a push towards cognitive-behavioural approaches, which centre on getting the offender to challenge their own behaviours, cognitions and feelings in order to desist from crime. As such, emphasis became focused on individual responsibilisation, marginalising the use of traditional one-to-one work with offenders (Burnett et. al., 2007). Such techniques are often criticised for their lack of attention to wider sociological factors which contribute towards criminality (Palmer, 2006), something which had traditionally been a fundamental element of probation's work with offenders, and suggest a wider shift towards an emphasis on public rather than offender's interests.

This responsibilisation of offenders was an essential part of the 'Just Deserts' rationality which peaked with the Criminal Justice Act 1991 (CJA 1991) (Mair and Canton, 2007). The concept of proportionality was fundamental within the 'Just Deserts' rationale in two ways. First, emphasis was placed upon the need to sentence individuals for the crime they had committed rather than any sociological or behavioural issue that may contribute to the committing of that crime (Raynor, 2007). Second, under the concept of proportionality, in which sentences are matched to the severity of the punishment (Mair and Canton, 2007), non-custodial sentences became recognised as an alternative to prison rather than an alternative to punishment (Worrall, 2006). Thus, probation was regarded as a punishment in its own right, 'appropriate for all but the most serious of offences' (Cavadino and Dignan, 2007: 160). This is evidence of probation's shift from a 'treatment' to a 'punishment' or 'correctional' agency (Raynor and Vanstone, 2007) within a wider move towards a policy of 'punitive bifurcation', in which punishments are differentiated according to this fundamental notion of proportionality, but based upon an overall increase in punitiveness within the whole scope of punishments (Cavadino and Dignan, 2007). Cohen (1985) refers to this process as the 'dispersal of control', in which the use of community based punishments 'blurred the boundaries' between the private and the public.

Although the concept of responsibilisation survived, this period of proportionality was short-lived as, due to a rise in what Bottoms (1995) refers to as 'populist punitiveness', much of the CJA 1991 was revoked within the Criminal Justice Act 1993. Despite this, the 1991 act caused a huge shift within the criminal justice system, particularly with the introduction of

National Standards. For the probation service, these were designed to assure minimum standards of practice were met for all elements of probation's work, including that of social enquiry reporting (Nash, 2003). Social enquiry reports (SER) were rebranded as pre-sentencing reports (PSRs), in which the focus shifted from the social background of the offender to the circumstances of the actual offence for which they are being sentenced – yet further evidence of probation's shift towards a 'correctional' institution. Additionally, unlike their predecessor, PSRs were far more structured in terms of what information was to be submitted about the offender. This highlights a fundamental shift in which sentencing moved away from a sympathetic 'special pleading culture' to a position of neutrality, now concerned primarily with identifying any attributes which determine an offender's likeliness of reoffending (Nash, 2003). As such, it can be argued that the introduction of National Standards and the use of structured PSRs not only reduced the professional autonomy of probation staff but also finally ended the traditional social work values within probation (Mair and Canton, 2007).

3 Risk and Actuarial Justice

This politically driven neutrality in sentencing can be seen as symbolic of a wider shift towards risk assessment and risk management in sentencing principles (Nash, 2003). The concept of risk underpins all of today's criminal justice system in England and Wales. In terms of probation, it can be argued that one of the most fundamental developments came through from the Criminal Justice and Court Service Act 2000, in which the National Probation Service was formally established. This statute made the probation service a government funded agency and thus subjected it to more political direction. Therefore, it was through this act in which probation redefined *itself* as an agency prioritising the reduction of reoffending through the management of risk (Burnett et. al., 2007). Risk, in criminological terms, can be defined as the probability of harm (O'Malley, 2006) – whether this harm be financial, psychological or physical. It reflects a wider societal anxiety about crime and the potential likelihood of becoming a victim. Within this 'risk society', demands are placed upon criminal justice agencies such as probation, an agency not typically subjected to public scrutiny, to be seen to be doing something about crime and criminality (Nash, 2005). As such, risk is a concept which is intrinsically political, permeating through government ideologies down to policies (Loader and Sparks, 2007). This emergence of the 'penology of risk' (Kemshall and Wood, 2007) highlights the paradigm shift that has occurred within the criminal justice system towards an actuarial style of justice (Kemshall, 2007).

