

REDEMPTION, REHABILITATION
AND RISK MANAGEMENT
A HISTORY OF PROBATION

GEORGE MAIR AND LOL BURKE

Redemption, Rehabilitation and Risk Management

Redemption, Rehabilitation and Risk Management provides the most accessible and up-to-date account of the origins and development of the probation service in England and Wales.

The book explores and explains the changes that have taken place in the service, the pressures and tensions that have shaped change, and the role played by government, research, Napo and key individuals from its origins in the nineteenth century up to the plans for the service outlined by the Conservative/Liberal Democrat government.

The probation service is a key agency in dealing with offenders; providing reports for the courts that assist sentencing decisions; supervising released prisoners in the community and working with the victims of crime. Yet despite dealing with more offenders than the prison service, at lower cost and with reconviction rates that are lower than those associated with prisons, the probation service has been ignored, misrepresented, taken for granted and marginalised, and probation staff have been sneered at as 'do-gooders'. The service as a whole is currently under serious threat as a result of budget cuts, organisational restructuring, changes in training and increasingly punitive policies. This book details how probation has come to such a pass.

By tracing the evolution of the probation service, *Redemption, Rehabilitation and Risk Management* not only sheds invaluable light on a much misunderstood criminal justice agency, but offers a unique examination of twentieth-century criminal justice policy. It will be essential reading for students and academics in criminal justice and criminology.

George Mair has been Professor of Criminal Justice in the School of Law, Liverpool John Moores University since 1995. Previously, he was Principal Research Officer in the Home Office Research and Planning Unit. He is a leading authority on community penalties and has published widely on this topic. He was a member of the Merseyside Probation Board, 2001–7.

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‘This is an important, timely, and hugely engaging and challenging book. The esteemed authors offer a sophisticated account of the changes within the probation service over the past hundred years and critical reflection on what has happened since. Essential reading for students and academics in criminal justice and criminology, of course, but every politician and policy maker should be required to read the book too, and to reflect and act upon its key messages.’

*Professor Loraine Gelsthorpe, Institute of Criminology,
University of Cambridge*

‘*Redemption, Rehabilitation and Risk Management* is a comprehensive, engaging and timely history of the probation service in England and Wales which will be an essential resource for students and academics alike. Drawing on their considerable experience in research and practice contexts, George Mair and Lol Burke have produced an extremely valuable contribution to the literature on probation which charts the fascinating evolution, over more than a century, of a key player in the criminal justice system.’

Dr Gwen Robinson, Reader in Criminal Justice, Sheffield University

Redemption, Rehabilitation and Risk Management

A history of probation

George Mair and Lol Burke

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Introduction

In 2007 the probation service in England and Wales was 100 years old. Its birthday was celebrated by several major conferences as well as booklets providing an overview of the history of the service (National Probation Service 2007; Napo 2007). Understandably, there was a great deal of satisfaction in what the service had achieved in its 100 years and how far it had come, but it was notable that in the respective booklets both the Director of Probation in the Home Office and the National Association of Probation Officers (Napo) representing probation staff spoke of uncertainty about the future of the service, thereby tempering the celebratory mood. And there was a lot to be anxious about. Probation had been under persistent attack by Conservative and Labour governments since the early 1990s. It had been subject to fundamental structural change as it was reorganised into a National Probation Service under direct government control in 2001, and then had become a part of the National Offender Management Service (NOMS) in 2004 alongside the prison service (although in 2007 it was still unclear exactly what form NOMS would take). The Offender Management Bill, which had been presented to Parliament in November 2006, contained provisions to end the monopoly of Probation Boards on providing probation services and to replace Boards with Trusts. The promise of the Effective Practice Initiative had remained unfulfilled. New sentences – the community order and the suspended sentence order – had recently replaced the probation order, the community service order and the various other community sentences run by the service. And the pressure to meet externally imposed targets was unrelenting. For probation service staff, then, celebration might not have been the most appropriate response to the centenary; a more considered response would have been to ask how it had come to this.

With this book we set out to answer such a question. A centenary is, of course, a timely moment to look back and reflect upon the contributions of any organisation, but it was more the uniquely difficult circumstances confronting the probation service that provided the impetus for the book. Probation had always been a Cinderella service – except it had never actually arrived at the ball. Its Ugly Sisters – perhaps the police and the prison service – have treated it for most of its existence with condescension. It has been misrepresented, unfairly attacked, sneered at, caricatured, marginalised, even ignored by politicians and public.

