After-care, resettlement and social inclusion: The role of probation

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Abstract
The priority of public protection has moved probation away from its historical concerns with providing after-care, now emphasising risk management as well as the continuation of the sentence in the community. Yet people released from prison notoriously face many difficulties in accessing the social resources they need for desistance and meet with mistrust associated with their criminal records. This paper looks at the responsibilities of the Probation Service in their supervision of people leaving prison, considering the role of probation in promoting social inclusion and supporting desistance.

Keywords
probation, prison, after-care, resettlement, desistance

Leaving prison
Leaving prison, especially after a long sentence, is an acute existential shock. There is a surfeit of new sensations; daily habits and routines are starkly changed; the world must be negotiated in altogether different ways. The transactions and etiquette of the street and the shop are very different from those of the landing or the wing. The very possibility of independent action, the reasons to behave in particular ways, the costs and benefits of certain courses of action are radically altered.

Bare subsistence, the need for housing and income are the first challenges for many. In almost all countries, financial support on release is woefully insufficient.
and it can be complicated to access welfare provision. Some are fortunate enough to have families to help them, although this can impose further financial burdens on hard-pressed households (Western 2018). There are likely to be difficulties in obtaining work, including suspicion from employers (Henley 2019). These material challenges, often aggravated by problems of substance use, and / or poor physical and mental health (Cumming 2020), would overwhelm almost all of us and have to be confronted at one of the toughest times in anyone’s life. Resources are at their lowest – not just minimal social capital, but rusty problem-solving skills and ways of negotiating relationships that are altogether different in the community from those that have to be deployed in prison. For women especially, re-establishing relationships damaged by custody is no less an imperative (Baldwin 2021; Western 2018). Often made homeless by the custodial sentence, nearly 60% of women leaving prison have nowhere safe to go (Safe Homes for Women Leaving Prison Initiative 2020).

The many problems people face interact viciously, and welfare support is not up to the challenge, with any number of distressing consequences – including not only recall or reoffending, but even death (for example, Binswanger et al. 2007). In England and Wales, between 2019–2020 and 2020–2021, there was a marked and shocking increase of 59% in the numbers of people who died while under probation supervision after release from custody (Webster 2021). Rates of suicide by those under post-release supervision have also increased alarmingly (Phillips et al., 2019). The failure to address the neglect of such a vulnerable group has been denounced as ‘state abandonment’ (Phillips and Roberts 2019).

Some studies have found that most offenders want to desist (Bottoms and Shapland and Bottoms 2017), but for many the prospect is daunting, and confidence may waver (Nugent and Schinkel 2016). Even when individual motivation is at its most resolute, desistance will depend not only on the individual’s attitudes and behaviour, but also on an acknowledgement by others of their predicament with active attempts to help. More usually, they encounter a range of structural impediments to accessing essential resources – notably accommodation and employment - on the basis of their criminal record. While there are many better experiences to report, the observation of Mary Douglas still holds in so many cases:

‘The man who has spent any time “inside” is put permanently “outside” the ordinary social system. With no right of aggregation which can definitively assign him to a new position he remains in the margins, with other people who are similarly credited with unreliability, unteachability, and all the wrong social attitudes.’ (Douglas 1966/2003: 97).

This exclusion, persistent suspicion, and the sense of precariousness that all this induces in people leaving prison are reflected, reproduced and reinforced by criminal records. The extent to which these obstacles to desistance are made better, worse or untouched by the involvement of the probation service is the subject of this paper. A short historical sketch is a useful beginning to understanding how probation has come to think and go about its work here.
The many and various difficulties that confront people on release have long inspired concerns and efforts in response. From at least the early years of the 19th century in Britain, philanthropic enterprises were to be found offering material support and guidance to people leaving prison. Many of these initiatives came from charitable and religious impulses, but other priorities began to intercede, especially as agencies of the state began to take a more formal interest. Radzinowicz and Hood (1990: 603) cite the Gaol Act 1823: ‘It is desirable that prisoners discharged from prison should be supplied with the means of returning to their families, or to their place of settlement, where they may be engaged in a Life of Honest Labour for their Maintenance, and prevented from pursuing Evil courses.’ They go on to suggest that intentions here were less benevolent than economic and preventive, to guard against vagrancy and crime. Most likely, perhaps, motives were mixed.