This actuarial justice, in terms of offenders, refers to a statistical calculation of the risk of reoffending and potential harm, and is evident through the development of programmes such as the Offender Assessment System (OASys), the aim of which is:

> To deliver a common, efficient and effective offender risk and needs assessment system that enables the Prison and Probation Service to achieve Home Office targets for reduction in reoffending/reconviction rates, and for the increased protection of the public. (National Probation Service, 2005)

Yet, simultaneously any actions taken must now also be seen to be 'value for money', within the restrictions of economic pressures (Kemshall and Wood, 2007). As a result, offenders are categorised in terms of the level of harm they pose to themselves and the wider public. In accordance with penal policy characterised by bifurcation (Kemshall and Wood, 2007), this assessed level of risk determines the individual's suitability for individually tiered intervention programmes (Burnett et. al., 2007):

> These tiers are not mutually exclusive, but are layered one on the other, so that each involves the interventions of all lower levels as well as those specified at its own level. (Burnett et. al., 2007: 222)

Therefore, although all sentences will include an element of punishment, the level of assessed risk justifies any further levels of intervention and, as such, subsequent 'access' to resources. Furthermore, as a result of the Criminal Justice Act 2003 – which created a generic community order (Ashworth, 2007) – sentences can be mixed and matched accordingly in a 'cafeteria' approach (Ashworth, 2002). The rationale behind this is that not only is the offender punished, but is then placed into the appropriate programmes which stand the best chance of desisting offending behaviours (National Probation Service, 2003). However, critics argue that this process causes deprofessionalism within probation, insomuch as risk assessments have now shifted from being a clinical judgement based on professional autonomy towards an actuarial approach focused on statistical based predictions (Kemshall, 2007).

Additionally, due to 'populist punitiveness' (Bottoms, 1995), much of the legislation in this area is subsequently guided by wider public anxieties rather than by 'rational' actuarial evidence (O'Malley, 2006). While the new penology is concerned with risk, populist punitiveness is infatuated with dangerousness (Simon, 1998). This is particularly problematic when it comes to offenders, since risk assessment tools effectively sentence individuals based on what they might do in the future rather than for what crime they have actually committed. As such, sentences risk being far more punitive than is actually necessitated.

Cohen (1985) describes this process as 'net-widening' in which, through punitive policies, more individuals are brought into the criminal justice system. Furthermore, as a result of this move towards actuarial justice, probation has been pushed further away from a one-to-one, client-centred service towards a standardised agency, in which the majority of resources are aimed primarily at those offenders deemed as 'high risk', often to the detriment of those classified a lower risk (Robinson, 2003). This has led some critics to argue that it reduces individualism by categorising offenders into groups.

It can be argued that there are two assumptions made within this actuarial approach. First, that this is a linear process in which offenders go through the programmes and exit a non-offender; and second, that all offenders within their respective categories are the same. However, as each offender is a unique individual, these assumptions are open to debate. This process of categorisation creates generalisations about people which can subsequently overlook this individualism (Clear et. al., 2009). As such, placing individuals into programmes deemed suitable for that type of category of offender may not be appropriate and may not rehabilitate that particular offender. Furthermore, even if programmes are suitable for offenders, there may be factors that affect an individual's likeliness of rehabilitation at that time in their life; as such, the process may not be a linear one. This preoccupation with risk also emphasises the need for partnership working within the criminal justice system and drove the introduction of the National Offender Management Service (NOMS) in 2004. This umbrella organisation amalgamated the overall running of both the prison and probation service in order to provide 'end-to-end management' of offenders (Burnett et. al., 2007), particularly those identified as 'high risk'. The government stated that the purpose of NOMS was to:

> Protect the public and reduce reoffending by delivering the punishment and orders of the courts and by helping offenders to reform their lives (Ministry of Justice, 2010a).

Within NOMS, offender reform is attempted through a 'mixed economy' approach in which, through risk assessments, the appropriate levels of 'help' are given to each offender (Ministry of Justice, 2010a). As such, NOMS is designed to provide a more holistic approach which is 'Consistent, Continual, Committed and Consolidated' (Holt, 2002, in Burnett et. al., 2007). In terms of probation, this has dramatically impacted on the way in which they work with offenders. Probation staff, traditionally employed to work with offenders on a one-to-one basis, now adopt a more prescribed approach (Robinson, 2003, in Annison et. al., 2008) in which they act as sign-posters, directing offenders to other agencies with whom they can receive 'help'. Thus, it can be argued that this deprofessionalises the service by increasing

government control and reducing professional autonomy; government imposed targets become the priority for probation staff, whilst social factors linked to crime are largely ignored unless they relate directly to criminological risk factors. Consequently, this then perpetuates 'the social exclusion of individuals who are already disadvantaged and marginalised. (Drakeford and Vanstone, 2000). This focus on government targets can be said to create a 'pass the parcel' technique (Robinson, 2005, in Burnett et. al., 2007) which offers probation staff little opportunity to build trusting relationships with offenders, leading to the depersonalisation of the service (Burnett et. al., 2007).

