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Probation, Credibility and Justice[1]

Abstract

This paper explores the difficulties that arise for probation agencies or those that deliver community sanctions in developing and maintaining their credibility in prevailing 'late-modern' social conditions. It begins by questioning the limits of the pursuit and promise of 'public protection' as a source of credibility, and then proceeds to examine the emergence of an alternative strategy – based principally on reparation and 'payback' – in Scotland, arguing that these Scottish developments have much to say to the emerging debates in England and Wales (and elsewhere) about the 'rehabilitation revolution' and the proper use of imprisonment. The paper provides a critical account of the development and meaning of the Scottish version of 'payback', linking it to some important philosophical and empirical studies that may help to steer the development of payback away from a 'merely punitive' drift. In the conclusion, I argue that probation agencies and services need to engage much more deeply and urgently with their roles as justice services, rather than as 'mere' crime reduction agencies.

Introduction: Community Sanctions in Times of Insecurity

The times in which we live are tough times for community sanctions[2]. Historically, probation services in most jurisdictions have been preoccupied with the pursuit of rehabilitation – although the forms and functions of rehabilitation have changed in probation's different eras and in the different places where it has developed (McNeill, Bracken and Clarke, 2010). One important and helpful analytical distinction that can be made about rehabilitation concerns whether it is considered as an end in itself or as a means to another end. The French expression 'rétablir dans ses droits' captures well the notion of rehabilitation as moral purpose that we should pursue in its own right – that end being the full restoration to the formerly errant citizen of all of his rights (and responsibilities) (see Lewis, 2005). By contrast, contemporary penologists argue that in recent decades rehabilitation has been recast, particularly in the English-speaking world, not as an end but as a means or a mechanism for reducing crime (for example, see Garland, 2001). Such analyses tend to locate these developments within accounts of broader social changes associated with late or post-modernity. As Zygmunt Bauman (1997) has famously observed, the fundamental discontents of post-modern societies rest in their sacrifice of collective securities for individual freedoms. For penologists, the argument usually runs along the line that as social life has become more atomised, more individualised, more preoccupied with uncertainties and risks – basically more insecure – people have become more eager to look after themselves and their own and less tolerant of anyone cast as an alien, an outsider, a threat.

Within this context, it is no surprise that public protection has become a key priority and even a 'meta-narrative' for probation in some jurisdictions (see, for example, Robinson and McNeill's (2004) discussion of England and Wales and Scotland). Nonetheless, there are good reasons for

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[1] This paper is a written version of a speech delivered at a conference in Belgium which celebrated 10 years of the Maisons de Justice. That speech drew heavily on two earlier papers published in the European Journal of Probation (McNeill, 2009a) and in the Irish Probation Journal (McNeill, 2009b) I am grateful to the editors of both journals for permission to re-use some of this material here.

[2] The Council of Europe defines Community Sanctions and Measures (CSM) thus: 'sanctions and measures which maintain the offender in the community and involve some restriction of his/her liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose'. The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment' (Rec. (92)16 on the European Rules on Community Sanctions and Measures). When I refer to 'probation' in this paper, I am referring not to the specific probation order but to CSM in general.

having reservations about the term. To talk of protection seems to make sense in times of insecurity; perhaps probation's political position and its claims on public resources can be best legitimated by promising to manage and reduce risks and thus to enhance security. Certainly at a time when offenders are increasingly vilified, this might seem a safer pitch for probation than its traditional sympathy for and commitment to the offender. However, there is a paradox at the heart of protection and there are risks with risk. Whenever the promise to protect is made, the existence of a threat is confirmed and fear is legitimised and reinforced (Douglas, 1992). Similarly, when probation commits itself to the assessment and management of risks, it exposes itself not to the likelihood of failure, but to its inevitability. Not all risks are predictable and not all harms are preventable. Even being excellent at assessing and managing risks most of the time -- assuming that this could be achieved -- would not protect probation from occasional, spectacular failures and the political costs that they carry (Robinson and McNeill, 2004).