In any event, irrespective of the motivations of the pioneers of these schemes, those directly involved will have undertaken their work with varying degrees of sympathy and censoriousness. More importantly, how this was experienced may not be how it was meant. For example, one individual complained about ‘pseudo-charitable people’, patronising him and ‘putting him to uncongenial ill-paid work, and making inquisitorial investigations in regard to the spending of the miserable pittance he receives.’ (Radzinowicz and Hood 1990: 616). Benevolent intentions, however sincere, can never ensure that they will be experienced as kindness. There is an important methodological point here. Histories may attempt to uncover the motivations behind penal practices, making inferences from a study of political debates and policy papers. Historians of the probation service, for example, have emphasised the benevolence of its founders or, by contrast, suggested that its true intent was to control (for a judicious summary of the historiography of probation, see Nellis 2007). But there can be no straight read off from the intentions that may be inferred from policy statements to realisations in implementation or the perceptions of the recipients of these attentions.

The rationale for post-sentence interventions or services is linked with an understanding of what prison does, could or should do and, just as there can be no consensus about purposes set for imprisonment, there is unlikely to be agreement about the priorities and character of post-sentence involvement. It may be possible, however, to identify particular purposes and justifications (Maguire 2007). While at different times and places one or other of these rationales may have been foregrounded or even come to dominate practice, this is an area of contestation in which rationales compete, interact and sometimes work against one another (Goodman et al., 2017). And these tensions are acted out in post-release policies and practices no less than during the custodial term.

**After-care**

The enormous difficulties confronting people leaving prison may prompt initiatives to offer support and help for their own sake. The provision of support could be seen as
a requirement of justice and as a duty of a decent society towards vulnerable people. A compelling argument is that the prison sentence was imposed by a court as a (presumptively) fair and proportionate punishment for crimes and once that sentence has been served the individual, like anyone else in distress, is entitled to call upon others for help. This could even be understood as a right, the state having an obligation to foster circumstances in which ex-prisoners, like other citizens, may thrive (Rotman 1986). A failure to respond to this claim detracts from the legitimacy of the sentence.

The claim is all the more compelling for those difficulties that have been caused or made worse by imprisonment. People sent to prison often lose their homes and their jobs, for example, and even if they had been unemployed or homeless already, their prospects of finding somewhere to live or gaining employment are likely only to have been made worse by the experience of incarceration. The state accordingly incurs a responsibility to begin to redress those pains, which were not supposed to be intrinsic to the punishment awarded by the court. A failure to do this can amount to the injustice of ‘incidental’ and disproportionate punishment (Walker 1991). And since people are well placed to take their own decisions about the resources and services they need, a guiding principle of after-care should be voluntarism.

**Treatment**

One conception of rehabilitation is that it requires some form of interventionist treatment. At the turn of the 19th century, after the Gladstone Committee had affirmed rehabilitation alongside deterrence as the ‘primary and concurrent objects’ of the prison (Bailey 2019: 17), it was a short step to attempts to sustain and build upon the improvements hoped to have been brought about during the custodial term. This aspiration was most fully articulated, perhaps, in the idea of Borstal.

‘Borstal training falls into two parts. In the first part a lad is trained in custody at an Institution: in the second part he enjoys the comparative freedom of licence or supervision, and is under the training of the Borstal Association. The functions of the two bodies dovetail closely into one another. The one sort of training will fail if the other is badly done.’ (Prison Commission 1932: 31).

It may be doubted that either the institution or staff in the community had the skills and resources to accomplish this aspiration. Nevertheless, ambitions of continuing treatment persisted. Although complicated with other set purposes, the idea of continuing treatment is immanent in the concept of parole and in the scheme for Automatic Conditional Release introduced in the Criminal Justice Act 1991. The Carter Report – part of the inspiration for the creation of the National Offender Management Service, formally merging the Prison and Probation Services – envisaged a ‘seamless sentence’, echoing the ambitions of Borstal while changing the metaphor from woodwork to sewing (Carter 2004).

While care and rehabilitative treatment are sometimes conflated to mark a clear distinction between them and more explicitly punitive approaches, there are
important differences between them. A treatment model typically posits some kind of individual pathology that lies behind offending, while the philosophy of after-care emphasises the social context in which the offence took place and its likely continuing significance in the effort towards desistance. A further critical difference is the question of voluntarism. Where the emphasis is on after-care, the individual seems to retain the right to seek support at their choice. Treatment, however, controversially, can be made obligatory and all the measures so far considered were compulsory on pain of enforcement action, which might include recall to custody.