Conclusion

Changes within the probation service are ongoing; in addition, the election of the coalition government in 2010 and the subsequent spending cuts are likely to further impact upon the service and its work with offenders. Today, within a period of national economic uncertainty, there is a renewed emphasis on reducing the ever increasing prison population through the use of community based sentences. Whilst recognising that 'prison remains the necessary punishment for many offenders' (Ministry of Justice, 2010b), the 'rehabilitation revolution' (Ministry of Justice, 2010b) led by the Justice Secretary Kenneth Clarke, is designed to protect the public whilst tackling the UK's high recidivism rate – something recently made apparent by the nationwide riots (Eaton, 2011). Such a policy is analogous with a utilitarian consequentialist theory, in which the use of punishments is justified by the social good that will come from them. There are three justifications for the use of punishments within this theory; 'deterrence', 'incapacitation' and 'rehabilitation' (Rex, 2003). However, what is apparent in all of the developments discussed in this article is that references to rehabilitation have decreased whilst those of public protection through the enforcement of punishment have increased.

In summary, what this paper has highlighted is how 'recent' changes within the probation service have resulted in a rise in responsibilisation of offenders, a decrease in a personalised service and an overall reduction in professional autonomy. This is due to an increasing level of political control over criminal justice agencies since the 1970s. This political direction has been fuelled by a rise in so called populist punitiveness and the emergence of the 'risk society'. This move towards risk and actuarial justice:

> Essentially implies a shift of focus away from individuals in favour of categories or aggregates of potential or actual deviants and from a position of rehabilitative or 'transformative' optimism, in favour of more limited, managerial goals.
>
> (Robinson; 2002)

Additionally, this has been exacerbated by the rise of a managerialist culture in which agencies are judged on performance – not in terms of whether offenders are successfully rehabilitated in terms of their reintegration into society, but by whether they are rehabilitated in relation to desistence from criminal behaviour. Thus, rehabilitation is essentially used in order to protect the public. Despite the apparent lack of regard for rehabilitation within the rhetoric of the new government, Robinson (2008) suggests that it has not vanished from recent criminal justice policies, but that it has just been reinvented as a utilitarian concept. As such, rehabilitative programmes are now pitched as existing:

> To promote the greatest happiness (or more precisely, safety) for the greatest number, not (primarily) the individual welfare of the offender. (Robinson, 2008)

As such, despite probation historically being a service created with humanitarian ethics and social work values in mind, any rehabilitative work must now be seen to be done with the primary aim of protecting the public rather than focusing on the welfare of the actual offenders themselves (Garland, 1997). This is a huge contradiction of the traditional aims of the probation service and the role of the probation officer (Annison et. al., 2008) and can be argued to have led to a 'fortress society' (Garland, 2001) in which offenders who are not classified as high risk do not qualify for the same levels of 'help' or 'rehabilitation' as those who are deemed to pose a greater threat to public safety. Whereas community based punishments were typically designed to be a more inclusionary form of punishment, it can be argued that they are actually now incredibly exclusionary. Furthermore, the politically driven criminal justice system now responsibilises offenders for their own behaviours instead of recognising them as being the product of social inequalities.

What the evidence cited in this article has shown is that probation is an agency always at the heart of the debate between punishment and rehabilitation. However, due to 'recent' changes, and the subsequent shift in focus from offender to public 'protection', they are now an agency starkly inclined towards punishment (Burnett et. al., 2007). This has had a drastic impact upon the way in which probation works with offenders and has resulted in an overall shift in which the service has moved from one delivering 'caring control' to one focused on 'punitive control' (Whitehead, 2010) and the role of a probation officer from 'social worker' to 'offender manager'. The result has been a seismic shift in the meaning of the concept of rehabilitation and a decline in its prioritisation within probation's aims. Within the probation service today, the concept of rehabilitation – a traditionally fundamental element of the work of probation staff – has been displaced by those of 'enforcement' and 'public protection'. It

can be argued that regardless of whether probation staff themselves still view humanitarian values as fundamental to their work, the restrictions placed upon them through the increase in political control has reduced the amount of time, resources and professional autonomy that can be used when working with offenders. The result is a service in which the welfare of the offender is at best marginalised and at worst completely neglected.

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