

# Exploring modern probation

Social theory and organisational complexity

Philip Whitehead

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I have been interested in and a supporter of the moderating contribution of probation to the criminal justice system since the late 1970s. After undertaking a course of study to work as a probation officer at Lancaster University during 1979–81, I was offered employment by the Cleveland Probation Service where I remained for 26 years, until November 2007. During this lengthy period I made attempts to reflect on the nature of probation work; more recently my interests have been diverted towards engaging with the implications of profound transformations associated with the politics of modernisation. Consequently I am indebted to many people who have contributed to my work over many years. I first met David Smith at Lancaster in 1978 – he has probably forgotten this by now – when he told me I needed some practical experience before starting a period of training at university. On the strength of his advice I worked in a hostel for the homeless in Lancaster in 1978–79 before David became one of my probation lecturers. It is therefore fitting, and it also gives me pleasure, that he agreed to write the foreword to this book.

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# Foreword

*Professor David Smith, Lancaster University*

In this book, as in his earlier work, Philip Whitehead deploys a wide range of sources to explore critical issues of policy and practice as they affect the Probation Service in England and Wales. Unusually among writers on such topics, he is alive to the insights that can be drawn from imaginative literature, as well as from philosophy and social theory. Combined with his own empirical work – interviews with criminal justice practitioners, but also a close reading of policy statements and political pronouncements – this approach produces a subtle and stimulating analysis of what has happened to the Probation Service and how this might be understood.

The focus of this book is on recent history – developments since the first ‘New Labour’ government was elected in 1997. Anyone who hoped that the change of government might lead to a revaluation upwards of the contribution of probation to the criminal justice process, let alone to support for a revival of its humanistic, person-centred traditions, must have been quickly disappointed. Not that such hopes could have had much empirical foundation: Jack Straw, Home Secretary in the first Blair government, was publicly committed to policies of ‘modernisation’ which left no room for anything that might look like sentimentality towards people who offend. While the Probation Service did not continue to suffer the malign neglect that was the most obvious feature of the Major government’s attitude, from the outset New Labour’s penal policy was characterised by a determination to talk and act tough. As has often been remarked, the New Labour government set new records in the pace and volume of new criminal justice legislation (for example Solomon et al, 2007), accompanied by organisational changes – notably in probation and youth justice – claimed to be necessary for the achievement of efficiency, consistency and rationality.

In New Labour’s early years, however, there were grounds for optimism among those who continued to believe in the potential of the Probation Service to rehabilitate and reintegrate people in trouble. The Home Office’s Crime Reduction Programme (CRP), the largest and most ambitious crime-related initiative ever undertaken by a British government, was implemented in 1999, with an intended lifespan of 10 years. Ten per cent of its £250 million budget was to be devoted to independent evaluation of the projects it supported, with the aim of improving the evidence base for effective practice (Maguire, 2004). Among the projects were a range of probation programmes designed to test the effectiveness in different contexts of work run on ‘what works’ principles – primarily, cognitive-behavioural group work with a focus on offending and related problems. Home Office researchers were cautiously optimistic at the start that the results would be positive (Vennard et al, 1997), but when the CRP was



wound up in 2002 (after three years, not 10), little of this optimism remained. Now, it appeared, it was quite likely after all that nothing worked (the dismal orthodoxy of, roughly, 1975–90), although (supposedly) none of the research commissioned for the CRP was robust enough to show whether anything worked or not (Harper and Chitty, 2005).

