

Contemporary Probation in Europe: Some Reflections¹

Rob Canton

Professor of Community and Criminal Justice, De Montfort University, Leicester

If probation in Europe is to consolidate and build upon its achievements, it must establish its legitimacy and give a clear and confident expression of its purpose and values. But why is it important to have a probation service at all? Different countries put a different emphasis on some of the possible answers to this question. For that matter, within any one country, different people assign various purposes and priorities to probation, for their own (often unstated) political reasons. Among the familiar arguments used in support of probation, three stand out in particular.

First, it is supposed that *community sentences, administered by the probation service, are the best response to rising prison populations*. The prison population has been rising in most European countries. Even those countries with traditionally less punitive responses to crime, like the Scandinavian countries, are showing signs of changes in public attitudes that could in time lead to higher rates of imprisonment (Bondeson 2005). It is plausible to think that community sentences, conceived as *alternatives to custody*, represent the solution. But there is a disquieting shortage of evidence that increasing the number of community

sentences leads to a reduction in the number of people in prison. Some countries (for example, England and Wales) have seen increases in their prison populations *at the same time as* increases in the proportions of defendants receiving community sentences. It should also be noted that community sentences typically displace (at best) those who would have served *short* terms of imprisonment. Since the size of the prison population is largely a function of the *length* of sentence, without substantial (and improbable) radical changes in sentencing practice to reduce sentence length, community sentences can have no more than a modest affect on the size of the prison population overall. That said, it is difficult (and unnecessary) to give up the aspiration that community sentences that command the confidence of the courts might displace prison sentences in some cases - or, at the very least, slow down the acceleration in the numbers of prisoners.

Secondly, it is believed that *probation can protect the public*. There are some excellent examples of probation services, typically in partnership with the police and other criminal justice (and civil) agencies, working diligently and successfully to reduce the risk

posed by some high risk offenders (Kemshall *et al.* 2005). At the same time, exaggerated political claims about probation's capacity can lead to disappointment and unreal expectations. The National Probation Service for England and Wales was criticised when offenders under supervision were involved in a grave crime (see Bennetto 2006). Yet they were under community supervision for quite different kinds of offence, there were no shortcomings in the manner of their supervision and there were no sensible suggestions that this offence could have been anticipated or prevented. A large proportion of grave crimes are committed by people in lower risk categories. So while probation's capacity to contribute to public protection is considerable, it is important that this should be expressed carefully and realistically.

Thirdly, it widely held that *probation can rehabilitate offenders*. What is conventionally known as the 'what works' agenda has promoted the delivery of programmes that can be shown to reduce the incidence of reoffending. But once again such claims must be expressed in a modest and qualified way. Programmes that have delivered well in a pilot stage, once 'rolled out' often fail to achieve such impressive results: challenges of implementation have sometimes undermined their effectiveness of programmes and perhaps evidence is now showing them to be simply less effective than had been hoped (Harper and Chitty 2005; see also Raynor 2004). A judicious summary of the achievements of these programmes in England and Wales suggests that at least some initial expectations have turned out to be over-optimistic (Bottoms 2004).

Probation is not alone in facing the challenges of legitimacy and effectiveness. The criminal justice agencies generally are under considerable political pressure to demonstrate their effectiveness in crime reduction. It seems only common sense to assume that 'more effective' criminal justice practice can reduce the incidence of crime, but the evidence is doubtful. Crime is more likely to be a function of social and situational factors which criminal justice cannot control (compare Garland 1990).

The relationship between crime and criminal justice can be instructively compared to the relationship between health and medicine. What makes people healthy? Genetic legacy is important, as well as environment: the quality of the air that people breathe, the water that they drink, the food they eat; their capacity to find adequate shelter and protection from harm; their style of life; their avoidance of harmful circumstances. Most of this is beyond the reach of medicine. This by no means entails that medicine is unimportant. On the contrary, high quality medical services are essential when people are ill or injured, and medical research has helped us to understand many of the elements of a healthy life.

Similarly, most of the factors that are known to be associated with offending are entirely beyond the reach of criminal justice. Criminological research suggests that these include, for example, the influence of parents and carers, of other associates, of school, as well as socio-economic factors, notably poverty and access to resources and opportunities. Desistance (stopping offending and staying stopped) typically depends on living a worthwhile life, including, for example, sustaining rewarding relationships and 'pro-social' ways of living. The informal social controls exercised on most of us by our partners, our friends, our colleagues and which arise spontaneously from living full lives are a much more compelling inducement to good behaviour than the external controls of criminal justice. Again, this does not mean that criminal justice is unimportant: on the contrary, trustworthy and effective criminal justice institutions can make a significant difference for many people. But, just as it is entirely unrealistic to expect that medical services can make us well, so it is not reasonable to imagine - or to encourage the public to think - that the criminal justice can solve our problems of crime. As Ivan Illich would have put it, health and crime are problems of living and do not lend themselves to technical solutions.