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Yet despite all of this, its staff have carried on for 100 years with the thankless task of trying to effect change in offenders in the community, and have always proved amenable (perhaps too much so) to take on extra tasks. It is difficult to imagine the last 100 years without the probation service, even though probation officers have never achieved – and probably never desired – the symbolic status we give to police or prison officers.

The aim of the book is, quite simply, to offer an accessible yet rigorous account of the origins and development of probation in England and Wales (probation has had a different history in the other countries that make up the UK; for a succinct accounts of its development in Scotland see McIvor and McNeill 2007, and for Northern Ireland O'Mahony and Chapman 2007). We try to explain why developments have occurred in the form that they have taken; the pressures and tensions that have shaped change; the critical role played by the Home Office, Napo and a number of key individuals; the missed opportunities. Too many studies of probation tend to view it as a stand-alone agency, but it has always been a part of the criminal justice system – although, until recently, perhaps not a fully engaged part. It is also deeply embedded in the social, cultural, political and economic conditions within which it operates. An awareness of the context, then, is necessary to understanding the emergence and development of probation. We have briefly sketched in some of this context whenever most relevant, although we are aware that this represents a light-touch approach. To fully situate probation in the conditions in which it has operated would necessitate a very different, and much longer, book.

As criminologists we foreground crime, law and order in our work, yet it is a chastening experience to read general historical accounts of post-war Britain and note just how rarely criminal justice is mentioned. Neither Peter Hennessy (2006, 2007), Dominic Sandbrook (2006, 2007, 2010), nor David Kynaston (2007, 2009) in their histories covering (so far) the period 1945–74 have much to say about crime. They do, of course, say a great deal about the conditions which can lead to crime and responses to it – housing, unemployment, affluence, divorce, alcohol consumption, education and the like – but in books of 500–600 pages criminal justice issues are lucky if they get half a dozen pages of discussion, and probation none at all. Similarly, in the personal accounts of their time in power of Margaret Thatcher, John Major and Tony Blair, when criminal justice was at its height as a policy issue, there is surprisingly little about the subject (Thatcher 1993; Major 1999; Blair 2010). So probation needs to be contextualised in a balanced way; on the one hand we must recognise its significance, but also acknowledge that from a wider perspective it is a relatively small player.

Indeed the size of the probation service, in terms of its numbers compared to the other traditional criminal justice agencies (police, courts, prisons) may have a part to play in explaining its history. Given the small number of probation officers, the service has always been easy to marginalise and also easy to change. In addition, probation is invisible; unlike the police or the prison service, probation officers do not (yet?) wear uniforms or work in a closed institution. Yet the size and the invisibility of the service do not explain how it has reached its

present position. *Redemption, Rehabilitation and Risk Management* shows how the key issues that are often assumed to be behind the problems facing the service have – for the most part – been around since its beginnings. There has been no carefully plotted and co-ordinated conspiracy by government to take over and centralise – and perhaps thereby destroy – the service; this happened gradually and only became inevitable due to a process of reaching a ‘tipping point’ that fitted with wider governmental aims.

There are, of course, other historical accounts of the probation service available and it is worth noting how these differ from this one. First, in chronological terms, is Dorothy Bochel’s (1976) *Probation and After-Care*, which covers the history of the service from its beginnings up to the Criminal Justice Act of 1972, which introduced the community service order, the suspended sentence supervision order, and four experimental day training centres. This is an invaluable study of the first 70 years of the service but suffers from two limitations. First, it is now 30 years old and while – with the benefit of hindsight – 1972 is an appropriate date to end a historical study of probation as the new sentences introduced by the Act changed probation profoundly, there have been many developments since then that are not covered. Second, the book reads like an authorised, official history; it does not capture fully the tensions and struggles that went on, it rarely makes use of statistics or research to illuminate its arguments and it does not touch upon the ways in which probation officers went about their tasks. Despite these limitations, *Probation and After-Care* remains an indispensable volume for anyone interested in the history of probation.

