

**‘SHINE LIKE A JEWEL’**  
**Kantian Ethics, Probation Duty, and Criminal Justice**

**Abstract**

Since the 1980s the criminal justice system in England and Wales has been recalibrated by the ideological and material forces of marketisation and competition. Specifically, the probation duty to advise, assist, and befriend has been eroded by the instrumental functions of punishment and prison. These profound transformations have undermined the ethico-cultural foundations of criminal justice, indexed clearly in the privatisation of probation services between 2010 and 2015. The original contribution of this article draws upon Kantian deontological ethics to critique these events and to re-energise the moral coordinates of government policies and organisational practices. It confronts the current orthodoxy with the unconditional moral demand of duty and moral obligation.

**Key words: Probation, justice, duty, ethics, moral obligation**

**Introduction**

With discernible stirrings in the 1980s, gathering momentum through the 1990s, before culminating in the Rehabilitation Revolution of 2010-15, criminal justice in England and Wales has been systematically recalibrated by the instruments of economy and efficiency, quantifiable targets and measurable outcomes, punishment, prison, and bureaucratic rationality. These features have congealed to impose a paradigm shift in governmental responses and organisational practices, indexed most notably in subjecting probation to the ideological and material signifiers of privatisation, marketisation, and competition. The urgent, vital, and original purpose of this article advances the proposition that the historical conventions of probation ought not to be fragmented by an instrumentally-driven operation to

achieve fiscal efficiencies, provide investment opportunities to the commercial sector, or become the subject of governmental will to power over troublesome populations. The substantive reason for this proposition is that probation work, in conjunction with youth justice, health, welfare, and educational provision, is *people-facing*. In other words, its essential composition is I-thou relations (Buber, 1970) not I-it functions. Organisations that work with people as their primary rationale are confronted with *what* to do as well as *how*, which provoke existential moral questions that transcend instrumental utility. Accordingly, there is a fundamental distinction between what is functionally useful and fiscally responsible, from what is intrinsically morally right. **This distinction has been blurred over recent decades.** Within the scope of this article people work with offenders includes probation services and community rehabilitation companies in England and Wales, ineluctably entangled with the coordinates of **Kantian inspired** personalist sensibilities (Mounier, 1952), symbolic conventions, ethical demands and responses.

A supporting contention of this article is the under-theorisation of the criminal justice domain (see XX 2015a, 2016 forthcoming). To rectify this deficiency I proceed through an exposition of moral philosophy with Immanuel Kant (1724-1804) to forge a thematic association between deontological ethics and probation duty, of which the latter was legislatively established in 1907. This was sequentially engraved in historical and cultural conventions through four substantive documents (Home Office 1909, 1922, 1936, and 1962), and **inculcated into practice.** Next, I proceed into the crisis decade of the 1970s and the path of duty abandoned, informed by **returning to** the Home Office *Review* (1977), Haxby (1978), and the pertinent insights of Robert Harris on moral dissonance (1977, 1980). I also apply Kantian ethics to critique 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. Specifically, this article maps the discernible shift in organisational rationality from the moral category of advice, assistance, and friendship, to delivering expressive and instrumental forms of punishment in the community. This empirically verifiable transformation constitutes a significant volte face that has serious implications for the dialectics of criminal and social justice. I will suggest that Kantian ethics foregrounds salient concepts of significance, a vocabulary of interest, to analyse, critique, but also to confront a recent history of moral erosion imposed by successive governments. Essentially, this article 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 urgent and timely to address these matters, particularly after the revolutionary turbulence of 2010-15, and it is necessary to begin by establishing the theoretically abstract platform of Kantian ethics.

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

Although Bertrand Russell (1946) was reluctant to endorse the judgement that Kant was the pre-eminent modern philosopher, he ascribed historical importance to deontological ethics (from the Greek *δέον*/deon interpreted as 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, asserted that the state was confronted with the necessity to impose morality onto self-interested human beings. Later, Shaftesbury and Hutcheson expatiated on 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 relief what is useful according to contingent **political and economic** conditions and what is intrinsically right or good (see Schneewind, 2003, for a detailed exposition on **these different** 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 (Schneewind, 2003: 651). Accordingly, 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 with some justification that 'Kant stands at one of the great dividing points in the history of ethics' (MacIntyre, 1967: 190).