**Continuing punishment**

That post-custodial involvement should be regarded as a continuation of punishment might have struck earlier generations as wrong in principle. The custodial term was the punishment and, while subsequent interventions might be justified as treatment, punishment should end when the sentence had been served. Among the reasons for change was the concern that complicated systems of remission and early release had come to mean that the time actually served was often markedly less than the term pronounced in court. These devices were necessary to manage the size of the prison population, but at the cost of confusing or dismaying the public. The solution was to insist that punishment would continue after leaving prison, only it would now take place in the community.

Quite what this punishment amounts to is unclear, although if it is to be accepted as punishment it may need to involve restrictions, deprivations and hardships – for their own sake and not (or not only) in the service of treatment or even, necessarily, the management of risk. This is even more compelling than in the case of treatment, for if these requirements are ignored, this looks like (is) impunity. The claim that punishment is to continue in the period following a custodial term is likely to lead to increased demand in the form of additional requirements and consequently a greater scope for violation. For the same reasons, supervision must be seen to be rigorous, with a robust response to any failure to abide by these obligations. Where there is any violation, an individual may be recalled to prison. (The term ‘recall’ reflects their standing as someone still serving a sentence: they are not being sentenced to imprisonment and indeed, at least at the point of initial recall, lack the due process protections of sentencing.)

**Reducing reoffending and the management of risk**

The attempt to bring it about that people leaving prison do not commit further offences has always been part of the rationale for supervision. This aim is now usually articulated in the language of risk management. The extension of parole and other mechanisms of early release may damage public confidence without assurances that there will be protection from the most risky. This is one aspect of the bifurcation that Bottoms (1977) posited - proposals for shorter sentences for some people are likely to be accepted only if sentences are seen to be longer for more serious or riskier offenders, who should be detained (where the law permits)
until judged to be sufficiently safe for release and subsequently supervised in a way that minimises the possibility of reoffending.

This conception of post-release intervention, like punishment in the community, implies rigorous attention to the assessment and management of risk, with recourse to recall to custody where changes in circumstance suggest that the risk can no longer be safely managed in the community.

These, then, are the four most familiar accounts of the purpose of post-custodial intervention or service provision. As Maguire (2007) notes, the different models grounded on these various purposes are rarely found in a pure form. Usually, practice represents an accommodation among competing conceptions of what is due to people after release.

Ambitions of help, treatment, punishment, and reduced reoffending, however, do not always work readily in harmony, so that post-custodial involvement will always be riven with uncertainties and tensions around purposes, priorities and practices. In public and political debate, these tensions are commonly reduced to and presented as a binary opposition – punishment or welfare, control or care, hard or soft. But this is an unpromising start. First, the oppositions are conceptually confused. For example, compulsory ‘welfare’ interventions, especially when enforced by threat of recall, can be hard to distinguish from punishment. Again, the relationship between care and control is much more complex than a mere antonymic opposition (Canton and Dominey 2020). Second, this type of binary analysis lends itself to the beguiling but misleading metaphor of a pendulum, supposing that practice represents policy in an unproblematic way, one orientation dominant while the other is suppressed until the pendulum swings back. Yet penal practice is always an area of contestation and even if one aspiration or theme is emphasised in policy debate at any one time, others continue to have their influence on practice and are much more than residual (Goodman et al., 2017). Third, these oppositions reflect the aspiration of the policy-maker / punishers and leave no room for the perceptions of the punished. If an intervention is justified as treatment, for example, but is experienced as punishment, it is not clear why the intentions of those imposing punishment are felt to determine its character, while intentions may, in any case, differ among legislators, sentencers and practitioners implementing the sanction.

Fourth, and with particular pertinence to the present discussion, each putative opposite subsumes various and often incompatible approaches within it. ‘Welfare’, for instance, may elide compulsory treatment with the voluntary provision of services. Even the seemingly more precise term ‘rehabilitation’ is notoriously slippery, adapting itself in policy discourse to a range of different (and even incompatible) aspirations and practices (Robinson 2008). ‘Punishment’ can be taken to include both retributive hard treatment for its own sake and the management of risk.

