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PROBATION AND THE AFAN ALTERNATIVE TO CUSTODY

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In March 1986, a senior Home Office civil servant, in an address to a probation officers' conference on the probation service's future, left his audience in little doubt that they had entered a new era of explicit policy expectations and accountability, in which the service had to prove itself.

'It is still difficult to demonstrate - and in present circumstances we have to demonstrate - that an increase in the size of the probation service would provide added value in terms of results, or that a reduction would produce an actual loss... As a matter of principle it is as important as ever that as few offenders as possible should go into custody, and as a matter of the practical management of the system it is crucial that the benefits of the prison building programme should not be lost through increases in the prison population.'

He went on to point out that while the service had 'done well' to attract more probation and community service orders, the use of custodial sentences was still rising.

That suggests that the service was not thought to have been fulfilling the objectives set out for it in 1984 by the Home Office in its Statement of National Objectives and Priorities:

'The first priority should be to ensure that, wherever possible, offenders can be dealt with by non-custodial measures and that standards of supervision are set and maintained at the level required for this purpose.'

Among the repercussions of this statement throughout the service has been a marked ideological division between advocates of alternatives to custody and those who see the priority as being to resist a drift by central government towards a more coercive and controlling view of the probation service.

At first sight, such a division seems surprising: surely probation officers could agree on the desirability of keeping people out of prison? As a magistrate has put it, in a reference to the 1982 Criminal Justice Act,

'Is it not sad that legislation intended to reduce the population of our prisons may well be virtually ineffectual by reason of the decisions of the probation service, of all people?' (quoted by W F Bullock and W M S Tildesley of the Cambridge Institute of Criminology in the course of a local study of probation and supervision orders).

From the point of view of the service itself, with its

social work tradition and principles, the issues are by no means so simple. The question of the proper balance between 'care' and 'control' has for many years been the most persistent theme in discussions about probation: should the service represent an extension of control and discipline into the community, or an enclave of humane and client-centred principles within a coercive system designed for what Nils Christie has aptly christened 'pain delivery' (see his 'Limits to Pain,' Martin Robertson, Oxford, 1982)? The 1984 Statement reminded the service that the Government expected it to justify itself through its impact on the criminal justice system. It emphasised alternatives to custody, but made no reference to the underlying aims and values of probation practice, and did little to resolve professional controversies about how and why specific alternatives to custody should be developed (for a brief summary of some of these, see *Care or Control?*).

Current attitudes within the service range from the enthusiasm of a minority of agency managers for control, containment and deterrence, through a middle position where gestures in the direction of 'controlism' are regarded as an unavoidable cost of the retention of professional autonomy in other matters, to a marked scepticism among many probation officers about the use of any additional requirements in probation orders to create programmes designed as alternatives to custody. The arguments most often advanced against additional requirements are that they transform probation from a form of conditional liberty into a form of containment; that they risk over-surveillance and increased breach rates; that they risk locating probation orders too high in the sentencing tariff, thus accelerating offenders' progress towards custodial sentences; and that there is no guarantee that they will be used only for suitable offenders. Persuasive evidence is cited of past failed attempts at diversion from custody: suspended sentences were mostly passed on offenders who would not have received immediate custodial sentences anyway, and some of them eventually went to prison for longer periods when they re-offended during suspension. Intermediate treatment for juveniles, in its early years, failed to provide an alternative to custodial sentences and care orders, and may have accelerated the system's custodial drift; and only about half of community service orders are alternatives to custody. From this point of

Care or Control?

The dilemma encapsulated in those alternatives, care or control, began to acquire a sharper policy focus in 1974 when the Advisory Council on the Penal System published a review of penal strategy towards young adult offenders – the Younger report – and called for a strengthened form of probation order to which clients would not be asked to consent, and which would include powers for probation officers to have their clients detained for 72 hours if they seemed likely to commit an offence. This proposal was successfully resisted by the probation service, which emphasised the collaborative and contractual nature of the process of social work under a probation order.