The *Groundwork* is theoretically and philosophically complex; for Eagleton (2009: 113) decidedly curious; but Kuehn unhesitatingly endorses a 'most impressive work' (2001: 283). It is not within my purview to critique its central metaphysical and rationalist contentions (see Eagleton, 2009). Rather, I want to extrapolate *concepts of significance* that can be applied to probation work, transformations in criminal justice conventions, **which are also applicable to other people-facing organisational domains**. The *Groundwork* has three main parts and I am indebted to MacIntyre (1967) and Ross (1962) for the following reconstruction:

- Passage from ordinary rational knowledge of morality to philosophical
- Passage from popular moral philosophy to a metaphysics of morals
- Passage from a metaphysics of morals to a critique of pure reason

To repeat, the central objective formulates a metaphysics of morals. In doing so, 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 rather than teleological significance. It requires no qualification, nor can it be added to something else to produce bad results. Then, in a statement of considerable import that is central to this article, it is explained that 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 *italics added*). Kant acknowledged that the human condition during the Age of Reason was 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 Odyssean 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 philosophically abstract and 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 that should be noted briefly. Hegel found it too formal and abstract (Pinkard, 2000); Eagleton (2009) is bemused; and Schweitzer (1929) cogently 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 Kant's 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 objection to take seriously is that Kant's *a priori* moral consciousness is one of history's naïve assumptions, a metaphysical conjuring trick in its mysterious relation with the functioning of human reason and cognitive categories. Accordingly, transcendental materialism (see Hall, 2012) confronts **the naivety of transcendental idealism** by advancing an understanding of morality that is not some fixed component of our cognitive apparatus, but inextricably entangled in the configuration of drives, **desires, and ethical evaluation by ideology**. Copleston did not refer to this 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 politico-economic conditions and historical contingencies. 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 philosophico-theoretical 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.

### **From Kantian philosophical abstraction to concrete probation duty**

I have not **discovered** any qualitative empirical evidence to suggest that the law-makers in **1907, the Home Secretary Herbert Gladstone, or any of 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 that came to power in 1906.** But duty, a salient Kantian moral concept, resonated with probation practice from its inception. It is unnecessary to reconstruct the early history of the probation system (see **Mair and Burke, 2012**; Vanstone, 2004; XX and XX, 2006). By contrast, it is appropriate to cite Section 4 of the *Probation of Offenders Act, 1907* which 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 interest to note that the probation system was established *instead* of punishment, prison, and financial



penalties. It was also an alternative to industrial and reformatory schools for juveniles. Significantly, the system was structured by a relationship of influence between the probation officer and probationer that enabled specifiable duties to be undertaken. These duties were subsequently engraved into **policy and practice** during the next few decades (see XX and XX, 2006: 25-47 for a summation of relevant documentation).

It should be clarified that although duty is central to the primary legislation, probation was not constituted by, nor solely operated to, Kantian deontological ethics. There has always existed a complex set of arrangements between its original religious mission, construction as a state-directed practice, and the controlling interest of the Home Office (**since May 2007 the Ministry of Justice**). 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 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 restating that probation duty was for several decades a central component of settled criminal justice and penal-welfare conventions (Garland, 2001). This settled convention was disrupted in the 1970s.

