

## Probation in the News: Transforming Rehabilitation

This article analyses the media debate around the Coalition Government's response to the *Transforming Rehabilitation* consultation in which plans to outsource work with low and medium risk offenders were outlined (Ministry of Justice, 2013). The reforms, which will only apply to England and Wales, will allow for private and voluntary organisations to deliver supervision, offender management and specific interventions to offenders, work that is currently the sole responsibility of publicly funded Probation Trusts. Around 70% of Probation Trusts' work will be outsourced. The new system will use a payment by results system by which contract holders will receive payment if they can show to have reduced reoffending amongst their client group.

These reforms have, perhaps unsurprisingly, been received with considerable anger and challenge by interested parties with a media campaign being created by the National Association of Probation Officers (Napo) and probation staff speaking out on social media such as Twitter (although they have since been barred from expressing their dismay (Travis, 2013d)). In addition to this, representatives of Probation Trusts have outlined their concerns about the reforms in local newspapers, Police and Crime Commissioners have spoken out about the reforms and the House of Lords voted in favour of an amendment requiring the Offender Rehabilitation Bill to be passed by the House of Commons before being enacted. In response, the Government has been active in putting forward its arguments in favour of the reforms with Chris Grayling, the

Minister for Justice, appearing on news programmes, answering questions to parliament, appearing in front of the Justice Committee and writing in newspapers. All of this means that probation has had a greater media presence than in recent years, where it has primarily been the subject of attention in the context of well publicised failures (Maruna, 2007). Importantly, both 'sides'<sup>1</sup> have explicitly engaged with the media with Napo's aforementioned media campaign leading the media engagement for opponents to the reforms, and evidence from a leaked 'risk register' suggesting that the Government has tried to mitigate the likelihood of a successful opposition campaign by 'media messaging to keep elements of reform at the top of the agenda' (Travis, 2013c).

This article presents an analysis of the ways in which opponents and supporters of the reforms have constructed their cases, arguing that the Government has made appeals to the 'emotive' (Maruna & King, 2004) element of probation whilst opponents have played a defensive game which risks failing to garner sufficient public support for the continuing existence of a public probation service. The arguments for and against the reforms have centred upon three main points: the potential effectiveness of the reforms, their aims, and the underlying rationale. With regards the first point we see the

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<sup>1</sup> I acknowledge that there are more than two positions in this debate and, as has been acknowledged elsewhere (Dominey and Phillips, 2012), many observers take a pragmatic approach by accepting the reforms will happen and concentrating on how best to work with them. This article focuses primarily on those who explicitly take a 'for' or 'against' stance. It is also worth noting that it is these two camps which are most represented in the media.

Government's complex system of payment by results being simplified by the media to the extent that it becomes hard to argue against the headline message that the reforms are all about rehabilitation. In relation to the aims of the reforms, we see opponents forced to focus on the public protection side of probation whilst the Government highlights and makes use of the ways in which the reforms will (allegedly) reduce reoffending. In this context, the article considers the concepts of public protection and reducing reoffending which, despite being two interrelated and interdependent concepts, are understood and interpreted in very particular ways by the general public. The arguments around the underlying rationale centre upon whether the reforms are intended to save money (the Government's line) or are simply a ruse to allow greater profiteering by the private sector (the opponents' claims). The article concludes by considering alternative strategies for opposing the reforms and reflects upon the ways in which arguments have centre around what Canton (2012) refers to as the 'taken-for-granted' aims of probation. Alongside this argument, however, the article considers the idea that the Government appears to have taken heed of research into public opinion towards rehabilitation and arguments around enhancing the credibility of community penalties whilst opponents have deferred to a portrayal of probation which reflects the functioning of the Service at the end of the New Labour's term in office (Burke & Collett, 2010).

*Probation in the Media*

Historically, the probation service has been the subject of considerably less media attention than other criminal justice agencies and similar state institutions such as social work. Based on an analysis of media coverage of probation related news and interviews with people engaged in the public relations side of probation work, Aldridge (1992) put this down to a lack of an "authorized knower" directly representing the views of probation services; a view that probation is more "professional" than social work agencies and that it gains an element of reputation by association stemming from its origins in the courts. Aldridge went on to echo Cousins' (1987) earlier argument that probation services should engage with public relations and the media in order to widen the presentation of probation in the media. Thus both argued that probation services could use the media to lobby policymakers and opinion-formers over issues such as resources and to garner public support for community disposals. Thus it seems that there is some potential for probation services to use the media to its advantage. This is especially pertinent in light of Maruna's (2007: 113) more recent analysis of probation in the media in which he argued that 'probation seems to be a new favourite whipping boy of the media' rather than being 'stubbornly lacking in news value' (Aldridge, 1999: 99). As Mawby and Worrall (2013: 105) argue, probation work appears to have become 'tainted' or 'dirty'; that probation workers are 'doing society's dirty work and should probably be ashamed, rather than proud, of themselves, for working with the 'undeserving''. Maruna (2007) argues further that whilst probation received positive

coverage up until around the 1970s, changes in policy and an uprating of political rhetoric around crime which has been covered in detail elsewhere (Downes & Morgan, 2007), probation became victim to a 'negativity bias' which, in turn, stemmed from its absence in the public's psyche and a lack of a human face. Such findings have been reflected in research on practitioners' thoughts about their work (Robinson, Priede, Farrall, et al., 2013a; Fitzgibbon, 2012). Thus, Aldridge (1992) and Cousins' (1987) arguments in favour of making more use of public relations seem as apposite now as they did then.

