

## Chapter 6

### **Modernising monstrosities and transformational traumas: Social theory, criminal justice, and morality**

#### **Introduction**

The first four chapters chronologically elongated and reconstructed modernising transformations in probation and criminal justice which occurred between 1997-2010, then 2010-2015. These chapters include a refined and extended grid of theoretical reference points which are put to work for the purpose of analysis and critique. Also, within the historical time-frame of new labour, opportunities were presented to research probation within one local criminal justice system in the North-East of England. The research chapter is retained to rectify what is a paucity of empirical research on solicitors, clerks, magistrates, barristers and judges. The first section of the final chapter reprises the period under review before assimilating the research findings. I also incorporate some concluding reflections prior to refining the task of theorising the criminal justice system.

#### **Probation and criminal justice: 1997-2015**

There have been occasions since 1945 when the term modernisation has been applied within the United Kingdom (Marr, 2008). Nevertheless, it acquired an exalted status under new labour and is synonymous with a political phenomenon which emerged during the 1990s, stimulated by Clinton Democratic politics in the USA. Previously, it was acknowledged how the term was applied to developments extending throughout the whole public sector that includes the criminal justice system. Let's reprise some of these modernising and transformational features.

Modernisation signalled a discernible shift in criminal justice policy to old labour that had provided an explanatory framework which accommodated compensatory social welfare and help towards rehabilitation. A new compass bearing was taken towards a muscular approach which enabled new labour modernisers to compete with conservatives on law and order. But there was a contradiction in new labour's soul because even though criminal justice had been reconfigured in a more punitive direction, the Social Exclusion Unit, and

the Cabinet Office Strategy Unit, acknowledged the link between adverse socio-economic conditions created by periodic downturns in capitalist markets and property offences (Newburn, 2007, p55). This explains why new labour addressed child poverty and introduced the New Deal to assist young people into work. It also established the Sure Start programme to benefit disadvantaged families.

Modernisation was manifested in fast-tracking young people through the youth justice system, reforming the crown prosecution service, the police, and introducing anti-social behaviour orders (ASBOs) which criminalised lower-level forms of disorder. Modernisation resonated with the expansion of surveillance technology and a torrential flow of new criminal legislation (Auld, 2001; Carter, 2007). A change in penal philosophy signalled by the Criminal Justice Act 2003 ensured that sentencing would become incrementally tougher for persistent offending. This undermined the just desserts approach of the Criminal Justice Act 1991. There is a war being waged against crime, the fight taken to the enemy within, an atmosphere of zero tolerance, the axis tilted towards victims and witnesses that re-balanced the system. One of the clearest indications of a radical transformation in penal policy is the expansion of the prison system. Between 1993 and 2012 the prison population in England and Wales increased by 41,800 to 86,000 (Ministry of Justice, 2013e). At the end of December 2015 it stood at 85,641 – 81,735 male and 3,906 female prisoners - and projected to rise to 90,000 by 2020 (Ministry of Justice, 2014). As the 2010 general election approached there was little to choose between labour and conservative approaches to criminal justice.

Modernisation signalled profound cultural transformations in probation, illustrated by the creation of a national service in 2001. Moreover, the centralisation of command and control established by nationalisation (NPS) was quickly followed by the National Offender Management Service during 2003/04. The latter created the politically imposed conditions for a mixed economy of offender provision (*contestability*) that penetrated deeply after 2010 on the platform of competition, marketisation, and privatisation. The NPS and NOMS re-routed probation into the circuits of bureaucratic centralism and punitive controlism (Burnett, Baker and Roberts 2007). Although rehabilitative language remains part of NOMS, modernisation

repositioned the organisation towards the punitive-controlling end of the care-control continuum<sup>1</sup>.

