Social Theory and Probation: Exploring organisational complexity within a modernising context

Philip Whitehead, *Teeside University, United Kingdom*

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PHILIP WHITEHEAD
School of Social Sciences and Law
Teesside University, United Kingdom

Abstract

The probation system in England and Wales, an integral component of the criminal justice system for over one hundred years, has been in a state of considerable flux since the 1970s. Furthermore since New Labour came to power in 1997 probation has seen far reaching cultural transformations, a consequence of a process of modernisation which has generated organisational complexity. This being the case a textured analytical approach is required to explore but also to explain *what probation has become* during the previous decade. Accordingly bodies of social theory located in the work of Durkheim, Weber, Marx, and Foucault, in addition to what can be described as a Personalist ethic, will be put to work to analyse the contemporary probation domain.

Keywords

New Labour, probation, modernisation, social theory, religion, personalism, punishment

Introduction

The main purpose of this paper is to establish the position that bodies of social theory, in addition to an identifiable set of humanitarian and personalist impulses, offer a nuanced approach to excavating the contemporary probation service in England and Wales. Traditionally probation has been approached as a series of discrete events which, since 1876, can be plotted and described in an orderly and sequential manner. The main exponents of this approach can be found in the works of Joan King (1964), Fred Jarvis (1972), and Dorothy Bochel (1976). A second approach, more analytically penetrating than descriptive, is to subject the history of probation to a series of largely discontinuous ideological periodisations: 1876 to 1930s a theology of saving souls; 1930s to 1970s rehabilitation through

casework; 1980s alternatives to custody (McWilliams 1983, 1985, 1986, 1987). It is also possible to extend these periodisations by referring to punishment in the community during the 1990s, as well as more recent managerial and bureaucratic developments.

By contrast what is offered below is the application of bodies of social theory to account for *what probation has become* by its centenary year (1907-2007). Arguably this approach is required to account for the emergence of what can be described as organisational complexity and multi-facetedness, predominantly a consequence of modernising convulsions associated with New Labour reforms since 1997 (Whitehead, 2007). In fact modernisation has been at the heart of the change agenda within the public sector, illustrated by the statement that New Labour "has a mission to modernise, renewing our country for the new millennium" (Cabinet Office, 1999). Accordingly the education system, hospitals, economy, in addition to the criminal justice system, have all been the subject of modernisation processes. Moreover where the organisation of probation is concerned the theme of modernisation is associated with the creation of a National Service in 2001, expeditiously followed by the National Offender Management Service (NOMS) since 2003/04; a more punitive working environment; computerisation; stringent enforcement practices; managerialism and bureaucracy; and new community sentences provided by the Criminal Justice Act 2003 (Whitehead and Statham, 2006). Accordingly I begin the exploration with what can be described as a humanitarian and personalist perspective - the 'good guys' of the criminal justice system - not so much a social theory as a set of ongoing impulses which should be acknowledged even in the contemporary domain. Subsequently I turn to the big guys, namely Durkheim, Weber, Marx, and Foucault, with a view to establishing a set of theoretical tools which can be utilised to explore and then explain recent modernising developments and their associated complexities.

Humanitarian impulses – the 'good guys'

The emergence of the probation system a century ago, based upon an orthodox more than revisionist reading of its entry into the penal system (Raynor and Vanstone, 2002; Young, 1976), was associated with positive initiatives under a reforming Liberal government during the period 1906 to 1914. Following in the footsteps of 18th century Enlightenment reformers imbued with the quality of reason, probation has been constructed as a progressive, humanitarian, altruistic innovation, an outbreak of benevolence standing in opposition to the harsh Victorian prison. Accordingly it constituted an alternative to punishment and incarceration with its philosophy of advice, assistance and friendship, mediated by supervisory oversight in the community. It was also marked by evangelical endeavour in that the Church of England Temperance Society had been providing the inchoate system with Police Court Missionaries since 1876, in addition to

which religious organisations facilitated the probation task (McWilliams, 1983). The dynamic of religion had also been significant within penal reform long before the missionary forerunners of probation officers appeared on the late Victorian scene, for example John Howard and Elizabeth Fry (see Hinde, 1951; Young and Ashton, 1956).