Indeed, Probation Trusts have made attempts to improve their public images with most Trusts including a 'news' page on their websites showcasing what work offenders have done (with the focus primarily being on work carried out through Community Payback). Moreover, most Trusts now have Twitter accounts which they use to publicise success stories and individual practitioners discuss their work openly (although confidentially) in ways which shed light on the positive things that probation officers do as part of their work. Additionally, Mawby and Worrall (2011: 18) report that they found 'examples of probation workers cultivating local media contacts and succeeding in getting out good news and promoting probation workers as 'hidden heroes' but this would appear to occur on a reasonably *ad hoc* basis, dependent more upon individual officers than any systematic approach. It is thus clear that supporters of a public probation service have been using the media to portray a positive image of the service, a form of action which

Schlesinger and Tumber (1994) consider key to the successful lobbying of political decision makers.

Being successful in this task, however, is unlikely to be an easy task, especially if we consider Allen and Hough's (2007: 579) argument that the primary relationships in this arena are those that exist between political decision makers and the news media, with special interest groups playing only a secondary role. This, they argue, puts 'those in charge of probation work very much 'on the back foot''. Indeed, defensiveness is seen elsewhere in probation practice with Gelsthorpe, Padfield and Phillips (2012) noting such a tone in relation to recording media interest in deaths under probation supervision and Head (2004: 274) intimating in his review of Greer's (2003) book *Sex Crime and the Media* that 'media training' in the context of probation involves 'taking a defensive line'. It is thus clear that any special interest group wishing to take on the might of political decision makers via the media would have its work cut out - that the political and media context makes defensiveness the default position and that probation's negative reputation would need to be shed before a more positive image could be portrayed in order to harness the public support which Schlesinger and Tumber (1994) consider critical in using the media to lobby political decision-makers.

*Public Attitudes towards Probation and Rehabilitation*

In order to shed more light on how the respective parties have constructed their cases for and against probation reform, it is important to have an understanding of what the public's attitudes are towards community penalties. The following discussion is necessarily brief, relying on both Maruna and King (2004) and Allen and Hough's (2007) contributions to our understanding of this topic. The first point to note is that 'most people are unfamiliar' with the range of punishments available beyond imprisonment (Roberts, 2002: 37). It has become a commonplace to talk about the public as increasingly punitive, with a thirst for punishment which politicians are eager to exploit via increasingly harsh sentencing regimes, crackdowns on particular types of offenders, increasing use of prisons and expanding prison populations (see, for example, Pratt, 2005; Bottoms, 1995). However, Allen and Hough (2007) make the case that when we look below this 'surface finding' we find a surprising level of enthusiasm for rehabilitation. More recently, Hough, Roberts, Jacobson *et. al.* (2009: vi) made the case that,

[i]t is significant that support for rehabilitating offenders remained high, even for those convicted of serious crimes of violence. Thus four out of five respondents provided a high importance rating for rehabilitation when asked in the context of offenders convicted of serious crimes of violence.

Such findings reflect Maruna and King's (2004) work on public attitudes to community sentences, which highlights a strong belief in the power of redemption and offenders' ability to change. Moreover, these findings led Maruna and King (2004) to argue that we need to consider both the effective and affective aspect of punishment because

punishment contains an inherently emotional element - one that is real and thus should be taken seriously. The effective aspect of punishment speaks largely for itself; punishment should be used to reductivist ends working primarily on the theoretical foundations of deterrence, incapacitation and rehabilitation. Affective justice (Freiberg, 2001), on the other hand, speaks to the emotional element of punishment. From this Durkheimian perspective, punishment sends a message to offenders that offending is wrong and to non-offenders that something is being done about these offenders (see also Duff, 2009). Maruna and King (2004) go on to argue that probation does have an emotional appeal - that of a belief in offenders' abilities to change - and that supporters of probation should take advantage of this if they are to harness greater support for probation from members of the public. Indeed, at a conference marking the centenary of the probation service Maruna (2007) went so far as to say, that if probation does not 'get' its 'emotional appeal' it will not survive the next century.