However, evidence was already accumulating, both in Britain and in the United States, which questioned whether non-custodial sentences made any difference to subsequent recidivism. Probation itself was particularly damaged by the Home Office's own 'Impact' study, which showed that, except for certain fairly untypical sub-groups, offenders on probation who received more intensive supervision from their probation officers actually re-offended slightly more than a randomly allocated control group who received the normal service.

Around this time also, the service was busy with innovations stemming from the 1972 Criminal Justice Act, particularly the community service order whose primary purpose was not to meet the social work needs of offenders, but instead to provide and supervise appropriate projects for offenders to work in for the number of hours ordered by the Court. Day-to-day contact with offenders was handled

largely by staff such as ancillaries and sessionally-employed supervisors who were not probation officers and had not received a social work training (and were, of course, cheaper to employ). Most importantly, the schemes were popular: the Government decided to extend coverage from the initial experimental areas to the whole country before the results of evaluative research were available. Sentencers were also enthusiastic. Because the community service order came to be often used for offenders at a higher level of the sentencing tariff, and therefore more at risk of custody than the average probationer, the result was a major increase in probation service activities.

Other innovations which were a more direct reflection of thinking about the social needs of offenders received less official encouragement. They included the experimental day training centres designed to help 'inadequate recidivist' offenders through intensive programmes of social-skill training under special probation orders incorporating a daily attendance requirement. There was also a decline, throughout the decade, in the numbers of probation orders made by Courts. Meanwhile, prison numbers grew and community service, which emphasised atonement and reparation rather than social work, seemed to be establishing itself as the most viable of the non-custodial sentences administered by the service.

At the same time, the underlying rationale of the service's traditional commitment to 'rehabilitation through casework' was coming under another kind of attack: not only was its empirical effectiveness

view, the answer to the prison population crisis lies in sentencing reform rather than in innovation by the probation service.

Some of the usual arguments against this position – for instance, that the officers advancing it are politically motivated or suffer from 'authority problems' – are easily dismissed; others are more telling. For instance, it does seem that many Courts do not often use conventional probation orders for the more serious offender, and our political system resists limitation of sentencers' powers, so it is difficult to counter the argument that ways must be found of presenting a wider range of credible non-custodial options to the Courts. Experience in the development of alternatives to care and custody for juvenile offenders suggests that with appropriate 'gate-keeping' and a carefully planned approach to recommendations in social inquiry reports, offenders need not be 'pushed up' the tariff and real reductions in the use of custody can result. Such developments should not, it is argued, be obstructed simply by a preference on

the part of some probation officers for more traditional styles of work.

However, what is most striking about both sets of arguments is that they lack an empirical base. Because service responses to the 1984 Statement and to the 1982 Act are still in progress, there has been little opportunity to monitor and evaluate the outcomes of new initiatives, and assertions about feasibility are often based on faith rather than experience. In principle, it seems that most concerns within the service could be satisfied if alternatives could develop in a way which both reduced custodial sentencing and provided helpful experiences for relatively serious offenders within the context of a probation order with additional requirements; but although there have been hints of such findings in some of the day training centre research, there has been a dearth of evidence from less specialised areas of probation practice. This has not been helped by the limited attention paid to probation practice issues by the Home Office research and planning unit since the end of

questioned, but the whole notion of 'treatment' for offenders was being strongly criticised on moral grounds as being contrary to justice. This 'justice model' argued that offenders should be sentenced for what they had done, not on the basis of their backgrounds nor in accordance with unreliable professional diagnoses of their 'needs.'

All this led, in the early 1980s, to fundamental self-examination on the part of the probation service. Some advocated the separation of probation practice from criminal justice issues, seeing the service's role as providing help for offenders in relation to their social and personal difficulties rather than administering specific penal measures. In line with this, radical members of the National Association of Probation Officers saw a danger of incorporation into an increasingly authoritarian State apparatus in a 'law and order' society. Others took a completely different line, best exemplified by Martin Davies, professor of social work at the University of East Anglia, who advocated, to a conference of chief probation officers in 1982

'a non-custodial disposal that will be seen not only as an acceptable option to prison, but as a punitive, retributive and controlling facility in its own right, hard enough to replace prison as the preferred short-term sentence.'