If one peers through this benign lens of modified penal sensibilities underpinned by evangelical theology a number of features hove into view which, traditionally, have been associated with probation. Some of these features can be enumerated as working with individuals who offend within the context of humane relationships; understanding, mercy, and help; offenders as ends in themselves rather than being used as a means to an end; respect for persons and the irreducible worth of human beings; a concern not only for behavioural repertoires (*what* people do) but also an empathic *feel* for who they are which takes cognizance of complex personal needs and social circumstances. Accordingly such features represent a distinctive axiological orientation which probation has brought to the complex workings of the criminal justice system during the twentieth century. In fact these are the elements of a cogent ideology which have structured the relations of employees with their conditions of existence within the organisation.

Notwithstanding major changes affecting probation since the policy driven 1980s, its dalliance with punishment in the community from the early 1990s, and particularly the politics of modernisation since 1997 (Nellis, 1999; Whitehead and Statham, 2006), humanitarian and personalist impulses may have been attenuated but certainly not eradicated. Of course it is difficult to quantify the existence of such impulses within the culturally transformed probation domain. Nevertheless they continue to attract support from other criminal justice organisations illustrated by research undertaken with defence Solicitors, as well as more extensive research (Whitehead, 2007; and 2010 forthcoming). It is important to acknowledge that the Effective Practice agenda which evolved during the 1990s gives some credence to a personalist[i] axiology in support of working with offenders (Chui and Nellis, 2003; Gelsthorpe and Morgan, 2007). Furthermore the Ministry of Justice continues to advocate the provision of support to offenders in order to address the underlying causes of poor behaviour (2008), and the NOMS Strategic Business Plan lends support to values of respect and decency (2009). Probation may have been reconstructed by a narrative of punishment in the community, and experience periodic bouts of modernising transformations, but it continues to be encouraged to provide helping strategies to promote the rehabilitation of offenders.

Durkheimian expressivism and passionate outrage

At first sight it may appear inconceivable to juxtapose Emile Durkheim with probation matters, even though he directly addressed crime and punishment in

The Division of Labour (1984/1893), Two Laws of Penal Evolution (1899-1900), and to some extent Moral Education (2002). Nevertheless it is possible to suggest that part of the Durkheimian corpus draws attention to features which contribute to an analysis of what probation has become. Accordingly over recent years the probation service has come under the influence of a more intrusive politically driven penal policy, one feature of which is the rise of expressive forms of punishment with its heightened emotional tone. The primary subject of punishment for Durkheim is not so much the individual offender, but rather the whole social body in order to "maintain inviolate the cohesion of society by sustaining the common conscience in all its rigour" (1984/1893, p63). In other words the emotional quality of the punitive response, with its expression of passionate outrage, is directed towards honest people to promote the bonds of social solidarity (Zedner, 2004, p77).

David Garland (2001) propounds that the late-modern crime complex (post-1970s) has responded to the predicament posed by an increased sense of economic insecurity, including rising crime, in three ways – adaptation, denial, and acting out. In fact contemporary crime control policies operate at two distinct levels which can be described as instrumental means to an end, and expressive-emotional end in itself. The latter, encapsulating a tone of condemnation and denunciation, has emerged as a salient feature of penal politics which, in turn, has the potential to draw probation staff into a cultural trajectory affecting thinking, feelings, and behavioural-organisational repertoires when responding to people who offend. Additionally this expressive tone is repeatedly fed by a rich diet of injudicious reportage in media outlets, sensationalist headlines responding to the phenomenon of crime which in turn drives government policies in a punitive direction. Even government ministers are not averse to passionate knee-jerk reactions exemplified by their emotional rhetoric rather than engaging in a dispassionate analysis of personal and social problems, of what lies beneath the latest ephemeral event or headline.

It is possible to provide examples of Durkheimian features enveloping probation practice illustrative of expressivism and acting out as follows. Firstly, and to set the scene, one of Garland's indices of penological change is expressive justice reflecting a heightened emotional tone which has disrupted the logic of penal-welfarism (2001). Secondly Mair's (2007) research on the Criminal Justice Act 2003 found problems with the Suspended Sentence Order which implicates probation in the up-tariffing of offenders, thus making sentencing more punitive (a perennial problem also acknowledged by Carter, 2007, p51). In other words this new sentence which has been available since 2005 is used more as an alternative to community rather than custodial sentences, and probation reports prepared for magistrates and judges seem to be contributing to this unwanted trend. Thirdly inappropriate recommendations in breach reports[ii] prepared by probation can have serious consequences for offenders. The Carter review of prisons (2007) found that the number recalled to prison for breaching licence