Next is the famous quartet of essays written during the mid-80s by Bill McWilliams (1983, 1985, 1986, 1987) which explore ‘the history of ideas sustaining the English probation service since its beginnings in the late nineteenth century’ (McWilliams 1987: 97). Taken together the essays offer a detailed explanation of how the original missionary ideal gave way to the diagnostic era which in turn was replaced by pragmatism. Their major limitation lies in the failure to provide adequate evidence to show how these three phases were actually practised by probation officers. McWilliams relies on a variety of academic, religious and governmental writings for his argument but at no point confronts the crucial question of how far probation officers utilised these texts in their work. In the third essay, four social enquiry reports – one each from the 1930s, 1940s, 1950s and 1960s – are used to make his case although, to his credit, McWilliams (1986: 259) does note that ‘it obviously cannot be demonstrated that they are representative of practice in general at the time’. Like Bochel’s book, simply because of the passage of time, the essays are now somewhat dated but they are a key source for the history of probation.

The third account is a study of the London probation service. *Crimefighters of London* (Page 1992), as the title might suggest, is more tabloid than broadsheet, but this is not meant to diminish its achievements. It is an immensely readable, straightforward history of the development of probation in London until, as a result of legislative changes, the Inner London Probation and After-Care Service came into being on 1 April 1965. Page uses a great deal of archival material to

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forward his argument and the book is particularly notable for highlighting the contributions of individual officers. However, it ends in 1965 and it is – given the nature of its subject-matter – a local study.

In 2004 Maurice Vanstone's *Supervising Offenders in the Community* was published. This is a highly original study building on the work of McWilliams, and exploring the history of the supervision of offenders in the community up to 2000 by examining what the author calls 'practice and practice discourses' (Vanstone 2004a: viii). This is done by analysing a wide range of documentary sources as well as interviews with serving and retired probation officers. The book is a hugely stimulating and influential study, but, as Vanstone acknowledges, it faces the same problem as McWilliams' essays: it is impossible to know how far the discourses discussed were put into practice; even when practitioners are writing about their practice there may be various reasons why this does not reflect fully what they did. They may be justifying their practice, they may be highlighting or obscuring certain aspects of their work, they may fail to recall exactly what they did (and, of course, there is the further issue of how the offender perceives what the probation officer has been doing). Because Vanstone's focus is the supervision of offenders there is no discussion of community service or the organisational development of probation, but as a study of the history of ideas behind offender supervision this book is likely to prove the definitive account.

Finally, and most recently, there is Philip Whitehead and Roger Statham's *The History of Probation* with its intriguing sub-title *Politics, Power and Cultural Change 1876–2005*. The authors offer a general account of the history of the service which updates the work of Dorothy Bochel, but the book is somewhat unbalanced and rather idiosyncratic. It is really a study of the 1979–2005 period rather than a full historical survey; slightly more than 10 per cent of the book covers the first 70 years or so of the service, while the remaining 90 per cent discusses the past 25 years. Despite its claim to examine politics, power and cultural change there is relatively little on these issues and how they relate to each other. While the personal experiences and knowledge of the authors is instructive and informative when it is used, it sits oddly with the more macro approach that is its normal style. Whitehead and Statham were long-serving members of the probation service, a point which they rightly acknowledge gives strength to their book as well as weakness.

Redemption, Risk and Rehabilitation provides the most up-to-date and balanced account of the history of probation in England and Wales. A history which has international resonance due to the influence the service has had throughout the world – most recently in helping to shape the emergence and development of probation services in eastern Europe following the collapse of communism. Our credentials as authors are based on extensive knowledge of the probation service from a number of perspectives. For George this involves more than 25 years researching and writing about the probation service from within government (as a member of the Home Office Research and Planning Unit) and as an academic, as well as a period of 10 years as a member first of a local

probation committees and then Probation Board. With regard to Lol, it has meant a similar period of experience, first spent working in a probation service as a Probation Officer then a Senior Probation Officer, subsequently training newly recruited officers as part of a university training consortium, before becoming a full-time academic.

This is very much an inclusive and synthesising history. We have relied upon a wide range of written material and have used our judgement about how much weight to give it. All documentary evidence is partial and written with a specific audience or audiences in mind. Our readers can always go to the originals and decide for themselves whether we have used them accurately or not. All statistics are taken from Home Office or, after 2007, Ministry of Justice statistical publications (*Criminal Statistics, Probation Statistics, Prison Statistics, Offender Management Statistics, Sentencing Statistics*) unless otherwise stated.

