



Helping, Holding, Hurting: Recalling and Reforming Punishment



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Apex Scotland Annual Lecture

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Forward

The Criminal Justice and Licensing (Scotland) Bill currently before the Scottish Parliament represents one of the most significant planned reforms of punishment in Scotland for generations. But, as we plan and debate a new penal future, to what extent have we learned the lessons of Scotland's penal history? In this year's Apex Scotland Annual Lecture, Professor Fergus McNeill presented findings from a British Academy funded research study of oral histories of Scottish probation in the 1960s – the forgotten but significant period immediately before the introduction of the Children's Hearings system and the generic social work departments. In offering an analysis of the sometimes powerful and moving stories of people who were subject to probation at that time, he aimed to challenge our preconceptions about how criminal sanctions can help, hold and hurt those who are subject to them, in so doing providing an important

and fresh perspective on key aspects of the current reform programme.

We were delighted that Professor McNeill accepted our invitation to deliver this year's Lecture and extremely grateful to him. His analysis was compelling and timely and generated a great deal of debate at the event.

Particular thanks are due to Mike McCarron, Apex Scotland Vice-Chair, for introducing the Lecture and chairing the discussion session. Thanks are also due to the Apex Scotland team at Head Office and to our colleagues at the Signet Library whose organising skills and attention to detail made the event such a success.

Brian Fearon, Chief Executive

Introduction

I consider it a real honour to deliver this year's Apex Lecture. In part, this is because this is such a distinguished and esteemed audience and one which has heard from many distinguished and esteemed people in previous Apex lectures. But perhaps more importantly, it is also because of the opportunity that it affords me to let other, perhaps less distinguished and less esteemed – but no less important – voices be heard at a key point in Scotland's penal development.

It is probably not an exaggeration to suggest that we are in the process of the most significant reforms of criminal sanctions in Scotland for generations – certainly since Lord Kilbrandon's Committee's report (1964) changed the way we thought about juvenile justice, and perhaps criminal justice as well. Looking at the report of the Scottish Prisons Commission (2008), I wonder if in 45 years we'll look back at it in the same way. And yet, despite the importance of these reports and the related policy developments, I wonder how much we really know about how sanctions have been constituted and practiced in the interim. In particular, I wonder how well we understand how community sanctions really function?

About two years ago, it was with these questions in mind that, along with my colleague Beth Weaver¹, I embarked on a small-scale study of Oral Histories of Scottish Probation². Initially I was driven by a curiosity to find out about a period of probation history that seemed to have been forgotten in the aftermath of the organisational restructuring that followed the implementation of the Social Work (Scotland) Act 1968. I suspected, on the basis of a few conversations with veterans of 1960s probation, that the 'official' sources of the period tell only a very partial version of what went on in those days (for an account of some of these sources, see McNeill, 2005). Though my objective was neither to inform the current reforms nor to advance debates about the effectiveness of probation, it turns out that the study's findings – or

rather its participants – have much to say to both of these important issues and topics.

Beth Weaver and I managed to trace and interview 13 former probation practitioners and educators and 12 former probationers. I want to talk this evening only about what the probationers had to say about their experiences. These are the 'user voices' to which other social services are now rightly expected to attend, but somehow when we call them 'offenders', their views and stories are too easily neglected. I think we do so at our peril, for reasons which I hope will become obvious. These are voices worth listening to.

The 12 probationers comprised 11 men and one woman, ranging in age from 52 to 70. They were recruited through newspaper adverts and then interviewed either at home, at the university or by telephone, depending on their preference. As is common in oral histories, our interviews were loosely structured and ranged in duration from under 20 minutes to over an hour. Seven had been on probation for property offences, 2 for violence or disorder, one for carrying an offensive weapon and one for truancy. One could not remember even the nature of the offence in question. All of the probationers came from the West of Scotland and most (n=9) had been on probation as juveniles (the median age at the time of the first order was 13.5). Academic analyses of the time (Arnott and Duncan, 1970) suggest that probation was mainly used for juveniles, for first offenders and for minor offences, so there is no reason to think this small sample unrepresentative. In a sense, the statistical representativeness of the sample is not the issue; a study of this nature is concerned with depth not breadth.