A further related problem with public protection is that it tends to dichotomise the interests of offenders and the interests of victims and communities in a zero-sum game (McCulloch and McNeill, 2007). It becomes not just a case of protecting 'us' from 'them', but a case of setting our safeties and liberties against theirs. For probation, this dichotomisation leads to a public and political pressure for more secure – for which we might read incapacitating – forms of control that serve, at least in the short term, to re-assure an anxious public. Probation's traditional mechanisms for generating protection or security are to be found in the support of long-term change processes. But these rehabilitative processes provide relatively little security and little reassurance in the short-term. So although changed ex-offenders who have internalised and committed to the responsibilities of citizenship offer a better prospect for a safer society in the long term, change programmes and services look somewhat feeble when set against the increasingly threatening offender that communities are taught to fear.

Leaving aside these political problems, there are other ethical and practical issues occasioned by the dominance of public protection. When probation accepts the lure of risk management and public protection, it preoccupies itself with things that may happen, with the offender's future behaviour, with potential victims and with the future impacts on communities of offending. There is a danger that the more that we preoccupy ourselves with these imaginaries, the less we concern ourselves with the real victims, real offenders and real communities that are with us now.

Moreover, although clearly it can be argued that it is *necessary* for probation services to ask and answer the question of what works in reducing reoffending and protecting the public, it is not *sufficient*. Probation services are not merely crime reduction agencies; they are justice agencies. As Herbert Packer (1993) observed, the pursuit of crime control stands in tension with questions of justice, due process and legitimacy; the rush towards crime control can compromise the pursuit of justice – social as well as criminal – especially when intense political pressure is brought to bear on the system[3]. In this respect it is important to recognise the vital role that probation services play not just in *rehabilitation* for crime reduction but in enabling constructive *reparation* by offenders – enabling them to pay back for their crimes. At the same time, and with social justice in mind, probation services retain an important role in advocating for offenders so that they can access the social goods and resources which so often they have been denied. Of course, it is inequality and the social *injustice* that it represents that so often underlies not just crime and offending but a host of other social problems (Wilkinson, 2005; Wilkinson and Pickett, 2009).

Against this backdrop, this paper aims to explore a central question for contemporary community sanctions agencies or probation services in any jurisdiction. In these tough times, is

[3] See, for example, Tony Blair's (in)famous speech on 'rebalancing the criminal justice system', 23rd June, 2006: http://www.guardian.co.uk/politics/2006/jun/23/immigrationpolicy.ukcrime1

the pursuit of effective crime reduction the only or best way to enhance the credibility of such agencies and services – or might it be better to prioritise the pursuit of a more constructive form of justice itself?

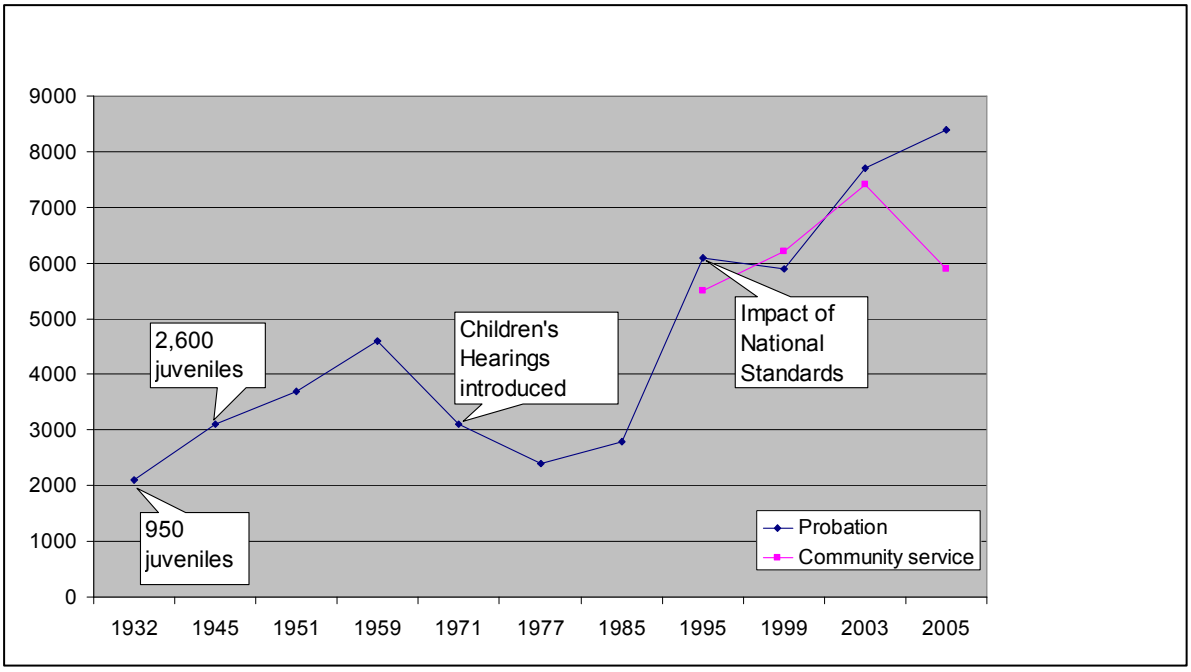
Scottish Community Sanctions: Problems and possibilities?

