

# **Probation Duty and the Re-moralisation of criminal justice: A further look at Kantian ethics**

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## **Autobiographical summary: 1977-2016**

My first contact with probation was in 1977 as a volunteer at the Lancaster probation office. The task was to flush out employers prepared to employ youths returning home on borstal licence. I was also introduced to the Lancaster Magistrates' Court, and visited Strangeways prison and Deerbolt borstal. During 1978-79 I worked in a hostel for ex-offenders before attending Lancaster University, 1979-81, to undertake Home Office sponsored social work training. Upon qualification I started work as a probation officer in the Cleveland probation service (Middlesbrough, July 1981 to 1987). Subsequently, 1987-1993, Research and Information Officer; 1993-1999 Middlesbrough court team; 1999-2001 probation officer, Redcar; 2001-2005 Senior Practice Development Assessor of Trainee Probation Officers (see Whitehead and Thompson, 2004). Finally, from 2005 to November 2007 I worked at the South Bank probation office, Teesside Magistrates' and Crown Courts, and the Hartlepool Magistrates' Court. In November 2007 I left the probation service after securing a lectureship at Teesside University; Reader March 2010; conferment as Professor in criminal and social justice July 2015, and Director of the Teesside Centre for Realist Criminology.

## **Introduction**

I begin with two quotations from a criminologist in 1958 and a solicitor in the North-East in 2006:

If I were asked what was the most significant contribution made by this country to the new penological theory and practice which struck root in the twentieth century...my answer would be Probation (Radzinowicz, 1958).

The probation service has changed beyond recognition over the course of the last ten years. The shift of the probation service has left the criminal justice system

unbalanced. There is too much emphasis on punishment and a void where there should be an agency dedicated to values of befriending and assisting.

The first quotation reflects and reproduces the 'golden age' of probation (Statham, 2014); the second emerges from, and responds to, new labour's modernised dispensation. The political-economic and ethical-cultural platform for Radzinowicz was the Keynesian post-war social-welfare nation state that supported a probation service and criminal justice system orbiting the circuits of *penal welfare* (Garland, 2001). It was rehabilitative, ideologically anti-punishment and anti-prison. By contrast, the political-economic and ethical-cultural platform for my solicitor respondent in 2006 (see Whitehead 2007, 2010) was the quickening pace of new labour's modernising frenzy imposed on public sector organisations. Its generative core is the 3Es of economy, efficiency, and effectiveness; value for money; a penchant for punishment and prison signalled by the Howard-Major era of 1992-93. These modernising contours nestled on the ideological and material platform of neoliberal capitalism, paradoxically reinvigorated after the economic catastrophe of 2007-08. The chronological distance between the two quotations frame my association as a probation worker (1977-2007), illustrated by transformative shifts from Keynesian conventions to the neoliberal order; from the nation state to market state; from governments supporting the personal social services, the welfare state, and probation taking centre stage in the criminal justice system, to releasing energies stimulated by privatisation, marketisation, and fearful competition that culminated in the 'rehabilitation revolution' between 2010-15. The solicitor respondent stated that transformational excesses unbalanced the criminal justice system by too much emphasis on punishment in prison and the community that eroded the historic mission to advise, assist, and befriend. In other words, profound changes imposed from *without*, not developed organically from *within*, levered open a moral void where there was and should be a moral core. This is clearly illustrated in the demise of the probation ideal. To understand transformations in criminal justice since the 1980s, specifically through the lens of probation, constitutes an intellectually rewarding but also disturbing field of study. If postmodernism has accurately been described as the cultural logic of neoliberalism (Jameson, 1991), transformations in probation and criminal justice reflect and reproduce the organisational logics of the neoliberal capitalist dispensation (Whitehead, 2016 forthcoming) and its indifference to morality and justice.