From court to probation

The probationers shared in common many aspects of their social backgrounds which we might summarise as accounts of growing up in tough times and tough places. They related a range of family problems including parental (usually paternal) alcohol use,

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² I am grateful to the British Academy for funding this study (Award no: SG48403).

bereavement and loss, economic hardship, large families, emotionally distant parents and a general lack of oversight occasioned by their parents' hard struggle to make ends meet. In this context, the friendship group, the 'gang' or the 'team' was often very important and sometimes formed the locus of behavioural problems including fighting, theft or other forms of 'mischief'. Many respondents recognised the significance of peer pressure and the associated issues of reputation, status and living up to expectations. With hindsight, they could identify the vulnerabilities that came from the interactions between problems in their environments, their families and amongst their peers.

Though social enquiry or pre-sentence reports then as now were an important feature of probation practice, only 3 of the 12 probationers recalled any such enquiries. Those that did remembered only basic questioning about their activities, relationships and families. One respondent, however, told a revealing story about being assessed in a remand home. The intelligence he gleaned from other more institutionally experienced boys was that you had to come up with a plausible story about why you were getting into trouble, in order to elicit sympathy rather than condemnation. He opted for the common (but in this case totally untrue) story that his dad was an alcoholic, much to the chagrin of his sister years later:

FM: Ah, I see, aye. So you had to have something?

Mark: It's the cause of why you're doing what you're doing.

FM: Yeah, okay, and a drunk father is one good story?

Mark: Aye, like that "Poor wee Johnny, he was put down as a drunk". And then my sister found out, she got the report – you see I got the report and I held the report for years and years and then one of my sisters found it – "What's this? My Da's a drunk?!"

Amusing though Mark found this now, it tells us something interesting perhaps about the pressure to make sense of one's own misdeeds in a way

deemed acceptable to or consistent with professional understandings of the times.

Few of the probationers had clear recollections of court. Those that did remember being sentenced spoke mostly of fear and formality – and of the sense of being processed rather than engaged with. If any dialogue with judges was recalled, it was invariably of the admonishing rather than the understanding sort. In somewhat surprising contrast, probation officers clearly made a very significant first impression, for better or worse. Andrew's account was fairly typical:

"...my Ma said "You better get up quick... there's somebody up to see you". I remember that vaguely – and running up the stairs and there was this big man, a very imposing man, he looked ginormous, he looked about – he was quite a tall man, he must have been about six foot. And I was really, really overwhelmed by this guy, the suit on, immaculate, speaking with a wee kind of funny accent type thing" (Andrew).

To their young charges, probation officers were intimidating both physically and socially. The officers' mode of dress (dark suits or smart jackets, raincoats and hats) seemed to confirm their higher social positions. Several probationers made clear that they were in no doubt that their probation office was their 'better'.

This social distance between the probationer and the probation officer was clearly something that the probation officer had to bridge in the early stages of supervision if effective communication was to be established. Some officers were clearly skilled at doing so as Luke and Mary relate:

FM: ...how did he explain how, what the whole thing was going to be about, if you can remember?

Luke: I do remember. He actually explained that it was about helping me change my life and not to get into any sort of further trouble. And his language was very, very acceptable and understandable because he didn't kind of jargonise words, he basically said

– “This is to keep you, helping you to stay out of any more trouble” and I said “Oh”. He said “It’s as simple as that”. And there was an immediate bond developed from that point, I knew that this wasn’t somebody that was coming into my home and telling me how to live my life. It was somebody that was saying “I’m here to support you and help you”.