Since then, the government's position on criminal justice policy, and the place of the Probation Service within it, has been defined by an odd combination of the claim that dramatic progress has been made and an insistence that much more must be done, as a matter of urgency. In a speech to trainee probation officers at the University of Portsmouth in early 2009, Jack Straw congratulated probation officers, or perhaps himself, on the 'distinct change in culture' which had come about in the past 10 years: 'Probation officers now routinely talk of the criminals they are dealing with as "offenders" – which is what they are – instead of the euphemistic language of "clients" which I encountered as Home Secretary' (Straw, 2009). He went on to give further evidence of improvement: 'More offenders are completing their orders than ever before and enforcement has improved dramatically. Now 95% of offenders are being brought back to court for breaching their orders; in 1999 this was a mere 44%'. (He meant, presumably, 95% of offenders who breach their orders.) Success is defined exclusively in terms of enforcement, not in terms of helping people change in constructive ways. In this respect New Labour's line on community penalties has been consistent: the constantly reiterated theme is that community penalties need to be made tougher, more demanding, more intensive and thus more punitive. A year earlier, the Ministry of Justice (2008a) published a 'briefing paper' which was mainly about prisons but also envisaged pilot or 'demonstrator' projects for an 'intensive control sentence' and an 'intensive punitive sentence', the latter to be made up of 'unpaid work and curfew'. All this is consistent with the overarching trends identified by Whitehead: the argument is that probation needs to become more punitive if it is to attract the support of sentencers and to build public confidence. It is thus endlessly committed to a competition with prison in which it cannot possibly win: no matter how intensive the restrictions of community supervision, they can never be as intensive as the restrictions of custody. There is no sense that probation might offer something different from custody; indeed, government statements often seek to blur the line between the two, stressing the rehabilitative potential of imprisonment, and the punitive component of probation.

Institutionally, this blurring of the boundary is represented by the National Offender Management Service (NOMS), the government's version of a national correctional service which, Whitehead suggests, will inevitably be dominated by concerns about prisons. In this organisational and policy context, he sees no prospect that the Probation Service will be able to retain the personalist, humanitarian approach which used to be seen as the main justification for its existence – although his respondents, less enthusiastic modernisers than the government, would like it to do so. Whitehead therefore concludes that if anyone is going to advise, assist and befriend offenders it will be from within the third

sector, and perhaps especially from agencies representing faith communities. If third sector organisations can become embedded within NOMS (Whitehead's metaphor is that of a Trojan horse), they could provide support for offenders while whatever remains of the Probation Service attends to enforcement.

Whitehead's work reminds us that there are few new ideas in probation policy: a National Probation Service was mooted in 1962, and the idea of partnerships between the service and a range of voluntary agencies has been a recurring theme of government policy since at least the late 1980s. But there is no doubt that the pace and scale of change have both increased in the period covered by this book. As he is well aware, there still are examples of probation practice that would be recognisable as such to earlier generations of officers, but there is no doubt that they now have the air of being examples of an endangered species. This book provides an intelligent and provocative account of how they came to be so marginalised and vulnerable.



# Introduction

The main purpose of this book is to explore and explain the phenomenon of modernisation and accompanying cultural transformations in probation and the wider criminal justice system since New Labour came to power in 1997. By doing so this book builds on and also develops two previous contributions within this specific field of enquiry. The first provided a historical overview of probation from 1876 to 2005 as the Probation Service approached its centenary year in 2007 (Whitehead and Statham, 2006). The second started to describe in greater detail more recent organisational and cultural mutations (Whitehead, 2007). This third and final book aims to develop a theoretical framework to facilitate the central task of exploration and explanation, as well as providing the final instalment of an empirical research project undertaken in the North East of England. Consequently this approach will help elucidate what the Probation Service has become under New Labour, in addition to allowing the research findings to articulate what it ought to be according to a number of respondents who agreed to be interviewed. Consequently the book unfolds as follows.

Chapter 1 clarifies the parameters of the book, which begins in 1997 with the election of New Labour to governmental office. It proceeds by establishing a visible index, a set of empirical indicators, of modernising features within the criminal justice system according to three continuous periods: 1997–2001, 2001–05 and 2005–2009/10. By proceeding chronologically it is possible to draw attention to some of the more salient modernising tendencies within probation contained in numerous documents that will be alluded to. Moreover, and according to one of my colleagues who reviewed the work, this chapter proceeds at a breathless pace. But, I would suggest, it needs to do so, precisely to capture the avalanche and ceaseless rapidity of those changes that have occurred in a relatively short period of time.