The central theme of my academic reflections, informed by three decades of practice, is concerned with the imposition of a moral void in criminal and social justice contingent upon a politically induced and coercively applied transformation in probation. This can be traced to the 1980s, took a nasty turn at the hands of the punitive zealots after 1992-93, solidified under new labour 1997-2010, and now the latest revolutionary phase of 2010-15. Essentially, the *a-moral* ideological and material platform of neoliberalism, which is more concerned with economics than ethics, has *de-moralised* the criminal justice system. Accordingly, I advance the argument for *re-moralisation*. To achieve this I draw upon first-hand existential-organisational experiences from within probation, supported by academic research, reflection, and publications. In fact, I have been concerned with morality and justice since my first co-authored publication (Whitehead and MacMillan, 1985). Importantly, probation's future design for re-moralisation must acquaint itself with Kantian de-ontological ethics to re-energise critical thinking on the criminal justice system. Recent changes raise moral issues and urgent questions that are insufficiently considered by the Ministry of Justice, National Probation Service, and the 21 Community Rehabilitation Companies. But first, it is necessary to begin with a historical excursus.

### **Probation history, morality and justice**

With its roots in 19<sup>th</sup> century practices of bail, judicial reprieve, and the recognizance; the example of Matthew Davenport Hill and Edward Cox; developments in the United States and New Zealand; probation work emerged from the police court mission of the Church of England Temperance Society (Whitehead and Statham, 2006). Probation was constituted as an alternative to punishment and imprisonment, containing elements of mercy, advice, assistance, friendship, and practical help, mediated through a *relationship* with a missionary then officer of the court after 1907. Raynor and Vanstone (2002) suggest it is legitimate to resort to the language of mercy and help when excavating the early history of the probation system within the context of late-Victorian philanthropy, evangelical religion, and benevolence. Nellis (2007) resorts to the language of 'humanising justice' when analysing probation history until the early 1970s. Radzinowicz and Hood explain that during the 19<sup>th</sup> century individual moral reform in conjunction with social amelioration were important features, often motivated by 'deep religious convictions, and philanthropic zeal and was thus

a true reflection of the dominant ethos of Victorian society' (1990, p49). These archaeological deposits combine to construct the orthodox account.

However, a revisionist corrective must allow for the fact that police court missionaries were not extending mercy and benevolence to *all* lost offenders' souls when they appeared before the London police courts. The Victorian categories of deserving and undeserving invaded the probation system, and the missionaries were orientated towards a middle class perspective. Although reformist impulses in penal developments were explained by a religious, philanthropic, and humanitarian spirit (Young and Ashton, 1956), Peter Young (1976) advanced the thesis that the probation service had its roots not so much in the relationship between the officer and client, but the relationship between the classes towards the end of the 19<sup>th</sup> century. This thesis is consistent with a version of social work that functioned from within the orbit of the middle class as an attempt to stabilise what was then a rapidly changing social order by extending its largesse towards the working class. Young does not see the existence of social work as a mechanism for the liberalisation and democratisation of society, but rather a mechanism to *drain away* and *neutralise* working class demands, potential agitation, and threats to social order - Marxist ideology conflicting with missionary endeavour.

The McWilliams quartet (1983, 1985, 1986, and 1987) asserts the view that police court missionaries were possessed of a religious philosophy. The increased power awarded to the Justices attendant on The Summary Jurisdiction Act 1879, then The Probation of First Offenders Act 1887, enabled the missionaries to inject mercy and leniency into the proceedings of the lower courts. Significantly, for a period of 60 years after 1876 the rationale for the mission to the courts was the saving of offenders' souls through divine grace (1983, p138). Subsequently, the gradual decline of the missionary spirit after the 1930s, but not its total extinction, was occasioned by the emergence of a more secular and scientific social work discourse (Whitehead and Statham, 2006).

Cecil Leeson (1914) worked as a probation officer as well as spending two years studying probation systems abroad, mainly in the United States. He referred to probation work in theological terms as a system for the reclamation and reformation of people who had

offended and it is 'essentially constructive and redemptive in character' (p42). He also clarified that the probationer required the guidance of a probation officer rather than punishment. Leeson said it was possible that social and religious agencies could facilitate reclamation, and that the attitude of the officer should be as a 'sensible friend; for the essence of Probation is constructive friendship' (p114). It is of interest to allude to a number of additional points raised by Leeson in what is one of the earliest books on probation in the United Kingdom. First, his work has contemporary applicability when it is recorded that probation is involved in the protection of the community; offending is analysed more at an individual than social level; and the offender's swift return to court is necessary if the probationer breaches a court order. Second, there are marked discontinuities because probation is reform not punishment; an emphasis upon religious influence; the probation officer is a friend encapsulated in the legislative adage to assist, not a bully or dictator; and the officer must operate with discretion. Therefore, there are continuous and discontinuous elements in his account (see Mawby and Worrall (2013) on the sound of different voices).