### **The path of duty abandoned**

Towards the end of the 1970s, Haxby observed that the 'probation and after-care service has never been free from change, but at present it is at a crucial stage in its development. Many changes have been imposed on it recently by legislation and administrative decision, and other changes are pending' (1978: 15). By splicing Haxby's assessment to the *Review of Criminal Justice Policy* (Home Office, 1977), it is **of specific interest** to reconstruct an era of transformative features that are worthy of historical notation:

- In 1966 probation became responsible for welfare posts in prisons.
- The Criminal Justice Act 1967 re-named probation the Probation and After-Care Service to reflect its expanding duties.
- Parole was introduced in 1968 which signified the ideological continuity with a prison system orientated towards rehabilitation, both during and beyond custodial release. Also, the Seebohm Committee presented an acute dilemma: if probation rejected proposals to become part of the re-organised local authority social service departments, it risked isolation from mainstream social work through closer identification with the penal system. By contrast, if it cooperated it risked assimilation, the loss of identity and autonomy as a separate service.
- The Children and Young Persons Act 1969 marked the apotheosis of welfare for young offenders that complemented the rehabilitative ideal, or penal-welfare that anchored adult criminal justice services. Probation assumed responsibility for social work posts in remand centres, detention centres, and borstal allocation centres.
- By 1970 plans were afoot to expand further probation responsibilities.
- In 1971 the Central Council for the Education and Training in Social Work was established under whose arrangements probation officers as *social workers of the courts* were trained, alongside local authority social work and psychiatric social work students.
- The Criminal Justice Act 1972 introduced the Community Service Order. Additionally, probation asserted its determination to retain its identity as a separate organisation in England and Wales.
- The Powers of the Criminal Courts Act 1973 **piloted** community service schemes in six probation areas.

- In 1974 IMPACT (Folkard et al., 1974, 1976) questioned the rehabilitative efficacy of probation practice, and Brody (1976) the deterrent effects of sentencing. The Younger Report on Young Adult Offenders accentuated debates over care and control and the future direction of probation work.
- By 1975 there was a worsening economic climate which restricted the expansion of probation, even though Probation Committees were given the opportunity to introduce community service schemes in their local areas.

The *Review* (Home Office, 1977) constitutes a site of historical interest for criminal justice scholars, managers and practitioners, but of greater interest is the tonal quality of its deliberations. Not only, in conjunction with Haxby, does it summarise developmental turning points in penal policy affecting probation, prisons, and the police in the years approaching and including the 1970s, it also provides insights into the philosophical and cultural platform of government towards criminal **and social** justice. Although the 1970s were increasingly afflicted by fiscal pressure in a more competitive global economy, policies towards criminal justice reflected economic contingencies *and* humanitarian concerns (Home Office, 1977: 3). The humanitarian dimension was manifested in Home Office support for probation work and corresponding attempts to reduce the prison population. It was acknowledged that custodial sentences have a deterrent effect, but they also inflict damage on young offenders and must be avoided where possible. Government policy towards, and organisational practices within, the criminal justice system were approaching the historical juncture when economy and efficiency, value for money, managerial and bureaucratic rationality, would assume greater significance than formerly. However, rehabilitation remained the hegemonic ideology if increasingly questioned by research; probation had a significant role in criminal and social justice; and the legal and moral obligation of duty articulated in 1907 remained intact. Robert Harris (1977, 1980) **enriched** Haxby's analysis that since the mid-1960s and following **the**

**comprehensive Morison report** (Home Office, 1962), the probation system had experienced bouts of rapid change and expansion. Crucially, the service was drawn towards the centre of penal policy that challenged its original mission and dissonance emerged at three levels. First, *moral dissonance* is the gap between the welfare ideology of personal social services, social work, probation practice, and the justice ideology of society. Second, *technical dissonance* is the gap between the task of reducing crime and the empirical failure to do so (see Brody, 1976). Third, *operational dissonance* constitutes **what was referred to as the care and control dilemma**.

Criminal justice and penal policy are complex matters, not least because they reflect and reproduce the interests of conflicting ideological and political constituencies. It is a field replete with contradiction, continuity and discontinuity, differences of degree and kind, and where strategic political posturing gets muddled with the objectives of criminal and social justice. The criminal justice system is forged by strategic political alliances, the election cycle, keeping an eye on public and penal appearances, ideological and axiological conviction across a wide spectrum of political, professional, and organisational interests. ‘What Works’ and the appeal of community rehabilitation contend with prisons that do and don’t work (see Crow, 2001). We also know that there has always been an uneasy alliance between the contrasting moral perspectives of care and control, welfare and punishment, rehabilitation, treatment, and justice, community orders and prison sentences, public sector probation, private sector solutions, and market driven operations. **These matters have been negotiated under different politico-economic and socio-ethical systems.**

Critically, attention to moral issues and ethical duty has not kept pace with political, legislative, economic, and administrative developments in the criminal justice domain.