In other words, the way to make alternatives more attractive than custody was to compete with custody on its own terms, and some probation services actually tried to do something of the kind. The best known example was the probation control unit in Kent, which required probationers to attend for six

days a week for six months on the basis of an additional requirement in their probation orders. The regime emphasised discipline and deterrence, with curfew requirements and rules such as

'probationers will respond immediately to any lawfully given instruction... probationers will at all times address members of staff using their correct titles and surnames.'

Although the control unit regime may, in practice, have been less negative and disciplinarian than its rules suggested, it acted as a focus for many practitioners' anxieties about the direction in which 'alternatives to custody' seemed to be moving, and appeared to represent a radical challenge to traditional probation values. In 1982, the House of Lords, in a case concerning a condition of attendance at a similar facility, held that a requirement in a probation order should not impose a custodial degree of control over a probationer 'on the ground that it would involve a substantial degree of custodial punishment.' By the time the 1982 Criminal Justice Act had responded to the Lords' decision by creating a new specific power to include in probation orders requirements to attend specified places or activities for up to 60 days of a probation order, the probation service was thoroughly and often deeply divided over the whole question of alternatives to custody. Most people agreed the prison population was too high (though this did not stop it increasing); most people agreed that the probation service could play a part in increasing the use of non-custodial sentences; but how this should be done, and what changes this implied in the traditional role of probation officers, were highly debatable issues.

the Impact experiment.

In this context, local evaluative studies of practice innovations assume a critical importance. By studying the introduction and operation of 'alternative to custody' schemes within local criminal justice systems, we can begin to build up useful evidence about whether, and under what conditions, initial diversion from custody can occur; whether the dangers of tariff escalation, or pushing offenders unnecessarily up the sentencing scale, can be avoided; whether clients benefit from involvement in such programmes; whether subsequent offending is lower, or at least no higher, than after custodial sentences, so that the public is not put at greater risk; and whether effective programmes, which can attract the confidence of sentencers as a realistic response to crime, can be developed at reasonable cost. Here, we report on one recent study of this type, and assess its implications for alternatives to custody based on the probation order.

The Afan Alternative Project

The project began in the Afan (now Port Talbot) petty sessional division of West Glamorgan in 1980 as a response to the low use of probation orders and high custodial sentencing among young adult male offenders. Local sentencers were involved from the beginning and responsibility for its development rested mainly with Deri Lewis, a local probation officer with substantial experience in groupwork with offenders. What became known as the 'Afan alternative project' involved the inclusion in probation orders of a requirement to attend one or two group sessions a week during the first six to nine months of a probation order; thus it anticipated many of the projects now developing under the 1982 Criminal Justice Act. From the outset, objectives included providing both an alternative to custody for the target male age group and a more helpful and constructive experience for offenders than the usual

Table 1: Sentencing Patterns, Afan Magistrates Court, 1979-1985

| | 1979-80 | 1981-85 |
|---------------|-----------------------------|---------|
| | % male offenders aged 17-20 | |
| Custodial | 19 | 11 |
| Non-custodial | 81 | 89 |

Table 2: Previous Convictions

| | Previous convictions | | | |
|--|----------------------|-----|------|-----|
| | 0-2 | 3-5 | 6-10 | 11+ |
| | % | | | |
| Project members | 20 | 42 | 29 | 9 |
| All* males aged 17-20 entering custody | 28 | 38 | 28 | 6 |

* England and Wales, 1984

custodial sentences.

The project used a combination of innovative group-work methods - physical training, psychodrama and sociodrama - which focused on everyday life situations in which members experienced difficulty or caused trouble for others. There was also close contact with families, a regular presence in court, contracts with offenders involving clear expectations about behaviour, and close links to the local community through a management committee.

How successful has the project been in reducing custodial sentences among the target group of young males? An independent evaluation was built in from the beginning. From this and from further analysis (with the aid of the Nuffield Foundation) of outcomes for the 79 clients supervised during the first five years, we are in a position to judge how helpful it was to young offenders, both at a personal level and in terms of their propensity to re-offend.