In trying to answer this question, it is instructive to reflect upon the Scottish experience of developing community sanctions – and to connect this experience to emerging debates in England and Wales about the 'rehabilitation revolution' and current debates there about the uses and abuses of short prison sentences. I have written elsewhere in some detail about the history of probation and criminal justice social work in Scotland (McNeill, 2005; McNeill and Whyte, 2007). In one sense, this is a story about the evolution of well-intentioned efforts to champion and to develop sensitive and credible alternatives to imprisonment. For example, one of Scotland's earliest probation schemes began in Glasgow in 1905 because of a serious concern about the numbers of Glaswegians being imprisoned for fine default. As a history of probation's first 50 years in Glasgow puts it, 'in view of the admittedly demoralising influence of imprisonment, the serious consideration of all was demanded concerning the welfare of the community' (City of Glasgow 1955: 9).

What is interesting about this quote, perhaps in contrast with the discontents of post-modernity referred to above, is its explicit recognition of the fact that the adverse effects of imprisonment on those who suffered it (that is, its *literally* de-moralising effects) were seen as constituting a threat to the welfare of the *whole* community. In many respects the quote evidences Glasgow's traditionally collectivist, corporate political and civic culture. To harm any part of the 'body corporate' was to harm the whole.

Although Scottish probation subsequently moved through various reformulations, when at the end of the 1960s Scotland integrated probation within social work services and created its distinctive system of Children's Hearings, these developments evidenced an enduring commitment to welfarism – to the recognition of the social context of crime problems and to the role of social educational approaches to resolving them (McNeill and Whyte, 2007). That said, an unintended consequence of the development of generic social work departments was the neglect of probation work, and decline in the use of probation reflected below in Figure 1:

Figure 1: The use of community sanctions in Scotland, 1932-2006



To address this neglect and decline, and under political pressures generated by prison riots and suicides thought to be related to overcrowding, the Scottish Office (then a department of the UK Government) in 1991 introduced ring-fenced funding and national standards for criminal justice social work services (SWSG, 1991). These mechanisms were aimed at enhancing the effectiveness, the credibility and the use of community sanctions in order to reduce the unnecessary use of custody. Figure 1 provides apparent evidence of the success of this initiative, showing a steep rise in the number of probation orders, as well as the successful introduction of community service. More recent figures suggest that around 20,000 community sanctions of various sorts were imposed in Scotland in 2008-09[4]; that is about ten times as many community sanctions as were imposed in 1932.

However, this 'success' is, in one very important sense, illusory – because Scotland's prison population has continued to rise. It now stands at about 8,000 prisoners (over 150 per 100,000), having been at less than 5,000 when the national standards were introduced in 1991 (and less than 2,000 in the 1930s). The explanation for this apparent paradox is complex (see McAra, 2008; Scottish Prisons Commission, 2008), but it is clear that the increasing numbers of supervised community sanctions have displaced not prison sentences but financial penalties, thus contributing to a 'dispersal of discipline', increasing rather than reducing the carceral reach of the state (McNeill and Whyte, 2007).