Chapter 1 explores the origins of probation in England and Wales. These are messy, contingent and various, and cover social, political, cultural and economic factors. The second half of the nineteenth century can be seen as a lengthy gestation period leading up to the 1907 Probation of Offenders Act. Chapter 2 covers the first decade of probation. It discusses the Act and its limitations as well as the Departmental Committee that was set up to examine the workings of the Act, and draws attention to the achievements of that period as well as the tensions that emerged. The 1920s, as Chapter 3 explains, was a key period for the development of probation despite the decade beginning with swingeing cuts in government expenditure. Various government reports meant that the local autonomy of probation services was slowly constrained, probation officers became more professional and the service grew in size. By the early 1930s, probation was the default disposal in the lower courts, and was extending its responsibilities. Chapter 4 discusses the various departmental committees relevant to probation that reported during this decade, noting especially the Committee on Social Services in courts of summary jurisdiction, which made the case for a wholly public service and more training. The regulation of probation work was also attempted by Napo with the publication in 1935 of *A Handbook of Probation*. The war years led to more punitive sentencing and a decline in the use of probation, but the 1948 Criminal Justice Act acknowledged its importance although the close working relationship with the Home Office was beginning to show signs of wear and tear. With Chapter 5, we enter the post-war period when, initially, we might see a golden age for probation as it expanded its responsibilities and its staff became the experts on casework with offenders. But research failed to prove that probation was unequivocally effective, and prison numbers and crime began rising, factors that were to prove significant in the future. Chapter 6 covers the 1960s and the first half of the 1970s, a key time of change for the service. It changed its name (to the Probation and After-Care Service) following the introduction of parole; it began the process of losing responsibility for juveniles who had been the core client-group for the service since its beginnings; and it was redefined as an alternative to custody following the criticisms of Martinson (1974) and the introduction of community service and day training centres. The loss of certainty

about what it was for can be seen by the number of attempts to redefine probation at the end of the 1970s, which are discussed in Chapter 7. The chapter also examines the many developments in probation during the 1980s, the growing pressure placed on the service by government, and the momentary optimism offered by the 1991 Criminal Justice Act. In Chapter 8 we take the story up to the present day. Since the arrival of Michael Howard as Home Secretary in 1993, probation seems to have been under sustained attack in an increasingly punitive penal climate. The Effective Practice Initiative was introduced but, like IMPACT in the early 1970s, ended with a whimper; a national service was introduced but scarcely given time to settle down before more radical changes were made with the arrival of NOMS; the names of orders were changed, new orders were introduced culminating (for now) with the community order and the suspended sentence order in the 2003 Criminal Justice Act. The combination of being marginalised in NOMS, becoming just another provider of services as a result of contestability, and the harsh cuts required by the current economic situation do not hold out much promise for the service. In the concluding chapter we attempt to sum up some of the key factors behind the 100 years of probation.

‘The past’, as L P Hartley noted in the opening of his 1953 novel *The Go-Between*, ‘is a foreign country: they do things differently there.’ But, whether or not things are done differently in the past, what is done continues to reverberate in the present as Hartley’s novel memorably shows. Probation’s current situation is not simply a result of what has been going on in the last few years; it is tied inextricably to the choices, tensions and initiatives that have marked out its history since 1907 and which we discuss in this book. By exploring its past this book helps to illuminate the present of a vital – and all too often misunderstood and under-appreciated – part of the criminal justice system in England and Wales. Our hope is that this study does not prove to be an epitaph for the service.

1 Origins

An Act of Parliament represents not only a beginning, but also a culmination. On the one hand, an Act sets out new legislation that will take effect from a specified date – it may be new forms of practice, new modes of allocation of services, new forms of control, new agencies – but the implication is that the Act is a starting point. But an Act is also the summation of activity that may have taken considerable time and energy to pull together and formulate. In this chapter, we will discuss the various ideas, individuals, initiatives and organisations that lie behind the 1907 Probation of Offenders Act. It is difficult enough today to try to elucidate the origins of recent Acts of Parliament; these tend to be complex, convoluted and all too often bathed in degrees of political spin. Looking back more than 100 years there is probably rather less spin to worry about (although it would be naive to claim that spin did not exist), but also less information in general. We do, of course, have the benefit of hindsight, which permits a more objective assessment of the factors that influenced the Act, but we do not have any real feel for what was considered at the time to be important.