### *The News Articles*

This article uses both print news media (in the form of national and local tabloids and broadsheets) and major digital news sources such as BBC.co.uk, Sky News and ITN News (in order to broaden the analysis beyond the relatively narrow confines of the



written press) as its dataset.<sup>2</sup> Relevant articles were uncovered through searches on the LexisNexis database with 122 news articles being identified that presented a range of opinions and perspectives from a variety of stakeholders, as discussed below. Relevant news articles were then analysed thematically using NVivo. Analysis of the articles sought to uncover the different ways in which the news media covered the reforms, as well as the supporting and opposing arguments that were put forward. This two-pronged approach allows us to see what approach is being taken by the respective parties and how such a message is being re-represented in the news media. This analysis resulted in the identification of three salient and contested theme around the effectiveness, aims and rationale of the reforms.

Before embarking on a discussion of these themes, it is worth highlighting a few points about the dataset and analysis more broadly. Most articles dated from the last 18 months, around the time the Government published its first consultations on these plans (Ministry of Justice, 2012a, 2012b). Interestingly, when the term 'privatisation' in search terms was included, results were dominated by *The Guardian* and *The Morning Star*, news outlets known for their left-leaning stance. The exclusion of this term provided results from a wider spectrum of the news media, although broadsheets were more

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<sup>2</sup> Although the debate has also occurred within a relatively small circle of people on social media such as Twitter, I have not included this as a news source as the aim here is identify the formal arguments being put forward by official representatives. This does, however, represent an area for further analysis.

prominent than tabloids. Local newspapers covered the reforms in some depth, mainly in the context of local interested parties speaking out (such as the local Police and Crime Commissioner) or because a local Napo group were planning a protest at the reforms.

As Aldridge (1992) put probation's absence in the media down to a lack of an 'authorized knower', analysis also involved the identification of key 'players' in the debate. In terms of opponents to the reforms, the main players were Harry Fletcher, former Assistant Secretary General of Napo and Ian Lawrence, current Secretary General of Napo. In addition to this, there was input from the Probation Chiefs Association (PCA) Chair and Chief Executive of West Yorkshire Probation Trust, Sue Hall, as well as Police and Crime Commissioners. In their work on occupational cultures in probation Mawby and Worrall (2011: 18) argue that 'the PCA has become more active in communicating the profile of the probation service, although not yet to the extent of displacing Harry Fletcher as the most recognisable probation 'voice'. This is certainly borne out in the articles identified as part of this research. As Napo is clearly the loudest voice, the organisation dominates the arguments made against the reforms. That said, other parties have also spoken out, particularly lobby groups such as the Howard League for Penal Reform, the Independent Probation Alliance and the Prison Reform Trust. In terms of voices that support the reforms we see members of the Government, particularly the Minister for Justice and Secretary of State, Chris Grayling

MP as well as other interested parties who, perhaps sceptically, will gain from the reforms such as NACRO, G4S and Serco. This alerts us to the work of Chibnall (1977) in which he argues that the news media is shaped by the extent to which journalists can access credible and authoritative voices. As probation does not appear to have a strong voice in the public sphere, the voices emanating from the supporters' camp are likely to dominate. The article returns to Chibnall's (1977) work at various points as his analysis of crime news reporting sheds considerable light on the way in which the cases for and against probation reform have been constructed by the news media.

*Effectiveness: complexity-induced simplification versus managerialism and detail*

The Government has placed considerable emphasis on the idea that these reforms will shift the focus of probation-related services away from managerialism and red-tape and towards rehabilitation and reducing reoffending primarily through its 'rehabilitation revolution' and concomitant payment by results framework for paying providers.

Although the Government has been slow in outlining exactly how it intends to measure 'results' we do know that reoffending rates will play a key part. Whilst 'reducing reoffending' initially appears to be a relatively simple matter it becomes considerably more complex when we look to some of the problems with measuring them (Merrington & Stanley, 2007). Important questions around whether it is necessary to build in measurements around changes in frequency and seriousness of offending are still unanswered and we do not know whether 'results' will be calculated on an individual or

aggregate basis. Importantly, it looks likely that the system will work on a bonus payment basis whereby a provider is given a set amount of money to provide the service and then receives a bonus payment if targets are met. Besides the fact that one can never know for sure whether an intervention has directly led to a reduction in reoffending, the complexity of the system is working in the Government's favour when we look to the media's re-representation of this element of the reforms. This hidden complexity has led to a considerable level of simplification in the way in which the reforms are reported in the news media. As Chibnall (1977) describes, it is an inherent tendency of a journalist's conception (and thus creation) of the news to eliminate 'the shades of grey that lie between black and white'. Such simplification is currently playing into the Government's hands with, for example, Sky News (2013) reporting that providers of the interventions will 'only get paid if they achieve results'.