For the present purposes, perhaps the most important point to grasp is that Scottish community sanctions certainly became more credible, probably became more effective (see Paterson and Tombs, 1998), but manifestly failed to significantly impact on the use of imprisonment; indeed, since such sanctions often bring with them increased risks of default and potential net-widening effects, they may have contributed to the growth of imprisonment (see Scottish Prisons Commission, 2008).

This continuing prison growth motivated the Cabinet Secretary for Justice in 2007 to appoint a Scottish Prisons Commission to examine the proper use of imprisonment in Scotland. The Commission was chaired by Henry McLeish, a former Minister for Home and Health in the Scottish Office (pre-devolution) and later a First Minister of Scotland. The Commission's report, 'Scotland's Choice' (often referred to as the McLeish report), was published in July 2008. The key conclusion and central recommendations of the report are these:

> 'The evidence that we have reviewed leads us to the conclusion that to use imprisonment wisely is to target it where it can be most effective - in punishing serious crime and protecting the public.
>
> 1. To better target imprisonment and make it more effective, the Commission <u>recommends</u> that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a significant threat of serious harm to the public.
> 2. To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission <u>recommends</u> that *paying back in the community should become the default position in dealing with less serious offenders' (*Scottish Prisons Commission, 2008: 3, *emphasis added*).

The idea that a parsimonious approach to imprisonment in particular and punishment in general should prevail is not novel. However, the Commission's remedy for Scotland's over-consumption of imprisonment was innovative in some respects. Specifically, the Commission proposed a range of measures that it considered necessary to enact their second

[4] See http://openscotland.net/Publications/2008/12/09091001/2, accessed 25/02/2010.

recommendation and make 'paying back in the community' the 'default position' for less serious offenders. Although Scotland's penal history should lead us to question the extent to which the development of sentencing *options* changes sentencing *practices*, many of these measures speak directly to the nature, forms and functions of community sanctions – and particularly to their credibility.

Leaving aside the Commission's equally interesting and important recommendations around resettlement aside on this occasion, their report seeks to recast both court-based social work services and 'front-door' community sanctions around the concept of 'payback', which it defines as follows:

> 'In essence, payback means finding *constructive* ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, *one of the best ways for offenders to pay back is by turning their lives around*' (Scottish Prisons Commission, 2008: 3.28, *emphasis added*).

Several ways of paying back are identified here and elsewhere in the report – through restorative justice practices, through financial penalties, through unpaid work, through restriction of liberty (meaning in this context electronically monitored curfews) and, perhaps most interestingly in this context, through 'paying back by working at change'. Working at change in turn is linked to engagement in a wide range of activities that might seem likely to address the issues underlying offending behaviour (drug and alcohol issues, money or housing problems, peer group and attitudinal issues, family difficulties, mental health problems and so on). The report also recognises the need for offenders to opt-in to rehabilitative modes of reparation; their consent is required for both practical and ethical reasons.

In setting out a process for paying back, the Commission's report suggests a three-stage approach to sentencing. In stage one, the judge makes a judgement about the level of penalty required by the offence with information from the prosecutor and the defence agent. By implication, this is no business of social work, no business of probation; rather, it is a legal judgement about the appropriate level of penalty. But stage two considers what kind of payback, what form of reparation, is appropriate and this requires a dialogue not just between the judge and the court social worker, but one that actively engages the offender too. Most importantly for present purposes and with respect to both judicial *and* public credibility, stage three involves checking up on the progress of paying back; here, the report proposes the establishment of a particular kind of 'progress court' where judges who are specially trained to understand issues around compliance and around desistance from crime would have mechanisms at their disposal for handling setbacks and lapses without undue recourse to custody. This court would also have the power to reward compliance and positive progress through early discharge or the lightening of restrictions. Clearly this model owes much to the development of problem solving courts in many jurisdictions (see McIvor, 2009).

