Practitioner response piece

Back to the future? The long view of probation and sentencing: A practitioner response

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Abstract
This practitioner response reflects on Peter Raynor’s insights into the role probation has played in sentencing over several decades. It considers some current challenges for probation staff in court, including speedy justice initiatives and the changing role of reports. This article conceptualises current probation practice within a continuum of person-centred practice which, although modernised, is informed by the traditional probation principles of advise, assist, and befriend.

Keywords
courts, narratives, organisational culture, practitioners, probation, PSR/court reports, relationships, sentencers

Introduction
Raynor starts his piece by reflecting on the origins of the probation service, in which being ‘on probation’ involved ‘proving’ one’s commitment to desist from offending, in exchange for which punishment could be averted (Raynor, 2018: 336). His beautifully put description of probation being the bridge into the welfare state has real resonance for me: My work as a probation officer over many years has often
felt like a form of social work by stealth, to which the values Raynor espouses are central. Although the modus operandi of the probation service has significantly changed since the days of ‘advise, assist and befriend’ (Probation of Offenders’ Act, 1907), the ethos of helping clients to improve their circumstances, and recognising their often multiple vulnerabilities, remains a driving force for my work, although it often feels as though this is no longer a priority for the service as a whole.

Raynor’s considered analysis of the role of probation in sentencing through the years expresses frustration at the changing nature of that role and identifies several key factors, of which two are particularly pertinent – the change of the Social Inquiry Report (SIR) into the Pre-Sentence Report (PSR) and the speeding up of justice. Both of these issues are considered in this response. In my role writing PSRs for both Magistrates and Crown Courts, I feel directly affected by the initiative to speed-up sentencing, and I find myself constantly negotiating the tension between tight deadlines and doing my duty to the clients and the Court in my reports.

**From social enquiries to stand-downs**

Although there has always been poverty and exclusion, the era in which Raynor practised embodied a continued post-war optimism that inequality could be reduced and that support from welfare state agencies could result in positive change. Since that era, the United Kingdom has endured Thatcherism, economic neo-liberal hegemony, multiple wars, and the global financial collapse of 2008, ushering in the current prolonged and brutal period of ‘austerity’, with a corresponding rise in managerialism and the responsibilisation of the individual within probation culture. Raynor discusses this in the context of SIRs changing to PSRs and then on-the-day or oral reports (the latter also known as stand-down reports) and addresses the debate on whether material circumstances can provide a lens through which someone’s offending is less ‘blameworthy’. This is an issue that has definitely changed over the intervening decades since Raynor was in practice. It seems that greater numbers of newer staff (e.g. who have joined the service since the formal break with social work) place less emphasis on the influence of environment on offending, including in Court reports. This is exemplified by the offensively named Lifestyle section of OASys, which implies a far greater measure of choice than clients often have.

This brings to mind Laureen Snider’s (2003) insight, written in the context of female offenders, in which she warns that power structures co-opt the language of resistance to further their own ends. In probation, this occurs with the conflation of risk and needs. For example, including a wealth of detail about clients’ often horrific circumstances can engender anxiety in report writers that instead of this being considered as social context for offending, it risks being interpreted by sentencers as proof of irredeemable criminality. Raynor rightly identifies the rise of risk-focused assessments as largely replacing this social context within reports. In Court, this concern can be compounded by the ‘class gap’ which separates most sentencers from most offenders. Particularly in the Crown Courts, it can appear as though Judges have very little personal experience of the lives which defendants habitually
live. The focus on individualised risk can also operate to distract practitioners from the very strong class inequity, which is currently widening in society.

Surveying the present-day blasted probation landscape, it is tempting to look back on Raynor’s reflections of probation in the 1970s and 1980s as a ‘golden age’, in which probation practitioners had 3 weeks to write reports, and the commitment to highlighting the role of disadvantage and poverty in offending seemed central. This is particularly so when it is remembered that a necessary corollary of SIrs’ focus on social conditions was an inherent assumption that a period of probation supervision would attempt to tackle those social conditions as part of helping someone desist from offending. Every practitioner will be familiar with the work involved in this, from helping clients claim benefits or getting them onto housing association waiting lists or referring them to local support services such as employment support or counselling. Nowadays, it has become ever-more difficult for probation officers to advocate effectively for access to welfare services, as these are increasingly restricted as budgets wither and the welfare state continues to contract.

The role of current practitioners has changed significantly since Raynor was practising. Routine mandatory completion of crude-but-required assessments, such as the Offender Group Reconviction Score, the Risk of Serious Recidivism calculator, the Case Allocation System, or the Effective Proposal Framework, can make the role of officers in Court feel as though it has been reduced to a component in a conveyor belt to sentencing which is anything but just. Once the impact of the post-Transforming Rehabilitation (TR) split is added to this mix, probation staff in Court may sometimes wonder if being on probation is in fact going to offer material assistance at all. Although their focus is on risk management rather than welfare, sentencers clearly share these reservations about the usefulness of probation supervision, as seen in decreasing numbers of community orders and ever-rising prison terms (Ministry of Justice, 2018).