These binary oppositions, then - punishment or welfare, care or control - can be substantially misleading. The ways in which these various objectives interact is of particular interest. The potential tensions between welfare and punishment are well-known, as are the difficulties of managing both treatment and care (the problem of compulsory help). Less familiar and less frequently explored are the difficulties of reconciling punishment and risk. It will be argued later that the aims of risk management
and continuing punishment are, in practice, often in tension with each other. Their conflation in policy leads to excessive and precipitate recall, damages relationships between probation staff and those under their supervision and may lead to more offending by frustrating desistance.

**Being supervised**

The four rationales for post-custodial intervention that have been identified have all been part of the history of the probation service in England and Wales. The work used to be referred to as after-care and, from the mid-1960s until 1982, the formal title of the service was the Probation and After-Care Service. While some supervision was mandatory (especially for younger people), most such provision was voluntary – people could take it up at their choice. Voluntary after-care was regarded as one of probation’s most important tasks and some local services establish specialist units to undertake it. Increasing numbers of people on parole, however, and, from 1992, the introduction of statutory supervision for everyone serving 12 months or more increasingly squeezed out voluntary provision (Maguire et al., 2000). Resource limitations confined post-release work to the growing number of statutory cases. This had a particular impact on services for those serving short sentences who, at that time, were released without formal supervision requirements and consequently with little or no support, even though they were known to be particularly in need and at risk of reconviction (Maguire 2007).

As well as the demands on limited resources, there was an ideological background to this shift. Emphasis changed to a continuity of punishment and to the management of risk, rather than an offer of support and help to people during the parlous weeks following release from prison. The connotations of care were ill-suited to this new characterisation and the term resettlement became increasingly favoured (Raynor 2004). In the USA, this shift from after-care to priorities of risk management and the continuation of punishment has been reflected in and reproduced through staff training and practice (Petersilia 2003). Staff administer drug tests, carry guns, monitor curfews, and collect fees. While this is a long way from the position in England and Wales, it may stand as a warning of where preoccupations with risk and punishment may eventually lead.

McNeill (2018) has deepened our understanding of what it might be like to be supervised in the community. When people think about this, to the extent that it can be envisaged at all, it is meetings with a supervisor that might first come to mind. But supervision is something that may be experienced all the time with an awareness of constraints on freedom, intrusion and feelings of humiliation. These burdens are likely to be all the weightier for those subject to statutory supervision after custody. McNeill borrows Crewe’s (2011) metaphors of depth, weight and tightness to capture the feeling of being enmeshed in a web of control or wearing ‘an invisible collar’. Women have expressed ‘feelings of being overwhelmed, inconsequential, powerless, constrained, under surveillance and stigmatized’ (Fitzgibbon and Healy 2019: 21). This chronic sense of stigma is made manifest acutely in circumstances where individuals are required to disclose their criminal records – for
example at a job centre or in trying to access a wide range of social resources (Weaver and Jardine 2022; Wilkinson 2022).

For their part, probation staff are encouraged to attend to risk and/or the rigorous implementation of continuing punishment. These feelings and attitudes constitute an unpromising basis for the development of a confident and trusting relationship. Relationships, known to be of fundamental importance to probation work, are further destabilised by the fragmentation of services (Dominey 2016, 2019). Despite the organisational unification of ‘offender management’, represented by NOMS and HMPPS, post-release supervision may be experienced as fragmented, especially disjointed by the divisions of functions and the formal separation of case management from interventions (Raynor and Maguire 2006). If managers believe that different personnel can succeed in providing what is required, practitioners and service users favour continuity. Maguire urged the value of ‘identifying one person to whom the offender can relate (”end to end”) throughout the whole of his or her sentence’ (Maguire 2007: 414) – although, as he anticipated, this would prove impossible to achieve in practice. After all, ‘Trust is personal: we tend to trust people rather than systems or processes, and we do not like telling our troubles to a succession of strangers.’ (Maguire and Raynor 2017: 145). A report by the Prison Reform Trust (2018) found probation unable to provide the support needed to meet the complex social challenges that many women encountered, while the threat of recall further undermined fragile relationships.