Though the Scottish Government accepted most of the recommendations contained in 'Scotland's Choice', the subsequent legislative measure – the Criminal Justice and Licensing Act 2010 – is much less radical than the Commission's report. That said, it does include provisions to establish a presumption against short-term prison sentences (of less than 3 months), a Scottish Sentencing Council (to promote consistency, develop policy and improve public understanding of sentencing), and new Community Payback Orders (CPOs). These orders effectively replace a range of community sanctions (including probation and community service) with a single order, in respect of which judges can choose from a range of conditions relating to supervision, residence, compensation, programmes, unpaid work, drug treatment, alcohol treatment, mental health treatment and conduct. Though this menu is similar to that

which applies to community orders and suspended sentence orders in England and Wales, perhaps the key difference rests in the title of the order. The Scottish Government seems to have signalled its acceptance of reparation or payback as the *defining* purpose of community sanctions and measures.

Payback, Public Opinion and Credibility

Returning to the question of credibility, around the time of the publication of 'Scotland's Choice', the UK Government published a report on 'Engaging Communities in Fighting Crime', written by Louise Casey. Casey's report sought solutions to perceived problems of public confidence in criminal justice in general and community sanctions in particular. The research evidence about public attitudes to punishment and to probation is, in some respects, complex (see Allen and Hough, 2007). First of all, there is no public opinion; there are different opinions from different members of the public; different opinions from the same people depending on what you ask them, how you ask them, what mood they are in and, probably, what has happened to them in the last 24 hours. Despite the broader context of insecurity alluded to above, there is evidence that it is something of a myth to suggest that 'the public' are universally punitive in response to offenders. Though most people tend to say that sentences are too lenient, if they are provided with case histories and then asked to suggest a sentence, they tend to sentence similarly to or more leniently than real judges.

With regard to community sanctions, ignorance is a fundamental problem. The most recent British Crime Survey (Jansson, 2008), for example, suggests that only 20 percent of people surveyed thought that probation in England and Wales was doing a good job. Allen and Hough (2007: 565) sum up the problem by quoting a focus group respondent who said simply: 'I don't think probation means anything to many people'. This is a common finding in many jurisdictions; people don't really know what probation is, they don't know what it involves, they don't understand what it is trying to achieve. Given this, problems of credibility and public support seem inevitable.

Casey's solution was another re-branding of community service, this time as 'community payback'. But Casey's concept of payback is quite different from the Scottish Prisons Commission's; it centres on making community service more visible and more demanding. She suggests that it should not be something the general public would chose to do themselves (in other words, it should be painful or punishing) and that offenders doing payback should wear bibs identifying them as such (in other words that it should be shaming). Contrast these suggestions with the following statements from the Scottish Prisons Commission's report:

> '…it is neither possible nor ethical to force people to change. But we are clear that if people refuse to pay back for their crimes, they must face the consequences' (Scottish Prisons Commission, 2008: paragraph 3.31b)
>
> 'The public have a right to know – routinely – how much has been paid back and in what ways. This does not and should not mean stigmatising offenders as they go about paying back; to do so would be counter-productive. But it does and should mean that much greater effort goes into communication with the communities in which payback takes place' (Scottish Prisons Commission, 2008: paragraph 3.31c)

In a recent paper in this journal exploring the available research evidence about public attitudes to probation in the light of Casey's recommendations, Maruna and King (2008: 347) come to the following conclusion:

> 'Casey is absolutely right to utilise emotive appeals to the public in order to increase public confidence in the criminal justice system. Justice is, at its heart, an emotional,

> symbolic process, not simply a matter of effectiveness and efficiency. However, if Casey's purpose was to increase confidence in community interventions, then she drew on the exact wrong emotions. Desires for revenge and retribution, anger, bitterness and moral indignation are powerful emotive forces, but they do not raise confidence in probation work -- just the opposite. To do that, one would want to tap in to other, equally cherished, emotive values, such as the widely shared belief in redemption, the need for second chances, and beliefs that all people can change.'

It is particularly interesting in this context to note that those who might be expected to be most angry and even vengeful in their emotive responses to offenders – crime victims – often seem able to draw on some of these more positive and cherished values. The recently published evaluation of restorative justice schemes in England evidenced this very clearly, though the findings are consistent with many earlier studies of victims' views and wishes:

> 'In approximately four-fifths of the conferences [n=346] that we observed, offenders' problems and strategies to prevent reoffending were discussed, whilst discussion of financial or direct reparation to the victim was rare... This was not because victims or their wishes were ignored but rather because *victims, in common with other participants, actively wished to focus on addressing the offenders' problems and so minimizing the chance of reoffending.* In pre-conference interviews... 72 per cent of victims said it was very or quite important to them to help the offender' (Robinson and Shapland, 2008: 341, emphasis added).