conditions increased from 150 in January 1995 to 5300 in August 2007. Moreover the number in prison for breaching a court order increased from 180 in January 1995 to 1200 in August 2007. In turn these factors are driving the custodial expansion[iii]. A review of recommendations contained specifically in breach reports is urgently required because it should be noted they can be prepared by Probation Service Officers (PSOs), rather than professionally trained and qualified Probation Officers (or Offender Managers as they have been renamed). Oldfield (2008) states in 2002 there were 4083 PSOs rising to 7247 in 2006, a 77% increase. This could be a significant factor requiring critical scrutiny within the contemporary criminal justice system where enforcement has received intrusive political attention and even encouragement since 1997. Fourthly it should be recorded how initial proposals by government on breach of community orders prior to the Criminal Justice Act 2003 included a mandatory prison sentence for a second unacceptable failure to comply. Moreover there was even an attempt to withdraw state benefits from offenders for a reported failure to comply *even before* a finding of guilt was established by a court by testing out the evidence.[iv]

It has therefore been stated that, with hindsight, it is difficult to see how government ministers and their advisers failed to appreciate that the imposition of punitive sanctions before establishing a finding of fact by due process of law not only undermined a fundamental precept of justice, but also amounted to being punished twice (Windlesham, 2003, p275). This amounted to putting political and punitive imperatives before fundamental considerations of justice, individual needs and circumstances, and the evidence. In fact what other reasons could there have been for the introduction of the Benefit Sanction which allowed a proportion of state benefit to be withdrawn for up to four weeks from an unemployed offender? This is tantamount to an additional punitive tax on the poor with its questionable efficacy to reduce further offending. The same question can be posed when thinking about pursuing a policy of zero tolerance, the three strikes legislation contained in the Crime (Sentences) Act 1997, and the language of the *war against crime* (see Simon, 2007 on the war against crime in the United States). These illustrations, it may be suggested, are constitutive of organisational and political responses at a visceral level which taps into a primitive emotional urge in the face of wrongdoing. Additionally such responses communicate a powerful message via government and the courts throughout the whole social body. In fact such measures present a "symbolic spectacle of reassurance" directed at the law-abiding majority (Pratt, 2007, p30).

Consequently the application of a Durkheimian theoretical framework to these developments suggests probation may be more involved in practices emotionally expressive, rather than adhering to dispassionate professional and organisational logics designed to control crime, provide help and support, and prevent the damaging effects of custody. Accordingly the organisation allows itself to become captured by the prevailing cultural zeitgeist of punishment for its own sake, doing what is expedient than what is right, a veritable conduit for the

rich and sometimes disturbing symbolism of gesture politics. This represents the dilution of its original historic mission as an alternative both to punishment and custody enshrined within the probation ideal (Whitehead, 2007). Indubitably the probation service is constantly under considerable pressure to demonstrate credibility with politicians, courts, and the wider public by resorting to punitive gestures in response to complex human problems within neoliberal regimes (Harvey, 2005; Wacquant, 2008). Nevertheless emotive knee-jerk reactions operate more at the level of political expedience (as in breach policy and removing a proportion of state benefit from unemployed offenders) than doing what could be deemed to be penologically effective, rational, helpful, or even evidence-based. Jock Young (2007, p40) discusses the expressivity of crime displacing its instrumentality. This is complemented by organisational expressivism fuelled by the politics of outrage and punitive vengeance largely directed against some of the most vulnerable people within society.

It can be argued that the growing involvement of probation in the politics of punishment is manifested in a much greater preoccupation with risk and harm; public protection; the punishment and control of offenders via tougher and demanding community sentences; and of course stricter enforcement arrangements. Consequently this is a retributive penal agenda, fuelled by punitive-populism, which has shifted the rationale of probation from caring control to punitive control (Burnett et al, 2007). Moreover all four tiers of the NOMS Offender Management Model incorporate some measure of punishment (2006). Therefore from the provision of advice, assistance, and friendship, to enforcement, rehabilitation and public protection, facilitates the message that crime is a key indicator of a deep seated malaise within society and that the punitive response contributes to reinstituting a sometimes fragile moral and social order. Whether it reforms or deters is not really the issue but rather the powerful message communicated throughout the whole social body from politicians and on through the media, courts, and in turn the probation service. Within this process it is offenders who become expendable subjects within a process resonating with Durkheimian themes where punishment is used to bolster the law-abiding through expressions of outrage and vengeance. The system may no longer involve itself in a Victoriana of hanging and whipping, but there is evidence of a punitive drift associated with New Labour after 1997 and before that with the Conservatives between 1979 and 1997. Indubitably the dominant expressive message is that *something is being done* about crime, but at what cost for the future cohesion and stability of the whole social body?

