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## **The Voluntary Sector and the Mandatory Statutory Supervision Requirement: Expanding the Carceral Net**

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### **Abstract**

Recent penal policy developments in England and Wales emphasise the role for voluntary organisations. Voluntary organisations play an important and increasing role in punishment, including imprisonment and supervision, but the effects of their work are ill understood. Existing literature is ambivalent: some argue such work empowers and builds social capital; for others, it extends control. This tension is addressed by analysing two payment by results pilot schemes. This analysis adds to the limited empirical knowledge about voluntary organisations. It demonstrates how their involvement in these pilots enabled and justified the new 12 month mandatory statutory supervision requirement, significantly extending the spatial and temporal reach of carceral power. The conclusion considers the theoretical implications of this analysis.

**Keywords:** Net-widening; Penal voluntary sector; Prison; Probation; Resettlement; Payment by results.

**Word count: 9873**

## Introduction

“There can hardly be a prison in the country that could continue to work as it does if there was a large scale collapse of voluntary, community and social enterprise services for people in custody” (Martin, 2013: no pagination; see also Neuberger, 2009; Armstrong, 2002).

The voluntary sector's impact upon punishment in England and Wales is considered very significant, and is likely to expand. But whilst an ongoing “lively debate” surrounds private sector involvement in punishment, the work of voluntary organisations has gone “largely unnoticed” by scholars (Armstrong, 2002: 345). Recent policy developments have emphasised the role for voluntary/charitable organisations<sup>1</sup> in the market for penal services as part of broad packages of reform. For example, *Breaking the Cycle* Green Paper (Ministry of Justice/MoJ, 2010) and *Transforming Rehabilitation: A Strategy for Reform* (MoJ, 2013c) stressed the role for voluntary organisations in payment by results (PbR) contracting<sup>2</sup>. These policy developments have increased the urgency of better understanding the impact of voluntary organisations upon punishment.

Although the value and contribution of voluntary organisations has been widely acknowledged (e.g. Corcoran and Hucklesby, 2013; Maguire, 2012; Mills et al., 2012; Benson and Hedge, 2009), the effects of their work are not clear. Existing literature presents a tension. For some, voluntary organisations empower prisoners and probationers, enabling them to build social capital (e.g. Bilby et al., 2013; Cohen, 2009; Lewis et al., 2007; Lippke, 2003). For others, the 'benevolent' work of voluntary organisations extends control, increases the scale of penalty, and shores up coercive carceral regimes (e.g. Cox, 2013; Armstrong, 2002; Cohen, 1985; McWilliams, 1983;

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1 I use the labels 'voluntary sector' and 'voluntary organisations'. An array of terminologies are used to refer to organisations in this area, including third sector; nonprofit; nongovernmental; charitable; civil society; philanthropic; and community organisations (Goddard, 2012; Alcock and Scott, 2007; Armstrong, 2002).

2 PbR links the contractor's payment to results achieved, to encourage greater efficiency and effectiveness in service delivery (Maguire, 2012). PbR offers potential reductions in state expenditure and transfers risks away from the state to commercial investors (Whitehead, 2015: see p. 293 for a full explanation of relevant literature).

Ignatieff, 1978; Foucault, 1977).

I address this tension and contribute towards better understanding how the work of voluntary organisations affects prisoners and probationers, by analysing voluntary sector involvement in a translation<sup>3</sup> of ideas from policy rhetoric into national practice.

Translation illustrates how the process of relationship building succeeds or fails and how actors impose their definitions of a situation upon other actors (Gray et al., 2009; Callon, 1986). This translation began with the *Breaking the Cycle* Green Paper (MoJ, 2010), and culminated in the enactment of the 12 month mandatory statutory supervision requirement (hereafter 'supervision requirement') through the *Offender Rehabilitation Act 2014*. This translation encompassed the prison-based PbR pilot schemes at HMPs Peterborough and Doncaster and the publication of *Transforming Rehabilitation: A Strategy for Reform* (MoJ, 2013c). Although the PbR pilots initially emphasised voluntary participation, rehabilitation and resettlement, I argue that they directly enabled the supervision requirement for all prisoners sentenced to less than 12 months in custody<sup>4</sup>. Extending post-release supervision to these prisoners “for the first time in recent history” (MoJ, 2013c: 6) is predicted to result in 13,000 additional offenders being recalled to custody annually and cost £16 million (Prison Reform Trust, 2013: 1). This analysis demonstrates how the involvement of certain voluntary organisations and a discursive voluntary sector in this translation enabled and justified the supervision requirement, and associated extensions in the spatial and temporal reach of carceral power.

I draw on data collected through document analysis of policy and voluntary organisation publications, which formed part of a larger research project conceptualising the penal voluntary sector in England and Wales. To map the translation, policy publications that

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<sup>3</sup> This analysis was informed by actor-network theory's four-phase process of translation. This methodology is not discussed here for reasons of space, but details can be found in Gray et al., 2009 and Callon, 1986.

<sup>4</sup> The supervision requirement has similarities to 'Custody Plus', a flagship of the *Criminal Justice Act 2003*. 'Custody Plus' involved a licence period of up to 26 weeks for short sentence prisoners with requirements aimed at reducing reoffending, but was never actually brought in due to concerns about inadequate resourcing and the potential for the system to become overwhelmed (Ashworth, 2010: 295).

followed *Breaking the Cycle* were analysed (MoJ, 2011a; MoJ, 2011b; MoJ, 2012a; MoJ, 2013a; MoJ, 2013b; MoJ, 2013c; MoJ, 2015a; MoJ, 2015b), along with the voluntary organisation responses to crucial stages of the translation (Howard League, 2013; Prison Reform Trust, 2013; Howard League, 2011; Nacro, 2011; Social Finance, 2011; St Giles Trust, 2011). First, the penal voluntary sector is defined. Policy reforms are then introduced and the four phases of their translation are examined. The effects of this translation are discussed and the theoretical implications of this analysis explored.