So while probation can indeed make important contributions to its stated purposes, it puts itself at risk of public disappointment and political manipulation if it overstates its case. The importance of probation lies every bit as much in *what it stands for*, the values that it expresses, as in its achievement of instrumental objectives. Above all, what probation stands for is a belief in the possibility of personal change and social inclusion. Legitimacy and public confidence will be gained, if at all, through a confident articulation of these values and why they matter, rather than in an uncertain pursuit of politically convenient objectives.

The Conference focused on four principal topics.

WHAT WORKS IN SUPPORTING DESISTANCE?

If the origins of offending are probably deeply embedded in the social order, responses need to be sought at the same level. Probation does have a distinctive role here:

- in motivating offenders and sustaining this motivation through difficult times – the relationship between probationer and supervisor here is crucial – and in helping them to recognise opportunities to change
- in helping people to acquire and develop the skills they need to achieve their legitimate aspirations (for example, skills of problem solving, employment skills)
- in advocating on offenders' behalf to enable them to have genuine access to the resources and services of civil society (social inclusion), helping to create opportunities for people to lead 'good lives' (Ward and Maruna 2007).

As McNeill puts it (2008), "Ultimately, we would all be more safe in a society where ex-offenders were supported to *move* towards better lives, than in one where the risks that they present are merely managed and surveilled, and where those risks are continually *fixed* and reinforced by their stigmatisation and exclusion."

But probation cannot create the social conditions that conduce to good lives and to that extent its influence on reoffending will be often significant but rarely decisive.

TECHNOLOGY AND SURVEILLANCE

While traditionally probation has worked with personal relationships to bring about change, many jurisdictions in Europe are making increasing use of new technologies (CEP 2007). Electronic surveillance - especially the 'tagging' that can monitor the presence of an individual at particular times and places and the 'tracking' made possible through global positioning system technology - has a strong political appeal. It seems to dispense with any need for the offender's consent or active co-operation and hints at a possibility of comprehensive and up-to-the-minute information.

There is research to show that electronic monitoring can sometimes help people to establish changes in their habits and lifestyles to support desistance, where the decision to desist has been taken (Hucklesby 2008). (The same research also shows, incidentally, that in some circumstances electronic monitoring can block pathways to desistance - for example by limiting employment opportunities). Nellis (2005) shows how monitoring technology of all kinds – tracking the movements of commodities, animals, people - is proliferating: the study of such general developments in monitoring and tracking offers a rather different view from a criminological perspective. This is an expanding (and lucrative) 'market' and probation must ensure that it engages with the market in a manner that sustains its own integrity.

In terms of what electronic surveillance can or should mean for probation, there are four particular points to be made:

- electronic monitoring will not effect enduring change on its own, although in certain circumstances it can contribute to change programmes and support desistance
- probation should see external control as a means to develop self-control
- technology has *at least the potential* to trespass significantly on people's rights of privacy - not only offenders, but perhaps their families and friends as well; any such intrusion must be proportionate to the seriousness of the crime they committed and / or to the need to protect the public
- technology should not lead or determine the

character of practice, but must be recruited to support the tasks of probation; in particular, we must guard against implementing some practices solely on the grounds that we can.

VICTIMS AND RESTORATIVE JUSTICE

The longer established probation services of northern and western Europe were set up to work with offenders and the ethical and political obligation to enhance services to victims poses challenges for these organisations. In some jurisdictions where a Probation Service is of more recent origin, the attempt is being made to incorporate attention to the needs of victims in the culture and organisation of the agency from the beginning.

The Probation and Mediation Service of the Czech Republic is a conspicuous example. Here, the ‘unit of intervention’ in response to crime is not just the offender, but the *relationship between the offender, the victim and the community*, recognising the rights and responsibilities of each. Romania and Latvia similarly recognise the importance of a victim focus in their probation practice.

Restorative justice is an approach to offending that sets as its priority *making amends* for the harms that a crime has caused. The community has responsibilities here as well, not only because both offender and victim are (typically) members of that community, but also because the crime can be a symptom of problems which the community needs to address.

But while this offers an exciting vision of a more constructive response to crime, this cannot be easily reconciled with criminal justice approaches to crime which accord priority to punishment, perhaps deterrence and public protection. Even rehabilitation does not sit easily within this model: the requirement to make amends and the focus on desistance are conceptually distinct and sometimes could be in tension.

Nor should it be supposed that restorative justice represents a full and sufficient response to the needs of victims. There are many crimes, for example, where no offender is detected or apprehended and

the needs of victims are no less insistent on that account. Again, not all victims (or offenders) want to participate in mediation or any other restorative process and, while the absence of the victim need not preclude working with the offender in restorative ways, the rights and needs of victims will need to be respected in other ways in such circumstances.