Opponents to the reforms, on the other hand, have made their case for effectiveness by referring to the 'fact' that all Probation Trusts have consistently met their targets over the last few years, thus demonstrating that the service they have provided is as good as it can be (Fletcher, 2013). In doing so, opponents to the reforms simply serve to reinforce the view that probation workers are constrained by the micro-management and red tape which the press seeks to ridicule (BBC, 2011; Doyle, 2011), the Government is trying to reduce (Cabinet Office, n.d.; Ministry of Justice, 2011) and for which there appears to be considerable public support. Rather than portraying a service which holds some

moral and reductivist potential, such arguments convey an increasingly outmoded message that probation can and should be measured with reference to managerialist measures of inputs and outputs rather than outcomes, and with little in the way of reflecting the ways in which practitioners themselves define the notion of 'quality' in probation supervision (Robinson, Priede, Farrall, et al., 2013b). In this sense, the opponents of the reforms appear to be reinforcing the *modus operandi* of probation at the end of New Labour's term in office which has been described as 'a prolonged period of unremitting change, burdened by bureaucracy and over-zealous micromanagement by the centre' (Burke & Collett, 2010).

In addition to making the case that probation services are inherently effective because they have met centrally defined targets over the last few years, opponents have made the (perfectly valid) argument that these reforms are being introduced with little in the way of evaluation and very little in the way of being proven (Travis, 2012). Opponents have pointed to the Work Programme to show that payment by results does not necessarily produce results. However, if we look again to Maruna and King's (2004) research, we see that appeals for cost effectiveness are unlikely to hold much sway with the general public. Indeed, the public are overwhelmingly sceptical of the ways in which governments and public bodies measure effectiveness and their use of statistics (one has only to look at the public's understandings of crime rates and official crime statistics to appreciate this (Roberts & Hough, 2005)). Again, then, we see opponents constructing

an image of probation which does not convey the messages which are likely to be effective in swaying public opinion. The Government, on the other hand, is able to put forward headline grabbing examples which are more likely to hold some sway with the general public. Indeed, as Sadiq Khan, Labour MP and Shadow Justice Secretary, (Sky News, 2013) admits, ‘the announcement sounds great - who could be against trying to reduce reoffending, the problem lies in the detail’ or, in the words of Ben Prisetley, Unison national officer for probation staff, ‘We support the ambition of the Justice Secretary to revolutionise rehabilitation, but he is dangerously misguided in his approach’ (The Express, 2013). Unfortunately for those opposing the reforms the news media are neither interested in the detail nor likely to convey such a message to the general public:

Simplicity is the keynote... I don’t think our particular readership is going to stay with a long leader however interesting and well-reasoned it may be.  
(Tabloid Editor in Chibnall, 2001: 30)

#### *Aims: Rehabilitation versus Public Protection*

As argued above, the Government has placed considerable emphasis on the rehabilitative focus of the reforms. As Lord McNally put it when introducing the Offender Rehabilitation Bill to the House of Lords:

My Lords, the purpose of this Bill can be summed up very simply: to improve the support we give to offenders in order to break the cycle of reoffending. (*HL Deb 2012-13*)

Thus we see the Government playing into some of the nuances that are found when one looks closely at public attitudes towards community sentences in that 'the majority of studies reviewed find that community penalties are largely supported by the public so long as they are used for non-violent rather than violent offenders (low and medium risk offenders)' (Maruna & King, 2004: 91). By limiting the reforms to low and medium risk offenders the Government is taking heed of findings that show that people are more willing to value rehabilitation with non-violent offenders than with violent ones. It would appear that the Government has colonised the notion of rehabilitation for its own ends, leaving opponents to focus on other, less understood aims of the criminal justice system, in particular public protection.

Hough *et al.*'s (2009: 12–13) work sheds light on what the public understand to be rehabilitation. The following quotes come from focus groups conducted with participants in their research:

You've got to break the social cycle ... Give them education so that they have the tools to move on.

These are the things that help people actually change.

Whilst the definition of rehabilitation is contested in the criminological academe (Raynor & Robinson, 2005), these quotes arguably indicate what members of the public understand by the term 'rehabilitation'. Indeed, Chris Grayling's own words reflect them quite neatly:

I intend to apply payment by results to the majority of rehabilitation work conducted with offenders in the community. This rehabilitation revolution will stimulate innovation and open the delivery of services to a wider range of providers with the skills needed to change an individual's behaviour and reduce offending in future. (*HC Deb 2012-13*)

There are different modes of intervention and different theories underpinning a variety of models of rehabilitation but there is widespread agreement amongst members of the public that rehabilitation involves some kind of 'treatment' with an individual offender to make them less likely to commit further offences. Chibnall's (1977) work alerts us to the tendency amongst news journalists of not moving the public's understanding of a situation beyond the 'mundane' and 'common-sense' as exemplified by the quotes above from Hough et al.'s (2009) work. Thus we might argue that the Government's focus on rehabilitation is relatively easily reinforced by the simplification we saw in the previous section.