Bureaucratic technicians; Probation's march into the iron cage

Weberian themes have an appealing cachet when excavating the probation and criminal justice system. For example *verstehen* draws attention to an understanding of the individual as the primary unit of sociological analysis which

challenges the contemporary preoccupation with managing aggregates of risk. Verstehen is also pertinent when approaching debates within the natural and social sciences and whether the methodology of the former can be applied to the latter (Weber, 1968, volume 1, pp4-24). Then there's bureaucracy (1968, volume 3, pp941-1003) which is the focus of the following subsection.

Martin Albrow explains that the word bureaucracy is of 18th century origin and means rule by officials within organisations. The argument is advanced that bureaucracy constitutes the most efficient form of organisation, exemplified by precision, continuity, discipline, strictness, and reliability. For Weber himself bureaucracy is an inevitable process in the post-18th century Enlightenment world, and one of his concerns was to prevent it from accruing power to such an extent that "it controlled the policy and action of the organisation it was supposed to serve" (Albrow, 1970, p47). Within Economy and Society the defining characteristics of the Weberian ideal-type bureaucracy can be summarised as follows: a specialised division of labour where different individuals-officials undertake specialised tasks in pursuit of organisational goals; a hierarchical chain of command and offices, with higher offices supervising lower ones; actions of officials governed by rules and administrative regulations, so there is little scope for individual initiative, discretion, autonomy, even human feeling from one person to another; appointment to office is based upon merit; a clear separation of public role and private life; and uniformity of organisation replete with documents, files, and the knowledge of technical experts.

Weber advanced the view that a major feature of the modern capitalist world is the trend towards rationalisation. This conveys the meaning that it is planned, technical, calculable, and efficient, but also bereft of human feeling and as such can be described as the disenchantment of the world. In other words rationalisation damages "the magic garden of faith" and affections of the heart (Turner, 1999, p62; also see MacRae, 1974, p86). Accordingly bureaucracy may well be the most technically efficient form of domination in a modern, capitalist, industrial society, but personalism pays a heavy price. However it is necessary, I think, to differentiate *managerialism* from *bureaucracy* as analytical categories because the two are not necessarily synonymous with each other. This is because it is possible for managerialism to be a positive, creative, and arguably necessary construct within complex organisations which purport to work with people who have offended, even within those committed to the principle of verstehen. In other words management can be a facilitative force which can be utilised to empower staff to understand and help individuals with their needs and problems. Indubitably there is nothing to prevent managerial structures from supporting and complementing such an organisational orientation (Statham and Whitehead, 1992). By contrast it can be argued that facilitative management is different from, and can even slide into, bureaucratic inertia and it is the latter which is often portrayed pejoratively. This is because bureaucratic systems and structures, rules and regulations, impersonal procedures and processes, can be put before, almost

as ends in themselves, human-professional relationships and the initial mission or purpose of an organisation. Therefore these two approaches should be disentangled from each other, and we need Weber to remind us that the development of bureaucratic power should be prevented from controlling rather than serving the organisation.

On the back of the collapse of the rehabilitative ideal and accompanying social work rationality which supported professional training to establish requisite skills – building relationships with people who offend, engaging and working with the individual, probation officers exercising autonomy and discretion when formulating judgements and making decisions – the new rationality of the last decade has been orientated towards the efficient containment and control of risky populations. Consequently the language supplied by New Public Management (NPM) has transformed the professional probation officer with the potential for exercising therapeutic imagination, into a functioning bureaucratic technician accompanied by the relentless pursuit of economy, efficiency and effectiveness; achieving value for money; chasing politically imposed objectives and targets and the auditing of tasks. In fact the organisation has been modernised and culturally transformed into a business controlled not so much by professionals but civil servants and government officials since it was centralised and nationalised in 2001. Moreover it can be argued that a number of elements associated with the appearance of the National Offender Management Service (NOMS) in 2003/04 can be slotted into a Weberian bureaucratic framework. In other words the modernised business orientated organisation has become more *calculable* – a target culture emphasising quantification and measurement; *efficient* – maximum outputs for minimum inputs; *predictable* – the imposition of a blanket of national standards to curtail local variations; *controlling uncertainty* – reducing staff autonomy, discretion, and scope for individual judgements and decisions (Hough et al, 2006). Additionally human actions are increasingly replaced by computer technology which reduces opportunities for staff to engage with offenders in face-to-face interactions[v].