That said, probation and restorative justice are natural allies, even if their mission is not identical. Both look further than punishment as a proper response to crime and both are optimistic about the possibility of change and the deployment of peaceful, rather than coercive means.

EU FRAMEWORK

The EU is about to adopt a Framework that marks a milestone in probation in Europe (see European Union 2008). This Framework will allow for the transfer, in certain circumstances, of probation supervision from one jurisdiction to another – typically where an offender convicted in another country is returned to their own country for supervision.

The significance of this agreement goes even beyond the enormously important problem that it seeks to address. While there is a long and distinguished history of sharing ideas about probation practice across Europe - through the Council of Europe, the *Conférence Permanente Européenne de la Probation*, and through academic exchange - this is the first time that a probation measure has had such international significance. In order for the framework to achieve its potential, the member states of the EU will gradually need to learn much more about each other’s probation practices. Whether or not this will, in time, lead to greater assimilation in practice and, indeed, whether this is necessarily a desirable thing are interesting questions. For now, it must be recognised that this measure will fail unless accompanied by greater understanding of and confidence in the probation practices of other countries. It has significant implications both for the state where the offence occurred and for the state where supervision will be carried out. Moreover, while the Framework applies to members of the European Union, it will have implications for all member states of the Council of

Europe, especially those countries who aspire to EU membership.

CHALLENGES FOR PROBATION IN EUROPE

Among the challenges that many probation services across Europe have to confront are:

- Gaining the confidence of the public, politicians and judiciary. Probation is not always well understood and in many places struggles to establish itself as a credible response to offending. This confidence is a critical aspect of probation's legitimacy. A personal view is that legitimacy is achieved by a clear and principled statement of values and purposes and a well-run organisation that reliably reflects those commitments. These are the hallmarks of a trustworthy organisation and probation must do all it can to retain its integrity amidst the volatile politics of crime and punishment. In the search for credibility as an 'alternative to custody', probation must not exaggerate its punitive character or try to make itself as 'prison-like' as possible. Nor must it make unsustainable claims about its capacity to reduce reoffending.
- Meeting the needs of non-nationals - and also those who, under the new Framework, may be returning to their own country of citizenship, perhaps after a long period of absence. With so much movement of people on the continent, this is a large and growing challenge. There is an important piece of work to be done here, in developing policies and practices that genuinely meet the needs of people in this position. Some central probation concepts - for example, *reintegration, community, social capital* - have a quite different significance for them.
- Improving quality of service to victims. In many countries, the rights of victims are used in political debate to try to justify a more punitive response to crime. Probation must acknowledge the legitimate concerns about victims even as it rejects a necessary opposition between the rights of offenders and victims and repudiates punishment as the best way of vindicating a victim's experience. Whether in direct delivery of a service or in working partnership with other agencies, probation must be – and be seen to be – working to enhance the standard of service

to victims. Mediation and other restorative approaches can have a valuable place here.

- Working to ensure that offenders have genuine access to services available to the rest of the community. As we have seen, pathways to desistance typically depend upon social inclusion and a reasonable access to services and resources. Where opportunities to sustain a law-abiding life-style are blocked – perhaps through unfair discrimination against (ex-) offenders in the employment market – probation must advocate and negotiate on offenders' behalf.
- Trying to make sure that tougher community sanctions and enforcement do not lead to more imprisonment. A specific concern is this: in the quest for credibility, many services are 'monitoring compliance' much more rigorously. If (in the same quest for credibility) ever more requirements are included in community orders, the scope for default correspondingly expands. More demands, together with tighter enforcement, could lead to an increased incidence of breach which, perversely, could in turn lead to an increase in the prison population (Maruna 2004; Canton and Eadie 2005).
- Responding to popular punitiveness. Crime, notoriously, can become a focus for all kinds of other concerns, including economic and social stresses. It is hard to predict how punitive attitudes will be affected by current economic recession and its social consequences, but they may well intensify if crime rises or is perceived as an increasing threat. It is entirely likely that offenders will be made to play their time-honoured role as scapegoats.

A COMMENT ON 'PUBLIC OPINION'

Many countries feel that public opinion is a particular challenge to the development of probation. Yet we need to recognise that the very idea that 'the public' has a settled and ascertainable 'opinion' is extremely debatable. Opinions about crime are more likely to be complex and ambivalent. Although in the abstract people will often express the view that punishment should be tougher, the more they come to know about the details of a particular case, the less punitive they become (see Maruna and King 2004).