It would be an artificial task – as well as an impossible one – to try to pinpoint a precise moment when the idea of probation began. As David Garland has consistently argued, there is very little evidence for concerted, carefully planned policy making in criminal justice; instead it is ‘a matter of fragmentary lines of development crossing and intersecting, or else being lost as they go off on implausible tangents’ (Garland 1985: 208). Probation emerges from a number of disparate ideas, developments and initiatives that can be found in the nineteenth century; a variety of factors that were not necessarily related to each other in any clear way at the time, although it is now possible to discern linkages. All of the factors examined in this chapter played a part in the emergence of probation, but it is important to emphasise that we do not list them in a simple chronological fashion or classify them according to their significance. The order in which they are discussed tends to move from the more general to the more specific. The key point to bear in mind is that while the various factors are discussed separately here, they certainly did not exist in separate silos. We have attempted to examine them individually only in order to simplify the analysis.

Religion

It is difficult today to appreciate fully the significance of religion in Victorian Britain. We now live in what is, essentially, a secular society, whereas mainstream Victorian culture was deeply embedded in a world view founded upon religion. And not just any religion: the Church of England or some of the sects that had broken away from it (Methodists or Baptists, for example) dominated the lives of the English. The works of the great Victorian novelists and poets – Charles Dickens, Robert Browning, George Eliot, Alfred Tennyson, Anthony Trollope – are profoundly concerned, either directly or indirectly, with issues of religious import. Politics, too, seems to have been driven to a considerable degree by religious impulses and the Evangelical movement in particular was especially influential.

Evangelical propaganda led to the suppression of duels and blood sports, evangelical drives to protect children in factories enjoyed some success, evangelicals played an important role in prison reform, and in their most impressive accomplishment by 1807 they had succeeded in abolishing the slave trade ... They played a dominant role in education: 55 per cent of children between 5 and 15 were enrolled in church-run Sunday schools. Every major figure in British political life from 1830 to 1870 with the exception of Palmerston was touched by evangelicalism ... The intellectual, moral and political cultures of Victorian Britain were based on evangelical Christian foundations.

(Allard 2005: 2–3)

William Wilberforce, one of the key individuals in the fight to abolish slavery, was an Evangelical Quaker; the Earl of Shaftesbury, who led the battle for factory reform and child labour, was proud to be an Evangelical (and was also involved in penal reform):

I think a man's religion, if it is worth anything, should enter into every sphere of life, and rule his conduct in every relation. I have always been – and, please God, always shall be – an Evangelical.

(www.spartacus.schoolnet.co.uk/IRashley.htm)

John Howard and Elizabeth Fry, both significant figures in prison reform, were closely associated with Evangelicals (Ignatieff 1978), as was Mary Carpenter (Radzinowicz and Hood 1986). And the importance of the Evangelical movement in penal reform generally throughout the nineteenth century is demonstrated by Martin Wiener (1990).

The Evangelical movement was religion in action. Evangelicals were not content simply to sit in church on Sundays and worship God; they were concerned with going out and grappling with social problems in an attempt to ameliorate them. They had a profound concern for the souls and well-being of the poor and

oppressed, and encouraged rescue work for those who deserved redemption. Salvation – the saving of souls – was central to their beliefs and this involved missionary work with sinners. But the redemption of sin, and, therefore, mercy ‘could not be extended to all’ (McWilliams 1983: 138); only those who were deserving of help could be saved. Thus, it was important to classify sinners into those who could be saved (or reformed) and those who could not, and mercy would be extended to the former group. It is somewhat ironic to consider that classification (admittedly based on clinical judgement rather than actuarial assessment) is so deeply rooted in the early days of missionary work with offenders and yet its most recent incarnations – the Offender Group Reconviction Scale (OGRS) and the Offender Assessment System (OASys) – were initially met with considerable unease by probation staff (Mair 2001).

This is not the place for a detailed analysis of the theology of the Evangelical movement and how it provided a powerful basis for dealing with what we might now call social problems (see Ignatieff 1978; McWilliams 1983; Vanstone 2004a; and Wiener 1990 for more detail), but the significance of Evangelicalism for penal reform generally in the nineteenth century, and for the development of the probation service specifically, cannot be underestimated. As McWilliams (1983) has shown, the religious impulse behind probation was superseded within 30–40 years of the introduction of probation in 1907, although its shadow lingered on until the introduction of the National Probation Service in 2001.