## **The penal voluntary sector**

This analysis is situated in the penal and policy context of England and Wales. Although there are important differences between territories, the voluntary sector and the marketisation of penal services are issues of international import. This discussion is thus particularly relevant to Canada, the USA and Australia, which have similar penal policy developments involving the voluntary sector (Ilcan and Basok, 2004; Armstrong, 2002; Wallis, 2001). Diverse voluntary organisations play an important and increasing role in the operation of imprisonment and supervision (e.g. Martin, 2013; Neuberger, 2009; Armstrong, 2002), but understandings of the penal voluntary sector are still “lacking” (Mills et al., 2011: 195), due to the “limited attention devoted to charitable organisations” by scholars (Armstrong, 2002: 345). There is a relative dearth of voluntary sector research in punishment, compared to housing and social care scholarship (Corcoran, 2011: 33). The penal voluntary sector therefore remains “a descriptive rather than theoretically rigorous concept or empirically defined entity” (Corcoran, 2011: 33).

Penal voluntary organisations are “charitable and self-defined voluntary agencies working with prisoners and offenders in prison- and community-based programmes” (Corcoran, 2011: 33). The 'voluntary' or 'charitable' descriptor is very powerful, but encompasses “extremely diverse organisations” (Armstrong, 2002: 356; see also Tomczak, 2014). The

organisations comprising the penal voluntary sector vary enormously in terms of income ranges, funding sources, proportions of volunteer and paid staff, working styles and objectives. Voluntary organisations do not make profits for shareholders (Maguire, 2012; Kendall and Deakin, 2010), although this distinction has been sullied by recent involvement of voluntary organisations in penal service delivery contracts and partnerships with private companies (Neilson, 2009; Alcock and Scott, 2007).

Voluntary organisations are assumed to have a distinctive ethics of compassion, rehabilitative approach, ability to engage (ex-)offenders, and focus on the needs and socio-economic integration of individuals (Goddard, 2012; Maguire, 2012; Mills et al., 2012; Corcoran, 2011; Meek et al, 2010; Brookman and Holloway, 2008; Lewis et al., 2007; Light, 1993). Although the idea of voluntary action exerts a powerful hold over penal policy reform movements and evokes a “richly positive imagery” of inclusion (Armstrong, 2002: 351; see also Crawford, 1999), there remains surprisingly little evidence demonstrating exactly how or if a penal voluntary organisation “*is* different than a for-profit business or a state agency” when dealing with prisoners and probationers (Armstrong, 2002: 346, emphasis in original).

## **Policy reforms**

The policy translation analysed here, which ran from *Breaking the Cycle* to the *Offender Rehabilitation Act 2014*, is not entirely discrete. The Conservative Thatcher government introduced neoliberal policies in the 1980s and 90s, which privatised public services by creating competitive service delivery markets (Maguire, 2012; Corcoran, 2011; Ryan, 2011). Whilst part of this broader neoliberal project, *Breaking the Cycle* initiated significant penal policy reforms and introduced the PbR contract mechanism. *Breaking the Cycle* emphasised failings of the penal system and set out government proposals to create a “rehabilitation revolution” in punishment (MoJ, 2010: 1), ostensibly demanding that penal services be further decentralised and marketised through PbR. *Transforming Rehabilitation: A Strategy*

*for Reform* also stressed that the market in penal services will be further opened up to public, private and voluntary sector providers, and assigned a central role to PbR as a means of improving competition, performance and effectiveness (MoJ, 2013c).

The foci of this paper are the prison PbR pilots and supervision requirement, but the *Transforming Rehabilitation* programme included further reforms. It created resettlement prisons for prisoners nearing release, established the public National Probation Service for high risk (ex-)offenders, and privatised probation supervision for medium and low risk (ex-)offenders by founding Community Rehabilitation Companies (MoJ, 2013c). The probation reforms also followed MoJ consultations on community sentences and probation (MoJ, 2012b; MoJ, 2012c), and voluntary organisations feature in almost all of the partnerships owning Community Rehabilitation Companies (which are partially remunerated via PbR). Elements of this analysis therefore apply to those developments.

The translation of *Breaking the Cycle* was principally a top-down initiative, operating from macro-scale national policy networks to affect organisation at a smaller scale. Each member of the penal system (including voluntary organisations) is actively involved in translating thought and action; giving rise to struggles, accommodations, alliances and separations (Carrabine, 2000). This paper considers how voluntary organisations affected and opposed certain developments and resisted the expansion of carceral control. However, it illustrates the critical role of voluntary organisations in extending the regulatory power of the penal apparatus by translating policies suggesting a significant expansion of carceral power into practice (cf. Carrabine, 2000). The next section details the first phase of this translation, in which the MoJ published *Breaking the Cycle*, identified a penal problem and specified how and with whom it was to be addressed.

## **Four Phases of Translation**

### **Identifying a problem, a solution and the actors involved**

In *Breaking the Cycle* (published 7<sup>th</sup> December 2010), the MoJ defined and identified a problem (high rates of recidivism following release from prison) and a particular solution (using the PbR mechanism to pay penal service contractors). They also identified the actors involved (discursively and practically) in the resolution. The MoJ defined punishment's failings as shared problems, concerning everyone interested in creating a safe society. Within the context of drawing “on the expertise of everyone who can make a contribution” to the rehabilitation revolution (MoJ, 2010: 5), there were numerous specific references to the voluntary sector's role (e.g. MoJ, 2010: 10, 14, 15, 25, 27, 31, 35, 38, 41).

The key problem was high rates of recidivism, meaning “most criminals continue to commit more crimes against more victims once they are released back onto the streets”; notwithstanding high penal spending: “despite a 50% increase in the budget for prisons and managing offenders in the last ten years almost half of all adult offenders released from custody reoffend within a year” (MoJ, 2010: 1). The MoJ characterised the penal system as “an expensive way of giving the public a break from offenders, before they return to commit more crimes” (2010: 1).