Chapter 2 begins by establishing the position that it is possible to construct different approaches to excavating the field of probation. The first approach constitutes a chronological description of key events. Second, one can proceed by thinking about the history of changing ideas exemplified, for example, in the work of Bill McWilliams (1983, 1985, 1986, 1987). But there is a third approach which makes it possible to consider the application of disparate bodies of social theory which draw attention to a number of insights associated with Durkheim, Weber, Marx and Foucault. In this chapter it is argued that this approach innovatively opens up rich and nuanced analytical possibilities in order to capture some of the modernising complexities that have evolved since 1997. It should be acknowledged that at certain points this chapter presents its own intellectual challenges due to the nature of the material under consideration which, it may be suggested, is difficult to avoid. Nevertheless the chapter concludes with what I hope is a helpful summary, in Table 2.1, of some of the key theoretical perspectives which will become relevant as the book proceeds.

Chapter 3 initially makes the point on the back of the preceding chapter that the Probation Service has become a complex organisation and that different social theories are useful in drawing attention to different organisational facets, for example, its heightened role in expressive forms of punishment (Durkheim), bureaucratic domination (Weber), the punishment and exclusion of problem populations under neoliberalism (Marxist) and the notion of disciplinary regulation (Foucault). However, it is not possible to remain analytically content with bodies of social theory associated with 'the big guys'. This is because one must not overlook the presence of 'the good guys' within the criminal justice system who belong to a discernible tradition supported by the lineaments of an ideology encapsulated in religion, a humanitarian outlook and social work help to individuals who offend. Here the emphasis is placed more on supportive welfare and rehabilitation rather than policies of punitisation, illustrated by what can be described as the existence of a personalist ethic. There is little doubt that the good guys have left their mark within probation, and that a vestige of personalism remains within the organisational dynamics of the National Offender Management Service (NOMS) that came into being during 2003–04. Nevertheless some of these benevolent features will be explored critically.

Chapter 4 puts bodies of social theory introduced in Chapter 2, in addition to religious and personalist impulses discussed in Chapter 3, to work. It is argued that the approach adopted in the two previous chapters can be combined to facilitate an excavation and explanation of the probation domain that has some analytical merit. In other words, it is suggested with accompanying empirical support that restyled offender managers (formerly known as probation officers) continue to operate within a modernised organisation, albeit in a restricted manner, as the good guys of the criminal justice system. But they can also be involved in expressive and occasionally illogical knee-jerk reactions, function as bureaucratic technicians, punish and exclude the residuum under neoliberal economic arrangements and operate as the disciplinary regulators and normalisers of the courts on behalf of New Labour. Therefore probation has become a complex organisation, ideologically diffuse, with traditional values compromised, which social theories and personalist impulses bring into focus. Consequently criminal justice, including probation practice, functions at levels beyond instrumental crime control. Accordingly, these four chapters constitute the first discrete part of the book.

Chapter 5 turns from bodies of social theory and personalist impulses to empirical research conducted in one criminal justice jurisdiction in the North East of England, known as 'Northtown'. In a work of this nature, it might be expected that this chapter presents research findings elicited from interviewing probation employees from *within* the organisation. However, this is not the case, which will be explained in due course. Instead I have been engaged in collecting data, both quantitative and qualitative, from a number of solicitors, court clerks and magistrates, including a more limited data set from barristers and judges, on themes pertinent to this book. Therefore there are features of this chapter that are

arguably empirically innovative. Moreover tension is established between *what the Probation Service has become* (Chapters 1–4) and *what it ought to be* according to the views of some respondents. In fact some of the research undoubtedly challenges and provokes doubts about the modernising programme deemed necessary by New Labour, by retaining a place and space for pre-modern features that has significant implications for thinking about the future of criminal justice.

Finally, Chapter 6 draws the theoretical and empirical material together as the basis for presenting the view that in rebalancing probation and the criminal justice system through modernisation, the ability of the system to promote criminal and social justice has been unbalanced. In fact it is possible that modernisation has irreversibly politicised and punitised probation to such an extent that there is a new order of things, a new organisational social fact, the implications of which are considered towards the end of this concluding chapter.