The conjuncture of political impositions and media representations elevated crime within the national consciousness as a phenomenon for which individuals are primarily accountable, rather than behavioural disturbances under neoliberal conditions. Accordingly, the war on crime is fought primarily against people from certain groups marked by the stigmata of vulnerability, poverty, and disadvantage to create the relegated urban outcast, rather than fighting the differential impacts of neoliberal capitalist structures and attendant inequalities (Cavadino and Dignan, 2006; Reiner, 2007a; Wacquant, 2008 and 2009; Wilkinson and Pickett, 2009). Macro structures are not conducive to creating a climate of trust, loyalty, and respect between people in local communities. The *Respect* campaign was fore-grounded, the strategic front line, as the solution to curing behavioural problems associated with crime (Pratt, 2007, p121). Probation was rigorously modernised after 1997, politically manipulated, then marketised and privatised after 2010 to exist in the new dispensation established by political fiat. Nevertheless, there were voices of disquiet from within the criminal justice system prior to the rehabilitation revolution.

### **Respondents' doubts and challenges**

The significance of the research findings gleaned from solicitors, court clerks, magistrates, to a lesser extent barristers and judges, is that *at certain points* modernising developments under new labour received some support. By contrast, there were concerns at the way the system had evolved after 1997. In fact, there were doubts about, and challenges to, modernisation erupting from a pre-modern direction.

The *quantitative insights* reveal some points of similarity between solicitors, clerks, and magistrates on their operational knowledge of probation which should demonstrate an understanding of offending, an awareness of personal and social circumstances, promoting criminal and social justice, and keeping people out of custody. Nevertheless, there are differential responses to other variables elucidated in Table 5.3. It is clear that the politics of modernisation created a climate of robust responses, bureaucratic targets,

offenders categorised as units of risk, rigorous enforcement procedures, to sculpt a musculature bulked-up on punitive steroids. By contrast, there is evidence for retaining the services of an organisation associated with benign rather than punitive instincts in response to complex human problems. Accordingly, there is more to criminal justice than punishment, and respondents were involved in a complex, not always consistent, conversation with probation. Table 5.4 is a more limited data set yet provides further support for a number of *pre-modern* features amongst barristers and judges.

Interviews with clerks and magistrates constitute a rich source of *qualitative responses*. It emerged that the purpose of probation retains a rehabilitative element, complemented by providing a service to people requiring help, assistance, remedial education, as well as engaging with the dominant language of punishment. To some degree the information gleaned from respondents reinforced what are *mixed* messages emanating from the tick box data Tables. Importantly, probation has a dual role because of its responsibilities towards the courts and offenders.

When turning to reports, a critical function throughout probation history that it still retains after the rehabilitative revolution, there were concerns contingent upon the simple, speedy, summary, and new public management agendas. Until this research was conducted in 2006/07, there was a Service Level Agreement for probation to produce 40% reports in the fast deliver format. By 2009 this had risen to 70% (National Probation Service, 2009). In a climate of recession (late 2008/2009) there were mounting pressures to anoint the FDR as the default document in the magistrates' court. The rationale of the probation report is to assist the court to determine the most suitable sentence which relies upon furnishing *all relevant information* on the background of offenders. For 9 clerks and 9 magistrates "background information" defined the rationale of reports. However, the focus upon fast delivery compromised this objective which has serious implications for achieving criminal and social justice. This remains pertinent for magistrates' courts which deal with 95% of criminal cases. The FDR, or oral stand-down, indubitably reduces costs and expedites answering *what have you done* questions, yet contributes little to exploring the more sociologically probing *why have you done it?* Interestingly, 12 clerks and 11 magistrates did not

anticipate problems with FDRs. By contrast, 8 clerks and 6 magistrates raised insightful concerns by acknowledging they only scratch the surface, appear rushed, and exemplify chasing central government targets. It is possible to tick all the boxes and achieve the targets, yet fail to engage effectively with offenders. Similarly, all the boxes can be ticked within the National Health Service and fail patients<sup>2</sup>.

The report problematic should be confronted head-on as the FDR, or oral stand-down, represent a false document, a system canard, specifically because of its incomplete methodology and self-evident inadequacy. Incomplete and inadequate because it abstracts and truncates offending and offenders in the material interest of the 3Es. It promotes poor probation practice by stating the obvious yet concealing the vital. There were tensions between the pursuit of efficiency within the new public management agenda, and achieving just outcomes. It was also clear there was a noticeable shift in direction towards FDRs and away from full PSRs. 12 clerks and 6 magistrates expressed concern that recent developments in the criminal justice system amounted to elevating business efficiency above the notion of justice. By contrast, 9 clerks and 10 magistrates articulated less concern about this growing tension.