High recidivism was presented as a shared problem throughout society, threatening the “safety and security of the law-abiding citizen” who “has a right to feel safe in their home and their community” (MoJ, 2010: 1). The apparent long-term threat caused by young offenders was also highlighted: “if we do not prevent and tackle offending by young people then the young offenders of today will become the prolific career criminals of tomorrow” (MoJ, 2010: 1). The MoJ connected these problems to the economic recession, stating the imperative to reduce the costs of punishment and emphasising their organisational commitment to “playing its part in reducing spending to return the country to economic growth” (2010: 8). By stressing the immediate and long-term negative effects of recidivism, *Breaking the Cycle* explained the problem of the expensive and failing penal system evocatively, so interested groups could relate, and presented a normative solution.

Specific measures were proposed to resolve this shared problem and ostensibly benefit citizens throughout society, but the practices of imprisonment and probation were not critiqued. The predicament of high spending yet enduring recidivism was explained by one failing of penal policy and practice: “the lack of a firm focus on reform and rehabilitation” (MoJ, 2010: 1). As such, “significant amounts of money have been spent [...] without properly holding providers to account for results” (MoJ, 2010: 38). PbR was identified as the solution to recidivism, as its firm focus on outcomes apparently incentivises all service providers to innovate and improve effectiveness at “reducing reoffending” (MoJ, 2010: 10, see also 6, 12, 38). The principle of decentralisation was also emphasised, moving “away from centrally controlled services dominated by the public sector, towards a more competitive system that draws on the knowledge, expertise and innovation of a much broader set of organisations from all sectors” (MoJ, 2010: 8).

These proposals were presented as “a fundamental break with the failed and expensive policies of the past” through the new focus on discovering “what works – the methods of punishment and rehabilitation which actually reduce crime by reducing the number of criminals” (MoJ, 2010: 2). As such, *Breaking the Cycle* provided “a once in a generation opportunity for providers from all sectors to work together to make a real difference” to punishment, safety and economic recovery (MoJ, 2010: 9). This rehabilitation revolution promised to “change those communities whose lives are made a misery by crime” (MoJ, 2010: 6). To achieve this, improve safety and generate “savings to the taxpayer” (MoJ, 2010: 1), the MoJ called on the “skills of the private sector and civil society” (2010: 2) to provide “new rehabilitation programmes, delivered on a payment by results basis” (MoJ, 2010: 1).

*Breaking the Cycle* described a new mechanism through which public sector organisations, the private sector and civil society should “compete in new markets” (MoJ, 2010: 2) to improve public safety and reduce the economic burden of punishment. It defined the identities of interested stakeholders, i.e. penal service providers from all sectors with the skills to enhance prisoner and probationer rehabilitation, who share the concerns of



improving public safety and stimulating economic recovery. Notably, the MoJ was constructed as a powerful macro-actor, indispensable to other interested actors.

Competitive commissioning of penal services through the PbR mechanism is essential to achieve the mutually desirable outcomes of improved public safety and economic growth. Such commissioning must be routed through MoJ procurement processes. *Breaking the Cycle* defined a set of shared problems and solutions, and specified the roles of interested actors. But these solutions and roles were not yet accepted nor adopted by interested actors. The MoJ invited feedback on its proposals: “we want to hear your views on the benefits and challenges posed by implementing them” (2010: 13). This consultation process constituted the second phase of the policy translation, which is now examined.

### **Submission and rejection**

Seeking feedback on the proposals and stimulating responses from a range of interested organisations worked to standardise the identities of interested actors in the translation, which the MoJ had defined in *Breaking the Cycle*. A range of interested actors defined their positions by publishing formal responses, including: G4S (G4S, 2011), the Church of England (Mission and Public Affairs Council of the Church of England, 2011), and the Judiciary of England and Wales (Thomas and Goldring, 2011). At least 28 voluntary organisations published individual responses, e.g. Action for Prisoners' Families (2011) and the Howard League for Penal Reform (2011). In addition, Clinks (the umbrella organisation for penal voluntary organisations) consulted with their members and produced a collective response informed by over 500 professionals working in punishment (2011). These responses demonstrated that *Breaking the Cycle* engaged the professional curiosity of numerous voluntary organisations that invested the time and resources required to consider its proposals and write responses. However, the vast majority of voluntary organisations did not respond<sup>5</sup>. Their silence may indicate that many do not have relationships with the MoJ and engage with smaller statutory agencies, were not

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5 In 2005, an estimated 1,500 voluntary organisations were working with prisons and probation (Meek et al., 2010: 3)

interested by the proposals, did not have the resources to respond, or chose not to use their resources thus.

The voluntary organisations Nacro and St Giles Trust used their consultation responses to broadly welcome the proposals, supporting the premise that voluntary organisations should participate in competitive penal service markets. The Howard League rejected the proposals and defined its interests differently. Nacro stated that *Breaking the Cycle* “offers a real opportunity for positive reform”, commending the victim focus and PbR's emphasis on outcomes (Nacro, 2011: 2). Similarly, St Giles Trust recommended outsourcing prison and probation services “to specialist voluntary and community sector agencies” to deliver effective outcomes at less cost (St Giles Trust, 2011: no pagination).

Conversely, the Howard League expressed dissidence and questioned multiple proposals, arguing that “criminal justice, and imprisonment in particular, is a blunt tool which cannot in itself provide lasting solutions to the problem of crime” (Howard League, 2011: 4). They stressed that “the underlying causes of local crime are best tackled through investment in public services beyond the criminal justice system, be it health, education or welfare” (Howard League, 2011: 41; see also Prison Reform Trust, 2011). They voiced “serious reservations about the payment by results proposals”, pointing out that PbR has “no track record of success” and could create “inefficiencies” due to its complexity (Howard League, 2011: 17). They stressed that PbR could see providers “cherry-picking” offenders who are most likely to provide the desired 'results', at the expense of engaging with “those who present the most need” (Howard League, 2011: 18). The Howard League thus challenged the very premise of the proposals, arguing that a firm focus on reform and rehabilitation within the penal system as currently constituted is not a mechanism that can stimulate a rehabilitation revolution. They also questioned the effectiveness and utility of PbR, which was an essential technique in *Breaking the Cycle*, ensuring service providers focus on outcomes and rehabilitation.