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# Modernising probation and criminal justice since 1997

## Introduction

This chapter provides an introductory and largely descriptive account of what the Probation Service has become, beginning with New Labour's manifesto of and election victory in 1997. My main area of concern is to establish a visible index of the direction of travel by alluding to a number of salient documents that bring into view a culturally transformed organisation. This approach also clarifies the operational parameters of modernisation within which this book has been constructed. However, before engaging with this task it should be acknowledged that from 1945 until the 1970s, the UK experienced a 'golden age' of inclusivist welfare and a criminal justice system majoring on rehabilitation rather than punishment (an *ideal type* construction, expounded in Garland [1985, 2001]). Nevertheless, by the late 1970s there were signs of dislocation within the post-war Keynesian schema, manifested in scaling back welfare provision and the emergence of tougher attitudes towards criminal justice (Hall et al, 1978; Brake and Hale, 1992; Cavadino and Dignan, 2006). Subsequently, from the onset of the Thatcherite era in 1979, and in the first instance until 1987, the rhetoric of law and order prevailed yet was tempered by, for example, the 1982 Criminal Justice Act, which introduced criteria to restrict the use of custody for young people (Whitehead and MacMillan, 1985; Charman and Savage, 1999). Indubitably there was a harsher melody line as the prison population continued to rise, but there were also less discordant voices. Subsequently, during 1987–92, the influence of Douglas Hurd's pragmatism moderated the Conservative motif of law and order as criminal justice became more managerialist, alongside a strategy of punishment in the community, ostensibly to hold down the prison population (Downes and Morgan, 1997). By contrast, between 1992 and 1997 the Howard–Major axis pressed the punitive law and order button in circumstances of economic difficulties and with the threat of New Labour on the horizon. Without much warning the gloves came off to expose penal hands brandishing the banner of prison works!

New Labour's election victory in 1997 signalled the evolution of a melange of contradictory penal and social forces. There was no wholesale abandonment of the links between socio-economic conditions and crime because of the salience given to tackling social exclusion, yet there would be no dilution of punitive toughness when responding to people who offended. New public management (Whitehead, 2007, p 34), inherited from previous Conservative administrations,

existed alongside evidence-based ‘what works’ and the renaissance of a form of rehabilitation (Clarke et al, 2000). Prisons may not ‘work’ as effectively as community sentences, but there was no concerted policy to curb imprisonment in a climate of zero tolerance and when young people were singled out for special attention. Additionally, there remained an ongoing commitment to neoliberal economics and its complementary punitive orientation towards the individual; but then again restorative justice was part of the sentencing agenda. Consequently, New Labour has not turned back the clock to some halcyon period dominated by inclusivist welfare and anti-punishment sensibilities. Rather it has presented itself as a modern political force, pursuing a new Clintonian Democratic ‘third way’ (Jones and Newburn, 2004), with a mandate to modernise the country and its institutions. In other words, the political foundations of criminal justice have been expressed as: ‘We must be tough; we must be modern; we must get value for money; we must be re-elected’ (Cavadino and Dignan, 2006, p 75). Within this changing, modernised and modernising context, with elements of continuity reaching back to 1979, it is necessary to look more closely at the period from 1997 that established the operational parameters for more penetrating explorations and explanations later on.

## **New Labour and modernisation: 1997–2001**

The political and electoral phenomenon of New Labour, in contradistinction to the social-democratic expression of pre-1990s’ Old Labour,<sup>1</sup> has been associated with the overlapping themes of modernisation and cultural change. Enshrined within New Labour’s manifesto leading up to the general election of May 1997, after 18 years of four consecutive Conservative administrations – *New Labour because Britain deserves better*<sup>2</sup> – modernisation was manifested in the way it called for a new bond of trust between the political establishment and the British people, exemplified in 10 specific commitments. These were enumerated as: education, tax, the economy, getting the unemployed into work and rebuilding the National Health Service (NHS). Importantly, at number six, was a reference to being tough on crime and its causes by halving the time it took persistent juvenile offenders to come to court.<sup>3</sup> The remaining four commitments were: families and communities in a modernised welfare state, the environment, the imperative to clean up politics and a statement about leadership in the modern world.