Mary: And it was really good, you know, I was able to tell her about my home life, you know, and how miserable that I felt and she asked me what I wanted to do with my life and, you know, we just hit it off, we just hit it off. And on the occasions, you know, she’d say occasionally to come to Osborne Street and I would go to Osborne Street and she’d take me to tea in town, it was called Miss Cranston’s. Now, you must remember here I was, a 17 year old, terrible background, you know, I never had any money and she would take me into this beautiful tearoom, you know, where all these well dressed people were sitting and with the cake stand the waiter coming and you know, I’d be sitting – I was absolutely overawed - overawed with it! And I thought “Gosh, she’s brought me here!”, you know, she’s brought me here. So then –

FM: Just a bit - what did that convey to you, that she’d brought you there? What did it mean to you?

Mary: I think it said that she liked me and, you know, and she listened to what I was saying and also sitting there and looking round as well and I thought “I could be here too, I could do this as well”, you know – “This is what I want to do, this is what I want to do.”

On the other hand, some probationers discerned an underlying lack of care, interest or respect from their officers:

John: No, she would never – this woman to me didn’t like her job... She didn’t like anybody that **came** in, not just me, you know, because I had never been – I was no a cheeky person... And so that’s the kind of attitude, she was no just with me, she was like that when I seen her with other people, she’d be quite like a bit of business and head down, didn’t look at you kind of thing, you know?

Bart: I think it was a case of he was frustrated with me and I was, you know, I didn’t feel as if I was getting any support or respect. You know, there was never any sort of understanding of my problems, my problems were never ever repaired in any way shape or form, it was a case of “Go to school, full stop”. Don’t ask what the underlying problems are, that would be too much to ask, you know.

In cases such as these, where the probation officer was seen as being a mere ‘pen-pusher’ who simply wanted to check up that you were behaving and checking in, the probationer very often ‘checked out’ – at least in terms of any serious engagement with the order’s rehabilitative intent.

On probation: helping, holding and hurting

It is clear from the excerpts that I have already quoted that in many respects the tone was set for probation in its early exchanges – and that this tone depended heavily on not just what messages the probationer officer conveyed but the style in which she or he conveyed them. The basic idea that the probation officer was there to provide help – to ‘advise, assist and befriend’ as the traditional epithet from the Probation of Offenders Act 1907 put it – was clearly evident for some:

Simon: I don’t have any doubt the man was trying to help me, guide me, support me - maybe prevent me going to prison, I don’t [know] if at the end he could have recommended prison, he maybe, you know - trying to achieve, trying to help me, trying to guide me, trying to support me, trying to advise me, everything...

Andrew: I think he was genuinely concerned about me. I think he took his job seriously and I think that the options he had, I mean it’s not like today’s options where they can do all sorts of things with you... But I think he genuinely liked me even though the big vagabond that I was.

The significance of being liked, being cared for, being seen not just as who you are but as who

you might become, was a recurring theme – as is perhaps clearest from Mary’s story of her visit to Miss Cranston’s tearoom. But probation was not just about these kinds of positive help and reinforcement; it also had both ‘holding’ and ‘hurting’ dimensions. More often than not the three themes of helping, holding and hurting were intertwined.

By the term ‘holding’ here, I mean not just the support and protection that we can clearly think of as allied to ‘helping’, but also surveillance and containment. In the former connection, probation often seemed to involve and invoke the notion of quasi-parental guardianship and sometimes (for younger probation officers) fraternal support:

Luke: ...to me he was a tower of strength and partly a source of protection.

FM: Okay – what age was he roughly?

Luke: I thought he would have been – I would probably have said mid 40s.

FM: ... more like a father figure than a big brother or a – ?

Luke: Oh yes, yeah. (emphasis added)

Paul: Because he would come up to you and give you a cuddle and that – “Oh, you’re doing well wee man” and things like that, you know, things like that, you know, it was good – “Have you been doing what I tell you?” and you’d say “Aye... I done this and done that” – “Ah, brilliant!” and give you a cuddle and that – “Stick in wee man”, you know.