Although these conundrums have become more acute over recent decades, Harris presciently sought a resolution at the end of the 1970s by separating the care and control function through creating two separate organisations. In other words, detach community corrections and the statutory supervision of court orders from the delivery of probation services. This would allow probation to become a court-based social work service to a disadvantaged section of the community. It would honour its moral obligation and legislative duty to provide help and support with accommodation, social security, employment, counselling services, enhance social skills, address personal and family problems. Harris qualified his resolution by clarifying that he was more interested in theoretical efficacy, rather than practical implications. **Nevertheless, and on reflection, I think his main concern was to preserve the caring and personalist tradition of probation work, as a manifestation of moral obligation which is of value for its own sake.** However, the proposals advanced were not implemented by the incoming conservative government in 1979, **which resulted in the path of duty being diluted.** This had serious implications during the 1980s and up to the present that can be reviewed briefly within the scope of this article.

### **Kantian ethics, probation duty, and moral disturbances: 1979-2015**

Caution is required when evaluating the nature and scope of criminal justice after 1979. There was no pre-emptive strike in the direction of the *great moving right show* (Farrall and Jennings, 2014; Hall, 1983) as the 1980s were an Indian summer of liberal consensus (Faulkner, 2014). Undoubtedly, there is evidence of seeping governmental interference, a more energetic political interest in performance and efficiency, the spreading attraction of market discipline, a growing disenchantment with rehabilitation and treatment. Although Mrs. Thatcher, as prime minister, positioned herself to the right of her first Home Secretary, Mr. Whitelaw, it is often overlooked that conservative governments throughout the 1980s

remained committed to reducing imprisonment (Faulkner, 2014: 139). There was more continuity with the tone of labour's *Review* (Home Office, 1977) than what transpired only a few years later with the outbreak of retributive punishment and prison expansion. Significantly, though, the duty to advise, assist, and befriend, a foundational moral and legal requirement since the 1907 Act, was **initially diluted and then finally deleted** after probation was manoeuvred to deliver punishment in the community by the Criminal Justice Act 1991.

The conditions of existence for the development of criminal justice, probation, and penal policy that provoked moral questions were transformed during 1992-97. Beginning in October 1993, Michael Howard announced his 27 point plan on law and order which **abandoned** the aforementioned liberal **penal-welfare** consensus. There is evidence of populist criminalisation, the deeper penetration of punishment and prison into criminal justice consciousness, and the emergence of harsher conventions towards offenders contingent upon the decline of professional autonomy and discretion. This prised open a moral void within the system, indexed by a politics of disenchantment towards probation. Populist punitive expressivism, managerial and bureaucratic aggrandizement, political opportunism, and the closer alignment of criminal justice with electoral politics, proceed beyond preoccupation with the moral foundation of criminal and social justice. This was a defining period when the structure of moral regulation was subjected to the politics of disavowal, imposed from above by governmental fiat, not emerging organically from within the system itself.

Students of criminal justice learn quickly that it is a field replete with paradox. When new labour came to power in 1997, intellectual assent was awarded to the empirical linkage between adverse socio-economic conditions and crime (see Home Office, 1977). But, at the same time, did not abandon the salience attached to punishment and prison under the