Following this consultation, the MoJ published *Breaking the Cycle: Government Response*, foregrounding how the consultation enabled interested actors to consider “opportunities and risks presented by the proposed reforms” (2011b: 3). The response explained that that the consultation lasted twelve weeks, receiving over 1,200 written responses and feedback from events run “across the country” (MoJ, 2011b: 3). The contributions helped the MoJ “set a more intelligent course for delivering effective punishment and reducing reoffending in England and Wales” (2011b: 2). However, whilst there were multiple strands of the consultation, it is difficult to see how dissidence was taken into account. Regarding PbR, the MoJ response underscored that PbR “will underpin all our work on reoffending”, stating: “we are clear that we want to rapidly build on these pilots” (2011b: 7). There was neither acknowledgement of nor engagement with criticisms of this mechanism<sup>6</sup>. The impact of dissidence on MoJ consultations is further explored below. The next section considers the third phase of translation, during which the MoJ formally enrolled actors into its proposals and experimented with PbR through pilot schemes.

## **Experimentation and Enrollment**

The first PbR pilot at Category B HMP Peterborough was significant in *Breaking the Cycle*. Contracts were signed in March 2010, and it launched in September 2010 (MoJ, 2011a: 1, 3). This pilot affected 3,000 male, short-sentence prisoners inside HMP Peterborough and following release, entailing prisoner mentoring and linking to services addressing offending behaviour (MoJ, 2012a: 2). Qualifying prisoners were at least 18 years old when sentenced for a consecutive period under 365 days (MoJ, 2011a: 34). The aim was to reduce

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<sup>6</sup> See also, for example: the Prison Reform Trust's recommendation to abolish the mandatory minimum sentence for murder (2011: 5) and MoJ statement “mandatory life sentences for murder are an essential part of the sentencing framework” (2011b:10); the Prison Reform Trust's emphasis upon drastically reducing short prison sentences given their poor track record in reducing reoffending (2011: 4; see also Howard League, 2011: 8) and MoJ statements “we are not aiming to cut the prison population” (2011b: 2), “we will not push for community sentences to be used instead of prison” (2011b: 4); the Howard League's warning of “danger in making community sentences 'tougher' [...] we must not shift community sentences too much towards punitive objectives for risk of repeating mistakes of the past” (2011: 10) and MoJ statement “non-custodial sentences need to be tough and demanding [...] we will also consider further changes to the system, including ways in which we can use the market, and payment by results, to deliver more and tougher requirements” (2011b: 4).

short-sentence reconviction rates, from 60% within a year of release (MoJ, 2011a: 3; Social Finance, 2011).

This formed the world's first trial Social Impact Bond and PbR pilot, with investment funding obtained upfront from non-governmental investors for an intervention to improve social outcomes (MoJ, 2011a: 1,3). The non-governmental financial intermediary Social Finance raised £5 million from 17 social investors, “mostly charitable trusts and foundations” (Social Finance, 2011: no pagination; MoJ, 2011a: 3). A key attraction for investors was the pilot's “alignment with a charitable interest in criminal justice and offender rehabilitation” (MoJ, 2011a: ii). This investment offered dual benefits: making a social impact and generating financial returns, but all capital was at risk if outcomes did not improve (Social Finance, 2011).

'Outcomes' referred to the reconviction rates of the pilot group in the 18 months following release from custody, compared to reconviction rates for the matched control group of prisoners (MoJ, 2011a; see also Cave et al., 2012). The MoJ and the Big Lottery Fund would make an outcome payment if reconviction rates reduced by: a) 7.5% or more across all 3,000 prisoners; or b) 10% or more in all three cohorts of prisoners<sup>7</sup> (MoJ, 2011a: 33-34; Social Finance, 2011). These thresholds were calculated by the MoJ's analytical team to reflect statistical levels at which improved outcomes had not occurred by chance (MoJ, 2011a: 33-34, 37). If successful, investors would receive increasing financial returns on their investment of up to 13% per year over eight years (Social Finance, 2011).

The financial intermediary Social Finance (not the MoJ) enrolled charitable actors as investors and service providers in this pilot, before *Breaking the Cycle* was published. Charitable trusts and foundations “largely” provided the £5 million investment funding for the pilot, including the Esmee Fairburn Foundation and Lankelly Chase (MoJ, 2011a: ii,

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<sup>7</sup> The first cohort would close upon the scheme reaching two years of operation or discharging 1,000 prisoners (MoJ, 2011a: 33).

5). Three charities were enrolled as service providers to practically support prisoner resettlement: St Giles Trust, Ormiston Children and Families Trust and the YMCA. St Giles Trust was the principal service provider, with other providers appointed on an as-needs basis (MoJ, 2011a: 17). St Giles work only with (ex-)offenders, but Ormiston and the YMCA have a broader remit. St Giles supported prisoners inside, at the gate and following release; Ormiston supported prisoners' families during imprisonment and post-release; and the YMCA supplied a community base for prisoners post-release (Social Finance, 2011). This work fed the pilot's aim of supporting resettlement and reducing recidivism.

PbR pilots and the specific Peterborough pilot were critical in *Breaking the Cycle* (e.g. MoJ, 2010: 1, 10, 11). But the Peterborough pilot was not a 'typical' PbR scheme for three reasons. First, it was instigated by the non-governmental financial intermediary Social Finance, which approached civil servants with the concept (MoJ, 2011a: 10). Although the pilot was not sponsored by the MoJ, it was subsequently incorporated into their translation. The pilot proceeded under a novel, commissioning relationship, where the MoJ did not contract with service providers, maintained no control over their selection and had no direct relationship with them (MoJ, 2011a: iii). These tasks were delegated to Social Finance, which would not usually occur (MoJ, 2011a: iii, see also 15). Second, the scheme targeted short-sentence prisoners serving custodial terms of under twelve months, for whom there was usually no probation supervision following release (unless they were under 21 years old) (MoJ, 2011a: 10). This pilot was therefore an expansion, delivering services not part of existing statutory service provision. Third, the contract between Social Finance and the MoJ was not procured through the usual government tendering process to ensure fiscal competitiveness (MoJ, 2011a: 14). Social Finance's proposal was considered "worth testing" and had support from a high level in the MoJ (MoJ, 2011a: 14). These three unusual conditions significantly affect the suitability of this pilot to test PbR across prison and probation service delivery.