In many cases, this kind of support and protection seemed to be focused on efforts to merely contain the disruptions and turbulence of adolescence; perhaps a kind of harm minimisation strategy that awaited the normalising and socialising processes of ordinary maturation. Evidently where parents lacked the capacity to fulfil this containing role, probation officers sought to step into the breach.

But sometimes this kind of containment had more constraining and surveillant aspects. These features

were brought home to me most clearly by James who articulated a very sharp recollection of the ‘geography of supervision’. James had the misfortune of living very near to both the probation office and the police station. His probation officer made clear that he should be home from school every day within 20 minutes of the lessons ending, just in case he might choose to visit. He had to remain at home until after tea, at which point he was allowed out to play, but only in certain nearby streets. The local beat police officer would let the probation officer know if he strayed too far. On Fridays, he was expected to be at the Boys’ Guild in the local church. If he failed to show up, the priest would pass the information on and if his general conduct gave any cause for concern, his mother was more than ready to let the probation officer know. All of this might make a modern day electronic tag sound easy-going, but what was striking was that, despite the irritation caused by all of these impositions and restrictions, James seemed to tolerate them as a burden that was intended to serve his interests, the imposition of which was motivated by care on the probation officer’s part.

Others conveyed a similar sense of the probation officer as ‘just the all-seeing eye type thing; he knew what was going on’ (Andrew), but for some this had a more malign aspect. Thus Peter, who was 26 when the order was imposed and by his own account an occasionally serious offender with a significant alcohol problem, remains highly indignant to this day about alleged police-probation collusion in the breach of his order:

‘I’m sure but word was put into the, these probation officers: “Get him off the fucking streets.” Do you know what I mean?’ (Peter).

Some support for Peter’s suspicions is found in the accounts of the probation officers to whom we spoke, at least in the sense that they made clear that regular flows of information and intelligence between the courts, the police and probation staff were indeed a routine aspect of practice. As Peter’s account suggests, in his case the surveillant aspects of probation stretched beyond ‘holding’ and into ‘hurting’.

One of the most common ‘pains of probation’ (on which see Durnescu, 2009) articulated by the

probationers related to the looming threat of and sometimes the actual pains of enforcement action. In Peter's case, these pains were exacerbated by a sense of profound injustice. Peter acknowledged his failure to comply with a probation condition that he must attend Alcoholics Anonymous meetings; he attended one or two meetings but found they didn't suit him. Despite this, he held down a job, limited his drinking and avoided reoffending. Nonetheless, 18 months into a 3 year order, his probation officer lost patience with his persistent refusal to attend AA. With considerable vehemence, Peter related his subsequent arrest and imprisonment as follows:

I said "I've no done fuck all!" He [one of two police officers] said "I don't know but we've to come for you" he said "you go in front of the sheriff at 2 o'clock today".... So I went in front of him, oh, and I said "Look - " and I said - "He [the probation officer] doesn't agree with some people and I'm one of them", I said "I've no done any harm, I've not - I'll need to have a chance of [keeping my] job". He said "You can get a job in three months", he said, and three months he gave me. That really fucking burst me - do you know what I mean?... Because it was something for nothing, that was as far as I was concerned, you know. I was really upset about it, I really was flaming after it.

For Matthew, the pains of enforcement action had perhaps deeper roots. Sometime before he reached school age, Matthew and his siblings had been separated from one another and their parents during a brief period of institutional care occasioned by parental illness. The family were reunited and years later, Matthew was getting on well with a young probation officer he regarded as a 'big brother' figure who was trying to steer him away from trouble. However, after several minor further offences, his probation officer suggested that a short custodial remand in relation to one of these new charges might do him some good:

Matthew: ... Basically he put in the report that I never - I think I had to be taught a lesson and to this day I still disagree with that because I got remanded

in custody to get taught a lesson. To me, what's all that about? You're supposed to get remanded in custody for reports or for - i.e. "Lock him up" and that was the story of my life, right through that "Lock him up"...At the end up he passed [me] on to somebody else because he thought I was out of control. Again, I felt rejected.