Philanthropy

The charitable impulse in Victorian life was just as significant as – and, indeed, intimately related to – the importance of religion. Christianity enjoined its adherents to practise charity towards those who were in need; this would not only save the soul of the giver, but also help the needy, and this injunction was deeply engrained amongst Victorians even of limited means. Victorian philanthropy indeed may have been

... little less than a golden age of Christian social service that yielded benefits far beyond the provision of welfare services. It provided the foundation of civil society. It humanized urban industrial life and relations between rich and poor. It introduced a higher moral tone to working-class life. It contributed to social cohesion. It gave skills and status to disadvantaged groups and, as such, has been described as a nursery school for democracy.

(Bowpitt 2007: 106)

Charitable ventures aimed at young delinquents, such as the Marine Society and the Philanthropic Society, had been established by the beginning of the nineteenth century, and soon after the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders was formed, which advocated segregating young offenders from adult criminals (Pinchbeck and Hewitt 1969; 1973). That there was a considerable need for philanthropic endeavours was made clear

by the work of Henry Mayhew with his *London Labour and the London Poor* first published in 1851 (and interestingly followed up in 1862 by *The Criminal Prisons of London*), which showed graphically the extent of poverty in the metropolis. Mayhew's work was followed up in the 1860s by Joseph Rowntree's studies of poverty (the first of which examined the links between crime and poverty), and towards the end of the century by Charles Booth's massive survey *Life and Labour of the People in London*. These studies not only demonstrated empirically the existence of poverty, they also classified different kinds of poverty and – by implication – suggested that as there was so much poverty difficult choices would have to be made about who should be helped given the limited resources available.

With no state apparatus to support or direct it, charity had, for more than half of the nineteenth century, been ad hoc, localised, loosely organised – and thus increasingly seen as inefficient. In 1869 the Charity Organisation Society (COS) was formed with the aim of improving charitable work by organising it, regulating it, and scientifically classifying those who might be its objects into the deserving and the undeserving. Only the former would receive assistance; helping the latter would be wasteful. But how was it possible to differentiate between those who genuinely deserved help and those who did not? The answer was by careful inquiry into those who applied for help – one of the principles of the COS:

Careful investigation of applications for charitable aid, by competent officers, each case being duly considered after inquiry, by a Committee of experienced volunteers, including representatives of the principal local charities and religious denominations.

(Mowat, quoted in Garland 1985: 116)

Charitable activity, however, in addition to its philanthropic aims, can also be seen as having a political objective. Peter Young has argued that

... charitable activity, including probation, operated as a mechanism which politically incorporated a possibly oppositional working-class culture into an institutional and cultural structure based on middle-class values and ideologies. Thus social work should not be seen as a gradual liberalisation and democratisation of society, but as a directed attempt to circumscribe the scope of legitimate action and life styles available to working-class people.

(Young 1976: 55)

While the close relationship between religion and charity slowly began to unravel towards the end of the century, for much of the second half of the nineteenth century the links between the two were inescapable. Charity was one of the distinguishing features of the religious individual. Charity was meant to save sinners. Charity was putting Christian beliefs into practice and thus was especially suited to Evangelicals. Not all could be saved or helped and thus the need to differentiate between sheep and goats was the same for religion and philanthropy.

It would be difficult to over-emphasise how many of the great philanthropists were driven by their religious beliefs: Wilberforce, Shaftesbury, Fry, Carpenter, Rowntree, Barnardo, to name but a few.

But this is not to suggest that charity and religion always proceeded smoothly hand-in-hand. Garland (1985) has demonstrated that there were real tensions between groups in the charity movement. And given the levels of need found by the likes of Rowntree, Booth and Mayhew it slowly became evident that charity alone – no matter how well organised or efficient – was not enough. The state began to move into the sphere of social work as the century ended.

Crime

While crude data on the numbers committed for trial for indictable offences began to be collected in 1805, it took a further 50 years before anything that might be termed a useful data set began to appear in 1857. It is, therefore, difficult to be precise about trends in crime during the nineteenth century. Radzinowicz and Hood (1986: 113–15) argue for three discernible periods: for the first 40 years of the century they see ‘unrelieved pessimism’ with crime steadily increasing, followed by 30 years of ‘qualified optimism’ and then a final 30 years of ‘unfaltering optimism [when] [t]he war against crime seemed to be won’. Wiener (1990: 15) argues that there was considerable anxiety about crime in the early Victorian period with ‘contemporaries almost unanimous in perceiving an ever-rising amount of criminality of all kinds, and particularly offences committed by juveniles’. Perhaps somewhat surprisingly, the flogging of adults was abolished in 1861, only to be reintroduced almost immediately in 1863 with the Security against Violence Act (the Garotter’s Act) of that year, which was a result of the panic engendered by the garotting outrages of 1862.