The current bureaucratic form of organisation, the modernised structure of domination, has inflicted a heavy price upon local area services and working environment for probation staff. Most staff join the probation service (and other people-orientated professions such as social work) to work with people labelled offenders and appreciate the autonomy to be creative and exercise imagination in what is demanding work in order to make a difference. Nevertheless they currently find themselves in a politically dominated and centrally controlled organisation with its authoritarian top down mechanisms of control; bureaucratic management rather than charismatic leadership; cogs in an expansive NOMS machine; a marketised and computerised working environment endorsing contestability between the public, private, and voluntary sectors; relentlessly pursuing targets and the latest centrally imposed policies in a much more routinised organisational culture which has attenuated the human dimension. The

iron cage of Weberian bureaucracy offers a theoretical framework to account for what probation has become in contrast, for example, to a personalist philosophy situating the individual and personal relationships at the centre of theory and practice. Probation was once an integral component of the personal and professionalised social services, but it has become a politically dominated and predominantly office-based bureaucracy in a business orientated environment. Therefore bureaucratic domination has high-jacked the original ideology of probation and constitutes the disenchantment of advising, assisting, and befriending.

Marxist punishment of sub-proletarian populations

Marx, like Weber, but in contrast to Durkheim, had little to say directly about crime and punishment (Tierney, 2006, p186). Nevertheless it is possible to identify a discernible Marxist tradition which is relevant to thinking about crime and punishment. Consequently this constitutes yet another body of theory, another analytical tool for exploring and critically excavating probation's complex and multifaceted undulations. This is the body of theory which explicates the view that economic change is a necessary condition of social change which, in turn, has implications for the operational logic of punishment (McLellan, 1986). At this point one can turn to Lucia Zedner who alludes to the enduring nature of Marxist analysis because it creates a framework for thinking about punishment as a governmental strategy "inherently linked with power relations, economic struggle, and social conflict…"(2004, p80). Accordingly it draws attention to the notion of class based justice in the way the existence of rules and laws, operating within the criminal justice system, promote the interests of the rich over the poor, strong over weak, thus maintaining the vested interests of the few over the many. It is helpful to expand upon Marx's economic interpretation of history by highlighting the often cited substructure-superstructure metaphor as the fundamental economic base and the dependant non-economic superstructure. The latter includes a society's legal and political institutions in addition to the education system, family, religion, and the criminal justice system, conditioned by the economic system and thus promoting the interests of those who own and control the means of production, distribution, and exchange. Therefore with these preliminary thematic points in mind I want to explore a number of perspectives which are located within the Marxist tradition, concluding with a specific reference to the probation domain.

During the early years of the 20th century Willem Bonger (1916) was one of the first criminologists to develop a Marxist analysis of crime. Even though Taylor, Walton and Young criticised Bonger (1973, pp222-236), Reiner (2007) adds a more charitable encomium by saying that such criticisms signally fail to acknowledge Bonger's position as a pioneer of the political economy of crime. According to Bonger's analysis crime should not be understood as a fixed or

absolute concept, but rather as a variable phenomenon. Additionally the structures of capitalism generate conflict and exploitation and were themselves criminogenic in the way they conduced to egoism and avarice. Consequently one of the key perspectives within the Marxist tradition is that the phenomenon of crime is rooted within, and can also be a response to, the organisation of capitalist social and economic arrangements, rather than an outcome of some essentialist pathology of the 'other' located in the individual (Young, 2007).

Rusche and Kirchheimer in Punishment and Social Structure (1939/1968) examine the relationship between the economic system, labour markets, and punishment. Therefore as changes occur within the political economy, so changes correspondingly occur in the nature of penality, a thesis advanced to support the contestation that economic forces *determine* punishment. This can be exemplified by saying that when labour power is plentiful, penal responses can be harsh, as in the late middle-ages when capital punishment was prevalent. By contrast when the demand for labour exceeds supply, the state is less disposed to exercise excessive punishments. Consequently the labour market determines the social value placed upon human life, and the form taken by punishment corresponds with the demand for labour. *According to this reading it is postulated there is no direct, unambiguous relationship between criminal acts and punishment. Rather the system of penality is involved, beyond the crime-punishment nexus, in controlling surplus populations (predominantly the poor) under specific economic conditions.* Rusche elucidates further by saying that

> the criminal law and the daily work of the criminal courts are directly almost exclusively against those people whose class background, poverty, neglected education, or demoralisation drove them to crime (Rusche, 1933, quoted in Garland, 1990, p91).