Trust is not simply about maintaining a comfortable relationship. There are tight and indissoluble bonds between good relationships, legitimacy and the compliance without which none of the benefits of supervision can be attained (Irwin-Rogers 2017). After-care, treatment and, not least, risk management depend upon openness, clear communication and mutual confidence. Tuddenham (2000) has insisted on the need to appreciate the effect the assessor will have upon the assessment of risk, as well as on its subsequent management. If people feel that probation staff will react precipitately to troubling changes in circumstances, they may become defensive, evasive, and even furtive, eliciting further suspiciousness from supervisors. These attitudes are all the more likely to result in a recall to prison, fulfilling their most burdensome anxiety. In this way, preoccupation with risk can undermine attempts to reduce reoffending.

**Enforcement and recall**

If attempts to motivate and engage persistently fail to bring about compliance, probation staff may feel that their options are few. A thematic inspection by HM Inspectorate of Probation (HMIP 2020) commented on the operational instructions for staff considering recall, with options including more frequent contact, additional conditions and referral to other agencies. While it may be that compliance would improve if these aims were achieved, making further demands upon individuals who are already failing to comply is, on the face of it, unpromising. Referral to approved premises seems more plausible, although hostel provision is already routinely oversubscribed (Irwin-Rogers and Reeves 2020; HMIP 2020). Formal warnings are used, but the
thematic inspection found that in the great majority of cases where warnings had been issued, recall to prison was the eventual outcome.

For most of the past several years, the number of people who had breached licence conditions and were returned to custody at the instigation of the offender manager had been increasing steadily. But there has recently been a steep increase - a rise of more than one third over a four-year period. These variations in rates of recall cannot be attributed to changes in levels of offending nor, with any confidence, to assessments of increased risk. They are at least partly a function of a change in enforcement procedures and in the anxieties and disquiet of offender managers. At times (partly because of pressures on the prison population) recall has been relatively discouraged, although this could be quickly altered by high profile cases. The thematic inspection expressed concern about a culture of risk aversion: ‘responsible officers repeatedly spoke of their “fear” of failing to recall individuals immediately, if and when concerns about compliance and behaviour arose. They feared being held individually responsible for any serious further offences committed.’ (HM Inspectorate of Probation 2020: 19)

These anxieties are likely to be most acute for those believed to be at risk of committing the most serious offences. Those who had been sentenced to indeterminate imprisonment for public protection (IPP) seem to be particularly vulnerable to recall. To qualify for such a sentence, individuals must have been judged by the court to pose ‘a significant risk to members of the public of serious harm’ (Criminal Justice Act 2003, s.225). They are, as it were, statutorily dangerous, even though eligibility for this sentence was originally determined by the commission of certain specified offences which constitutes an inadequate proxy for a systematic assessment of risk, whether at the time of sentence or subsequently (nor can it be assumed that all of them have committed especially serious offences). In the year ending September 2020, 1357 were being held in prison on recall, a 13% increase on the previous year. Most had committed no further offence and had been sent back for often minor incidences of non-compliance - for behaviour that fell short of the formal criteria that are supposed to determine such decisions (Edgar, Harris and Webster 2020).

More generally, HMIP (2020) found that in 2019/2020 in about one-third of cases the grounds for recall included a failure to keep in touch with the supervising officer. Such technical violations – not keeping appointments, missing a curfew - can sometimes be indications of a changing level of risk, but should prompt further enquiry rather than necessarily leading to recall. Loss of contact, however, perhaps through a change of address, may be particularly worrying. A responsible officer may feel they have no option but to initiate recall when they cannot make contact to find out what has been happening and assess the implications of events. That said, as HMIP recognise, even loss of contact does not necessarily indicate an increased risk of serious harm.

More than one third of all recalls are fixed term, used as a response to poor compliance. HMIP write:

‘Responsible officers have to balance potential loss of accommodation or services with the risk of re-offending and the requirement to enforce the licence. In our review of
cases, fixed term recalls were used appropriately to stabilise chaotic lifestyles and to re-establish compliance before re-release.’ (2020: 16 emphasis added).