Of course New Labour’s theology of ‘behold I am doing a new thing’ was in the process of being shaped before they were elected to governmental office. This involved setting the nation on a new course, in a spirit of rebuilding and renewing, on the solid foundation of a belief in progress and justice, values of equal worth (themes resonating with Old Labour), with no one cast aside in what would be a fairer and safer society (but see the critique in Wilkinson and Pickett, 2009). Additionally, within this latest version of the New Jerusalem, in a society rapidly approaching the new millennium, the politics of crime were constructed according to a narrative of personal responsibility that would receive a more punitive if

not vindictive riposte. This approach set it apart from and also against the tenets of Old Labour, yet continued to forge a new consensus with Conservative penal philosophy since Michael Howard's right-wing lurch in 1993. In fact New Labour had already transformed its criminal justice outlook since the early 1990s so that the 1997 manifesto could claim it had become the natural party of law and order, a critical selling point if it aspired to secure electoral legitimacy. If the NHS was safe in New Labour's hands, the country could equally feel secure in the knowledge that the punishment of offenders would be as safe in the same capacious hands. Accordingly, modernising influences would fast-track the punishment of recalcitrant young people; reform the Crown Prosecution Service to convict more criminals; put more police in uniform on the beat; and crack down on petty crimes including the malaise of disorder. However, it should also be acknowledged, to maintain a sense of evidential balance, that a tougher and more punitive approach to offenders would not eschew the relationship between behavioural repertoires, differential opportunities, social deprivation and exclusion.<sup>4</sup>

Even though at no point in Campbell's (2007) journalistic apologia of the Blair era is there a specific reference to the Probation Service (it is subsumed beneath the reform of public services), it is difficult to entertain the view that probation was never mentioned prior to 1997 within political debates surrounding the modernising agenda. Having speculated, we are on solid ground by 1998 because the language of a modernised Probation Service was very much on the political agenda in a consultative document called *Prisons—probation: Joining forces to protect the public* (Home Office, 1998). After decades of ideological, philosophical and organisational distinctions between prisons and probation, a period of consultation was established in 1997 to explore ways in which probation and prisons could be better integrated with a view to improving efficiency and raising performance levels. In other words, according to the doctrines of new public management, could it be possible for these two organisations, which had for decades largely pursued their own distinctive penal-welfare trajectories, to work more closely together to reduce re-offending; better prepare prisoners for release; share resources, information, knowledge and skills; and reconfigure organisational structures to provide value for money?

In the second chapter of the prisons—probation review there is a reference to modernising the organisational framework of probation. It is also stated, as a matter of concern, that legislation continues to direct employees of the service to advise, assist and befriend (originally stated in the 1907 Probation of Offenders Act) which, without supporting evidence, is boldly claimed to be out of touch with the expectations of the courts and what probation work has become (but see Chapter 5, this volume). This is because the service has become more orientated towards public protection, which means that a modernised service must confront, challenge and change offenders, rather than provide advice, assistance and friendship, thus constituting a profound shift in tone. Accordingly, a harsher and more punitive discourse appears to be tantamount to the process of modernisation.<sup>5</sup> The document proceeds to state that there is a lack of probation accountability to



central government due to fragmented governance arrangements, which at the time would have been disputed in the 56 local area services by the then chief probation officers (CPOs). Consequently, probation needed to be better organised, forging closer links with central government, the prison system, police, mental health services, local authorities and the Crown Prosecution Service. Interestingly the theme of modernisation and cultural transformation involved, the document argued, much clearer national direction and stronger national leadership, and the Home Secretary must be able to have political responsibility – in other words, centrally imposed command, power and control – over local area probation services. Windlesham concurs when stating that in the area of criminal policy, as in other areas of public administration, ‘the demands of modernisation called for models of central control, rather than delegated authority and local accountability’ (2001, p 245).