Alternative to custody

As Raynor points out, the tendency to remember the past through rose-tinted spectacles is well-documented. It is important not to fall entirely into this melancholic trap: being a probation practitioner above all requires optimism. Although the role of probation has significantly changed over the decades, it is crucial that practitioners cling to the thread of social justice, which interweaves our practice, and try our creative best to hold onto the values which have underpinned our profession since its inception. With that in mind, one particular debate Raynor touches on is worthy of mention – the principle of probation as an alternative to custody, which he rightly describes as having fallen out of political favour in the 1990s, replaced by the ‘What Works’ agenda (Raynor, 2018: 338). Although it is accepted within academic circles that the era in which probation was promoted as an alternative to custody has been over for some time, I would suggest this has never been true for practitioners. Despite the multiple iterations of the service, practitioners have never given up on the principle of probation as an alternative to custody and have
determinedly continued to present the Courts with this option, including for quite risky people (e.g. Alternatives to Custody pilots, or Integrated Offender Management) (HMIP, 2014; MoJ, 2011). Indeed, the idea that probation is not promoted as an alternative to custody begs the question: what, then, is it for?

**Speedy – But is it just?**

Raynor rightly identifies the time pressure that staff are now under, and fast delivery targets and speedy justice initiatives can mitigate against access to justice. For practitioners, this can involve being confronted with the choice of leaving out much background information which may be indirectly relevant or working at an artificially fast pace to produce an in-depth quality report in a much-reduced time period. Indeed, if the client is at risk of custody which might possibly be avoided this can feel like a moral imperative. This latter option not only risks burnout but also a perception among sentencers and senior management that speedy justice is working, when in fact there are multiple signs that speedy justice is neither justice done or justice seen to be done. However, simplistic readings of probation are unhelpful. It is useful to note that there is a counter-narrative, in which the narrative of ‘decline’ within probation is resisted. For example, Robinson’s research with Magistrates Court probation staff identifies a more nuanced picture, in which both disadvantages and benefits of modern probation working practices in Court are discussed by practitioners (Robinson, 2018).

Lack of professional autonomy, and disillusion with an organisation’s leadership, can lead to disaffection and a lack of effort. It is important to resist this temptation. As has always been the case, amidst the hard work and frustrations of the job, it is the encounters we are privileged to have with those for whom life has often been brutal, which can serve to energise our practice and help foster the belief that probation can still help change someone’s future. The time constraints currently are such that it can feel quite difficult to exercise our judgement: The temptation is to take ‘painting by numbers’ approach to our proposals, for the sake of keeping up with the relentless pace and pressure to get onto the next report – particularly in the Magistrates Court, where the numbers seen each day are much higher than in the Crown Courts. However, sometimes it is imperative to resist that pressure and be mindful that the best interests of the client may require doing something differently.

Two recent practice examples illustrate this. The first involved a vulnerable man with a personality disorder, due to be sentenced for blackmail offences, with quite severe mental health problems, including suicidal tendencies. The judge directed that this was a straight choice between making a Suspended Sentence Order (SSO) with a Mental Health Treatment Requirement (MHTR) or custody. Probation staff will be aware that probation does not yet have a seamless interface with mental health services: indeed, it can sometimes seem the two services have set their faces against each other irrefutably. This client’s local mental health team refused to entertain an MHTR because the only available treatment was psychotherapy group work and he was not eligible for it – because he was in Court proceedings. Once Court proceedings were finished, he was told he could begin. Explanations that he would
certainly not be in the community if he was not in treatment went unheeded. Three
lengthy adjournments and much to-ing and fro-ing later the client received an SSO
with an activity requirement to engage in his community treatment; without an
MHTR, but with mandatory reviews by the Court, and he thereby avoided custody.

The second case involved a high risk, heavily gang-involved, actively offending,
young man who was being resentenced for breaching his community order, which
he had received for a serious double stabbing, committed while he was still a
juvenile. The breach report anticipated a prison sentence in the light of the identified
serious risk to others and non-compliance. However, on interview, it became
apparent that he had quite noticeable learning needs. A full PSR was written, minus
a proposal, in which request was made for a psychological evaluation, without
which an informed proposal could not be made. The judge ordered a psychological
evaluation and placed him on bail. His (very diligent) probation officer worked
extremely hard during the adjournment period to supervise him in the community
where he was at imminent risk of reoffending and of being seriously harmed by
others. The evaluation concluded he did have moderate learning difficulties and
was entitled to reasonable adjustments. He avoided custody, was resentenced to a
Youth Rehabilitation Order instead of a Community Order (which is possible but
rare, in certain circumstances) with an exclusion from London to help manage the
risk. He was placed in a safe area with the help of Children’s Services.