But these fixed terms are very short: 14 days for those sentenced to less than 12 months and 28 days for those serving longer. HMIP’s conclusions notwithstanding, it is not easy to see how lifestyles may be stabilised (although perhaps some emergencies may be averted or maybe postponed - for example, relapse into acute drug misuse) and even harder to understand how compliance can be re-established. Part of the problem is that resource constraints effectively preclude any opportunity for significant engagement within so short a period of time so that the ‘re-establishing of compliance’ is likely to amount to little more than a reassertion of a further threat of recall. But, tellingly, HMIP refer not only to risk, but also to the requirement to enforce the licence. People subject to licence are considered to be still serving their sentence - still subject to punishment - and accordingly required to comply with formal requirements. Non-compliance, it may be thought, should have consequences. The decision to recall, then, even when there has been no change in the level of risk, is one that can readily be defended. It seems at least possible that some recall decisions for non-compliance are meant as (and certainly experienced as) punishment for past failures, rather than a response to concerns about risks.

The processes of recall, the scope for representation against such decisions and the question of what must now be accomplished to be released again are often altogether unclear to the individual (Padfield 2012). This in itself is troubling, but the implications for the future relationship with probation and engagement with supervision are profoundly disquieting. Those who have been recalled will be released again and subject to supervision. A recall decision that was insufficiently explained or otherwise experienced as unjust is likely to prejudice the trust and legitimacy on which compliance and active cooperation may depend (Weaver, Tata, Munro and Barry 2012). Fitzalan Howard and colleagues (2018) discovered that a lack of motivation to engage with supervision was a key factor in negative outcomes. And where trust has collapsed, there must be a possibility that, worried about the supervisor’s reaction to an instance of even fairly trivial violations, non-compliance could lead to evasion, further avoidance and a sense of ‘being on the run’ - in its turn leading to further violations of licence conditions.

Again, the implications of these kinds of developments have serious consequences for the effective management of risk. A key informant in managing risk is the individual in person and, where trust has broken down, they are likely to become wary of disclosures. Preoccupation with enforcement on the grounds of continuing punishment founds the supervisory relationship on threat - threats to which many former prisoners have repeatedly shown they are altogether inured - and erodes the sense of trust conducive to compliance.

Probation and criminal records

Probation staff make extensive use of criminal records in their practice. The ‘risk principle’ itself (the first element of the RNR model [Bonta and Andrews 2007]) insists
that the nature and level of intervention should depend upon the degree of risk. The Offender Management Model (Grapes 2007) assigned individuals under supervision to different levels and purposes of intervention based on risk. Under Transforming Rehabilitation, it was again this assessed level of risk that determined allocation to the National Service or to a Community Rehabilitation Company. Although there are dynamic instruments of assessment, the criminal record continues to be fundamental to probation’s risk assessment practices (Roberts 2007). The record matches the individual with a group whose aggregate probability of reconviction is known, but from which individualised inferences cannot be made. Moreover, since these records are historical and unchangeable - and claimed to be more accurate than more dynamic, person-by-person assessments - it can be hard to decide that a level of risk has decreased. Dependence on these instruments can accordingly have the effect of inflating assessed risk. Still more seriously, while actuarial methods may have some place in assessment, they separate the assessment of risk from its management, giving no indication at all about what specific interventions might take place to reduce the chances of further offending. Probation staff should be less interested in ‘predicting’ offences than in trying to stop them taking place.

Pre-sentence reports are likely to discuss previous convictions. Here the role of the probation officer might be to interpret the record, setting a list of offences in the context of an individual’s life. Attention might be drawn, for example, to times when the frequency and seriousness of offending has been relatively high and, on the other hand, other times when less serious offences were committed and / or there were longer intervals between convictions. There is already debate about the relevance of previous convictions to a sentencing decision (Tonry 2010). In terms of retributive justice, there is an argument that adding a criminal record to justify a weightier sentence amounts to punishing someone again (and again) for debts that should have been fully repaid by the original sentence. As for risk, as has already been argued, the list itself is of limited use in determining how best to reduce reoffending, although it may be of greater value if it can be interpreted and contextualised.

The insights of interpretation could also be put to use on behalf of probation clients in making representation on their behalf to employers or others who may enquire about their previous convictions. Probation staff might demonstrate the context of the record, its limited reliability as an indication of future conduct and its relevance (or just as likely irrelevance) to any application (Henley 2019). Working in partnership with voluntary sector agencies who already undertake much valuable work of this kind, people under supervision might be supported and advised in how to make their disclosures in ways that would help employers and others with access to social resources to look beyond the list and see the person.