Perceptions of crime changed, however, as the second half of the century developed.

Although non-indictable offences increased during the last 30 years of the century the more serious indictable offences fell, so much so that Wiener (1990: 258) can talk of the ‘success of Victorian criminal policy’. It is possible to discern two very general responses to crime that would seem to be related respectively to the first half of the century when crime was seen to be increasing and therefore a problem, and the second when crime was increasingly seen as being under control and less of a problem. Because of the perception of crime as a problem, there were various responses to try to deal with it – one of these being the establishment of police forces first in London, then in the counties and boroughs (and this, of course, had an impact upon levels of crime). There were also a variety of charitable endeavours focusing particularly on juveniles as they were seen as being heavily involved in crime. As early as 1815 the Society for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis had been established. In a report the following year the Society argued against the imprisonment of young offenders because of the effects of contamination by adult prisoners (Pinchbeck and Hewitt 1973). In 1817 the Society for the

Improvement of Prison Discipline and the Reformation of Juvenile Offenders was formed, and it too argued for the separation of juvenile from adult criminals. The Children's Friend Society appeared in 1830 (Radzinowicz and Hood 1986). The reformatory movement ultimately succeeded with the Reformatory Schools Act of 1854 and the Industrial Schools Act of 1857 (see below).

As a result of the perception that crime was becoming much less of a problem, during the second half of the century there were more concerted moves to punish less harshly and more constructively, the beginnings of what we would now refer to as the rehabilitation of the criminal. Perhaps the most significant moment in this trend was the *Report of the Departmental Committee on Prisons* in 1895 (the Gladstone Report) which advocated introducing a more reform-minded approach to dealing with prisoners who were to be seen as reclaimable and no longer as hopeless cases.

It is ironic that we think that it is only since around 1980 that crime has been a serious problem in England and Wales. Even a brief examination of a handful of the various nineteenth-century studies would suggest that for much of the century crime was a topic of considerable significance for government (e.g. Garland 1985; Radzinowicz and Hood 1986; Rawlings 1999; Wiener 1990). And this in an era when there were no mass media, few developed rapid transport links in the country, no mass communications and little feel for what we now call public opinion.

Exceptional cases

As the discussion of both religion and philanthropy has noted, classification was a vital aspect of the workings of both. Theologically speaking, not all could be saved; and for practical purposes not all of the poor could be helped. Singling out the exceptional types, therefore, who were redeemable or reclaimable became a key task and various groups were defined as requiring special treatment because of their circumstances. The most significant of these was children.

During the preceding centuries, children had been simply treated as small adults but as the nineteenth century began there were increasingly significant developments in dealing with juveniles who were either criminals or who seemed to be on the verge of becoming so. Some of the most important charitable ventures in this direction have already been mentioned, but even before these had been established the Marine Society had been founded in 1756 and the Philanthropic Society in 1788. The former aimed to divert boys of 12–16 from the criminal justice system by sending them to sea, while the latter seems to have focused (at least initially) more upon children at risk (see Radzinowicz and Hood 1986: 133–8). In 1825 the principle of segregating young offenders from adults was put into practice when one of the prison hulks¹ was specifically set aside for young convicts; it was closed down within 20 years as 'an unredeemed failure' (Radzinowicz and Hood 1986: 144). But the principle remained and in 1838 a penitentiary for boys was opened at Parkhurst on the Isle of Wight (it too closed as a failure, in 1864). The next steps were the introduction of reformatory schools (inspired by Mary Carpenter and supported by Shaftesbury – both Evangelicals)

in 1854, which were to be used for offenders under the age of 16 following a prison sentence of at least two weeks. These were quickly followed by industrial schools in 1857 for those aged between 7 and 14 who had not been convicted but were considered to be in moral danger. In 1873 Benjamin Waugh's book *The Gaol Cradle: Who Rocks It?* angrily attacked the way in which juveniles were dealt with by the criminal justice system, demanding at one point 'May not the time have come to abandon altogether the practice of juvenile imprisonment?' (Waugh 1873: 89).