For Matthew this report recommendation represented another abandonment - with clear echoes of an earlier trauma of which the probation officer was doubtless unaware. Nonetheless, Matthew's sense of betrayal, like Peter's sense of injustice, remains potent and enduring.

In other cases, even when breach action did not result, the burdens of supervision and the mere threat of further punishment still constituted a 'pain of probation' - especially for adolescents eager to 'spread their wings':

Andrew: Yes, it was a punishment, yes, to me it was, aye.

FM: So - in what sense?

Andrew: In the sense that you were always under the wings, I was always - my parents always threatened me with him ... "We're going to tell your probation officer", you know, that type of thing and then that thing you had to be direct, you know, you're a kid and you just want to go out and get about and you had to meet him every week, you know, you had to be there. It was a burden, aye it was. I suppose it's like these boys, you know, they've got the time thing, they canny go out at night.

FM: Yeah.

Andrew: Aye, probably, well I felt that way, I felt restricted so it was like a sentence.

In three cases, the pains of probation extended beyond those legitimated by the courts. In the most troubling interview in the study, Mark described an experience of witnessing sexual abuse by a probation officer. In his account, the officer required boys on probation to attend regular scout hall meetings, where he put them through intense physical exercise and then insisted they shower before going home:

Mark: So there was just a wee cubicle there, right, and we'd go in and have the shower and then you'd come out and then he [the probation officer] would rub you down, right?

Mark recalled that the boys simply laughed this off and suggested that the probation officer's behaviour was common knowledge in the community – but no-one challenged or reported it. That said, when Mark fled the scout hall during his first visit, his elder brother did intervene, insisting that Mark not be required to attend again and that all further meetings take place in the office with the brother present.

In two other cases, probationers described physical bullying by probation officers. Bart was on probation only for truancy. He had committed no criminal offences prior to the order but in his view the probation experience itself triggered his descent into institutionalisation and delinquency. His description of physical abuse was clear:

Bart: I was actually afraid of him, you know.

FM: How do you mean, physically or – ?

Bart: Well both physically and, you know, mentally because he did one day grab me up against a wall in his office by the throat and I can remember his mad eyes blazing and I can't remember exactly what he was saying to me, you know, but it wasn't nice anyway whatever it was, all because I was still truanting.

Probation methods

Interestingly, but perhaps not surprisingly, neither the surveillant nor the punitive aspects of probation featured much in the probation officers' accounts. However, some of them did recognise the deterrent aspect of the probation order's quality as a kind of suspended punishment. Indeed, for some of them it was the order itself that was, in important respects, the probation method. 'Mere' supervision was supposed to bring about change (or at least, as I have already suggested, contain trouble).

Where probationers and probation officers were able to articulate a method (over and above the order) that was being used for supporting change, they tended to stress the role of diversion into constructive and organised youth activities and, for older probationers, into employment. Probationers and officers also shared in common the recollection of probation officers working with or through parents – not perhaps in the sense of engaging in formal 'family work' or addressing family dynamics, but rather in the sense of simply supporting parents in their efforts to contain young people during adolescence, thereby buttressing parental authority.

What was notable in both sets of accounts is how little evidence we found of the considered and consistent use of social casework methods aimed at diagnosing and correcting deviance. This is despite the fact that the official sources and academic texts of the time tend to describe this as the predominant method of practice by the 1960s (McNeill, 2005; McNeill and Whyte, 2007). Though it is the subject for another paper, the probation officers' accounts imply that this may have been because probation was learned mainly 'on the job' – from one's peers – rather than through academic engagements in the incipient probation training programme³. This kind of professional socialisation may have engendered a conservative practice culture that was slow to adapt to novel ideas and methods.