**Discussion**

It has been suggested that there are four principal rationales for post-custodial intervention and support. These have been referred to as: after-care, treatment,
continuing punishment, and reducing reoffending. Two of these are self-evidently valuable. It is plainly right that people confronted by the overwhelming needs that beset them on leaving prison should receive help and active support to access the resources that they need. It must also be right that everything possible should be done to reduce reoffending. Treatment too seems a valuable aim. Experience may invite scepticism that there is much effective treatment undertaken in prison, but the aspiration should not be abandoned, and any gains should be built upon in the period after release. The social capital made accessible by after-care may come to nothing unless people have the skills and attitudes to take opportunities and the motivation and encouragement to identify circumstances as opportunities (Maguire and Raynor 2006, 2017).

It is beyond the present scope to explore the complex question of whether treatment or welfare can or should be made compulsory on pain of sanctions. Motivation shifts and, just as some keen to take advantage of interventions may quickly be put off by the experience and either drop out or attend with reluctance, others who were suspicious or were even forced into participation may find unexpected rewards and become keen to continue (Canton 2014). Yet it is widely recognised that it is impossible to disregard the attitudes of individuals under supervision: attempts must always be made to gain their consent and indeed their active participation if supervision is to achieve its aims. This holds both for treatment and for the effective management of risk.

As in penal practice more generally, the aims of punishment and crime reduction, often conflated as ‘tough’ approaches in contrast to welfare or treatment, do not work well together. Punishment insists on proportion, yet attempts to reduce risk may override proportionality and warrant indefinite interventions. On the other hand, the perceived need to enforce requirements so that a community sanction does not look like impunity, can lead to actions that are determined more by the priorities of punishment than risk. And, as has been argued, officious and precipitate response to violation is likely to damage the relationship of trust on which effective engagement most fundamentally depends. In combination, risk thinking and punishment, each neutralising the limiting principles of the other, have an inflationary effect on sentencing and on recall practices.

In his influential exploration of behavioural incentives, Bottoms (2001) (for example, 2001) distinguished normative and instrumental reasons to comply. Normative compliance comes about because people feel an obligation to comply – perhaps because of a recognition of the legitimacy of demands made upon them or because they find value in their relationship with probation staff. Instrumental incentives refer rather to considerations of self-interest of which, in the present context, threat is the most salient. But these incentives (and Bottoms identifies others besides) must be made to work in synergy. One of the problems with excessive resort to threat is that this instrumental incentive works against and undermines normative claims. In general, shortcomings in the normative dimensions of compliance cannot be made good by an emphasis on the instrumental.

It seems to me that the continuation of punishment should be abandoned as a rationale for post-release intervention. The miseries and frustrations of incarceration
will inevitably entail that subsequent punishment for its own sake will be resented and inhibit the substantive compliance which conduces to desistance, as opposed to the formal compliance with which punishment must rest content (Robinson and McNeill 2008). The claim that punishment (as opposed to treatment or the management of risk) should persist after a sentence of imprisonment was only introduced as an expedient device to reduce numbers in prison, while attempting to reassure a suspicious (and largely unconvinced) public that punishment would continue in the community. Other and better ways of responding to the problem of honesty / truth in sentencing need to be found, although they are likely to call for political courage and for the judiciary to be willing to revise the habits of the tariff to which they have become accustomed. But the guiding principle should be that the term of custodial detention should be the punishment. The problem thereafter is not how to continue punishment into the community, but how to bring it to an end.

Concluding remarks

Bruce Western’s study of people under supervision after release in Boston found they had a much lower self-reported crime rate than those who were unsupervised, but were reincarcerated twice as often (Western 2018: 127). Being supervised was one of the strongest predictors of a return to custody (second only to relapse into substance misuse)8. The most likely explanation is that risk aversion, intrusive scrutiny and excessive monitoring or (and / or) preoccupations with compliance in the name of punishment are responsible. To this extent, the interventions of probation may compound the problems that beset people when they leave prison. These practices do violence to everything that research suggest about how desistance is accomplished and how it might best be supported.

The argument in this paper is that the intrinsic value of after-care needs to be reaffirmed. Post-custodial work might best be seen as an endeavour to respect people’s dignity and their efforts to establish the lives that they would aspire to lead. These are matters of intrinsic value, irrespective of contingent effects upon reoffending and however elusive to measure statistically or reduce to performance targets (Western 2018). To turn people out of prison without any attempt to address the circumstances that brought them into prison - not only any psychological characteristics thought to be associated with their offending - is morally indefensible (Rotman 1986). It is even more unacceptable when so many of these circumstances and characteristics (including trauma) have been made worse by the fact of incarceration (Bennett 2017). After-care should be regarded not as charity, but as a matter of justice – a fundamental dimension of a sentence’s moral performance9.