The complex dynamic between actors in this pilot involved six contractual relationships

(MoJ, 2011a: 13, 15) that stabilised actors' identities and commitments. The MoJ had three contracts, with: Social Finance (who operated the pilot and secured investment), Peterborough Prison Management Limited (the consortium contracted for HMP Peterborough, with operation subcontracted to the private company Sodexo), and the independent results assessors (QinetiQ and the University of Leicester) (MoJ, 2011a: 3, 13, 17). Social Finance<sup>8</sup> had three contracts, with: their financial investors, charitable service providers, and the Big Lottery Fund (which invested in the pilot and would pay an outcome return alongside the MoJ) (MoJ, 2011a: 17).

Although the Peterborough pilot appears relatively independent, the MoJ significantly influenced its terms at every stage. Social Finance identified the shared concerns of financial returns and social impact and approached the MoJ with this idea. But the MoJ was involved from a very early stage, affecting the terms of the pilot, its location and the investors. Social Finance initially focussed on short-sentence prisoners discharged in Cambridgeshire (MoJ, 2011a: 36). However, this group proved too small to be statistically significant, so did not meet the MoJ analytical team's requirements (MoJ, 2011a: 36). Negotiations between the MoJ and Social Finance followed (MoJ, 2011a: 36), but the MoJ's requirement of statistical significance proved critical. Social Finance made a confidentiality agreement with the MoJ before identifying and shortlisting potential investors, who were subsequently reviewed by the MoJ (MoJ, 2011a: 17). The next section explores how the MoJ was involved in determining and reporting the pilot results.

Further non state actors were enrolled into *Breaking the Cycle's* proposals following publication. Subsequent PbR pilots included the Heron Unit/ Project Daedalus in HMP Feltham, London<sup>9</sup>, and a resettlement pilot at the Serco-managed Category B HMP Doncaster (MoJ, 2012a: 1). The Doncaster pilot was provided by an 'alliance' of service

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8 Social Finance set up a limited partnership called 'The Social Impact Partnership' to operate the pilot scheme. Here the nomenclature 'Social Finance' is used to maintain clarity of expression (MoJ, 2011a: 13).

9 For full details of this and other PbR models, see Independent Commission on Youth Crime and Antisocial Behaviour, 2011: 19.

providers, comprising the private company Serco and voluntary organisations Catch 22 and Turning Point. The contract was signed in April 2011, and the pilot commenced in October 2011 (MoJ, 2012a: 3). It operated within *Breaking the Cycle's* context, embracing PbR and addressing reoffending (MoJ, 2012a: 2).

Serco's contract to operate HMP Doncaster expired in July 2011 (MoJ, 2012a: 3). Serco's successful bid proposed a PbR pilot scheme for prisoners approaching discharge, aiming “to test the impact of replacing a multitude of process and output targets and performance monitoring with a single outcome-based target (to reduce the reconviction rate) with a strong financial incentive to achieve this” (MoJ, 2012a: 3). Although initially intended for all prisoners, the target group was reduced to short-sentence prisoners during the early stages of implementation (MoJ, 2013a: ii). The rationale was explained only as: “providing intensive case management in custody for all offenders was not the most efficient or appropriate use of resources” (MoJ, 2013a: ii).

The Doncaster pilot demonstrates the MoJ's successful enrollment of the 'alliance' into *Breaking the Cycle's* proposals. The 'alliance' of private and voluntary sector service providers also subsequently targeted short-sentence prisoners, mirroring the Peterborough pilot and laying the foundations for enacting the supervision requirement. The next section examines how the MoJ became the principal spokesperson for the heterogeneous actors involved in these pilots, ultimately mobilising their inputs to translate PbR and the supervision requirement from policy rhetoric into practice.

## **Results Spokesperson**

The MoJ became the dominant spokesperson in this translation, reporting for all actors who responded to the consultation and participated in the PbR pilots. This group included some voluntary organisations in practice (as named above) and drew on a discursive 'voluntary sector' of service providers. The spokesperson is a powerful macro-actor that

can mobilise the interests, roles and relations of entire networks (Callon and Latour, 1981). By defining a problem and solutions, deciding on outcome measures, signing contracts and generating results, the MoJ generated a series of intermediaries and equivalences (cf. Callon, 1986; Callon and Latour, 1981) that designated it the dominant spokesperson for all actors in the translation. By publishing proposals, running consultations, collating responses and running PbR pilots, the MoJ took primary responsibility for determining and publishing their results. The MoJ then mobilised and accumulated the inputs of heterogeneous voluntary and private sector actors. The MoJ is not uniquely privileged in commenting on *Breaking the Cycle* and the PbR pilots, but it is a powerful macro-actor, compared to weaker individual actors who publish their own comments and responses.

The results of the PbR pilots at HMPs Peterborough and Doncaster were primarily determined and published by the MoJ (e.g. MoJ, 2013a), with analyses also provided by the independent assessors (e.g. Jolliffe and Hedderman, 2014). The MoJ's analytical team had privileged access to the baseline reconviction data and determined both the time frame across which reconviction events would be measured and the statistical levels at which the pilots were judged to have achieved 'results' (MoJ, 2011a: 33, 36, 37). The work of Social Finance in stimulating the Peterborough pilot and the work of all the heterogeneous actors involved was ultimately most powerfully represented and analysed by MoJ. The MoJ also became spokesperson for the prisoners in this translation, although their voices sounded only through statistics demonstrating reconviction rates (e.g. MoJ, 2013a). It is notable that prisoners formed the link between all actors and were the object of this policy reform, yet remain entirely silent in the body of publications examined here, featuring only in terms of recidivism rates. Although prisoners retain their individual agency and capacity to resist participating in or engaging with programmes, here the negotiations between service providers entirely eclipsed the voices of those subject to the reforms.