If Leeson provided an insightful resource for understanding probation work during the early years after 1907, evidence contained in four Home Office Departmental Committee Reports repays careful study (Home Office 1909, 1922, 1936, and 1962). These documents constitute a rich source of evidence on those impulses under review and contrast markedly with modernising developments since the 1980s. The Departmental Committee of 1909 underlines the rationale of the inchoate probation system as an alternative to punishment, custodial institutions, and financial penalties, and its suitability for youths as an alternative to the Victorian Industrial and Reformatory schools. The personal influence of the officer is considered an essential component in the reformed system of justice taking shape during the early years of the 20<sup>th</sup> century under a reforming liberal government. We should remind ourselves that the first probation officers, appointed after 1907, were gleaned from the pool of missionaries accruing since 1876, and by 1922 the religious convictions of probation officers remained an essential ingredient. In fact, the notion of probation work as a religious vocation was very much in evidence (Home Office, 1922: 9). Interestingly, the second Departmental Committee report arrived at the conclusion that 'Many qualities were mentioned to us as desirable in a good Probation Officer – sympathy, tact, common sense,

firmness, are but a few – but there was general agreement that a keen missionary spirit, based on religious conviction, is essential’ (1922: 13).

The third Report of 1936 provides a detailed historical survey of the contribution made by former missionaries. These forerunners exemplified a ‘humaner spirit’ operating within the penal system. It is confirmed that probation officers should avail themselves of religious agencies in their work with offenders (Home Office, 1936: 64); the probation officer is a social worker of the courts (p77); and the pioneering work of the police court mission is given due recognition. By the 1960s social casework eclipsed theological constructions and justifications for probation practice (Home Office, 1962). During a period of change which started to gather momentum from the 1960s and 1970s (Whitehead and Statham, 2006), religious inspiration gave way to ‘scientific’ casework practice. Nevertheless, the religious phenomenon (Whitehead, forthcoming 2016), a humaner spirit, ethically informed personal relationships, congealed into the *probation ideal* that no longer frames political attitudes or organisational practices.

Probation, from its statutory beginnings during the early 20<sup>th</sup> century, performed tasks on behalf of the state whilst operating with a measure of organisational independence until, that is, relatively recently. Its rationale, although containing a *mélange* of competing ideological perspectives (see Whitehead, 2016), exemplified a humane approach to understanding the biological, psychological, and sociological correlates of offending behaviour. It was also, at its ideological best, a humanising influence throughout the whole system. Probation officers responded to Schweitzer’s (1929) advice to find vocational work to facilitate human welfare through which they could make a difference as well as make a living (see also Statham, 2014). They understood something of and practiced *reverence for life* towards their clients, victims and local communities, to promote criminal and social justice. They implemented a life-view that blended cognitive insight with empathic sensibility, professional duty to the courts and passion for the job conducted through relationships that combined the professional and personal. In other words, there was a moral dynamic stimulating practice, negotiating and mediating criminal and social justice. The central features of the *probation ideal* can be reconstructed as follows:

- Informed by religious, humanitarian and personalist impulses that combined to humanise the criminal justice system.
- Utilised the human sciences, from psychology to criminology and social theory, to excavate the aetiology of complex behavioural patterns. Understanding incorporated both *what* and *why* dimensions (*what* have you done and *why* have you done it?) to explain offending to magistrates and judges by taking account of structural, cultural, and biographical variables (Whitehead and Thompson, 2004).
- The probation ideal involved openness to the *other* and a curiosity about behavioural repertoires. It concurred with George Eliot that the world can be a better place by understanding and comprehension, which was the function of the social enquiry report to advance. According to George Eliot in *Middlemarch*, human relationships are unquestionably complex but if taken seriously they come with the invitation to grow beyond self-centeredness: ‘If I really care for you – if I try to think myself into your position and orientation – then the world is bettered by my effort at understanding and comprehension’ (Mead, 2014: 223 – *this is the social worker’s and probation officer’s creed*). Empathy, curiosity, and imaginative understanding.
- The probation ideal supported a constructive and educative approach in the community wherever possible, which symbolised something more positive than punishment and prison. It was part of the personal social work services, not retributive punishment.
- Operated with a narrative of tolerance, human decency, caring control and compassion, empathy, support and help which was its vocational public duty.
- Believed that people can change and so did not give up on others. Relationships were at the centre of practice – good and right in themselves, and effective.
- It explicated that probation officers were the social workers of the criminal and civil courts, therefore different to other staff within the organisations of criminal justice.
- The probation ideal included intellectual curiosity and moral obligation, qualitative service outputs, deontological ethics, a value-driven rationality, and the rehabilitative ethic. In other words, probation work and its diverse services could be justified by being good and right in themselves. Probation may not reduce reoffending; it may