There was some evidence for the punitisation of reports at 'Northtown', supported by evidence supplied by central government (in the Teesside Area Business Plan for 2008/9). 14 clerks and 9 magistrates perceived this was the case in proposals for custody and punishment in the community. Then again, other respondents were less convinced. Furthermore, the notion of *understanding* (Weberian *verstehen*) is under pressure. Arguably, the macro context of neoliberalism is highly pertinent for the criminal justice system because it provides an explanatory context for offending episodes. To some degree the Offender Assessment System facilitates an exploration of offenders' lives, from personal and family factors to wider social circumstances. However, we saw how the prevailing culture of FDRs, in addition to the triple 'S' and NPM agendas, undermined an insightful exploration of individual stories. 9 clerks and 2 magistrates said that probation was demonstrating *less* understanding of offenders. Alternatively, 10 clerks and 14 magistrates indicated that probation was not diluting the contribution

made to understanding people who offend. Intriguingly, version 4.3.1 of OASys, released in the summer of 2009, implied probation staff would spend less time processing computerised data through the mechanism of layered assessments.

It is disquieting that although NOMS had been in existence since 2003/04, few respondents had any meaningful grasp of what it was, or its likely implications. This finding constituted a cause for concern in 'Northtown', particularly after assimilating the rehabilitation revolution between 2010 and 2015 that normalised competition between the public, private, and voluntary sectors, internal markets, and privatisation (see Deering and Feilzer, 2015). Contestability during 2006/07 became fearful competition during 2010-15, which reflects and reproduces the organisational logic of neoliberal political economy and the new public management. NOMS was critical to the future of criminal justice but only 1 clerk and 4 magistrates had heard of contestability.

When reflecting upon *what probation had become* under new labour, stimulated by the empirical findings, some respondents restored a semblance of balance to the operational dynamics of criminal justice by retaining, if not re-instating, pre-modern features. Rutherford's *Criminal Justice and the Pursuit of Decency* (1994) included interviews with 28 practitioners between 1988 and 1991. The comments by a Chief Probation Officer are worth repeating:

**I have no qualms that we are part of the criminal justice system. But our prime task is to be a social work service 'core', and that buys in a set of principles which we do not abandon because other bits of the criminal justice process find them uncomfortable (1994 p153).**

Rutherford concluded that hope lies with practitioners if the criminal justice system is to be orientated around a set of principles which can be classified as decent and humane. However, since 1997, particularly after 2001, and now 2010-15, this has become increasingly difficult because of in-balances injected into the system by the political class.

## **The great *unbalancing* act under new labour**

The comment from a barrister with over 25 years experience at 'Northtown' should be repeated:

**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.**

In an undated message to staff during 2008 Jack Straw, Secretary of State, and Permanent Secretary Suma Chakrabarti (Ministry of Justice Priorities and Performance and Efficiency Programme), clarified that the primary purpose of the Ministry of Justice is to secure justice, protect the public, and punish lawbreakers. There must be justice for the law-abiding and victims of crime and the message suggested a further bout of modernisation could be required, without any hint of future transformational activity.

After serious reflection on what occurred after 1997, and taking account of some of the findings in chapter 5, rebalancing *unbalanced* the criminal justice system. Barbara Hudson (1987) reminded us that the pursuit of justice should not be equated with punishment. Additionally, justice is not necessarily found patiently waiting at the end of modernising reflexes, constant change, expanding organisational bureaucracies, or transforming probation into a power to punish. Justice may not even be located in the direction of expanding the criminal justice estate, tinkering with penal policy, building new prisons, heightening its emotional tone, or reducing the cultural divide between probation and prisons. Instead, dialogue surrounding criminal and social justice must take account of the circumstances of offenders, including the macro context of neoliberalism and its differential impacts on individuals, families, and communities<sup>3</sup>.