Nevertheless, this is indeed a daunting challenge. As Karstedt puts it:

“Crime policies are explicitly based on the expression of collective emotions of fear and anger about crime. Politicians compete with each other in addressing the ‘emotional’ needs of the public, and in turn mirror these emotions back to the audience and the electorate. National and even global audiences become highly emotionalized ‘moral spectators’ in the spectacles of distant suffering of victims and perpetrators.” (Karstedt 2002: 303)

There is a risk that trying to challenge these powerful and deep-rooted emotions in the cool and dispassionate language of ‘effectiveness’ is simply (to use a musical metaphor) in the wrong register.

In a particularly illuminating discussion, Maruna and King (2004) point to a correlation between *punitiveness*, on the one hand, and *scepticism about the possibility of change*, on the other. In other words, if people doubt that change is possible, to that extent they become more punitive; or, conversely, the more they believe that change is possible, the more they favour making the attempt at change through non-punitive and positive interventions. It may turn out, then, that a strong affirmation of probation’s core value of *belief in the possibility of change* may be one way of resisting punitiveness. In any case, this seems a more honourable and promising position than attempting the task of trying to make probation ever more punitive in a forlorn quest for this kind of credibility. We need to insist that there is nothing ‘credible’ about the excesses of punishment.

VALUES AND PRINCIPLES

Although there are many (and increasing²) similarities in task and organisation in the European probation services, the DNA of the European probation family is in its shared values. Any summary of these values is inevitably personal, but among those that should be affirmed might be:

1. Probation aims to achieve rehabilitation through working with offenders to help and encourage them to lead law-abiding lives. This includes creating opportunities for offenders, helping them to acquire the skills they need to make good use of these opportunities and motivating them to do so.
2. Probation believes in the possibility of change. It tries to address offenders as responsible people and to draw out the best in them. As far as possible, offenders should be fully involved in any decisions that affect them. They should be actively involved in assessment, planning, interventions and evaluation.
3. Probation recognises the importance of a personal relationship in achieving change.
4. The purpose of intervention is to reduce the likelihood of reoffending. Interventions must accordingly be constructive and not punitive in character.
5. The work of probation makes an important contribution to public protection.
6. The most effective form of control is self-control. External controls are sometimes necessary, as punishment or to increase public protection, but the attempt to command the offender’s informed consent should always be an objective of probation’s work.
7. Probation services can play an essential role in contributing to a reduction in the prison population. In many cases, community intervention would be both fairer and more effective in reducing offending than custodial detention.
8. Social inclusion is a requirement of social justice and a key guiding principle in probation practice. Since people who do not have fair and reasonable access to the services and institutions of civil society (social exclusion) are more likely to offend, probation’s commitment to social inclusion also helps to reduce offending. Social inclusion brings opportunities to lead full and worthwhile lives, which are also associated with the informal social controls that conduce to pro-social behaviour.
9. To achieve the social inclusion of offenders, probation must work in close partnership with the agencies of civil society. Meeting the complex needs of many offenders calls for co-ordinated and complementary inter-agency work.

10. Probation services should ensure that in all their work they respect the diversity of those who use their services and challenge all unfair discrimination. To ensure that everyone is dealt with well and fairly, services must take full account of individual circumstances and needs.
11. In some countries, probation agencies offer services to victims of crime. Even where this is not the case, all probation practices must respect the interests and rights of victims of crime, as well as working with offenders to help them to recognise the harm that they have caused.
12. Probation interventions, whether as a punishment for an offence or as a measure imposed instead of formal punishment, normally involve a limitation on the rights of offenders. Any restrictions on offenders' rights must be proportionate to the offence and to the need to protect the public.
13. While the duty of probation staff to prevent offending will sometimes require them to take action against the offender's wishes, they should always try to secure the offender's understanding of and, so far as possible, consent to any decisions that affect them.
14. Probation staff must always have regard to the rights and interests of offenders, even when the rights and interests of others must take priority.
15. Policies, practices, organisation, staffing and resourcing should be such as to enable probation to achieve its purposes and give expression to its values.
16. Probation agencies should explain their work and its significance to the public. Its values, policies and practices must be open and must command the confidence and trust of the community.
17. Statements of policy and practice should be made available to other countries. This is a precondition of international understanding and cooperation and will allow different jurisdictions to have confidence in their probation practices.
18. Council of Europe and CEP have key roles in facilitating knowledge exchange and disseminating good practice. Discussions at this Conference will serve to enhance understanding and cooperation between countries.
19. Probation policy and practice should be evidence-led. Rigorous research and evaluation

should guide the work of probation agencies. The data collected through the SPACE initiative will be an invaluable source of intelligence.

20. The Council of Europe is helping to promote probation through the development of a recommendation on probation organisation and tasks, founded on a set of basic principles and values. In its future work, the Council will ensure that ethical considerations and human rights guide the development of probation practice in Europe.

The Council's Recommendation may well reflect some of these principles. In any case, the principles that the Recommendation adopts will be the foundation on which guidance about organisation, policy and practice will be built.

NOTES

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