accomplish 'nothing'; but what it stood for was good in itself (see Kantian ethics below). This was the probation ideal, ethic, and aesthetic.

In chapter 3 of my *Exploring Modern Probation* text (2010) that excavates the religious, humanitarian, and personalist tradition of the probation system, I quoted from my doctoral thesis that researched probation work during the 1980s. It is worth repeating that:

In essence, whilst probation officers are engaged in a diverse range of practices which are sustained, at times, by conflicting ideologies and with an eclectic approach to methods, the unifying thread weaving its way through all the paradoxes and dilemmas is a commitment to a personalist philosophy concerned with the meeting of human need. Probation work, for these respondents, is primarily about a social work service to the disadvantaged and not about social control or social action (p79).

Well into the 1980s the probation system was committed to the delivery of a social work service, sustained by a rehabilitative ethic that informed the morality of criminal justice. However, the collapse of the rehabilitative ethic in conjunction with the probation ideal eventually created a moral vacuum. My recent work on moral economy is a response to this politically imposed vacuum that is worth an explanatory note.

#### **Brief note on moral economy**

The purpose and scope of my latest monograph (Whitehead, 2015) theorises, reconceptualises, but also refines the idea of moral economy in its relevance for, and application to, criminal justice in England and Wales with specific reference to probation. In the Prologue I stated:

Beginning in the 1980s, followed by successive new labour administrations from 1997, and the Transforming Rehabilitation agenda of 2010 to 2015, criminal justice has been seized by the technical requirements of economy and efficiency, value for money, measurable outcomes, retributive punishment, prisons, and bureaucratic rationality. These features have combined to impose a paradigm shift in governmental policies and organisational practices, indexed most notably in probation (p.ix).

It is absurd to reduce criminal justice to an instrumentally driven operation to achieve fiscal efficiencies or provide investment opportunities to the commercial sector. Rather, the starting point is to establish its intellectual and moral foundations, the precepts of which are required to legitimate policy and practice. Accordingly, the concept of moral economy constitutes a point of rupture to the contemporary orthodoxy of criminal and penal policy, its modernising blandishments, and the platform of neoliberal ideological and material interests that it reflects and reproduces. Moral economy is foregrounded to excavate discernible transformations; it functions as a conceptual device; it also makes a serious contribution to the urgent task of moral reconstruction. Moral economy can bear the weight of these heavy demands placed upon it, as well as constructing a platform on which to plot a different way of thinking about doing justice.

Formerly, probation work within the criminal justice system was an integral component of the post-war Keynesian settlement as a public good, delivering a public service, as a public duty, largely to a disadvantaged section of the public. It belonged to the personal social services that operationalised a personalist ethic until, that is, the profession was trashed by the politics of new public management and its supporting musculature of managerial consultants, specifically after 1997. Probation's pioneering mission constructed structural, cultural, and biographical analyses of the human condition to understand and explain offending behaviour, an intellectual *and* moral task on behalf of the state and criminal justice system. But it has been vindictively jettisoned into the circuits of privatisation, marketisation, and fearful competition. For this author my first-hand experience of doing probation work since 1977, in addition to supporting academic research that began in 1985 (Whitehead and MacMillan, 1985), exposes the systematic erosion of moral obligation imposed by government ministers and civil servants. In other words, probation practice driven forward by social work relationships, personalist values, and humane interventions has been overturned. Nevertheless, the future must belong to ethics and a return to Kant offers a way forward.