The lives of people who offend, and who appear before magistrates and judges, should be understood within a holistic explanatory context. By doing so it is logical to argue there should be an organisation charged with the responsibility to explore and explain factors of relevance to sentencers. Modernising impositions have weakened this critical faculty, acutely illustrated

by the changing nature of reports by fiscal constraints. Accordingly, rebalancing has *unbalanced* the system in the direction of punishment rather than enhancing the category of insightful understanding which is necessary for making careful judgements about people who offend. Probation should be drawing attention to human casualties not compromising its historic mission; critically challenging the rationale of punitive excesses; a signpost towards alternatives to custody and punishment rather than a weathervane which catches the prevailing political wind; maintaining the professional capacity to engage with offenders to recount their life stories. Modernising processes, gilded by hideous transformations, have undermined these organisational functions.

Rebalancing *unbalanced* the relationship between probation and prisons. It was surprising that most court clerks, magistrates, but also solicitors did not have a sufficient grasp of NOMS, particularly contestability. Additionally, NOMS was restructured during 2008/09 to transform the two organisations by electing prison the dominant partner. This can be recounted as follows. First, there were 17 members of the Ministry of Justice ministerial team and Corporate Management Board in London. However, there was no probation representation at the highest strategic and decision-making level by 2010. Second, a parliamentary answer to Neil Gerrard MP on the 21.1.2009 revealed there were 113 former probation employees working within NOMS HQ, compared to 3,445 prison service staff. In other words, on the brink of the transforming rehabilitation agenda, probation accounted for only 3.2% of the total staffing complement in what was described as the 'new agency' (information contained in the National Association of Probation Officers briefing paper on the 9<sup>th</sup> March 2009). Third, roles and responsibilities were rationalised at a regional level by coalescing prison area managers and regional offender managers into the post of Director of Offender Manager (DOM). Most of the 10 DOMs were appointed by February-March 2009 but only one had a background in probation – Roger Hill who left his post as Director of Probation, which was not replaced, to become the first Director of Offender Management of the South-East region.

From the highest strategic level (NOMS HQ), then into the 10 regions, not forgetting that only approximately 50% frontline employees were

professionally trained, probation was under-represented in a modernised organisation dominated by the prison by 2010. This made it difficult, if not impossible, for probation to argue its case and defend its principles, values, history, culture, and distinctive contribution to the criminal justice system. The point where probation and prison overlap is when prisoners are being prepared for release into the community. Accordingly, the primary tasks of these organisations are self-evidently different as the prison system is concerned with humane containment; probation the supervision of offenders in the community. Both sets of staff require different skills when working with prisoners in conditions of secure confinement and offenders on community orders in conditions of freedom. Of course, there are points of interaction, but the primary tasks are fundamentally different and it is absurd to think otherwise. Therefore, bringing both organisations closer to each other within one organisational structure constituted an affront to logic, and a disturbing display of ignorance by the Ministry of Justice it repeatedly compounds. For example, during autumn 2015 the probation training scheme, pursuant to the rehabilitation revolution – *Community Justice Learning* – was reviewed by Martin Narey, a non-executive director in the Ministry of Justice. I'm probably over sensitive, decidedly too picky, but I'm not aware he was either trained or worked as a probation officer; supervised offenders; or prepared reports. In other words, if you haven't done the job you've been asked to review, where's the legitimacy? Why not come clean: 'I'm not equipped for the task'.

What should be clear by now is that modernisation between 1997 and 2010 constructed the politico-ideological platform to impose the rehabilitation revolution between 2010 and 2015. The revolution eroded the sphere of probation influence by the creation of 21 Community Rehabilitation Companies which constitutes the new order of things. Before returning to the thematic structure of this book, I want to reflect on whether the period from 1997 to 2015 was inevitable. Just because things are as they are does not mean they have to be like this.

### **'What if' and 'if only'**

Ian Kershaw's (2007) *Fateful Choices: Ten Decisions That Changed the World 1940-1941*, can be extrapolated to question the recent history of

criminal justice and penal policy. The ten decisions were: Britain fighting alone in the spring of 1940 rather than negotiate peace with Germany; Hitler's decision to attack the Soviet Union in 1940 that occurred in 1941; Japan seizing her opportunities; Mussolini deciding to grab his share of the spoils; Roosevelt deciding to lend a hand; Stalin's refusal to take seriously the German threat to his country; Roosevelt declaring war; Japan's decision to attack Pearl Harbour; Hitler declaring war on the USA; lastly, Hitler decision to eradicate the Jews in Europe. Kershaw asserts that these decisions were made by a handful of people in Britain, Germany, Japan, Italy, and the USA, but his central task is to explore those diverse and certainly complex influences which culminated in these world altering decisions. Kershaw poses the question: were the decisions taken inevitable, or were other courses of action feasible? Significantly, were there opportunities before the final and fateful decisions were taken to pursue alternative courses of action? He answers:

**In retrospect, what took place seems to have been inexorable. In looking at the history of wars, perhaps even more than at history generally, there is an almost inbuilt teleological impulse, which leads us to presume that the way things turned out is the only way they could have turned out (2007, p6).**

Kershaw argues that this was not the case. Decisions imply choices and alternative judgements and decisions could have been made amidst the welter of variables, pressures, national and international contingencies which interacted with each other. James Joyce in *Ulysses* addressed the nightmare of history that imposes itself with a heavy hand. Joyce, long before Kershaw, and one might add the great speculators of history including Vico, Hegel, Comte, and Marx (Mazlish, 1968), was troubled by the thought that it could have been other than it is. What if Pyrrhus had not fallen or Julius Caesar knifed to death? "But can those have been possible seeing that they never were? Or was that only possible which came to pass? Weave, weaver of the wind" (1992, p30).

Other decisions could have been made according to Kershaw's historical analysis. Moreover, the creation of the National Probation Service in 2001 was neither desirable nor inevitable. It should be recalled that

arguments for a National Probation Service were mooted as early as 1962 but rejected (Home Office, 1962). The Carter proposals in 2003 to create NOMS could have been dispensed with (don't forget a step too far during 1997/98 but a step in time after 2003). There were, and are, alternatives to competition, marketisation, privatisation, computer technology, numerical targets, centralisation, and bureaucratisation, including the management of 'problem populations' via punitive strategies, just as much as there are alternatives to the neoliberal order of things (Saad-Filho and Johnston, 2005). It is rank stupidity to think otherwise. A series of decisions were made by the political modernisers, implemented by apparatchiks *and probation managers*, but they were not inevitable. We can agree with Kershaw that things might have turned out differently; decisions imply choices; but imposition and collusion seized the day.

Garland (2001) argued that today's crime control strategies are a response to late-modern crime issues associated with increased levels of insecurity, the decline of rehabilitative efficacy and social welfare. The state has taken up the fight against those most affected by late-modern socio-economic conditions engendered by neoliberalism, primarily the urban poor, welfare claimants, minorities, and offenders as the excluded 'other' (2001, p195). Within this context probation has been *forced to adjust* to reflect the latest political, electoral, and penal realities which have been emerging since the 1970s. Choices have been made which incorporate punitive retaliation and acting out to maintain the rule of law, social order, and control. These choices have not been inevitable but more likely because of late-modern conditions and the problems they spawn. But 'what if' and 'if only' other choices had been exercised in the direction of more integrative social policies to reduce structural inequality (Wilkinson and Pickett, 2009), rather than hardening the state's penal arteries? What if and if only probation with greater determination resisted modernising overtures by defending its core values, organisational ideals, and professional integrity. Why has probation allowed itself to be turned over within such a relatively short period of time into a spectre of its former self? Why have respected social workers of the courts allowed themselves to be manipulated into punishment workers, when other judgements could have been formulated, decisions made, and actions taken?

Has the organisation been ethico-culturally transformed beyond all recognition? *This was the question I posed in 2009 before the revolutionary transformations of 2010-2015* (2010, p160).

There is evidence in chapter 5 to suggest that the “Northtown” probation service had an ally amongst some court clerks, magistrates, solicitors, barristers, and judges circa 2006/07, but didn’t realise it. These local relationships could have been cultivated to re-shape events; a new twist to multiagency working. Instead, my research was perceived as a threat by some of my senior colleagues, rather than a source of support in what were difficult operational circumstances.