previous conservative dispensation. Helena Kennedy stated 'That Labour took the decision to continue Michael Howard's incarceration binge is one of the blackest marks against the government's record on social justice' (2005: 283). There was no relief from the new public management (Faulkner and Burnett, 2012: 168) and encroachment of privatisation. Probation was out of step with a modernising agenda that displaced old labour values of social work, personal social services, duty and moral obligation to deliver compensatory welfare services. Significantly, there was insufficient critical evaluation of the shifting intellectual and moral landscape, or implications of the legislative, administrative-bureaucratic, politico-economic, and ideological-material energies that had been released to re-configure the system (see XX, 2015a). Instead, a robust politics of centrally imposed power and control erupted in the formation of the National Probation Service (NPS) in 2001, followed by the National Offender Management Service (NOMS) in 2003-04 (Carter, 2003). The rationale for bringing prisons and probation together through NOMS was to improve end-to-end management, enhance performance and instrumental effectiveness, continue the efficiency drive, and to establish a platform of contestability that exposed criminal justice services to a mixed economy of public, private, and voluntary enterprises. This was later consolidated in the *Offender Management Act 2007*. Further reforms to NOMS were initiated during 2008-09 (Carter, 2007) to coordinate and commission all probation and prison services from the public, private, and voluntary sectors. This brings us to the threshold and defining period of coalition government between 2010 and 2015.

Content analysis of relevant documentation that began with *Prisons With A Purpose* (Conservative Party, 2008), culminating on the 29<sup>th</sup> October 2014 with the announcement on the 21 Community Rehabilitation Companies that privatised the bulk of probation work, reveal a discernible turn of events in the intellectual, moral, and material reconstruction of the

system. All relevant documents (see XX, 2015a for detailed analysis) refer to payment by results (XX, 2015b) that constitute the transference of fiscal risk from taxpayers to the new providers through a process of competition between the sectors. The emerging system is designed to address the prison population that has doubled since 1993, retributive punishment that displaced rehabilitation, reconviction rates that remain too high and costly, and excessive legislative activity that was a decisive feature under new labour. The principles of the Rehabilitation Revolution, emblematic of 2010-15, are public protection, punishment and rehabilitation, transparency and accountability, and the decentralisation of services (Ministry of Justice, 2010). The reform of public services and realignment of the public-private sphere is constructed as a key modernising and progressive cause, exemplified by competition, privatisation, and marketisation. Financial rationalisation, value for money, outcomes not outputs, target achievement, risk and reward, business models and commercial practices, constitute the system's central operating features. Consequently, the system is unrecognisable compared to the *Review* (Home Office, 1977) and the inchoate process of change during the 1980s. The past was a different place, intellectually and morally, compared to developments from 1992, after 1997 **during the new labour era**, and by the end of the coalition government in May 2015.

Restructuring and rebalancing have disturbed the dialectics of justice by eroding historical, ethical, and cultural conventions that found expression in the categories of duty and moral obligation. There is an absence of reasoned debate on the moral foundations of criminal justice to guide the system in its judgements and decisions. Unless the system has a determinate moral foundation, it is constantly in danger of being manipulated by contingent conditions and the politics of electoral calculation. The Ministry of Justice (2013) consulted on 19 questions appertaining to the Rehabilitation Revolution, but not one of these questions



addressed the foundational requirements of ethics and justice. Furthermore, although the *House of Commons Justice Committee* (2014) elucidated that the programme of reform would extend statutory rehabilitation to those sentenced to less than 12 months (additional 50,000 offenders); expose rehabilitation services to a diverse market of providers and new payment mechanisms; establish a new National Probation Service involved in public protection; and re-organise the prison estate; it remained silent on the interconnected thematics of morality and justice. On Wednesday 29<sup>th</sup> October, 2014, the decision was announced on the successful bidders for the 21 Community Rehabilitation Companies: Sodexo Justice Services in partnership with NACRO (6 areas), **Achieving Real Change in Communities (ARCC)** (1), Purple Futures (5), The Reducing Reoffending Partnership (2), Working Links (3), Geo Mercia Willowdene (1), MTCNovo (2), and Seetec (1).