Maruna and King (2004) highlight the potential in appealing to the public's sympathetic attitude towards the notion of redemption and offenders' abilities to change. Indeed, they (2004: 103) conclude their chapter by arguing that 'appealing to the public to support community alternatives because 'people can change', and demonstrating this



with human interest stories of transformed offenders might have some value'. Hence, we see the increased presence of voluntary agencies in the news media who are all too willing to showcase their successful case studies, with Sky News (2013) featuring an organisation that is run by ex-offenders and Rob Owen (2013a), Chief Executive of the St Giles Trust making a strong case in favour of the reforms in *The Independent*.

Whilst the Government has focused on rehabilitation as the main aim of the reforms, opponents have focused on the public protection role of the service. Figure 1 shows Napo's banner for their campaign, clearly highlighting the public protection aspect of probation:



**Figure 1: Napo's Campaign Banner. Source: <http://www.napo.org.uk/>**

Indeed, this reflects the view within and without the service that its primary aim is public protection (Justice Committee, 2011; Robinson & McNeill, 2004). Whilst this seems a laudable strategy, making the case that the public will be less safe following the reforms risks backfiring, especially when considered in the context of the news media's

interpretation and portrayal of crime-related issues. As McNeill (2011: 10) has argued, 'Whenever the promise to protect is made, the existence of a threat is confirmed and fear is legitimized and reinforced'. One problem lies in what public protection means to the general public. Hough *et al.* (2009: 13) found that public protection as an aim of sentencing was considered the 'most important' yet they explain this with reference to other surveys that have found that people tend to think of more serious offenders when thinking about sentencing: '...our respondents probably had the more serious cases in mind, and this may have directed them towards certain objectives'. When comparing minor with major offences, they found that public protection was still considered to be highly important but with a much smaller gap between public protection and other sentencing aims. There is thus the potential that the opponents' focus on the public protective role of probation simultaneously makes people think that probation primarily works with high risk and serious offenders who the public think should probably not be in the community anyway (Maruna & King, 2004). Public protection, as Kemshall and Wood (2007) point out, focuses attention on the 'critical few', a group that will not be affected by these reforms.

This is, ultimately, a definitional and awareness issue. Whilst the Government has been able to play on a relatively straightforward, 'common sense' understanding of rehabilitation which enables the public to make a simple link between less offending and safer communities, the phrase 'public protection' conjures up an image of the more

serious offender. Kemshall and Wood (2007) discuss two primary models of public protection - community protection and public health. The public health approach acknowledges that much crime and, thus many offenders, do not come into contact with the criminal justice system and so the best approach is one of prevention through public awareness. The community protection model, on the other hand, 'is characterized by the use of restriction, surveillance, monitoring and control, compulsory treatment and the prioritization of victim/community rights over those of offenders.' (Kemshall & Wood, 2007: 207). Importantly, 'this approach takes place in a climate of fear ... and of blame'. (Kemshall & Wood, 2007: 207). Moreover, they argue that the community protection model

creat[es] a distance between offender and society, and the spectre of an invisible yet monstrous stranger in our midst ... this results in a 'zero-sum' relationship between offender and victim in which victims' rights can only be upheld at the exclusion of offenders. (Kemshall & Wood, 2007: 210)

Opponents' concerns about public protection primarily stem from the fact that medium risk offenders will be supervised by private companies in the community and that private companies will be incapable of doing so because of the pressure to drive down costs in order to make a profit. In making this case, Napo (2013: 1) have repeatedly made the claim that,

The 'medium risk' group includes people who have been convicted of violence, sexual matters, burglary, robbery, domestic violence or are known gang members.

At face value, and for the majority of probation practitioners and criminologists, this is not too risky a claim to make. The appreciation that risk is dynamic and individualistic and that offence type does not hold some inherent connotation of evil is something that 'we' almost always take for granted. However, when such claims are interpreted and re-presented in the news media we see the appropriation of such claims which feed into the cultures of 'fear' and 'blame' mentioned above, as illustrated by this excerpt from *The Sunday Sun*:

SOME 2,300 sex offenders will be among the criminals whose supervision is outsourced to private contractors under probation reforms, it was claimed today.

Around 3,200 gang members, 8,400 people convicted of domestic violence and 15,900 robbery cases are also among the "medium risk" offenders set for private supervision under Government proposals, the National Association of Probation Officers (Napo) said. (Hope, 2013)

This kind of re-presentation is not restricted to the tabloid press, with the *Guardian* (Travis, 2013c) playing on people's fears about serious offenders being in the community:

The cost of failures in the probation service has been illustrated by cases such as those of Anthony Rice, who sadistically murdered Naomi Bryant in 2005 after being released from prison on a life licence, and Daniel Sonnex, who tortured and murdered two French students in 2008 after blunders in his probation supervision.

