Back to the future: notions of punishment and resettling offenders in the community

Anthony Goodman contends that yet again, the future of probation is in doubt as privatisation beckons

Rehabilitation work with offenders is a challenging task. During the past century, responsibility has moved from its roots in philanthropy to an offender management system supervised by the Probation Service, often working in collaboration with the voluntary and private sector. It is important not to lose this history and indeed to understand why it has evolved into the current structure. In this respect, it is worth remembering the work of Rusche and Kirchheimer (1939/1968), who postulated that the intensity of penal systems and the use or avoidance of specific punishments are determined predominantly by economic forces. If this still holds true, what are the implications for the rehabilitation of offenders under the Coalition government?

Responsibility for resettling offenders has oscillated between the voluntary and statutory sectors and has evolved into a shared responsibility and a relationship between them. The sectors have been collaborative, not competitive. Resettlement has had a number of contradictory and complementary philosophical underpinnings and contexts, ranging from the religious and the saving of souls to rehabilitation and punishment. Originally barbaric, the notion of punishment has returned as a major preoccupation of supervising offenders. The early police court missionaries, while they had religious beliefs, were also eugenicists and were comfortable with the notion of locking up morally defective juveniles to prevent them breeding the next generation like themselves (Vanstone, 2004).

The Coalition government came into power in May 2010 and the Green Paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders,* was published in December 2010. The paper complained about the level of centralisation in the criminal justice system, in particular the top-down approach in both prison and probation services which focused on process rather than results.

Purpose of sentences

The aftermath of the riots in the summer of 2011 prompted a great deal of soul-searching by politicians and the media. This focused on whether the young people involved could or should be described as 'feral' but also on the fitness for purpose of community and custodial sentences. The Prime Minister regularly used the phrase 'broken Britain' to describe what he saw as the breakdown of the family and its values.

The rhetoric of the proposed reforms included making prisons places of 'hard work and industry', ensuring that community sentences were about punishing offenders with tougher curfew orders, tougher use of electronic tagging, more intensive community payback schemes, more financial reparation to victims, increased use of restorative justice approaches, integrated offender management approaches with local partnerships, tackling offenders' substance misuse, managing offenders with mental health problems, diversifying service providers to include public, private, voluntary and community sectors, and using Payment by Results (PbR). This latter process could be via local incentive schemes using local partnerships. It was recognised that 'cherry picking' offenders who were more likely to be successful would be perverse, but this would not stop the process and management of offenders from changing, hence the weakening of National Standards requirements in the supervision of offenders.

The consequences of these reforms for prison and probation work were spelled out, including the National Offender Management Service (NOMS) being significantly slimmed down. It is worth citing its proposals in detail:

We will fundamentally reshape prison and probation services to reduce unnecessary bureaucracy, empower frontline professionals and make them more accountable by:
- *Reforming the way in which Probation Trusts and prisons are managed;*
- *Reviewing targets and standards to ensure greater flexibility and professional discretion;*
- *Considering the scope and value of different business models such as public sector workers forming employee owned cooperatives; and*
- *Reforming the National Offender Management Service to reduce costs and enable local commissioning in the longer term.*
(Ministry of Justice, 2010a)

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Return to sanity

The Green Paper represents something of a return to sanity for probation staff in that it recommends that they should regain the ability to exercise professional judgment to decide 'the number and scheduling of appointments; when to undertake full-risk assessments and when offenders should start courses or programmes' (Ministry of Justice, 2010a). After publication, there were over 1,200 public responses over a 12-week period.

The government published its response to the consultation, which produced a restatement of purpose but also some inconsistencies: offenders were still to be punished and 'have no choice but to confront the consequences of their crimes' (Ministry of Justice, 2010b) and there was an ambition to make the working week in prison last for a full 40 hours. It might be considered somewhat disingenuous to blame the previous government for leaving a 'big failure … the national scandal of reoffending' (ibid). The paper conceded that punishment does not stop re-offending, but its tenor was steeped in the rhetoric of credible punishments, tougher punishments, more control, tougher curfews and such restrictions. While complaining about excessive bureaucracy from the past, it advocated a 'world first' of payment *only* for results when working with offenders. While this was not suggested for all offenders, it was thought, somewhat optimistically, that it *could* (my italics) 'lead to a reduction in crime of more than 500,000 offences per annum from 2016–2017 and generate economic benefits of over £0.6 billion per annum' (Ministry of Justice, 2010b).

Credible punishments

All rehabilitation services were to be tested to ascertain whether the most effective and efficient provider resided in the private, voluntary or community sector. This latter requirement would seem to indicate a 'hands-off' approach to what is done to and with offenders so long as it works. It is therefore difficult to square with the mandate in the government response that insisted that non-custodial sentences 'need to be tough and demanding' (ibid). It complained that 10 per cent of community orders 'contain only a 'supervision' requirement' (in other words, meetings with a probation officer). Community orders were to be 'transformed' into more 'credible punishments'.

the notion of punishment has returned as a major preoccupation of supervising offenders

In March 2012, the Ministry of Justice released a consultation paper, *Punishment and Reform: Effective Probation Services,* which starts from the premise that 'an effective criminal justice system should punish law breakers and protect the law abiding' (Ministry of Justice, 2012). Kenneth Clarke, Lord Chancellor and Secretary of State for Justice, is explicit that community sentences 'must be made more effective punishments in their own right' (ibid) and gives two reasons for this: first to give the public more confidence and second to reduce re-offending with more victims. Important as it is to reassure the public and prevent re-offending, this author knows of no study that shows that punishment can achieve these ends. Similarly, the mechanisms to achieve these ends listed in this consultation document – PbR and increased competition – are also unproven. Indeed, if probation trusts wish to compete for services, they will have to form new separate entities in order to do so. Yet again, probation is to undergo more change and an uncertain future. In my recent book (Goodman, 2012), I interviewed a number of probation practitioners and detail the problem of low morale and uncertainty for staff. This consultation document will exacerbate these problems and that cannot be helpful in terms of protecting the public. There is a leap of faith that competition must somehow lead to cost savings and better services. The former may be true, the latter is not.

Rusche and Kircheimer (1939/1968) may conclude, as they look down from on high, that postmodern capitalism is more concerned with rewarding big business than looking after the public in whose name the work is carried out. This wondrous new system aims, in Kenneth Clarke's words, 'to free up a traditional old-fashioned system' (Ministry of Justice, 2012). Some areas of the work, such as electronic monitoring, are perceived to benefit from economies of scale and will therefore be procured nationally, excluding local enterprise. In July 2011, the Parliamentary Justice Committee published its report on the role of the Probation Service, and its chairman, Sir Alan Beith MP, commented: 'We see a lot of scope for new organisations to come into the provision of probation services. Nevertheless there is an important duty for accountability to the courts and for offender management strategy which needs to rest with a public body' (House of Commons Justice Committee, 2011). The great experiment begins. ∎

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