Nevertheless, heterogeneous actors from the public, private and voluntary sectors can and



do speak on their own behalf e.g. through their publications, press releases and reports, as detailed in the sample of voluntary organisation responses to the consultation above. Following the 2013 interim results, Catch 22 publicly congratulated the Doncaster pilot as “the first step in the right direction towards reducing re-offending through a caseworker-led approach and a focus on improving outcomes”<sup>10</sup>. Similarly, St Giles Trust stated the results demonstrated “a huge endorsement”, showing the pilot is both “helping our clients turn their lives around and beginning to show savings for taxpayers by bringing down reoffending rates” (Pudelek, 2013: no pagination). St Giles “believes charities can play a bigger role in future criminal justice services” and remains “proud to be part of the first ever social impact bond” at HMP Peterborough (Owen, 2013: no pagination). In their most recent publication, St Giles speak of placing “much of our strategic focus” on “preparing and positioning ourselves to maximise the opportunities” that the *Transforming Rehabilitation* programme may offer (2014: 6-7).

Other organisations published dissident responses and mounted a counter-enrollment strategy opposing the further marketisation of penal services. For example, comment pieces by The Howard League have opposed the spread of contracting-out and using PbR to pay contractors (Neilson, 2011; Neilson, 2009). It is notable that Social Finance (which initially suggested and secured funding for the Peterborough pilot) expressed dissidence towards the proposals in *Transforming Rehabilitation: A Strategy for Reform* (MoJ, 2013c). Social Finance publicly critiqued “the suggestion that the progress of the Peterborough Social Impact Bond supports the case for the Transforming Rehabilitation initiative” (Howard League, 2013: no pagination). Social Finance explained that “the success or otherwise of the Peterborough pilot is of limited relevance” to assessing the merits of the much wider changes envisaged by *Transforming Rehabilitation*, due to the unusual conditions of the pilot as explained above (Howard League, 2013: no pagination). Nevertheless, the following section explores how dissidence and Social Finance's withdrawal of support ultimately did not prevent the translation of PbR commissioning

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10 See <http://www.catch-22.org.uk/news/response-interim-results-pbr-pilot-hmp-doncaster/>. Accessed 10/12/2013.

and the supervision requirement from policy into practice.

## Effects

Drawing upon the externally-proposed Social Impact Bond, *Breaking the Cycle* interested and enrolled heterogeneous actors, including a small number of voluntary organisations, into further PbR pilots. The diverse inputs and discursive presence of these actors facilitated the pilots and were subsequently mobilised by the MoJ in the *Transforming Rehabilitation* programme, rolling out PbR to pay providers across penal services and introducing the supervision requirement.

*Breaking the Cycle* stated the intention to roll out PbR across penal service commissioning by 2015 following pilots (MoJ, 2010: 11). Echoing the arguments of *Breaking the Cycle*, *Transforming Rehabilitation: A Strategy for Reform* emphasised that “stubbornly high reoffending rates” persist despite high penal spending (MoJ, 2013c: 3). Results for cohort one of the prison PbR pilots were not available until summer 2014, due to the time lag required to achieve a 12 month re-conviction measure (MoJ, 2013a: 1). Interim re-conviction figures for these pilots were published in a 2013 ad-hoc MoJ statistical bulletin only due to “the high level of public interest in these pilots, particularly in relation to the reforms set out in” *Transforming Rehabilitation: A Strategy for Reform* (2013a: 1). These interim results illustrated falls in re-conviction events for both pilots, but were incomplete and not statistically significant (MoJ, 2013a: 5-6). The results remain “far from being complete”, with final Peterborough results not due until summer 2016 (MoJ, 2015a: 4). For the Doncaster pilot, the first cohort (October 2011 to September 2012) had a reoffending rate 5.7% lower than the 2009 baseline year, so the 5% PbR target was met. The second cohort (October 2012 to September 2013) was 3.3% lower than baseline, so the PbR target was not met (MoJ, 2015b: 2). The available results are modest, and based on voluntary rather than mandatory offender participation (MoJ, 2015b).

Despite modest results from the pilots and the Prison Reform Trust's faith "that government will harness the lessons and evidence of success before rolling out a payment by results scheme nationally" (2011: 3), the MoJ used *Transforming Rehabilitation: A Strategy for Reform* to reiterate (without substantive empirical 'results' or evidence) that PbR was the best means to reduce reoffending and achieve socio-economic benefits, stating: "to make the biggest impact on reoffending rates, we want to give new providers, incentivised under 'payment by results', responsibility for rehabilitating as many offenders as possible" (MoJ, 2013c: 20). As such, under this new payment mechanism, "the taxpayer will only pay providers in full for those services that actually deliver real reductions in reoffending" (MoJ, 2013c: 3). PbR is again presented as the sole mechanism to control penal spending and the sole solution to current failures of punishment: "only by doing this will we bear down on the long-term costs of the criminal justice system" (MoJ, 2013c: 3, emphasis added).

In *Transforming Rehabilitation: A Strategy for Reform*, the MoJ at least acknowledged that the consultation delivered criticisms of the optimistic timetable for PbR implementation by 2015, significantly before full results from PbR pilots became available (2013c: 33). However, the MoJ merely emphasised the urgency for reform, because "the need to reduce reoffending is pressing" (2013c: 33). They ambiguously stated that they "will take a measured approach to implementation" (MoJ, 2013c: 33) but reiterated that PbR contracts would commence from autumn 2014. This was presented as a necessary timescale because: "to achieve the reductions in reoffending rates we need, it is vital that we move ahead to put our new approach in place" (MoJ, 2013c: 33). Although concerns raised during consultation were at least acknowledged by the MoJ in this case, its position and implementation timescale remained unchanged.