### **Return to morality and justice through Kantian ethics**

It was a grave error to fragment the humane conventions of probation by an instrumentally-driven operation to achieve fiscal efficiencies, provide investment opportunities to the commercial sector, to become the subject of governmental will to power over troublesome populations. The substantive reason for this proposition is that probation, in conjunction with youth justice, health, welfare, and educational provision, is *people-facing*. Its rationale is I-thou relations (Buber, 1970) not I-it functions. Organisations that work with people, rather than inanimate objects, are confronted with existential and moral questions. Accordingly, it is necessary to distinguish between the functionally useful, fiscally responsible, and morally right. Probation and social work have suffered from governments' inability to make these fundamental distinctions since the 1980s. Working with people who offend is ineluctably entangled with the coordinates of personalist sensibilities (Mounier, 1952), symbolic conventions, and ethical demands.

Presently, there is a moral deficit in probation, caused by a politics of imposition and disavowal. To rectify this deficiency it is necessary to construct a route to Immanuel Kant (1724-1804) to forge a thematic association between deontological ethics and probation duty that was legislatively established in 1907. This was sequentially engraved in historical and cultural conventions through the aforementioned documents (Home Office 1909, 1922, 1936, and 1962), and inculcated into the matrices of practice. Kantian ethics can be applied to criminal justice developments since the 1980s to expose intellectual and moral erosion, contingent on the demise of probation duty and the expansion of an internal market of services alongside punishment and prison. Kantian ethics foregrounds salient concepts of significance, a vocabulary of interest, to analyse, critique, theorise, but also to confront a recent history of moral neglect. This constitutes an ethical corrective to the political and organisational logic of instrumental utility applied to organisational domains, primarily probation and the inchoate community rehabilitation companies. It is important to summarise a central Kantian text.

### **Groundwork of the Metaphysics of Morals (Kant 1785/2005)**

Although Bertrand Russell (1946) was reluctant to support the judgement that Kant was the pre-eminent modern philosopher, he ascribed historical importance to deontological ethics

(Greek δέον/deon = duty, should, or ought). When the *Groundwork* was published in 1785, followed in 1788 with the *Critique of Practical Reason*, moral philosophy had progressed through the natural law formulations of Aquinas, Grotius, and Pufendorf that inscribed moral law into the fabric of the universe like some Greek universal logos. Hobbes, the anthropological pessimist, believed the state was confronted with the necessity to impose morality onto self-interested human beings. Later, Shaftesbury and Hutcheson talked about a moral sense, and Hume's utilitarian approach prioritised feeling over reason in ethical evaluation. Bentham's utilitarianism stated that the criterion to judge right action was its usefulness for human happiness (consequentialism). Mathematically, the utilitarian calculus quantified morality conducive to achieving the greatest happiness for the greatest number, but at a price. It risked manipulating others to accrue beneficial outcomes to oneself. It also put into sharp relief what is deemed useful according to contingent conditions and what is intrinsically right or good (see Schneewind (2003) for a detailed exposition on moral perspectives). With Kant, towards the end of the 18<sup>th</sup> century, the history of moral philosophy was presented with a perspective that makes the rightness or wrongness of an action independent of the goodness or badness of its consequences. It rejected utility for 'systems which are held to be demonstrated by abstract philosophical arguments' (Russell 1946: 639). In other words, Kant advanced a metaphysics of morals in which moral concepts are located *a priori* in human reason. It has been declared that 'Kant stands at one of the great dividing points in the history of ethics' (MacIntyre 1967: 190).

The *Groundwork* is complex; for Eagleton (2009: 113) curious; but Kuehn endorses a 'most impressive work' (2001: 283). It is not within my purview to critique its central metaphysical and rationalist contentions. Rather, I extrapolate *concepts of significance* that can be applied to probation work and transformations in criminal justice conventions. The *Groundwork* has three main parts and I am indebted to MacIntyre (1967) and Ross (1962) for the following reconstruction. Kant differentiates between what *is* the case or actuality of behaviour, from what *ought* to be the case according to the logical progression of philosophical argument. The latter form of knowledge is *a priori* because it does not depend on observing the actualities of behaviour. Copleston explains the difference by suggesting that we cannot 'verify the statement that men ought to tell the truth by examining whether they in fact do so or not' (1960/2003: 308-09). The statement is true independently of conduct that

establishes an objective principle compelling to the will, a command of reason that constitutes an *a priori* imperative in the Kantian schema (Russell 1946: 644).