These are the main features of system reconstruction since the 1980s that provoke intellectual and moral questions that urgently require an intellectual and moral response. There was evidentially a significant turn of events in 1992-93, little respite after 1997, and now the revolutionary enterprise of 2010-15 clamours for attention. There are accumulating deposits of disquiet posing serious questions of a moral nature, indexed most clearly in the *probation question* and its enforced decline as a source of ethico-cultural contestation to the forces of retributive punishment and prison. This is highlighted by eliminating the duty to advise, assist, and befriend from governmental policies and organisational practices, troublesome for a people-facing organisation. A case must be advanced to reanimate questions and issues appertaining to moral obligation. This can be pursued through engaging with Kantian deontological ethics, to alter the terms of debate and the ground on which it is conducted to wrest back the initiative from the modernisers and rebalancers who prosecute their case with revolutionary zeal. Before advancing this case, it is beneficial to be reminded of the Kantian

*concepts of significance*: a priori, good will, duty, motives, moral consciousness and obligation, moral law, ends over means, and respect for human personality.

### **Critical discussion**

There are self-evident differences between practical moral reason and instrumental reason; qualitative service outputs and targeted measurable outcomes; motives and consequences; the kingdom of ends and calculable means. These binary conflicts manifested within macro politico-economic systems; mezzo institutional arrangements; micro human subjectivity and interpersonal relations (Hall, 2012); reflect and reproduce moral philosophies differentially resonant of Kantian deontological ethics and Benthamite utility. Governmental approaches towards, and accompanying practices within, people-facing organisations – from probation, criminal justice and youth justice, to health, education, and welfare – can be structured by competing moral philosophies. This is pertinently illustrated by subjecting probation, criminal justice, and penal policy, to the lens of ethical scrutiny which empirically demonstrates the **ascent** of instrumental rationality. This article directs attention to the moral transformation of the duty to advise, assist, and befriend, to the recalibrated instrumental goal of punishment in the community and subsequent ideological and material developments through 2010 to 2015. That is, from *instead* of punishment and prison, to closer association with punitive delivery systems, expanding custodial provision, the utility of What Works, privatisation and marketised competition. Additionally, the punitive volte face of 1992-93 **was a significant turning point**, and the *Prisons-Probation Review* (Home Office, 1998) claimed that advise, assist, and befriend was no longer credible with the expectations of courts and transformations imposed by governmental fiat (but see XX, 2016 forthcoming). Specifically, the Acts of 1907 and 1991 constitute the legislative symbols of distinct historical, politico-economic eras, socio-moral conventions, organisational **rationale** and

responses. At the cusp of this transition Harris was troubled by the **turn taken by the criminal justice system in the direction of technical, organisational, and specifically moral dissonance.**

Extrapolating Kantian concepts of significance located in the *Groundwork* to politically imposed transformations in the organisation of probation and criminal justice, intimates three substantive points of theoretical interest for consideration.

### *Organisational a priori*

Although the pathway that culminated in the foundational legislation began in 1876 (XX and XX, 2006), the *Probation of Offenders Act 1907* established the legal *and* moral title deeds. S.4 specified the inchoate mission's *ought* in the duty to advise, assist, and befriend, consolidated between 1909 and 1962. The legislators inscribed a moral consciousness into the people-facing mission, illustrative of social and penal reforms undertaken by the reforming liberal government 1906-14. When making this assertion it is important not to ignore the complex politico-economic, social, and penological origins of probation. Young (1976), in a critical sociological essay on the early history of probation, argued that it emerged from within the middle class to stabilise the working class by draining away, or neutralising, recalcitrant threats to social order under an albeit reformed capitalist system. Probation officers and social workers were not left-idealist proto-revolutionaries agitating for the collapse of liberal capitalism, but inadvertently and unwittingly maintained it. This is a salient qualification to explanations of reform, constitutive of philanthropic and humanitarian impulses (Young and Ashton, 1956). Lurking below the surface of criminal justice reforming measures was a cunning exercise in strategic politics. Not so much to punish less but better (Foucault, 1977). Regardless of the interpretative weight attached to this dystopian reading, the 1907 Act legislated for moral agency in the duty to advise, assist, and befriend. Although probation's mission to the courts was not overtly informed by Kantian deontological ethics,

its thematic resonance created the opportunity to cultivate ethical conventions in contradistinction to the blunt instruments of 19<sup>th</sup> century retributive penalty. The moral **conventions** of probation were different to, and instead of, the attractions of punishment and prison. This ethical and cultural potentiality remained through the Criminal Justice Act 1948; *Penal Practice in a Changing Society* (Home Office, 1959); and the Morison report (Home Office, 1962). However, from the mid-1960s and into the 1970s there were accumulating deposits of moral dissonance that Harris correctly identified above.