In fact a visit to any Magistrates' Court landing where one encounters offenders waiting to be sentenced adds weight to Rusche's comment.

David Garland (1990), and Barbara Hudson (2003) clarify there are diverse perspectives within the Marxist tradition, in addition to the economic determinants of Rusche and Kirchheimer. Pashukanis (1978), Hay (1975), Ignatieff (1978), consider the role of punishment within the politics and ideologies of conflicts and struggles between classes, and as a way of promoting the power of the state and hegemony of the ruling class. Therefore within this analytical framework it can be argued that the operation of the criminal justice system, of which probation and social work are constituent elements, function as part of the state's strategy for controlling the poor located at the margins of society, sub-proletarian populations who lack the rudiments of socio-economic security and who form the backbone of probation's caseload of nearly 250,000. Under capitalism and its contemporary manifestation within neoliberalism (Harvey, 2005; Reiner, 2007; Wacquant, 2009) certain sections of society are deemed to be

surplus to requirements; veritable social junk (Box, 1987); grit in the eye or an irritating stone lodged in the shoe; which the state through its penal agents both in prison and the community seek to manage, control, contain, but also punish and banish. It was during the late 1960s that radical criminological perspectives, influenced by Marxist theory, surfaced in the USA. Subsequently an outbreak of radical theorising occurred in the work of Taylor, Walton and Young (1973) who took issue with the prevailing orthodox consensus expressed in terms of its functionalist perspectives, scientific positivism, determinism, and predominantly individualistic explanations of crime. Arguably Policing the Crisis (Hall et al, 1978) provides a pertinent illustration of what such a "fully social theory" of deviance would look like, required by the sociologically holistic perspective of Taylor, Walton and Young.

Nevertheless the classic text to consider is Walker and Beaumont's Probation Work: Critical Theory and Socialist Practice (1981). After exploring probation practice in relation to court work, prison-based work, and the assimilation of new developments, the authors located their radical critique of probation within a Marxist analytical framework. They theorised that the organisation is involved in the reproduction of capitalist social relations, individualising crime, and promoting consensus within society which is basically conflictual. Consequently they asseverated that

> A fundamental conclusion of our analysis is that probation officers are paid to do a particular job for the state and that this role is generally supportive of capitalism (1981, p160).

Accordingly they advocated a form of socialist practice characterised by the following elements:

a) Defending clients from the worst forms of punitive excess within the criminal justice system; minimising the use of custody; and recourse to breach proceedings as a last resort;
b) The provision of help consistent with the position taken by Bottoms and McWilliams (1979) in their explication of the non-treatment paradigm;
c) Educational work and the provision of useful services to meet the varied and complex needs of clients;
d) Community involvement in addition to campaigning action for social change and also changes within the criminal justice system.

It should also be acknowledged that McWilliams (1987) identified three significant ideologies underpinning practice back in the 1980s: personalism; managerialism (both alluded to earlier); and a radical-Marxist approach explicated by Walker and Beaumont. Finally Barbara Hudson brings together the key

elements of the Marxist perspective when looking at the functions served by social institutions as

> regulatory (mechanisms to keep the system working), repressive (penalties for workers who do not accept the rules of capitalist production), and ideological (making workers believe that social arrangements which in fact serve the interests of the capitalists, are in the interests of all) (2003, p115).

Arguably market forces under neoliberalism have stranded sections of the community in pockets of relative deprivation, exemplified by an unequal distribution of socio-economic opportunities. These are the structural forces which marginalise and exclude, and by doing so inflict a form of "violence from above" (Wacquant, 2008, p24). They also continue to supply probation office waiting rooms, police cells, and court precincts, with a constant supply of offenders. Consequently, probation has been modernised and culturally transformed by material pressures emanating from neoliberalism and, in turn, a centralised and authoritarian state in pursuit of controlling its recalcitrant citizens.

Foucauldian discipline and normalisation

Within the Marxist tradition prison-based punishment, including probation reconfigured as a punishment in the community, are instruments of state power and repression directed largely against the urban poor. When turning our attention to Michel Foucault (1977) he appears more concerned with what is occurring *within* institutions under capitalist social relations, and the way in which power is being exercised (Hudson, 2003, p134). In other words a micro rather than macro level of analysis. Before developing this point an earlier section of this paper considered a progressive reading of probation. Similarly the argument can be advanced that there is a progressively utopian reading of broader historical developments since the 18th century Enlightenment which focuses upon the march of human reason and progress. These developments are encapsulated within the institutions of liberal democracy, the notion of individual rights, as well as the contributions made by the emerging social sciences.