So, while Casey-style payback (at least as she appears to have intended it, if not as some services have developed it in practice) may leave some of us with grave reservations, McLeish's concept of 'paying back by working at change' seems to have strong resonance, not just with probation's rehabilitative origins and affiliations, but with what many victims want from justice processes. So it may be that, from many victims' perspectives, credibility is not a product of the 'punitive bite' of a sanction but rests instead on a process that invites and invokes constructive changes. With questions of wider public (and political credibility in mind), it is important to note here that, while this may sound 'liberal', in point of fact engaging in these kinds of efforts is something that offenders often find harder than undergoing 'mere' punishment (see May and Wood, 2010).

But even if it does hurt, there is at least some empirical evidence that paying back (or making good) through working at change is something that many offenders want and need to do in and through the process of desistance. No summary of this evidence can be offered here (see Farrall and Calverley, 2005; McNeill, 2009c; Maruna, 2001), but some of the implications for the delivery of community sanctions are emerging.

Firstly, since desistance is an inherently individualised and subjective process, approaches to community sanctions must accommodate and exploit issues of identity and diversity. One-size-fits-all interventions will not work. Secondly, the development and maintenance not just of motivation but also of hope become key tasks for probation workers. Thirdly, desistance can only be understood within the context of human relationships; not just relationships between workers and offenders (though these matter a great deal) but also between offenders and those who matter to them. Fourth, although practice tends to focus on offenders' risk and needs, they also have strengths and resources that they can use to overcome obstacles to desistance – both personal strengths and resources and strengths and resources in their social networks. Practice should support and develop these capacities. Fifth, since desistance is about discovering agency, interventions need to encourage and respect self-determination; this means working with offenders not on them. Sixth, interventions based only on human capital – what a Dutch colleague recently described to me as 'between the ears' interventions – will not be enough.

Probation needs to work on social capital issues with communities and offenders – it needs to work 'beyond the ears' if you will.

Though they are derived from empirical evidence, in one way or another all of these prescriptions from desistance research involve treating people humanely and fairly; in other words, they point to the ethical dimensions of practice. More specifically, they connect to the moral legitimacy that might underpin efforts to influence another human being's choices and behaviours. As I have argued elsewhere (McNeill, 2006), a case can certainly be made that desistance research makes a necessity out of certain practice virtues. To be effective in reducing crime it seems, the practitioner of community sanctions needs first to be just, since any perception of injustice, unfairness or illegitimacy will necessarily undermine the credibility of the 'change agent'.

Moving Forward: Alternatives to Punishment and/or Alternative Punishments?

Questions of justice and punishment are linked, but historically, in many jurisdictions, probation and criminal justice social workers have tended to consider themselves as providers and advocates of (usually rehabilitative) *alternatives to punishment*, rather than as providers and advocates of *alternative punishments*. Though probation in England and Wales was compelled to face up to these issues more than a decade ago, in many jurisdictions it remains the case that for practitioners the notion of punishing, as opposed to supporting, supervising, treating or helping – or even challenging and confronting – seems inimical to the ethos, values and traditions of probation and social work. Certainly, that was once my view, but now I am not so sure. The penal philosopher Antony Duff (2001) has argued convincingly that we can and should distinguish between 'constructive punishment' and 'merely punitive punishment'. Constructive punishment can and does involve the intentional infliction of pains but only in so far as this is an inevitable and intended consequence of 'bringing offenders to face up to the effects and implications of their crimes, to rehabilitate them and to secure… reparation and reconciliation' (Duff, 2003: 181). We both want and need people to feel the pains of remorse, since there is no such thing as painless remorse. This seems very close in some respects to the ideas of challenging and confronting offending which have become widely accepted in probation work in recent years, partly in response to political pressures to get tough but also, more positively, in response to the legitimate concerns of crime victims that their experiences should be taken more seriously. These 'pains of remorse' are not an accidental or consequential feature of challenging and changing behaviour; rather, they are constitutive of and central to the change process as a moral process (see also Bennett, 2008).