Thus, the opponents' focus on public protection, and the way in which it has been re-presented in the news media runs the risk of leading members of the public to

automatically think in terms of the community protection model. It would appear that the opponents' arguments are serving to reinforce an exclusive society rather than counter it. Arguing that the distinction of low, medium and high risk offenders is, at best, porous and dynamic and, at worst, wholly artificial raises the risk that the public begin to question a significant mechanism underpinning probation work (risk assessment) to such an extent that they begin to ask whether such people should be sentenced to a community penalty or released from prison in the first place (Maruna & King, 2004). Rather than eliciting support from the general public such a message appears more likely to lead to greater stigmatisation and alienation of those groups of offenders with correspondingly lower levels of support for the possibility of redemption. In combination with the populist rhetoric present in much of the news media (which might be inspired by an outlet's political affiliation or the need to sell newspapers (Chibnall, 1977)), the response neither works to garner public support for the *status quo* nor for the broader aim of limiting the role of punishment and exclusion when it comes to offenders more broadly.

*Underlying Rationale: Austerity and Flexibility versus Ideology and Profit*

In addition to making the case that these reforms are about increasing the effectiveness of community supervision (however simply defined) and being more focused on rehabilitation, the Government has made the case that these reforms will save money, a crucially important line of rhetoric that runs throughout much of the Coalition

Government's reforms. However, the message is slightly mixed. On the one hand, Grayling has said the reforms are not about 'cutting budgets' (Mason & Johnson, 2013) whilst on the other he has said that the reforms will allow providers to do 'more with less' (Travis, 2013b). Grayling has argued that the reforms constitute...

...a simple proposition, really.

You decide what works best, and we pay you when you are successful. I plan to bring that same approach to prevent re-offending.

We will allow nimble private and voluntary sector providers to innovate, to find the right mix of training and mentoring, to do what works in ensuring that those leaving prison and community sentences do not re-offend. (Walters & Owen, 2012)

Underlying this argument is the assumption and belief that the private and voluntary sectors can introduce innovation and flexibility into the system. The argument goes (as has been seen in other spheres of social policy) that the public sector is static and profligate when it comes to spending money. The profit motive of the private and voluntary<sup>3</sup> sectors *should* enable them to make best use of the resources available to them so that they continue to make money for their stakeholders (whether this be shareholders or future bids made by an organisation).

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<sup>3</sup> I acknowledge that voluntary sector organisations do not make a profit as such. However, many charities are now run in the same way as businesses with any surplus being used to reinvest in the organisation. Indeed, many organisations looking to be involved delivering probation services are referred to as 'community interest companies' with the only difference from a private sector company being the absence of shareholders and profit.

Opposing voices to the reforms have made counterarguments to these claims, many of which have referred to the integrity of the companies who are likely to bid for these contracts such as G4S, Serco and Sodexo. For example, Shaun Wright, Police and Crime Commissioner for South Yorkshire, argues that:

This is all about giving lucrative contracts to private companies; we will see more work being given to companies like G4S, despite their woeful Olympics record. (Yorkshire Post, 2013)

Harry Fletcher went further, arguing that,

This tendering exercise is not about quality, but purely about ideology and cost. In reality, it is a race to the bottom on price at the expense of effectiveness and efficiency, and is bound to compromise public protection. (Doyle, 2012)

However, as we saw above, opponents to the reforms have failed to make a sufficiently persuasive argument as to what effectiveness actually *is*. To read their claims one might assume that effectiveness is equivalent to meeting targets and protecting the public from dangerous offenders. There may well be potential in highlighting the failings of these companies in other areas but it ignores the powerful, if inaccurate, message that the companies will only be paid if they return results. As the following excerpt from the *Times* shows, supporters of the reforms are well aware of the need to assuage members of the public's concerns about such companies.

The business argument for outsourcing may be strong, but the public has yet to be convinced after the high-profile failings of companies such as G4S. The security company recently admitted that the "humiliating shambles" of

the Olympics, when it failed to supply enough guards, had cost it £88m and caused permanent damage to its reputation.

G4S has also come under fire for its management of the flagship Oakwood prison near Wolverhampton...

Yet for every Oakwood, there is an example of a private firm that has succeeded in turning round a failing institution. Last year Hinchingsbrooke hospital in Cambridgeshire became the first NHS trust to be operated entirely by a private company when it was saved from closure by Circle Holdings under a 10-year contract. The company ... reduced waiting times and boosted patient satisfaction to among the best in the region...

Hinchingsbrooke shows there is more than one model for the delivery of public services, from the big listed outsourcing giants to staff-owned businesses, social enterprises and charities. (Cooper, 2013)

Moreover, one might argue that the Government is in a favourable position to do so because the majority of the national press presents the reforms in a generally positive light. This is partly because of the confusion and simplification presented above but also, arguably, because the majority of the UK press is oriented to the political right. For example, whilst opponents have called the timescales for the reforms unrealistic and dangerous, *The Times* (Ryan, 2012) reports them simply as 'ambitious', whilst elsewhere *The Sunday Times* (Cooper, 2013 emphasis added) argues that 'the Ministry of Justice is already one of the most *progressive* departments in terms of opening up services to external contractors'.