By contrast Foucault presents the reader with a dystopian discourse of post-Enlightenment events, which leads us into the dark shadows where lurks a Nietzschean will to power and oppression, disciplinary regulation and subjugation, resonating with the Weberian march into the iron cage. Moreover the social-human sciences constitute new forms of knowledge constructed within power relations under specific socio-economic conditions, namely industrial capitalism. Rather than the social sciences emerging as a direct response to the human subject conceptualised as the "sole origin of meaning" (McNay, 1994, p5), this is postulated as illusory because the subject is instead a by-product of discursive formations linked to the politics of power and demand for social order.

Probation work can also be located within a dystopian realm at odds with, for example, those humanitarian and personalist impulses considered earlier. The probation officer works with individuals and families within a framework of disciplinary regulation and normalisation, as the eyes and ears of the regulatory state. An early review of the inchoate system talked about the provision of help and moral reformation (elements of the orthodox perspective). Nevertheless "there is always in the background the sanction of the penal law – the knowledge that the probation officer is the eye of the magistrate…". In fact the foundation legislation - 1907 Probation of Offenders Act - enabled the probation officer to exercise "a much stronger hold over the offender than the recognizance that was previously the rule" (Home Office, 1909, paragraph 13). Located in a space beyond the commission of the offence the officer of the court, who keeps magistrates informed of offenders' behaviour, casts a disciplinary and normalising gaze over all aspects of the probationer's life – thoughts and feelings, insight and awareness, how the commodity of time is being utilised, behavioural repertoires, recreational interests, friends and associates, hopes and aspirations, employment prospects and so on. Nothing should be beyond the all-seeing penetrating gaze of the state exercised through the court and more intrusively by its probation officials. If punishment under the ancien regime could destroy the body of Damiens (Foucault, 1977) it was the prison, and later probation, which could re-train and discipline minds and bodies with a view to reconstructing offenders into compliant citizenship.

Within this theoretical framework the point can be pursued that, since the late 1990s, Accredited Programmes attached to supervisory orders (for example the 'Think First' programme) have operated as mechanisms to inscribe *normal* thinking, problem solving, and social skills into probation clients. Accordingly probation, and accompanying programmes which bolster community sentences, do not so much address socio-economic realities (as the root causes of offending) as engage in cognitive restructuring to establish new behavioural drills conducive to docility. Offenders are therefore provided with the requisite skills to foster compliance with unpropitious personal and social circumstances, intellectually enriched to negotiate inequality, disadvantage, and the threat of prison exclusion if offending persists or if community orders are breached. Of course life can be extremely difficult, *but at least we have acquired the cognitive skills to handle it*, could be the position offenders find themselves in at the end of such a programme that means well but could alter very little.

Additionally Foucault's Discipline and Punish (1977) proceeds from what is going on inside the prison, out towards the social body, symbolised by the Panopticon. As was mentioned earlier the creation of disciplined, trained, and obedient bodies, was a necessary requirement for the capitalist-industrial machine. It should also be acknowledged that the techniques for examining the individual inside the institution – hierarchical observation and normalising judgment – turns the delinquent into a 'case', the observation of whom becomes an object of

knowledge linked to a regime of power. Furthermore the prison operates in a realm located beyond legal infraction, the sphere regulated by codified law. In other words normalising judgements are being made about forms of conduct which are not in breach of the prevailing legal code. It has therefore been pointed out that numerous judges of morality and normality exist – teachers, doctors, educators, social workers, judges, and even probation officers (Cousins and Hussain, 1984, p137). Probation officers may well be involved in the provision of much needed help and advice to offenders, but they are also involved with other institutions in disciplinary regulation and normalisation, including structures of domination, on behalf of the neoliberal state which has been fighting back since the 1970s (Saad-Filho and Johnston, 2005).

