

Justice and institutional care

Roger Grimshaw suggests that new forms of institutional care might offer a way forward for the Justice Matters initiative

Why talk about 'institutional care' and justice? How can 'institutional care' help us to think about alternatives to criminal justice? In this article I propose to define it so as to include any setting, designated by the state, in which there is someone who takes an approved responsibility for the daily living arrangements of others. Following this definition, the range covered by the term is potentially huge – from registered foster care at one end to an immigration detention centre, seemingly very far away in the distance. A productive effect of creating the spectrum is to start to question why there are differences, why some groups are placed here and not there in the institutional spectrum, and why the forms change, diminish or grow.

Broadening the concept

I will argue that, in its broadest use, the term 'institutional care' enables critics of incarceration to think more widely and more freely about accommodation and services that meet the needs of communities and individuals, without being prescriptive about a fixed recipe. The term also helps to recognise how people in prison exist in a relationship with other institutions – care homes, mental health hospitals and homeless centres, to name only a few – which many have experienced before prison or will experience after they leave. Before them looms an institutional continuum which conventional criminal justice discourse tends to ignore. The domain of institutional care contains this array of well-known types, as well as new possibilities, potentialities and alternatives, as I hope to show.

Another advantage is that it begins to delineate the architecture of the 'community'. If we believe that the community is the best place in which to resolve the problems that lead to criminalisation, it must host a network of material institutions in which people who have few assets and resources can live, work and develop.

What about 'justice'? When reformers refer to 'social justice' they often point out how biased and narrow a view of harm is taken by the criminal justice system; those it typically processes reveal a pattern of needs that reflects the worst misfortunes inflicted on their group of social origin (Carlen, 2012). The rich variety of 'institutional care' can be used as a resource to describe the better supported living opportunities that answer needs created by poverty, abuse and discrimination. For all these reasons the term can assist a discussion which steps outside criminal justice and begins to propose very practical alternatives.

Care and criminal justice

The underlying needs of people captured by criminal justice have been listed in countless reports and analyses. Young people in custody frequently have special educational needs, have been in local authority care, or have a diagnosis of an emotional or mental health problem (Jacobson et al., 2010). Such characteristics are shared with young people in other settings, whether in education, health or social care. Prisoners have been found to have a very high rate of disability: 36 per cent according to a recent official survey (Cunniffe et al., 2012). In such figures we can discern evidence about the extent to which criminal

justice shelters a population that in other circumstances would be seen as requiring care. The distribution of shared needs should make us suspicious of attempts to demarcate separate populations and to take for granted the existing institutional care landscape. If the needs are so prevalent, they should be properly recognised in all relevant living arrangements. Hence proposals for new forms of institutional care should be designed to meet needs without artificially devising separate regimes for those held criminally responsible by the courts.

The shadow of the *Poor Law*

Who chooses to live in an institution? For many, institutional living is not really a choice but is imposed either by circumstances or by coercion. For some, of course, access to residential care and treatment can be a matter of private purchase: we know about the growth of private care for the elderly, or for the treatment of celebrity addictions. With the right amount of purchasing power, a better deal can in theory be bought. But a large proportion of institutional populations tend to be needy and impoverished, lacking the consumer power to pick and choose their options. A significant proportion of young people in care and people with mental health conditions, as well as people in prison, come from backgrounds that have been blighted by poverty. The *Poor Law* in the nineteenth century was concerned to make sure that conditions in the workhouses did not encourage a growth of entrants; in the twenty-first century institutions are still circumscribed by their status as public provision for the needy, with a prevailing uncertainty about their place in public priorities. It is not surprising that these populations face difficulties in overcoming the disadvantages of their backgrounds. New thinking about institutional care should be aiming to have a transformative impact on the experiences of residents so that they leave with far better prospects. If we consider prison-based interventions, current evidence suggests that they have a limited impact on overcoming the risks of poverty (Grimshaw et al., 2014). Community-based services

represent a more inclusive context for countering the risks of poverty, which by engaging users with mainstream services might have a greater chance of success.

De-institutionalisation – for some

For many years there has been a movement to close institutions that are perceived as restrictive, uncaring and isolating. Residential care for young people, people with disabilities and those with mental health problems has been steadily cut back. In their place foster care, supported living and outreach services – all with community roots – have blossomed. The ironical comparison is with repressive institutions which have shown vigorous growth: whereas new forms of institutional care have emerged to replace the old, prisons and immigration detention centres are never short of cases. Just as provision for some groups started to improve, the old restrictive models were re-valued and regarded as legitimate placements for the rejected and condemned. Challenging this growth implies rejecting the purely negative connotations of institutional living and inventing new strategies which focus on the needs of individuals and communities.

Designing new solutions

To challenge the growth of imprisonment effectively, we have to ask whether current institutional care alternatives, such as probation and bail hostels, simply take the prison into the community. The aim should be to open up the space between the prison and community and to invent solutions that create more permeable and empowering institutions. Importantly these will have to be able to access the right levels and mixes of resources and be close enough to the users in order to ensure that the services are delivered.

Reviewing the achievements and shortfalls of the de-institutionalisation movement might be an enlightening step. The development of different forms of supported living was premised on the idea that there did not need to be a constant authority and service provider on site. People could be located as neighbours and

share access to services that visited them. Foster care too has branched out in diverse directions, with the development of specialisms and systems of support.

Even within the current terms of criminal justice, a good starting point would be to rethink 'Bail for the 21st Century'. Much more imagination will be necessary if the opportunities for meeting needs opened up by de-institutionalisation are to be applied in other fields where custodial options have been favoured.

Foundations of support and trust

Critics have argued that in its authoritarianism, suspiciousness and arbitrariness, the prison mimics and reinforces the toxic relationship with authority which has dogged the lives of people who regularly come into contact with criminal justice. The standard emphasis on security creates a zero-sum game which undermines possibilities for establishing responsibility and trust.

Breaking with prison has meant thinking about how to establish relationships of support and trust. 'Old probation' – long before the National Offender Management Service took over – set itself the task of opening up a constructive path through a personal relationship so that the probation officer would mentor and guide the probationer along the way. While probation has been firmly inserted within criminal justice its banished aspirations to 'advise, assist and befriend' remain attractive.

Of course probation was never simply about personal support; it has seen providing accommodation, drug treatment and support into education and employment as vital practical work. It will not be enough to simply provide an alternative place to live if the user needs treatment and support on a daily basis to become more autonomous – a process that happens through consistent and thoughtful interaction. New institutions standing outside the grasp of criminal justice will be able to prioritise that support.

Caution – and hope

The institutional care agenda is not a panacea and it carries risks;

we do not want to see networks of labour camps, or psychiatric regimes which are restrictive and opaque. The primary policy for communities will involve support to families: the most appropriate candidates for institutional care are those who are unable to live in family settings. It is therefore important to set realistic expectations about its impacts and to focus on prevention so that more and more people do not have to face the prospect of living outside a family setting.

New forms of institutional care will only be invented if there is a collaboration of designers, practitioners and potential users. Just as the cellular prison was invented by social architects influenced by notions of individual conscience and redemption, the new face of institutional care will be shaped by an architecture and design informed by a profound understanding of social need, integration and equality.

Building a network of institutional care facilities represents the most effective way of meeting substantial needs without recourse to criminal justice punishment and of answering those who rightly demand alternatives to address the pressing problems that underlie the stories told in the courts. ■

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