But it was not simply humanitarian concerns for the welfare of children and young offenders that drove such developments. Crime was perceived to be – to a considerable degree – a problem associated with juveniles, so focusing upon them would confront the problem effectively. Even more so, by targeting juveniles, crime in general would be tackled:

Notions about juvenile crime and habitual criminals dovetailed in the theory that the criminal class was constantly regenerated by the transmission through upbringing of criminal dispositions. If juveniles could be reached before they became firm in the mould the vicious process might be stayed and the criminal class would diminish.

(McConville 1981: 329)

While crime was a juvenile problem, it was also seen as being closely associated with drunkenness. By the middle of the century 'drink became perhaps the leading explanation for crime' (Wiener 1990: 79) and around the same time habitual drunkenness increasingly became accepted as a disease. Thus in 1879, by which time prosecutions for drunkenness had begun to decline, the Habitual Drunkards Act created a category of diminished responsibility for those defined by magistrates as habitual drunkards. While this was initially restricted to 'gentlemen', over the next ten years or so the punishment of drunkenness began to be questioned by both politicians and police officers (Wiener 1990). In what follows, the significance of both juvenile and drunk offenders for the early probation service will be noted.

During the course of the century, then, certain categories of offender became accepted as necessitating special treatment, so that by the time of the Gladstone Committee in 1895 it was officially acknowledged that

Habitual criminals, habitual drunkards, mentally disordered offenders, first offenders, young prisoners, women, women with infants, remand prisoners and debtors were all believed to require distinct methods of treatment in special institutions.

(Rawlings 1999: 120)

Sentencing

Some of the developments in sentencing that are relevant to the origins of probation have already been noted, for example the introduction of reformatory schools

for juvenile offenders. If a case could be made for differentiating between offenders, then different methods of dealing with these special cases was the logical next step. One of the most significant series of moves during the second half of the century was the increasing extension of summary punishment. One of the main justifications for this was that young offenders (as exceptional cases) would be treated less harshly, but costs and the ability to convict for less serious offences also played a part. These steps led inevitably to the considerable extension of the criminal law, but they also led to a huge increase in sentences other than imprisonment – primarily fines and recognisances.

The first significant legislation was the Juvenile Offenders Act of 1847 which permitted magistrates to try children up to the age of 14 for offences of simple larceny. Three years later the age limit was extended to 16. The Criminal Justice Act of 1855 not only extended the kinds of offence that could be dealt with summarily, but also covered adults. A further Act in 1879 again widened the number of offences that could be dealt with for juveniles and adults. Obviously, this ‘vast extension of summary powers’ (Radzinowicz and Hood 1986: 622) led to a considerably increased workload in the magistrates’ courts, less punitive sentences and perhaps also some recognition amongst magistrates that, given their increased workload, an increased range of penalties might be helpful.

The use of recognisance is particularly important for the origins of probation. Its own origins would seem to be somewhat vague (see Vanstone 2004a) but it seems clear that the principle of withholding punishment is rooted in common law. Bochel (1976: 3) describes recognisance as ‘an undertaking by the person before the court, with or without sureties, to reappear when called upon, and to observe conditions set by the court’. Because of the lack of statistical data it is difficult to tell how often recognisance was used by sentencers in the first half of the nineteenth century but one of the founding narratives of probation is that some Warwickshire magistrates were using it in the 1820s to commit a young offender to the care of a suitable employer. The main source for this information is Matthew Davenport Hill, who had practiced as a lawyer in Warwickshire and as Recorder of Birmingham from 1841 followed the scheme and tried to improve it by relying on ‘guardians’ rather than employers (who might not always be available or willing) and by

keeping a register of those released and by arranging, with the help of the Chief Superintendent of Police, for ‘a confidential officer’ to visit the guardian, inquire about the conduct of the offender, and record his findings. Hill thus had some check on the outcome of his decisions.

(Bochel 1976: 5)

Hill’s efforts seem to have been followed up in Portsmouth and Middlesex by Edward Cox who appears to have made some further improvements to Hill’s scheme:

as well as calling upon parents or friends to enter into recognizances to bring a person up for judgement, with sureties, as an alternative to imprisonment,