In discussing their officer's methods, several probationers revealed a degree of realism and perhaps even sympathy for the limited resources at the disposal of the 1960s officer. Set against the context of the tough times and tough places discussed previously, they saw their officers as having no real means of addressing or relieving those broader social pressures:

"I don't think they had any options in they days, I don't think they had any. His method I think was just to try to be friendly and he was patient... Okay, I got into other things but certainly it helped... Really – he didn't have the – I mean in they days, don't forget, a probation officer didn't do anything for you, a probation officer just made sure you were behaving yourself" (Andrew).

³ This began in Glasgow in 1962 and many of the probation officers interviewed had experienced it.

Impacts and imprints

Perhaps despite this perceived lack of methods and resources - and against the grain of the social contexts in which the probationers struggled - there is evidence that probation had some effect. Whilst five of the orders were breached, seven were completed, and two of the probationers reported that probation brought about their complete and permanent desistance from crime. Even amongst those who breached the orders, or who failed to immediately desist, many spoke of probation decelerating their offending – at least for a while. Typically, like current day probationers, where care had evoked loyalty, they spoke of a desire not to let the probation officer down (Rex, 1999). Underlying this perhaps lay an appreciation of the probation officer's authenticity – what we might call the moral quality of their work. Though I might struggle to define this clearly – and though I doubt it could ever be standardised as a facet of 'effective practice' – the probationers recognised it clearly enough; they knew (or felt they knew) who was well motivated and caring, and who was not.

Looking beyond the immediate impact of the probation orders, there is also some interesting, if only suggestive evidence about the longer-term impact of the officers. Of the twelve probationers, it is striking that the subsequent life trajectories of six involved significant professional or volunteer roles as carers of different sorts. Thus, Luke himself became a criminal justice social worker, Paul a member of the Children's Panel, Mary a midwife, Simon a volunteer boxing coach, Andrew a Christian prison visitor and James a welfare rights officer. These involvements in generative activities may well owe something to the probationers' exposure to role models who enabled the probationers to believe in who they might become (see Weaver and McNeill, 2010 forthcoming).

Conclusions

So is there anything more here than mere nostalgia for times past and practices lost in the mists of reorganisation and change? I think that there is –

indeed I think there are two particularly important lessons that can be learned from listening to these voices; and that there is therefore much to be gained from paying close attention to the life experiences that they convey.

The first lesson for our contemporary reform efforts is that structures and systems are only part of the story of how justice or punishment works out in practice. These voices reveal the extent to which the meanings and natures of sanctions are negotiated between the people involved. Perhaps a key message is that where sanctions aim to elicit change, the skill of the practitioner in bridging the social distance between the punished and the punishers is critical to the process. Equally, the moral quality and the authenticity of the practitioner's performance lie at the heart of the matter (cf. Liebling, 2004); this moral quality profoundly affects the meaning, nature and experience of the sanction. Within this context, the legitimacy of the practitioner – on which his or her influence for good depends – is hard-won, easily lost, and almost impossible to recover.

The second and related lesson concerns not so much the immediate impact of our interventions as their lasting 'imprint'. Inviting people to recollect experiences of probation that are over forty years distant may raise some methodological problems, but it also allows for a longer lens picture of the effect of a sanction than most contemporary evaluations. Listening to these voices, it occurs to me that, in simple terms, rehabilitative interventions invite and aim to enable people to be or become 'good'. But how can we expect people whose lives have been far from good to become so unless we allow them to experience 'good'? And might it be that exposing people to 'good' – to fairness, to justice, to respect, to compassion – is both the right thing to do in itself and something that might somehow, sometime, call forth some good in return? Equally, where we return pain for pain, harm for harm, evil for evil, rejection for rejection, what can we really expect to receive in return? Recent events in Scotland have invited us, compelled us even, to consider the relationships between justice and compassion. In a less dramatic but no less important way, these voices

from the past remind us that our penal values and visions matter. For better or worse, they say something fundamental about who 'the punishers' are and about what we dare to hope that 'the punished' can become.

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