Although the provision of after-care should not be evaluated solely with regard to its impact on reoffending, there is reason to think that the demonstration of respect and care that it would evince may well turn out to be more (reductively) effective than the assiduous monitoring and tight enforcement now expected of probation. If the Probation Service believes that it offers something of value to individuals under supervision, it can bring this about through cultivating normative compliance and the provision of services found to be genuinely relevant. Possibilities here include
the motivation and encouragement that may sustain the confidence and direction that people need in their struggles towards desistance.

A further consideration is probation’s potential contribution to former prisoners’ accessing resources, to social capital and to social inclusion. Their understanding of the significance of criminal records could be of value here. A mere list of convictions bears disproportionate weight and defines individuals in terms of the worst things they have ever done. This is the quintessence of criminalisation. This is a term that can usefully be applied to discussions about whether particular kinds of behaviour should come within the scope of the criminal law. But the record of convictions can lend authoritative endorsement to the reduction of individuals to their crimes, criminalising them and not just their behaviour. This may be all the more likely in the case of convictions that are never ‘spent’, giving a specious authority to persistent discrimination. In truth, the structural barriers that confront people leaving prison obstruct desistance and so make further offending more likely. Where probation depends upon the record in its pursuit of risk management or the continuation of punishment, it may become part of the problem rather than contributing to the solution. As has been argued, contextualising and interpreting the record could enhance social justice and help to demolish structural barriers to desistance.

The theoretical support for these reflections may be found in the Good Lives Model (Ward 2010). Desistance is commonly achieved less by direct attention to ‘criminogenic needs’ than by finding a way of living in which offending has no place, a fulfilment of lawful aspirations. Practitioners should therefore work with individuals to support them in their attempts to make this ‘good life’, attending to the creation of practical opportunities, relationships and social support. In that way, after-care may turn out to be the most effective means of managing risk and reducing reoffending.

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Notes
1. While the impact of the Covid-19 pandemic must not be overlooked, it seems to have made no more than a minor contribution to these alarming figures.
2. The self-inflicted death rate for the general population is about 14 per 100,000; for prisoners it is around 83; the rate among people leaving prison in 2018–19 was 212 per 100,000 (Phillips and Roberts 2019).

3. The argument here is in no way at odds with the case mounted eloquently by scholars like Shadd Maruna and Thomas LeBel (2002) for an approach towards desistance that emphasises people’s strengths rather than their needs or their risks. It is no condescension to have regard to the disadvantage and trauma that have damaged the lives of so many people in prison and pose continuing problems for them.

4. The 1984 Statement of National Objectives and Priorities (Home Office 1984) explicitly accorded voluntary after-care a lower priority and successive editions of National Standards largely excluded such services precisely on the basis that, as a voluntary provision, it did not need the degree of regulation appropriate for mandatory supervision.

5. The lexicon of the Council of Europe (see the Glossary in Council of Europe 2010) distinguishes after-care - which is voluntary for individuals to take up, but stands as a duty of the state towards people who have completed their sentence and have a right to meaningful opportunities of reintegration – from resettlement.

6. On 30th September 2016, there were 6,710 recalled prisoners in custody (Fitzalan Howard, Travers, Wakeling, Webster and Mann 2018). On 30th June 2020, the number was 9,211 - 12% of the total prison population (HM Inspectorate of Probation 2020).

7. Only individuals subject to a determinate sentence are eligible for a fixed term recall. They are automatically re-released after a fixed period. Where the risk of serious harm is too high for a fixed term to make sense, a standard recall could result in the individual remaining in custody until the sentence expiry date. Recalled individuals have a right to have their case referred to the Parole Board. All individuals subject to indeterminate and extended sentences are processed under standard recall procedures. When the risk of serious harm is assessed as imminent, probation providers can request an emergency recall. Indeterminate sentences are processed in this way.

8. I am not aware of comparable studies in other countries and it is right to be cautious about assimilating the experience of England and Wales to one part of USA.

9. The term ‘moral performance’ is taken from the work of Liebling (2004).

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