### **Theorising probation and criminal justice**

I have exposed the under-theorised domains of probation and criminal justice to theoretical excavation, to illuminate politically induced empirical complexity. As noted earlier, social theory constitutes an essential tool in scholarly activity to explore and analyse features of social phenomena, including institutional practices. The theorisation of criminal justice cannot support a single interpretative approach, any more than crime can be theorised by resort to one criminological theory. Accordingly, theories constitute the “conceptual means of interpreting and explicating information. They come into competition only when they offer alternative and incompatible explanations of the same data” (Garland, 1990, p13). The theoretical spine of this monograph, in conjunction with its empirical content, construct the intellectual resources to analyse and critique discrete periods of modernisation and transformation within the criminal justice system, with particular attention directed towards probation. Those modernising forays of new labour from 1997 to 2010, followed by the rehabilitation revolution imposed by the coalition government between 2010 and 2015, are bathed in clearer light by the application of social theory, the religio-personalist tradition, and penetrating lens of moral economy. In pursuing this approach we are confronted with the distance travelled from the probation and civilisational ideal (see chapter 3). A sequence of political convulsions has exacerbated organisational dissonance beyond anything envisaged by Harris (1980), and distorted its distinctive

historical contribution to the dialectics of criminal justice (see Whitehead, 2015b).

Probation represented a discernible configuration of governmental supported approaches and values. Of course, the supporting Keynesian social-democratic dispensation wasn't perfect, there was no golden age, but it was intellectually and morally different to what currently exists after repeated bouts of modernisation and transformational incursions. Governmental intervention since the 1990s has pitched economics before ethics, markets before morality, to establish the organisational logics of neoliberalism. The former reproductive mechanisms of symbolic efficiency - the probation ideal (Whitehead, 2015b, pp34-35), rehabilitative ethic, personalism, inclusive citizenship, an aversion to punishment and prison – have fractured under the weight of the market state. According to this monograph modernisation and transformation, the raw constituents of a forceful political act violently imposed *from above*, have constructed a multifaceted organisational phenomenon, elucidated by condensing the aforementioned extended grid of intellectual resources:

- The articulation of heightened emotional responses through expressive punishment, acting out, and displays of sovereign power as a symbolic spectacle of reassurance in the fight against crime (Durkheim).
- From the individual offender as the primary unit of analysis, to controlling aggregates of risk. Greater emphasis on bureaucratic management, 3Es<sup>4</sup>, VfM, procedures, processes and impersonal systems. National Standards, business audits, targets, computerisation, NOMS and contestability (Weber).
- Probation implicated in government's punitive strategy directed against the poor. Forced integration into, rather than instead of, the repressive capitalist state apparatus that it reflects and reproduces (Marx). Probation's reconstruction by fearful competition, privatisation, and marketisation.
- The offender manager casts a disciplinary and normalising gaze over offenders, the eye and ear of the regulatory state. Deviant populations have their minds and bodies cognitively redirected to promote

compliant citizenship. Accredited programmes, such as Think First, induce *normal* thinking through social and problem solving skills conducive to docile behavioural drills (Foucault).

- The Lacanian/Žižekian conceptual framework can be applied to organisational analysis and critique (as well as human subjectivity), illustrated in the single case study of probation. Under the Keynesian dispensation, probation and criminal justice were components of the post-war welfare state and supported a rehabilitative ethic. Under the neoliberal order, probation has been jettisoned out of the *Symbolic* order and accompanying accoutrements of symbolic efficiency, into the capitalist *Real* by the forces of privatisation, marketisation, and competition. Payment by results is the material signifier of the new politico-economic, ideological and material, dispensation.
- Religion, personalist impulses, and a moral economy of humane sensibilities combine to work with offenders within the context of social work *relationships*. Provision of support and help for personal and social problems, rather than punishment. A distinctive set of attitudes and values promote respect for persons and treat people as ends not means. Helping strategies to promote rehabilitation remain a feature of NOMS, although less in evidence than formerly (see chapter 3).