Sentencing

Compared with sentencing before the project was set up, there was a marked reduction in custodial sentences in the first five years (see table 1). Young offenders who took part resembled, both in the number of previous convictions and types of offences, offenders in England and Wales who received custodial sentences - a third had already been in custody. In other words, these were offenders to whom the Court would not normally have handed down probation orders. There was no clear evidence that the project encouraged 'net-widening,' or the inclusion of offenders at a low tariff level who would

normally have expected other non-custodial sentences. In particular, 'normal' probation and community service orders for the relevant age groups did not disappear from the Court's repertoire.

Despite the fact that members of the project were expected to pay close adherence to specific requirements, breach proceedings were rare - only ten in five years - and resulted in custody in only two cases; the other eight remained with the project. More than half of those who re-offended were dealt with by non-custodial sentences and in several cases returned to the project, so there was no evidence that the project accelerated recruitment to custodial sentences. Project staff were aware of this risk and took steps to avoid it.

Helpful to young offenders?

Before and after the period of compulsory group attendance, offenders were asked about the nature and level of problems in their daily lives. Some project members who were reconvicted early were not available to complete a second checklist, but of the majority who were, about two-thirds, or 38, reported a reduction in the social and personal difficulties which they faced, compared with 18 who reported an increase in those difficulties.

As opposed to the conventional wisdom that 'nothing works,' there was evidence of a significant reduction in reconviction risk for project members - that is, their reconviction rates over two years were significantly lower than the nationally recorded rates for comparable groups of offenders on release from custodial sentences, including those from Borstal. This difference was particularly marked during the second year following induction into the project: project members aged 17-20 had a two-year reconviction rate of 50 per cent, while 63 per cent of male offenders aged 17-20 released from custodial establishments, including Borstal, in England and Wales in 1981 were reconvicted within two years (table 3).

How much did it cost?

The direct running costs of the project during the five years are not easy to determine, since they involve inputs from the wider probation service as well as the salaries of staff who were also doing other work, and the use of premises which were not all exclusive to the project. However, a reasonable estimate is about £115,000, which includes the cost of developmental work by project staff outside the immediate locality. On average the 79 young offenders participated in the project for six months each. This represents an average cost of about £1,456 per client, or just under £56 per week. This compares with weekly costs in 1984/85 of £269 for a custodial place in a closed youth establishment, and £13 for a conventional probation order. If we make a fairly conservative assumption that the project's clients might otherwise have expected custodial sentences of an average length of about four months and allow for reduction by remission to an average of about 10.7

Table 3: Reconviction Rates

| | Months from date of order/release: | | |
|---------------------------------|------------------------------------|----|----|
| | 6 | 12 | 24 |
| | % reconvicted | | |
| Project members | 21 | 39 | 50 |
| Custodial offenders aged 17-20: | | | |
| all male offenders | 25 | 46 | 63 |
| Borstal | 25 | 46 | 65 |

weeks, the potential cost of dealing with these offenders by way of custodial sentences can be estimated at just over £227,000, or nearly twice the actual cost of the project. In other words, and without taking into account any possible savings through reduced re-offending, the project was clearly much cheaper than custody, but rather more expensive than conventional probation orders.

Balance sheet

Overall, evaluation of the first five years produced encouraging results, which justified the continuation of the project. Among the factors which seems to contribute to its effectiveness were clear 'gate-keeping' to ensure concentration on the intended target group; reasonably effective referral systems to ensure that the project was considered as an option in appropriate cases; clear contracts with project members, involving informed consent and a recognition of clients' obligations and responsibilities; a disciplined framework; a high level of involvement with Courts; high levels of client contact; methods which were demanding and evoked the personal involvement of clients in work on real problems; the social work skills of staff; the support of the Home Office and senior probation management; and the role of the local management committee.

It was not all plain sailing however. Relations between the probation service and the management committee were not always easy, and the committee disbanded in 1984 when the probation service took over full financial responsibility for the project. Some probation staff disliked the project, and gave it only guarded and limited support. In general, however, the evidence lends support to the view that alternatives to custody which use additional conditions in probation orders can be feasible and effective, and need not have the adverse consequences predicted by their opponents. The aims and goals of social work can be combined with displacement from custody, provided that attention is given to careful planning, resources, public relations, local involvement, clear guiding principles and values, realistic monitoring and adequate levels of skill.