As elucidated earlier, Kant's *Groundwork* advanced a metaphysics of morals that constituted an original contribution to moral philosophy during the seventeenth and eighteenth centuries (Schneewind, 2003: 651). He blended Continental rationalism with British empiricism to theorise that some knowledge is given *a priori* independently of experience. Extrapolated to and reconstructed within probation, the duty to advise, assist, and befriend was *a priori* in the sense that it is a matter of logic, theoretical and philosophical argument that work with offenders, including the 21 community rehabilitation companies, requires attention to moral conventions. Probation was established instead of punishment and prison, and moral obligation was prior to, and independently of, politico-economic developments that have instrumentally transformed the criminal justice system. In a people-facing organisation structured by I-thou **relations**, there was a foundational legal and moral principle of duty to others that was preserved through mutating conditions from 1909 to the 1960s. In other words, it was not added as an after-thought, it did not emerge after trial and error. Rather, it existed from the beginning and constituted a mark of difference within the operational dialectics of criminal justice responses towards people who offend. Probation duty was a moral category given legitimacy by a legal precept. Law sanctioned the conscious operation of moral obligation.

This is undoubtedly an abstract philosophical and theoretical reconstructive argument informed by Kantian ethics, transposed into the practices of concrete organisational life. But a dose of abstract theory is required to analyse organisational convulsions since the 1980s, the Criminal Justice Act 1991 that endorsed punishment in the community, the moral reverses of 1992-93 exemplified in punitive and custodial excesses, **and instrumental reasoning that has come to dominate the criminal justice domain**. Moreover, abstract theory can be put to work to critique the new labour dispensation after 1997, culminating in 2010-15 with the demise of probation by ideological and material forces indifferent to ethico-cultural and historical conventions. This constitutes a recent history of relentless instrumental assaults on *a priori* duty that has eroded the foundational structure of moral obligation for others. It recounts a process of *de-moralisation*, a story of loss, the erosion of a moral pathway with implications for justice, right, and good will (for a full discussion see XX, 2015a).

### *Organisational good will*

Organisational good will intimates the theoretical possibility of responses being intrinsically good and inherently right, rather than instrumentally useful. The duty to advise, assist, and befriend can be reconstructed as the definitive maxim constitutive of organisational good will. The delivery of social work and probation services to offenders *in extremis* may achieve ‘nothing’ of instrumental significance. It may not always be useful or calculatingly beneficial at preventing crime or reducing re-offending. Nevertheless, it can ‘shine like a jewel for its own sake as something which has full value in itself’. It is politically and organisationally conceivable that social action can be good in itself, a rational response to the demand of duty and moral obligation, of intrinsic worth in responding to the claim of the *other*. Nevertheless, a Kantian-inspired moral philosophy that appeared 'at one of the great dividing points in the history of ethics' (MacIntyre, 1967: 190), and thematically resonated with probation duty, has

been unceremoniously destabilised. This is evidenced in organisational good will to advise, assist, and befriend being diluted by a post-ethical and cultural politics of instrumental utility that elevates quantifiable outcomes above the intrinsic qualitative moral worth of service outputs. In other words, the Kantian inspired concept and moral category of organisational good will was displaced by new public management with its managerial and administrative logic supportive of the neoliberal capitalist order (XX, 2016).