Conclusion

In a speech delivered to a trainee probation officer audience at the University of Portsmouth in February 2009, the Justice Secretary acknowledged the many cultural changes which have been imposed upon probation over recent years (Straw, 2009). These changes are illustrated by recourse to the language of offenders and criminals rather than clients; the marked shift from advice, assistance, and friendship, to disciplinary and punitive control; and probation as part of the modernised correctional machinery of a more centralised and authoritarian state rather than an extension of social services. Additionally it is now legitimate for persistent offenders to be punished with incrementally tougher sanctions rather than in proportion to the level of seriousness, an extra 20,000 prison places will be made available by 2014, and community sanctions must continue to shed their 'soft image' problem. The tenor of this speech is more prescriptive than analytical and so does not consider the implications of changes in policy gathering pace since 1997. By contrast this paper suggests that bodies of social theory, in addition to a remaining vestige of humanitarian impulses, offer an innovative approach to excavating the *becoming of the probation service* which has some analytical merit. One hundred years ago it was possible to make sense of the emergence of probation by recourse to an orthodox and revisionist perspective. The former is associated with religious and philanthropic features encapsulated in the adage to advise, assist, and befriend. The latter constructs probation as a state directed enterprise to discipline, control, and normalise the recalcitrant in a class divided society.

Now that the organisation has arrived at its centenary year a combination of philanthropy and Foucauldian discipline are analytically inadequate. It is therefore necessary to put additional theories to work drawn from the contributions of Durkheim, Weber, and Marx. None of the theoretical perspectives discussed above adequately explain, in isolation from each other, the emergence of probation since 1997 particularly. Instead it should be argued that all five perspectives which can be assembled into a *combined theory* are required

to capture some of the complex undulations of what is now a multifaceted organisation, operating at different levels, against the background of New Labour's modernising tendencies and accompanying cultural transformations. The implication of this is that probation officers (some of them at least) remain active as the 'good guys' of the criminal justice system who represent a distinctive axiological orientation rooted in personalist ethics. But they can also be involved in expressively punitive knee-jerk reactions consistent with a heightened emotional notation (Durkheim); function as bureaucratic technicians (Weber); punish and sometimes exclude the recalcitrant residuum, as a conduit to prison, under adverse material conditions located in neoliberalism (Marxist); and operate as disciplinary regulators and normalisers, the eyes and ears of the courts and increasingly centralised and authoritarian state (Foucault). If recourse to these disparate bodies of theory has any analytical cogency when explaining the development of probation over the last modernising decade, it may be concluded a state of confusion has emerged because of the lack of a coherent organisational rationale. This is because probation has become a theoretically and ideologically contested site of operations. Nevertheless it is also possible to consider that what at first sight appears confusing is, upon closer inspection, illustrative of a coherent logic which has seen the emergence of a more authoritarian, bureaucratic, and punitive state. Consequently an exceptional form of the state has demanded the modernisation of probation and criminal justice system to respond in a more punitive and exclusionary manner towards offenders under specific socio-economic conditions.

Finally, if this paper suggests a nuanced and textured methodological approach is required to elucidate what the National Probation Service has become, the same theories can be put to work to critique and explore future developments concerning what the essence of the organisation should in fact be[vi]. Accordingly we need a much better understanding of developments over the last decade before plotting a more rationally humane course into the future.

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Notes

i   Personalism is a concept with a long philosophical pedigree. Within a more scientific, technological, computerised society and bureaucratic working environment, personalism continues to emphasise the importance of human beings and relationships (Mounier, 1952).

ii   When offenders fail to comply with court orders (normally after two failed appointments) they are rapidly returned to court in breach proceedings. The court can either allow the order to continue with more onerous requirements since the Criminal Justice Act 2003; or revoke the order with an option to send the offender to prison.

iii   Carter (2007) says the rise in the prison population over recent years can be accounted for by the following factors: changes in public attitudes and political climate; changes in legislation and sentencing framework (66 pieces of legislation since 1995); more offenders brought to justice and sentenced by the courts (1,354,294 in 1995 and 1,420,571 in 2006 constitutes a 5% increase); offenders serving longer prison sentences; greater focus on the enforcement of court orders; a climate of risk, harm, and public protection.

iv   This point is linked to the second Note above because unemployed offenders who breach their community order, and who are therefore in receipt of state benefit, can have a proportion of their benefit withdrawn for up to 4 weeks. However it is important to acknowledge that this policy was terminated during the early months of 2009. For more information on the Benefit Sanction see: Whitehead and Statham, 2006, p201; also Windlesham, 2003, which is a discussion contained in Zedner and Ashworth (Eds).

v   Probation staff undertake different roles, one consequence being that some spend more time with people who offend than others. For example the office-based Offender Manager required by NOMS spends less time in face-to-face contact than staff involved in Accredited Programmes group work. It is estimated that many probation officers and social workers can spend up to 80% of each working day entering data into computers in their offices.

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