We also need to set this particular debate in the context of the debates around austerity, paying particular attention to public opinion. Whilst the reforms may well be



ideologically inspired (whereby that ideology is one of a smaller public sector and a more involved private sector), the fact remains that inherent to such an ideology is a message about reduced costs for the public sector, if only in the short term. Although the reforms may lead to a lower quality of service in the delivery of community supervision saving money remains a powerful argument. The welfare system has undergone similar reforms and similar debate (although it has been more public than that around probation), where the Government made similar claims about potential efficiencies. Again, the reforms might not save money in the long or even short term but it is a powerful argument and one that appears to be being successful in terms of public support for the reforms. As a YouGov / *Sunday Times* Poll (YouGov, 2013a) found, limiting welfare rises to 1% has been met with considerable support amongst members of the public. In a separate poll (YouGov, 2013b) 49% of respondents supported the 'bedroom tax' with 38% opposing it. It may, of course, be the case that a similar construction of the arguments for and against this policy will have played out in the media and so we must take treat the findings of such polls with care. Moreover, there is evidence that there is a similar lack of awareness surrounding the welfare reforms as there is around community penalties. The Trades Union Congress accused the Government of 'brainwashing' the public with 'myths' around welfare reforms and a concomitant lack of awareness about the amount of money benefits recipients actually

received (Grice, 2013). Nevertheless, it would appear that a similar argument being put forward in a separate sphere is eliciting considerable levels of support.

As part of the opponents' focus on the ideologically-driven nature of the reforms the ethical practices of the companies who are likely to bid for contracts in this area has been cited regularly. The majority of these concerns have revolved around examples of malpractice with A4E being cited because of allegations of fraud and G4S and Serco being accused of overcharging the Government for monitoring offenders on electronic tags (BBC, 2013). Interestingly, this element of the campaign has found a seemingly unlikely ally in *The Express* newspaper, a result of which is that this aspect of the campaign is receiving considerable attention. The opponents are also finding allies in the organisations which may well benefit from the reforms with the voluntary sector 'warmly welcom[ing] the reforms with their main concerns revolving around 'learning the lessons' from the Work Programme (Owen, 2013a). However, as with the majority of the arguments being made by the opponents' camp, they are technical in nature. The immediate response to such arguments is that as long as more checks and balances can be included then this won't happen:

Yet lessons seem to have been learned on issues such as cashflow, appropriate payment and "creaming and parking". (Owen, 2013b)

Alongside this, opponents have argued that the reforms are to be implemented too quickly. The Government introduced the Offender Rehabilitation Bill to the House of Lords with a view to it being read only by that house. The Bill, however, was returned to the House of Commons for a full reading, debate and vote. One of the two amendments which secured this was technical in nature, with the main concern being about the speed at which the reforms are to be implemented (Travis, 2013a). Again, we see very little in the way of advancing the benefits of a public sector probation service. As the *Guardian* put it, this brief glitch in the process will serve to slow progress down rather than stop it altogether (Travis, 2013a).

#### *An Alternative Opposition*

Thus far, I have argued that the debates around the probation reforms have played out in the media along three main topics: effectiveness, aims and underlying rationale. The analysis shows that the Government has played a game which has, as Allen and Hough (2007) predicted, put opponents very much on the back foot. Nevertheless, it might be argued that opponents have played too much of a defensive game, conveying a negative image of probation and reinforcing the exclusionary nature of public protection rhetoric. This should be all the more concerning for them, because the Government appears to have obtained the upper hand in terms of appealing to the nuances in public opinion about rehabilitation, whilst also being able to take advantage of general support for saving money.

Saving money aside, the Government's strategy appears to have addressed two important elements of what we know about public opinion towards criminal justice issues. Firstly, they appear to have tried to address the widespread scepticism about the use of statistics in the sphere of criminal justice. By shifting the focus of the debate, through a reliance on the simplification inherent to the news media, to the idea that the deliverers of community supervision will not be paid if they do not achieve results, they are simultaneously making the case that red-tape, targets and managerialism are no longer the means by which probation will be measured. Secondly, they have successfully portrayed the idea that the reforms will aid the rehabilitation of offenders, thus appealing to the public's support for such a sentencing rationale.

The ways in which the arguments for and against these reforms have been constructed in and by the news media reflect, perhaps unsurprisingly, the 'taken-for-granted' purposes of probation, punishment, rehabilitation and public protection (Canton, 2012). Interestingly, it is the Government which has prioritised valuing the rehabilitative aspect of probation, whilst opponents of the reforms have highlighted its public protective role. In doing so, the Government has taken advantage of (or has been aided by) the news media's propensity to oversimplify criminal justice issues whilst simultaneously playing into the nuances that become apparent when we look below the surface-findings related to public opinion and rehabilitation. Thus, the message conveyed is that providers will *only* be paid if reoffending rates are reduced and that measuring reoffending is a

relatively straightforward process. From one perspective, this could be a case of the Government truly believing in the importance of rehabilitation. A different view may consider this to be a case of rehabilitation existing solely in the service to another dominant ideology (Robinson, 2008), with the ideology in this case being privatisation and neo-liberalism rather than punitivism and public protection.