### *Organisational ought*

The operating logic of people-facing organisations embodies the requirement to demonstrate moral features that transcend instrumental reason, fiscal inducements (as in payment by results), and will to power **over troublesome populations**. These organisations ought to bear witness to moral categories that have a permanently binding quality. In other words, a fundamental and foundational moral ought transcending contingent historical conditions, the perennial threat of political manipulation for questionable motives, and strategic governmental tactics that manoeuvre organisations for overt political purposes during the cycle of electoral politics. It is demonstrably the case that the moral ought of probation work has been systematically undermined, most notably by the material forces of privatisation and marketisation. It has been demonstrated that from the late-1970s, in circumstances of moral dissonance, the political process applied to probation and criminal justice did not support the organisational ought of moral obligation to the *other* advocated by Harris (1977, 1980). Whatever moral and organisational autonomy prevailed in probation during the early decades, were swamped by repeated waves of ethico-cultural repudiation. The ethic of duty, as a foundational organisational ought, became expendable. Kuehn (2001: 241), in his insightful intellectual biography of Kant, elucidates that he addressed three questions: what can I know (epistemology); what ought I to do (morality); what may I hope for (teleology)? It

is the second which is foregrounded in this article. Therefore, the fundamental questions for people-facing organisations are: what ought we to do; what is the right thing to do; rather than what is useful and politically expedient? Organisational engagement with the moral ought of duty and obligation directly challenges what has been established, increasingly since the 1980s, as the orthodox paradigm.

## **Conclusion**

Although this article is directly relevant for England and Wales, its arguments are pertinent for all national and international probation systems. Specifically, the *European Probation Rules* (number 13 refers to ethical and professional standards), in addition to the *Probation Institute*, articulate a codified system of ethical requirements that resonate with a Kantian-inspired perspective. Accordingly, probation work within the criminal justice system, including the 21 community rehabilitation companies, ought not to be recalibrated by the demands of fiscal efficiency, commercial opportunities, or governmental will to power over troublesome populations. People-facing organisations must accentuate the dialectic of instrumental function *and* moral responsibility, facilitated by due diligence to concepts of significance derived from Kant's *Groundwork*. Both sides in this politico-ethical debate must re-learn how to reason with each other. Nevertheless, this debate is confronted by a serious problem, which is the expanding platform of neoliberal capitalism. It is one thing to analyse, critique, and re-energise the moral components of people-facing organisations, but what of the broader picture? As well as organisational critique and the legitimate demand for moral reconstruction, what of taking forward political critique that confronts the debasement of the shining jewel and journey towards the civilisational ideal? What has been witnessed over recent decades is not solely the diminishment of the probation ideal, but rather a concerted political assault on the ethico-social realm (Winlow and Hall, 2013). Consequently, the

renewal of duty and moral obligation within the parameters of people-facing organisations cannot occur in isolation from a genuinely political transformation that systematically establishes a new ethico-cultural foundation for civil society. The neoliberal capitalist order neither facilitates nor sustains the argument and theoretical proposition advocated above. This constitutes a radical disjuncture, a contemporary manifestation of dissonance.

The former reproductive mechanisms of symbolic efficiency consisting of the probation ideal, rehabilitative ethic, the duty to advise, assist, befriend, and moral obligation, have been destabilised by exposure to forces indifferent to morality. The Keynesian nation state was replaced by the market state which has reconstructed organisational conventions according to the tightly packed isobars of privatisation, business networks, commercial transactions, investment opportunities, and competitive advantages, not foundational moral principles. Even though it is legitimate to argue for the resurgence of organisational ethics, it is undermined by structural limitations of moral indifference. This platform does not invalidate the burden of my argument, but it does present substantive limitations of scope.

Fundamental politico-economic transformations are required to renew support for the ethico-cultural and symbolic foundations of civil society. 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 must be made for more Kant and less Bentham; 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 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 and the organisations we want to sustain it. This will involve the demanding task of forging a new rapprochement



between politics and ethics. Kuehn's substantive intellectual biography of Kant stated that 'True morality is an ideal yet to be instantiated in the world, but it is the only ideal worth striving for' (2001: 286). Accordingly, rational statecraft has a duty to confront political economy with the moral and civilisational ideal that **shines like a jewel**, and incorporate Kantian concepts of significance into organisational life.

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