But Duff's work also helps us with a second problem, since he recognises, as I have already noted and as probation and social workers have understood for decades, that where social injustice is implicated in the genesis of offending, the infliction of punishment (even constructive punishment) by the state is rendered morally problematic, because the state is often itself complicit in criminogenesis (crime-generating) through having failed in its prior duties to the 'offender'. For this reason, Duff suggests that probation officers or social workers should play a pivotal role in mediating between the offender and the wider polity, holding each one to account on behalf of the other. Again, this discomfiting space is one which many probation and social workers will recognise that they occupy and through which, with or without official or public support, they seek to promote social justice within criminal justice.

It may be therefore that Duff's work provides some of the conceptual resources with which to populate the concept of payback constructively. To the extent that the new centrality of reparation compels criminal justice social work to engage in punishing offenders, his notion of constructive punishment and his insistence on the links between social justice and criminal justice might help to buttress the Scottish social work version of payback from drifting in a 'merely punitive' direction. There are other sources that probation services could also draw

upon usefully here. Shadd Maruna's (2001) 'Making Good' is one important desistance study that reveals the importance for ex-offenders of 'making good', and of having their efforts to do so recognised. In a sense, the relevance of the concept of 'generativity' – referring to the human need to make some positive contribution, often to the next generation – hints at the links between paying back and paying forward, in the sense of making something good (for others) out of one's own damaged and damaging past (see McNeill and Maruna, 2007). Bazemore's (1998) work on 'earned redemption' examines more directly the tensions and synergies between reform and reparation, and the broader movements around 'relational justice' (Burnside and Baker, 1994/2004) and restorative justice (Johnstone and Van Ness, 2007) provide possible normative frameworks within which to further debate and develop these tensions and synergies.

Clearly these questions would bear much closer examination that now seems necessary but is beyond the scope of this paper. But in terms of the practical applications for probation, these ideas and developments evoke Martin Davies's (1981) notion of probation as a mediating institution. This can be understood in two ways. Firstly, probation mediates between the sometimes conflicting purposes of punishment – between retribution (but not of the merely punitive kind), reparation and rehabilitation. But equally probation mediates between the stakeholders in justice -- between courts, communities, victims and offenders, much in the manner that Duff (2003) suggests.

Conclusions

This paper began by noting that we live and work in times of insecurity. Perhaps insufficient time was spent building the argument that insecurity and punitiveness are closely related, but such an argument is probably not difficult to construct (see Bauman, 2000; Garland, 2001). Certainly it is clear that punitiveness squeezes the 'space' for community sanctions and measures in any justice system and strikes at the heart of their credibility.

Arguably a key danger at this particular moment in the UK, with the combination of excitement and cynicism about the 'rehabilitation revolution' growing, is that a continued focus on reducing reoffending may lead to neglect of the recognition that justice systems are not only and perhaps not primarily concerned with reducing crime; to think that they are is to miss the point that crime reduction is but one amongst several purposes and functions that such systems serve (see Tonry, 2006). It follows from this that the delivery of effective crime reduction (or of public protection) is not the only key to the credibility of community sanctions. Rather, we need to think much harder about the role of community sanctions agencies not narrowly as crime reduction agencies but more broadly as justice agencies. Though in this paper I have done no more than the raise some questions and interpret some historical lessons about the struggle for credibility, the plug for the late-modern credibility gap might be found in working harder to deliver and communicate sanctions that sentencers, offenders, victims and communities can understand as and feel to be constructive justice, rather than 'mere' crime control.

Perhaps most practically, this invites probation agencies and practitioners to engage again with the legal, moral and psychological legitimacy of their relationships not just with offenders, but also with these other core constituencies (see McNeill and Robinson, forthcoming). The National Offender Management Service in England and Wales has wisely embarked on an 'Offender Engagement Programme'; perhaps for NOMS and other probation agencies, similar initiatives are required for probation's other 'audiences'.

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