Finally, at paragraph 2.11 of the review (Home Office, 1998), the suggestion was made for a new organisational name to accompany the new nomenclature that would convey modernised messages. In other words, the Probation Service, with its considerable history and cachet (Whitehead and Statham, 2006), conveyed an image of tolerance towards crime and offenders that was no longer politically palatable. Therefore the organisation should be rebadged, from the Probation Service to the Public Protection Service, or perhaps the Community Justice Enforcement Agency. The 2000 Criminal Justice and Court Services Act signalled the culmination of a process beginning in the *Prisons–probation* document that saw the establishment of the National Probation Service in 2001. Consequently the word ‘probation’ was eventually preserved after much lobbying and deliberation between the organisation and the government. It can be argued that from 1997/98 probation was inextricably enmeshed in the politics of modernisation at the behest of New Labour modernisers (Nellis, 1999; Windlesham, 2001). This was driven home in 1999 when it was asserted that the government had a mission to modernise, to renew the country for the new millennium: ‘modernising our schools, our hospitals, our economy and our criminal justice system’ (Cabinet Office, 1999). Probation was therefore relaunched on a new trajectory based on the many changes that had already occurred since 1979 (Statham and Whitehead, 1992; Whitehead and Statham, 2006). Before moving on, it is interesting to acknowledge Raynor and Vanstone’s analysis of this period because even though the prisons–probation review gave due consideration to the merging of two organisations into a single service, with a view to *reducing the cultural divide*, at this stage it was considered to be a step too far (Raynor and Vanstone, 2007, p 71). A step too far in 1998 but not by 2003, as we will see later.

## **A new urgency: 2001–05**

By 2001, after a four-year term in office, New Labour’s manifesto, *Ambitions for Britain*, included a number of pledges for the next five years on economics, schools and health. There was also a pledge for 6,000 extra police recruits to tackle drugs

and crime and to build on the claim that crime was down by 10% compared with 1997 (in fact crime had been falling overall since the mid-1990s; see Reiner, 2007a, for an assessment of the relevant data). Once again attention was drawn to an agenda for more radical public service reform that included renewing public services to provide frontline staff with the freedom to respond to the needs of the public, particularly nurses, doctors, teachers and police officers (probation officers were not included in this list). The language of 'tough on crime' was repeated, as were the related themes of punishment and individual responsibility for one's actions, seemingly regardless of differential social circumstances. In fact, outbursts of criminality were constructed almost in millenarian-apocalyptic terms as a battle that had to be fought and won by government on behalf of the people. In other words, this was a war against crime, or, more specifically, a war against certain impoverished sections of the community waged by government in support of the law-abiding. It has been pointed out that the war on crime, including the war on terror and war on poverty, became a cogent motif of political governance in the US that helped legitimate the expansion of governmental power, punishment and authoritarian control. By doing so it helped drain away the real causes of social conflicts rooted in the 'asymmetrical effects of power' (Simon, 2007, p 14). This tone was duplicated in the UK when, in the Casey report, it was stated that crime was tackled most effectively when the law-abiding majority 'stand together against the minority who commit it' (Cabinet Office, 2008, p 4).

Reforming and modernising impulses towards the criminal justice system were also the subject of a White Paper that would speed up the prosecutions of offenders, take victims much more seriously and continue the fight against crime, in addition to the development of crime and disorder reduction partnerships (CDRPs). The fight would also continue against anti-social behaviour and what was emotively referred to in 19th-century terms as a 'yob' culture. It should also be acknowledged that there was a greater sense of urgency to reform and modernise after the election victory in 2001, encapsulated in the political gimmickry of the benefit sanction and rigorous enforcement procedures (Windlesham, 2003). Therefore, at this point, we need to explore this White Paper in a little more detail. *Criminal justice: The way ahead*, published in February 2001 (Home Office, 2001a), begins by acknowledging in structuralist, social exclusion mode that the increase in crime over the past 25 years was partly a result of unemployment and lack of opportunities for the unskilled, the increasing blight of drugs and the availability of consumer goods. Consequently, even though the mechanisms for the creation of a responsible and law-abiding society do not inhere solely within state criminal justice systems – in other words, socio-economic and wider structural factors must be factored into an analysis of human behaviour which balances structure and agency – nevertheless, a modernised criminal justice system must function instrumentally to prevent crime and reduce re-offending, be efficient at dealing with cases, respond appropriately to victims and be more accountable for its decisions. Fundamentally, what was desirable was a criminal justice system that delivered justice for all (Home Office, 2001a, p 5).