Alternatively, we can think about this in terms of appealing to the emotive element of community penalties as discussed above. In the context of the Casey Report (Casey, 2008), Maruna and King (2008: 347) have argued that the Government was 'right to utilize emotive appeals to the public in order to increase public confidence in the criminal justice system' but that 'revenge and retribution, anger, bitterness and moral indignation' were the wrong emotions to draw on. Rather, they (2008: 347) argued that 'one would want to tap in to other, equally cherished, emotive values, such as the widely shared belief in redemption, the need for second chances, and beliefs that all people can change.' It would appear that the Government is doing just that here.

Opponents, on the other hand, have conveyed the message that the reforms will encourage profiteering and cost-cutting at the expense of public protection. In doing so, they have (perhaps inadvertently) conveyed the message that probation is for the 'critical few' whilst using strategies which reinforce the exclusionary rhetoric to which many commentators see probation as having the potential to be a counterforce.

Canton (2012) argues that there are alternative ways of valuing the worth of probation. Rather than focusing on the punitive and instrumental aims of probation, he argues that we should value the 'virtue of obliquity' when thinking about the overall worth of probation practice. That is to say that probation primarily works indirectly rather than with the directness implied by the focus on rehabilitation and punishment. Neither set of arguments outlined above take such an argument into account. Indeed, one might argue that they explicitly eschew obliquity as a way of understanding and conveying probation's potential. For example, the Government expects to be able to identify exactly who has rehabilitated an offender whilst the opponents' arguments implicitly convey the message that the probation service is the primary agency responsible for imposing controls on offenders. Both arguments can be relatively easily critiqued with reference to a wide range of criminological theory and evidence which deal with issues outside the sphere of formal criminal justice such as informal social control, families and friends, social bonds and so on. There is potential in taking Canton's argument into account in the context of these reforms. Canton (2012: 6) argues that the focus on punitivism and instrumentalism:

militate[s] against a recognition of [users of probation's] ethical entitlements and a proper appreciation of the structural, cultural and personal influences that are associated with their offending and within which their potential for desistance must be explored and developed.

Canton goes on to argue that acknowledging the oblique nature of probation's effect on offenders opens up the potential for working in an ethical and personal way with

offenders. Importantly, he makes the pertinent point that privatisation is likely to work against this kind of practice:

these reflections also open up irreducibly ethical questions about the 'moral limits of markets' and the extent to which marketization and a profit motive corrupt the social values that the probation service should express.

Whilst opponents have said that the focus of criminal justice should not be about profit, they have neglected to make the, arguably more powerful, case that probation should be about a belief in an offender's ability to change. It might seem antithetical to our basic understanding of public opinion to make arguments along the lines of treating offenders ethically and personally but the evidence on which Canton draws shows that such arguments can still be framed by effectiveness. Indeed, despite his misgivings about instrumentalism, Canton (2012: 14) states that 'the principle of obliquity... often turns out to be more effective in achieving probation's goals'. Thus, rather than playing a defensive game, as opponents to these reforms appear to have done, Canton's argument could have allowed opponents to be more assertive in arguing that a profit-making criminal justice is not only negative because private companies are ruthless in their pursuit of profit to the extent that they will under-deliver or commit fraud to maximise their income but because the reforms are likely to limit the potential for community sentences to actually reduce reoffending.

All of these reforms come under the Government's umbrella term of a 'rehabilitation revolution'. However, it would appear from the arguments analysed above that the Government is merely 'repackaging' the same old probation in a neo-liberal overcoat. The arguments put forward by opponents to the reforms, on the other hand, appear to be presenting any future probation service as playing the same role as it has for the last ten years or so. McNeill (2011: 19) has warned that,

Arguably a key danger at this particular moment in the UK, with the combination of excitement and cynicism about the 'rehabilitation revolution' growing, is that a continued focus on reducing reoffending may lead to neglect of the recognition that justice systems are not only and perhaps not primarily concerned with reducing crime.

This appears to have come to fruition. Rather than taking the opportunity to draw on the findings that are becoming increasingly accepted about how and why people desist from offending in conjunction with a realistic vision about probation's role in that process, it would appear that probation's defenders are content with a simplistic portrayal of what probation does and what it might be able to do in the future. The Government, on the other hand, appears happy to forego what we know we know about offenders' desistance journeys in order to maximise savings and enable the widespread roll out of privatisation in the sphere of community penalties whilst simultaneously playing a novel version of populism which actually reflects, in a more subtle way, what the public believe and want from community penalties.

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