Kant begins with an exposition of a good will. A good will is considered good not because of what it produces, achieves, or its utilitarian consequences, but by virtue of it being good in itself. In other words, it has intrinsic value. It requires no qualification, nor can it be added to something else to produce bad results. Then, in a statement of considerable import, a good will even if 'lacking in power to carry out its intentions, if by its upmost effort it still accomplishes nothing, and only good will is left; even then it would still shine like a jewel for its own sake as something which has its full value in itself' (1785/2005: 65). Kant acknowledged that the human condition is subjected to both good and bad impulses, desires and drives, but a good will manifests itself in acting for the sake of duty. Duty is a central feature of the moral consciousness and its three propositions are: human action is deemed morally good when undertaken for the sake of duty, not inclination, desire, the Benthamite pursuit of happiness, or Hobbesian self-interest; dutiful actions have moral worth when undertaken according to a maxim, principle, or motive, not instrumental utility; to act according to duty is the requirement to act out of reverence for the moral law.

There are many obstacles to exercising a good will and doing one's duty. But the moral law ought to be obeyed for its own sake. Copleston elucidates by saying that human actions 'if they are to have moral worth, must be performed out of reverence for the law. Their moral worth is derived, according to Kant, not from their results, whether actual or intended, but from the maxim of the agent' (1960/2003: 318). Nevertheless, this vocabulary of good will, duty, and the moral law, appear abstract, lacking in content. So how do these abstract concepts translate into the concrete moral life? The answer introduces the categorical imperative that has three modes of expression:

- 'I ought never to act except in such a way that I can also will that my maxim should become a universal law' (Kant 1785/2005: 15) e.g. speak truth not lies
- Humanity as an end in itself – we cannot and must not use other human beings as the means by which we pursue and achieve our own ends
- Kant refers to the universal legislative will.

Notwithstanding the defensible merits of Kant's deontological ethic, there are objections. Hegel found it too formal and abstract (Pinkard, 2000); Eagleton (2009) is bemused; and Schweitzer (1929) argued that reverence for the moral law lacked existential human content stating: 'How far Kant is from understanding the problem of finding a basic moral principle which has a definite content can be seen from the fact that he never gets beyond an utterly narrow conception of the ethical' (1929: 108). Consequently, he replaced reverence for law with reverence for life. Nevertheless, Schweitzer's evaluation supported the centrality of human beings as ends rather than means, motives rather than consequences, so that the 'utilitarian ethic must abdicate before that of immediate and sovereign duty' (1929: 107). A final and telling objection is that Kant's *a priori* moral consciousness can be said to be one of history's naïve assumptions, a metaphysical conjuring trick in its mysterious relation with the functioning of human reason. Accordingly, transcendental materialism (see Hall, 2012) rectifies this naïvety by understanding morality not as some fixed component of our cognitive apparatus associated with a numinous metaphysical realm, but inextricably entangled in the configuration of drives and desires by ideology. Copleston did not refer to the transcendental materialist perspective, but his positive summation was that 'It cannot be denied, I think, that there is a certain grandeur in Kant's ethical theory. His uncompromising exaltation of duty, and his insistence on the value of the human personality certainly merit respect' (1960/2003: 345).

To summarise, Kant asserted the existence of moral consciousness within rational human beings, and isolated the *a priori* as an unchanging element independent of ephemeral conditions. He emphasised a good will manifested in duty, prioritising motives over consequences. But, MacIntyre asks, how is duty presented to us? The answer is that it 'presents itself as obedience to a law that is universally binding on all rational beings' (1967: 193). What is the content of this law? Its content is manifested in precepts that must be obeyed by all rational human beings, which is the categorical imperative. Ultimately, the test of a moral imperative is that it can be universalised. According to the Kantian schema human beings are ends, not means, so any attempt at calculable manipulation must be avoided. Significantly, Kantian deontology rejected utilitarian ethics for a system demonstrable by abstract philosophical arguments (Russell 1946: 639), more concerned with the ideal of pure reason than pragmatic decisions in complex human situations (Kuehn, 2001). Nevertheless,

the central concepts of significance, the primary vocabulary of interest, should not hastily be dismissed which can be distilled as follows: *a priori*, good will, duty, motive, moral consciousness and obligation, moral law, ends over means, and respect for human personality. They are applicable in forging a thematic link between Kantian deontology and probation duty, which necessitates a chronological leap from 1785 to 1907 and a return to themes introduced earlier.