*Transforming Rehabilitation: A Strategy for Reform* also proposed that "statutory rehabilitation" be extended to short-sentence prisoners (MoJ, 2013c: 6). These prisoners were the object of the PbR pilots at HMPs Peterborough and Doncaster, which ran with

voluntary organisation involvement. *Transforming Rehabilitation: A Strategy for Reform* explained the need to support prisoners “through the prison gate” and deliver “mentoring and rehabilitation support to get their lives back on track so they do not commit crime again” (MoJ, 2013c: 3). This was deemed particularly important for “those released from short-sentences, who currently do not get support they need” to resettle in the community, having the highest reoffending rates yet “typically left to their own devices on release” (MoJ, 2013c: 4). The document signalled a continuing role for the voluntary sector in this work, noting that it: “has an important contribution to make in mentoring and turning offenders’ lives around” (MoJ, 2013c: 3).

The PbR mechanism enabled the supervision requirement for short-sentence prisoners, funded by savings predicted from rolling out PbR for penal service providers (MoJ, 2013c: 4). Notably, the need to reduce penal spending justified the introduction of PbR in *Breaking the Cycle* (MoJ, 2010: 8). Through the process of translation following *Breaking the Cycle*, an apparently natural link (Foucault, 1977: 232) was created between short-sentence prisoners, the need to supervise them in the community and the necessity of 'rehabilitative' punishment delivered under PbR. The supervision requirement for short-sentence prisoners represents a significant extension of penal control over this group, for whom there was previously no mandatory supervision.

The supervision requirement was publicly welcomed by St Giles Trust (Owen, 2013). However, the Howard League and the Prison Reform Trust both expressed dissident responses and resisted these reforms, producing briefing papers for MPs and the Lords attempting to prevent passage of the *Offender Rehabilitation Bill 2014*. The Prison Reform Trust pointed out that the new supervision requirement will add a “further year to the ambit of the criminal justice system for all those sentenced to custody for any period of over one day and up to two years” (2013: 1). They explain its likely result of around 13,000 offenders being recalled to custody and cost of £16 million year (Prison Reform Trust, 2013: 1). As such, the Trust advocated further consideration of whether these proposals are

“fair and proportionate and whether the proposed new arrangements should be voluntary or mandatory” across short-sentence prisoners (2013: 1). Similarly, the Howard League noted that the supervision requirement will “result in a substantial increase in the number of short term prison sentences” and that “receptions to prison for breach or recall are already becoming one of the main drivers of the prison population” (Howard League, 2013: no pagination). They argued that the supervision requirement could see Magistrates up-tariff and “sentence offenders to a prison sentence when a community sentence would be more appropriate in order that they will qualify for the 12 months of statutory rehabilitation on leaving custody” and noted the increased costs should this occur (Howard League, 2013: no pagination). As such, the Howard League recommend that “support for short sentenced prisoners ought to be voluntary” (2013: no pagination).

These dissident responses may have contributed to Lord Beecham's proposed amendment to the *Bill* when it was considered in the House of Lords. The amendment suggested that changes to short-sentence offender supervision should be subject to an initial pilot. The issue went to a vote, resulting in a government win with 188 for and 209 against<sup>11</sup>. The passage of the *Bill* and adoption of PbR throughout the delivery of penal services, despite dissidence from voluntary organisations, demonstrate how a powerful actor can mobilise other actors to achieve its own ends and illustrate the potential downfalls of voluntary sector involvement with penal policy experiments. The final section considers the net-widening effects of this translation.

## **Discussion**

By mapping the translation that followed *Breaking the Cycle*, I demonstrate how voluntary organisations underpinned this translation, inventing the Social Impact Bond that stimulated the PbR pilots and facilitated the roll-out of PbR throughout penal service

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11 See <http://www.parliament.uk/business/news/2013/may/lords-offender-rehabilitation-bill/>. Accessed 21/03/2014

contracting, creating cost savings to finance the supervision requirement. The MoJ's discursive voluntary sector and the voluntary organisations practically involved in the translation facilitated the supervision requirement, which represents a significant expansion in community control (Cohen, 1985: 15) to include the new group of short-sentence prisoners. Without actually providing evidence of their utility, the pilots supported PbR and the supervision requirement. The involvement of voluntary organisations in these pilots and MoJ consultations enabled and justified the further marketisation and decentralisation of penal services using PbR and the expansion of control. Although some voluntary organisations actively displayed dissident reactions to these proposals, e.g. through responses to policy consultations and briefing papers regarding the new supervision legislation (e.g. Howard League, 2013; Prison Reform Trust, 2013; Howard League, 2011), this dissidence was not powerful enough to counter the MoJ's multiple proposals, publications, pilots and position as spokesperson.

The supervision requirement is problematic for three key reasons. First, it is predicted to significantly increase the scale of punishment, increasing the prison population and the costs thereof by increasing recalls to custody (without further offending) and causing up-tariffing by magistrates (Howard League, 2013: no pagination; Prison Reform Trust, 2013: 1). Historical precedents aiming to discipline less serious offenders illustrate how disciplinary reforms can increase the scale of penalty. Echoing *Breaking the Cycle's* arguments about disciplining young offenders, the establishment of the penitentiary in the nineteenth century led to dramatic increases in the numbers imprisoned in England, through the apparent need to discipline petty offenders using the rules and regulations of the penitentiary, to prevent them proceeding “unimpeded to the commission of more dangerous offences” (Ignatieff, 1978: 28, 108). The establishment of probation in the late nineteenth and early twentieth century also increased the scale of punishment through the *Summary Jurisdiction Act 1879*, which enabled supervision for cases only “where the offences were thought so trifling as to make punishment unnecessary” (Jarvis, 1972: 10).

Second, recent reforms look set to expand punishment, by further fragmenting the legal power to punish and increasing the “army of technicians” involved in punishment (Foucault, 1977: 11). The decentralising proposals in *Breaking the Cycle* draw on “the expertise of everyone who can make a contribution” to improving public safety (MoJ, 2010: 5). It is, however, questionable whether this represents progress towards more effective punishment and better public safety or rather, further fragmentation of the legal power to punish (away from the state) and increases in the scale of punishment (cf. Garland, 1990; Foucault, 1977). That is, whether the effect of involving a broader set of “providers from all sectors” (MoJ, 2010: 9) in competing for and delivering penal services is likely to be more effective punishment, or merely more punishment (cf. Cohen, 1985: 254). Voluntary sector staff participation in PbR pilots and supervision for short-sentence prisoners can be equated to Foucault's subsidiary authorities of punishment and “minor civil servants of moral orthopaedics”, whose presence means that the penal system is “constantly growing” (Foucault, 1977: 10).