Remaining with the last facet immediately above, there are scattered deposits of hope in probation and the 21 CRCs, a vestige of muted voices, rather than organisational resistance and opposition to modernising transformations (see Mawby and Worrall, 2013; Deering and Feilzer, 2015; Cowburn, Duggan, and Robinson, 2015; Whitehead, 2015b, chapter 5). But these deposits are not taking on the forces of modernisation, but desperately co-habiting, trying to cling on and survive in the interstices of a state-driven hegemony. Probation must excavate its history (Whitehead and Statham, 2006) to re-connect with its distinctive ideological resources to move forward in conjunction with the CRCs. The impedimenta forced onto probation and, in turn, the criminal justice system, flushed to the surface by the theoretical construction of this book, must be systematically dismantled to return to reasoned debate on

ethics, criminal and social justice. This is why the rediscovery and reassertion of a probation historico-ideology is so urgent and vital.

Ideology constitutes a set of beliefs, axiological commitments, value orientation, by which to transform and transcend our current neoliberal predicament, not simply cohabit in the new order of things. Ideology, not in the sense of distorting reality, but fundamental beliefs and values by which to restructure the macro political economy, the organisations of civil society, and human subjectivity (see Winlow et al., 2015). My earlier work on *reconceptualising the moral economy of criminal justice* (Whitehead, 2015b) advances the intellectual resources to construct an ideology to resist and transform, not collaborate with our current predicament. In other words, to build our way out of raw nature, and the penetrative encroachment of the *Real*, toward ethics which constitute the renewal of vision in a good and just society. Ideology transcends the present after a sustained period of disavowal at the injudicious hands of modernisers and transformers. This is, as a matter of logic, a basic requirement in a people-facing organisation and moral leadership is required to defend vigorously probation, not collaborate with the principalities and powers of the age. Moral leadership is urgently required to stimulate a moral core that dispels the moral void left by the mutilators of an honourable profession.

What is swirling around beneath our feet, violently erupting from below the surface of the criminal justice system, is a vortex of exchange relations, material signifiers, fearful competition, and the new orthodoxy of privatisation. The generative core of the neoliberal market state has reconfigured organisational rationalities and probation is a notable scalp. If we despair at the construction of the new order of things it is urgent and imperative to *transform* the criminal justice domain, not piece-meal reform by tinkering at its operational edges to enhance effectiveness or efficiency. Specifically, it is in the realm of politics proper where we need to raise basic questions of ethics and moral obligation that, in turn, has implications for the renewal of organisational life. With this in mind a case can be made for more advise, assist and befriend and less punishment and prison; more attention to ethics and less to the material priorities of the market state; more intrinsic right and good than utility at the political and organisational level. It is in the realm of

politics where we must urgently decide what kind of society we want to construct, its defining anthropological characteristics, and the organisations we want to sustain it. This will involve the demanding task of forging a rapprochement between politics, ethics, and justice, systematically eroded by successive governments, specifically the Ministry of Justice.

## **Epilogue**

Probation, at its idealistic best, its most exalted and fondly remembered – perhaps this was always its promissory note to the criminal justice system – was located at the epicentre of a human drama of offending behaviours. It was anxious and curious about the fracturing of the Symbolic order, debilitating acts of theft and burglary, and the preparedness of some citizens to inflict serious damage on others. Probation offered to understand and explain the repertoire of behaviours through exercising its existential, aetiological, and hermeneutical skills, and flexing moral responsibility towards offenders, victims, courts, and the local community. But this responsibility has been eroded by a sequence of politico-economic convulsions. Probation has been roughed-up, knocked-about, coerced into line to reflect and reproduce the ideological and material contours of the neoliberal order of things. Modernising monstrosities and transformational traumas constitute the blunt instruments of reconstructive organisational surgery. Incontrovertibly, the political elite botched the operation by the repeated excision of what was of inestimable value to the criminal justice system. Its blunt-edged scalpel hacked away at healthy organisational tissue, assaulted its vital organs and, in turn, destabilised the arterial flow of justice. The extended theoretical construction of this monograph adds academic weight to this contention.

A series of hinges to promote critical excavation are 1979, 1992-93, 1997, 2001 NPS, 2003 NOMS, and the misnomer of the rehabilitation revolution from 2010 to 2015. 2015 signals the final, or latest, phase in what is a long project of ideological and material reconstruction that began in the 1970s. Since then the generative core of capitalism, previously insulated by the regulatory jacket of Keynesian social democracy, represented in the criminal justice system by probation, has expanded and penetrated. This is the transition from Keynesian to neoliberal governance; nation state to market

state. The anti-ethical *Real* has fractured the contours of symbolic efficiency. We must lament this historical event and express concern at its present and future consequences.