### **Kantian ethics and probation's duty to re-moralise criminal justice**

I do not possess the empirical evidence to suggest that the law-makers in 1907; Home Secretary Herbert Gladstone; or the five members of the Departmental Committee appointed by Gladstone on the 8<sup>th</sup> March 1909; were Kantian ethicists in the reforming Liberal government of this period. But duty, a salient Kantian moral concept, resonated with probation. Section 4 of the *Probation of Offenders Act, 1907* specified the duties of probation officers:

- a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order;
- b) to see that he observes the conditions of his recognisance;
- c) to report to the court as to his behaviour;
- d) to advise, assist and befriend him, and, when necessary, to endeavour to find him suitable employment.

Within one year of the primary legislation, an inquiry was established to determine whether full advantage had been taken of the 1907 Act (Home Office, 1909). It is of historical and penological interest to confirm that probation was established *instead* of punishment, prison, and financial penalties. Significantly, the system was contoured by a relationship of influence between the probation officer and probationer that enabled specifiable duties to be undertaken. These duties were subsequently engraved into the coordinates of policy and practice over the next few decades.

Self-evidently, probation was not constituted by, nor solely operated to, Kantian deontological ethics. There has always existed a complex dynamic between its original religious mission, construction as a state-directed practice, and the controlling interest of

the Home Office before the Ministry of Justice was established in 2007. Probation may well have been entrusted with the performance of numerous duties instead of punishment and prison. However, definitions of moral and legal duty were positioned obliquely to the primary instrumental function of reducing crime and preventing reoffending. Such tensions became more acute after the Morison Committee (Home Office, 1962), but this should not preclude affirming that probation duty was for several decades a component of settled criminal justice and penal-welfare conventions (Garland, 2001). These settled conventions were disrupted in the 1970s, since when a moral vacuum has disturbed the policies and practices of criminal justice. It is vital and urgent to establish a fundamental and foundational moral order in criminal and social justice, and probation should be the prime mover, informed by a clear sense of what is intrinsically good and right when working with people who offend.

## **Conclusion**

The accumulated deposits of my practitioner experiences and academic reflections over a period of nearly 40 years have been informed and sustained by a personalist ideology, enriched by Kantian ethics, initially manifested in the probation ideal before its latest expression in moral economy (Whitehead, 2015). Indubitably, this ideology is in conflict with a neoliberal order of things and new public management, replete with moral indifference. I maintain the argument that there is a higher and nobler political philosophy and set of organisational policies and practices that respond to the claim of duty and exercise moral obligation towards the *other*. This may achieve nothing according to the modern obsession with instrumental calculation and efficiency, but *shine like a jewel* because it is intrinsically the right thing to do. In other words, organisations that are constituted to work with the troublesome and disadvantaged are confronted with an ethical demand that transcends the all-too fleeting contortions of ephemeral party politics with their economic priorities.

Therefore, it is vital and urgent to shift the terms of the debate from the stranglehold of a-moral neoliberalism, organisational de-moralisation, to re-moralisation. This requires a decision at the level of politics proper that systematically reverses the incalculable damage inflicted on criminal and social justice, starkly manifested in the privatisation and marketisation of probation services that puts economic viability before ethical responsibility.

I urge a rapprochement between ethics and politics that will put moral economy before political economy. Without moral reconstruction there can be no criminal and social justice, and probation must place itself in the vanguard of shaping the future. It is urgent and vital to advance a vision of something new, of something better, of something that is ethically and morally superior to what has been politically and organisationally allowed to happen since the 1980s. In fact, we urgently need a vision of the Good society by which to restructure the politics of criminal and social justice.

One final comment: when I was first appointed as a probation officer in July 1981 I expected this would be my profession until I retired. However, by 2007 it was no longer possible to do the job I'd been trained to do at Lancaster University as a *social worker of the courts* because of modernising impositions. It is, therefore, more accurate to say that I did not leave probation, it left me. This will always be a regrettable state of affairs, compensated for by the opportunities at Teesside University to continue in the field of probation, criminal and social justice, and penalty.

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