Third, these reforms insert the power to punish more deeply into the social body (Ignatieff, 1978: xiii; Foucault, 1977: 82). The formerly automatic liberty afforded to short-sentence prisoners following release now has more restrictions and conditions attached. The sentences of short-sentence prisoners therefore no longer end when they are released from prison and a “further year” has been added “to the ambit of the criminal justice system” (Prison Reform Trust, 2013: 1). Because short-sentence prisoners “currently do not get support they need” to resettle in the community (MoJ, 2013c: 3), a mandatory and coercive supervision requirement has been introduced. The continued liberty of short-sentence prisoners post-release is now conditional upon their willingness and capacity to comply with the requirements of their supervision orders (cf. Cohen, 1985: 286).

This paper adds to the limited empirical knowledge about voluntary organisations (Corcoran, 2011; Mills et al., 2011; Armstrong, 2002). It illustrates how voluntary sector involvement in penal policy can result in expanded penal control; and how apparently

inclusionary 'support' policies may mean that penal institutions remain, their remit is widened, intervention is intensified, control is extended and the net of carceral power is widened (cf. Cohen, 1985: 15, 286). The foundation of *Breaking the Cycle* was improving public safety, supporting prisoner resettlement and reducing the costs of punishment, but this translated into a mandatory coercive supervision requirement estimated to cost £16 million annually. The expansion of penal power in this translation operated through voluntary sector involvement in the PbR pilots (cf. Carrabine, 2000: 319). Although these reforms were publicly opposed at every stage of the translation by other voluntary organisations, including the Prison Reform Trust and the Howard League, this dissent did not prevent the passage of the *Offender Rehabilitation Act 2014* that enacted the supervision requirement and expanded the carceral power in space and time. The translation illustrates that the powerful labels of charity and voluntarism (Armstrong, 2002; Crawford, 1999) can be adopted by the machinery of government and utilised to support certain purposes. Dissident responses from voluntary organisations do not match the power or spokesperson capacity of the state. Quite simply, the state's machinery is larger and stronger.

This analysis suggests that assuming beneficial outcomes such as empowerment and social capital (e.g. Bilby et al., 2013; Cohen, 2009; Lewis et al., 2007; Lippke, 2003) is problematic and demonstrates that the work of Cohen and Foucault *inter alia* remains highly relevant. However, a unilateral control 'effect' of voluntary organisations' work is neither presented nor inferred here for two reasons. First, the diversity of organisations within the sector and their varied relationships with the statutory agencies of punishment (e.g. lobbying, payment by results, contractual and informal relationships at different scales, such as with the MoJ and with individual prisons) means that one analysis certainly does not fit all.

Whilst the empirical evidence base surrounding the penal voluntary sector remains lacking, this analysis also demonstrates that both the control and emancipatory literatures appear to be inadequate, so suggests that more nuanced hybrid or integrated theorisation



is required. The work of voluntary organisations can apparently result in both control and emancipation, or negative *and* positive effects. Without detracting from the utility and validity of control and netwidening theory, they tend to provide partial and limiting accounts which overlook variations in the substance and quality of the carceral net.

Although the work of voluntary organisations is neither an uncomplicated good nor a panacea, the potential for such work to have beneficial outcomes should not be discounted. The interim results from the pilots must be viewed with extreme caution for the reasons outlined above, but they do indicate a fall in reconviction events (MoJ, 2013a: 5-6) and there is some evidence that participants valued the opportunities provided (MoJ, 2015b: 30). This reflects Lewis et al.'s study, which addressed British voluntary sector resettlement and mentoring Pathfinder projects with short-term prisoners transitioning into the community. It found offenders who had post-release contact with voluntary sector mentors "did significantly better than any other group of prisoners analysed" (Lewis et al., 2007: 47). In follow-up interviews, over half of the participants indicated that the most beneficial aspect of the programme had been 'emotional support' or 'someone to talk to', which was cited almost four times as frequently as the next most common response: 'help with accommodation' (Lewis et al., 2007: 47). Clearly, the potential for voluntary sector programmes to expand the scale of penality must not be overlooked, but it seems that voluntary sector staff can also have agentic effects and build positive relationships with prisoners and probationers (Maguire, 2012; Mills et al., 2012; Neuberger, 2009; Lewis et al., 2007). These relationships appear to be unique and valuable, although this should not be assumed and further evidence is certainly required to substantiate this. It is however possible that voluntary sector staff should not solely be equated to Foucault's subsidiary authorities of punishment (1977: 10).

Desistance literature indicates that probation staff behaviours can confirm staff compassion and trustworthiness, and form the foundation upon which probationers will co-operate with services, commit to long-term compliance and take steps towards

desistance from crime (Phoenix and Kelly, 2013; McNeill, 2006). Whilst control and netwidening theories are valuable, they do not explain that a carceral net which enables and encourages those caught within will be experienced differently and lead to different outcomes from that which is, for example, disabling, violent and depressing. Although I would much prefer that short-sentence prisoners were offered resettlement support on a voluntary rather than mandatory basis, it is undeniable that short-sentence prisoners have high reoffending rates and are likely to experience difficulties (re-)integrating into the community post-release (MoJ, 2010).

The most pressing question is, then, whether voluntary organisations' work must always expand control, and whether it may also have beneficial effects. If both statements are true, then we need to establish whether its beneficial effects can be greater, i.e. if it can help more than it hinders. If it can, we should explore the conditions under which beneficial outcomes can occur for prisoners and probationers. It may be that voluntary engagement is necessary, and it may be that informal relationships between voluntary organisations and smaller scale statutory entities (such as a single prison) are important. A significantly expanded base of empirical evidence could underpin theory accounting for hybrid experiences, e.g. by examining the characteristics and qualities of the carceral net as it operates and is experienced by different people, in different places and at different times

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