The probation system, or what remains of it, in conjunction with the 21 Community Rehabilitation Companies, has a duty and moral obligation to transcend the politics of imposition and embed the civilisational ideal in the criminal justice system. But it cannot do this unless and until it also exercises the duty and moral obligation to challenge a political economy which has released a-moral forces into the system, starkly manifested in the erosion of the probation service. Unless this debate is enjoined; unless we proceed from piece-meal reforms that tinker at the edges to radical transformation; then more of the same will ensue between 2015 and 2020.

## Notes

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<sup>1</sup> Some years ago I located what were referred to as different models of probation on a care-control continuum (Whitehead, 1990). First, a number of *academic models* from the contributions of Robert Harris (1977 and 1980) at the care end of the continuum, to Griffiths (1982a and 1982b) at the control-punitive end. Additionally, I introduced a *bureaucratic model* associated with the Statement of National Objectives and Priorities (Home Office, 1984), and made reference to a National Association of Probation Officers *professional model*. Finally, a *local area service model* of probation practice.

<sup>2</sup> The introduction of an objective-driven and later target culture into the public sector during the 1980s and 1990s, continued after 1997, elicited numerous comments in the national press which can be illustrated as follows. First, we were told that a consultant gynaecologist quit the NHS “over the tyranny of targets and tick-boxes” (Daily Mail, 8.6.2006). Second, Simon Jenkins, in the Sunday Times on the 24.9.2006, headlined his article with the words “Set a silly target and you’ll get a really crazy public service”. Jenkins explored targets in education and the NHS, arguing that a public service and professional ethos have been replaced with a target-driven culture imposed by central government with adverse effects. Next, Peter Riddell, in an article on treasury targets in The Times on 19.7.2007, exclaimed that “No one will miss targets when they’re gone”. The next two examples begin to raise deep concerns about the effects of targets when we read, The Times again: “Children taken from parents and adopted to meet ministry targets” (24.8.2007). Also, the Guardian on the 3.4.2008: “Police criminalising young to hit targets, says charity”. Sixth, the Guardian stated on the 19.3.2009 (the G2 section) that “A hospital is able to tick all the boxes, yet still utterly fail patients”. Finally, for a critique of targets in probation see: Whitehead, 2007, Chapter 2, pp39-46.

<sup>3</sup> Castellano and Gould (2007) refer to three types of justice: procedural, distributive, and restorative. Where the first two are concerned it is argued that procedural justice refers to the processes and procedures adopted by organisations by which disputes are resolved. Therefore, within a criminal justice context it may be suggested that the dilution of discretion and autonomy, particularly within the probation service; in addition to putting the procedural emphasis upon the fast delivery rather than standard delivery report, may not enhance the cause of criminal and social justice. Furthermore, distributive justice alludes to the economic system and the equitable distribution of material resources throughout society (which relates to the arguments advanced in Wilkinson and Pickett, 2009, already considered and referenced in this book).

<sup>4</sup> During 2008 and 2009 the Ministry of Justice made it clear in numerous documents that budgets will be cut during the next three years. Where the probation service is concerned a Briefing Note compiled by Harry Fletcher (National Association of Probation Officers, 2009)

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made the following observations in response to Ministry of Justice projections. The probation budget for 2008/2009 was £914m; for 2009/2010 it should be £894m; subsequently there will be a further reduction of £50m in 2010/2011 and a further £50m reduction in 2011/2012. Therefore, by 2012, the probation budget will be £794m which constitutes a total reduction of £120m. Significantly, the Briefing Note provided a breakdown of the implications within 30 area services and it was summarised that “The consequence of the cuts are dire and coupled with the recession are likely to have a major impact on crime. The average cumulative cut is about 20%, and therefore most areas will have to cut frontline jobs” (p6). Harry Fletcher, on behalf of NAPO, concluded that the probation service faces “meltdown if the current cuts go ahead and crime soars in the recession” (p11). These could be the conditions in which the third sector will flourish in the criminal justice system. This was before the transforming rehabilitation events of 2010-15 and the privatisation of part of probation through creating the 21 CRCs.