The Future

In today's economic climate, it is not enough to suggest that a scheme appears to work; questions of cost-effectiveness loom large. The assumption is that alternatives to custody must be cost-effective simply because custody is so costly. Research on at least one intensive supervision project for juveniles has already questioned this. In the close supervision unit in Kent, Martin Knapp found that, while costs per client-week were lower than weekly costs of the custodial sentences the project was intended to replace, costs per sentence were actually higher, since clients stayed at the unit for much longer periods than they would have been likely to spend in custody. It is also doubtful whether significant savings in the costs of the custodial system arise through the diversion of a few dozen or even a few hundred individuals, since running costs are largely taken up in salaries and buildings, and are unlikely to be reduced until the diverted numbers become so large that whole institutions can be closed. Present trends are in the opposite direction.

A more modest goal would be to try to ensure that the projected prison-building programme will actually end overcrowding - which on current projections it will not - and to create sufficient breathing-space in the system to allow refurbishment, integral sanitation and an improvement in what is generally regarded as an unacceptably low quality of life for most inmates. A prison system which accords more closely with civilized values may be a more realistic goal than one which operates at significantly lower cost.

Another, more immediate, reason for discussing cost-effectiveness in community-based corrections is implicit in the Home Office's 1984 Statement, which encourages probation services to develop probation - and by implication alternatives to custody - for more serious offenders by transferring resources from other less favoured areas, such as voluntary after-care and the social work service, to the civil courts. This suggests that the Home Office believes that the additional costs of alternatives are marginal. The evidence from the Afan study, which we have just considered, puts this into perspective. Even a part-time alternative to custody, which avoids the high costs of daily attendance and therefore runs much more cheaply than a custodial sentence, is not a cheap option for the probation service. Furthermore, the general development of such alternatives is a more costly undertaking than is assumed by the Home Office. Part of the reason for this is that staff in such projects need to undertake a large amount of developmental and liaison work, and new projects have to bear staff costs before they fill up with clients. The Afan project would certainly have been less effective without such promotional and developmental work, and it is impossible to escape the implication that to rely on the probation service to provide alternatives to custody implies a more costly probation service.

In the long term, the question of alternatives to custody is only partly one of costs. It may well be that a good and comprehensive system of community-based alternatives, combined with a smaller but better residual custodial sector which provided an appropriate level of containment, care and assistance for the most difficult offenders who could not be contained in the community, would show some fiscal benefits in comparison with the existing system. These savings might, however, be smaller than many people imagine. The more important questions are about values, and about social and political choices: what sort of criminal justice system do we want? We now have the largest prison population in western Europe, held in deteriorating institutions where all pretensions to rehabilitation have been abandoned. The development of alternatives to custody offers one strategy for improvement, and involves a move away from reliance on the unproductive coercion of offenders towards a system in which a different kind of demand is made on them: namely to accept responsibility for harm done, and to enter into negotiated but enforceable agreements about what they will do to make good the harm (see John Gretton's article on victim-offender mediation elsewhere in this edition). Community-based programmes allow offenders to participate actively in finding solutions both to the problems they experience and to those their offending has created, and bring the community itself into more constructive contact with its offending members. If the community also benefits from lower re-offending, so much the better.

Such programmes represent a more creative and empirical approach to some of the difficulties of our criminal justice process, and we already know that it is possible to develop less coercive and more effective solutions to some criminal justice problems. The remaining question is whether we wish to do so. Probation services can contribute by identifying areas where the Courts over-rely on custodial sentences, developing appropriate strategies in consultation with sympathetic sentencers and other local people, monitoring the results and using evaluation to inform practice. Such an approach also seems to offer the best prospect of finding common ground between those who are concerned to see concrete service objectives reflected in changed criminal justice outcomes and those who seek to maintain a social work focus on the needs and interests of individual clients. The historical debate about 'care' and 'control' is overdue for a more informed and empirical approach. ■