Without a judge willing to work creatively to ensure just was done, this would not
have been possible (and the liaison between probation at court, probation in the
field, and Social Services was likewise essential). Had the principle of speedy jus-
tice been more rigorously adhered to, these solutions would not have been possible
and custody would have resulted. In these two cases, and many others, the judges’
approach allowed probation the time to overcome multiple obstacles, which a
commitment to speedy justice does not usually allow. However, I know that I, and
other overworked practitioners, can feel under immense pressure to provide a
‘timely’ service to the Court, and it can feel difficult to justify requests for further time
to sentencers, many of whom have wholeheartedly adopted the speedy justice
ethos. This can be reflected in a Magistrates Court case in which the client had a
long history of psychosis and was hearing voices at the time of PSR interview. When
this was highlighted to the Court, I was advised that the sentencer was aware of this
and wanted to proceed to sentencing regardless, without a further adjournment,
and without a written report.

One corollary of the speeding up of justice – and the time allowed for reports to
be written in particular – is that it seems no longer fully acknowledged that practi-
tioners need time to reflect. I know that after mulling over an interview for a while I
may change my recommendation or think of a new angle from which to assess the
client’s needs. The risk of losing depth and nuance to reports through the imposition
of ever shorter timescales seems to have been disregarded by the architects of
speedy justice. As Robinson usefully identifies, the TR agenda actively promotes
speedy justice and has problematised delay prior to sentencing. This narrative
constructs speedy justice initiatives as straightforwardly positive for witnesses, vic-
tims, and clients alike (Robinson, 2017). From this rather simplistic perspective, the
traditional probation approach of providing in-depth and often complex reports, which are improved by time to probe, discuss, and reflect, becomes an obstacle to success.

**Reasons to be cheerful**

The era that Raynor refers to is before my own time as a practitioner, but one of the (perhaps underrated) aspects of probation is as an organisational culture with an oral history of its own. This oral history can play a key part in maintaining that thread of social justice referred to earlier. I think active participation in the probation service union Napo has helped me to have a strong sense of this oral tradition due to exposure to a wide community of colleagues across age groups and regions, as well as to conference speakers, and access to this Journal (which non-union members also have of course). These are ways in which union membership has provided me and others with a sense of belonging, which is important given the very real risk of practitioner burnout. Hearing from colleagues who practised in Raynor’s era can sometimes engender feelings of regret to have missed it, but as Raynor himself points out, the service of that era is not beyond criticism, not least for its lack of reliable evidence, including about effectiveness of interventions (Robinson, 2001) or service user characteristics.

Although mandatory data harvesting for the Ministry of Justice can feel tiresome, and representative of our IT-dominated working lives, it is essential to improving the service, particularly for disadvantaged groups. Systematic collection of information on gender and ethnicity, which is a feature of the modern probation service, makes an important contribution to the ongoing debate about bias within the wider criminal justice system. For example, such statistics assisted the Lammy Review (Lammy, 2017) to draw attention to black and minority ethnic (BAME) disproportionality. Both Lammy’s findings, and the information about female clients which informed the Corston Report (Corston, 2007), have contributed to the National probation service’s (NPS) current laudable aim of reducing the number of young BAME men and female clients being sent to custody without a report. Such a policy demonstrates that the modern service has a more coherent approach to engaging with issues of diversity than in previous, less data-literate, times. The court probation practitioner’s role in raising awareness with sentencers of the need to order reports for these clients will clearly be central to the success or otherwise of this objective and is an example of how probation practitioners can work to reduce unfairness in the criminal justice system.

At the time of writing, events have somewhat overtaken Raynor’s recommendations for improvement. The multiple damning reports from bodies such as the Probation Inspectorate and the National Audit Office (2013) have long since reflected practitioners’ first-hand experience of awareness of the catastrophic ideologically driven omnishambles which was TR, and David Gauke’s announcement on probation reunification (albeit with a significant role for the private sector) is therefore a time for cautious optimism. A new iteration of the probation service is now inevitable, pending which it feels timely to reflect on Raynor’s points about cooperation
and therapeutic alliance. Raynor describes practitioners gamely attempting to work in this person-centred style, but without the legal or organisational support which this approach requires. I know this has led me to experience some serious cognitive dissonance. Probation practice can sometimes feel like a conspiracy between practitioner and client to see each other’s humanity while operating within an inhumane system. Navigating this tension not only raises a risk of burnout but also points to something more profound. The service has changed massively since Raynor’s time in the field. Edicts and initiatives have come and gone, the demographic of the workforce and the training offered has changed substantially, and yet that commitment to seeing clients’ humanity, and retaining hope that they can change their lives for the better has survived throughout. This raises some interesting questions about the transmission of organisational memory and offers an illustration of that thread of social justice discussed earlier, still weaving through the fabric of poverty and exclusion and providing a glimmer of hope.

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