Criminalisation, criminal records and rehabilitation: from supervision to citizenship?

Scholars of criminal justice have long described contact with the penal system as involving different forms of 'pain'. Paradigmatically, Skyes (1958) outlined the 'pains of imprisonment' whereby the incarcerated experience deprivations of liberty, autonomy, security, goods and services, and heterosexual relationships. Subsequently, Crewe (2011) described 21st century imprisonment as involving pains associated with indeterminacy, psychological assessment and self-government in his analysis of the 'depth', 'weight' and 'tightness' of the contemporary prison experience. However, the notion of a 'painful' criminal justice experience has not been limited to studies of incarceration. Durnescu (2011; 2019) applied Sykes' approach to non-custodial supervision, suggesting that amongst other 'pains of probation' or 're-entry' were the sense of instability or 'walking on thin ice', the uncomfortable aspects of being forced to return to and confront one's offending, and the stigmatisation effects of the juridical status of the probationer. Hayes (2015) has also considered the various 'pains of community penalties', noting how supervision may involve an *intrusive* and, in some cases, *hostile* degree of intervention by various agencies in the lives of lawbreakers.

In addition to this more established focus amongst academics on imprisonment and community punishment, increasing attention is now being paid to so-called 'collateral consequences' of a criminal record. These 'invisible punishments' (Travis, 2002) include numerous *de jure* provisions and *de facto* practices which involve people with criminal records being treated less favourably than others in a wide range of life domains *outside of the sphere of criminal justice* and often long after the completion of their sentences. Scholarship in this field has focused predominantly on the United States where many thousands of laws exist restricting rights in areas such as employment, housing, participation in democracy and access to social security (see *inter alia* Jacobs, 2015; Kirk and Wakefield, 2018; Corda, 2018). However, greater focus is now starting to be placed on discriminatory practices against people with criminal records in Europe (Kurtovic and Rovira, 2017; Larrauri and Rovira, 2018) and to how this might be tackled (Larrauri, 2014a; Henley, 2019).

It is appropriate to reflect then, not merely on the pains associated with imprisonment and re-entry, or with community penalties and probation supervision, but with *the status of holding a criminal record itself*. In post-sentence life, the *pains of criminalisation* associated with the stigma of a criminal record may even have more harmful and long-lasting impacts on the citizenship and life chances of former lawbreakers than the sentence itself (Henley 2018a; 2019). Arguably these pains should therefore be considered not merely as 'collateral' but as *central* to social practices of punishment involving shame and moral stigmatisation.

HM Prison and Probation Service state ambitions to 'prevent victims by changing lives' and 'reduce reoffending by rehabilitating the people in our care through education and employment' (UK Government 2022). Similarly, in relation to criminal justice social work, the Scottish Government (2022) states that '[w]hilst crime should be punished, we believe that people should also be given support where possible to turn their lives around.' Whilst official discourse about the aims of criminal justice in the UK has, for at least two decades now, been grounded in unambiguously punitive but also utilitarian crime reduction motives, research indicates that many probation practitioners see their work as guided by values more commonly associated with probation's founding 'advise, assist and befriend' ethos (see Worrall and Mawby 2014; Canton 2018). Yet potentially painful experiences of criminal justice supervision combined with the harsh realities of post-sentence life with a criminal record are clearly at odds with goals of rehabilitation and social inclusion. Indeed, an obvious tension arises when the work of probation practitioners -

motivated to support the transition of former lawbreakers into 'good citizens' – collides with legal barriers and discriminatory social attitudes which restrict post-sentence citizenship.

Precisely fifty years ago, the report *Living It Down: The Problem of Old Convictions* (Justice 1972) drew attention to the many difficulties faced by people with criminal records. The landmark Rehabilitation of Offenders Act 1974 (the ROA) which followed allows some convictions to become 'spent' if the person in question has not been reconvicted of an offence over a specified period of time. The Act then requires that in most areas of law and public policy an individual with a spent criminal record should be treated no less favourably than if they had never been convicted of or sentenced for their original offence. However, a sizeable gap often exists between the end of a penal sentence or supervision arrangements and the achievement of legal rehabilitation under the ROA. This often places people with criminal records in a state of 'civic purgatory' where they are no longer categorised as 'offenders' being formally punished or supervised, but they are not able to enjoy unencumbered access to the same rights and entitlements as full 'citizens' due the stigma of their criminal records (Henley 2018b).

These matters are far from a niche concern, since over 11.8 million people across the UK have a criminal record listed on the Police National Computer (Home Office, 2020). Whilst the vast majority of these records will be spent under the ROA, criticism has been levelled at the criminal records regimes within UK jurisdictions, in particular the tendency for widespread disclosure (mostly to employers) of even spent convictions, cautions and other information held on police databases (Thomas and Bennett, 2019). Larrauri (2014b) has discussed the tensions between such disclosure practices and rights to privacy as protected by article 8 of the European Convention on Human Rights. Carr (2019) has highlighted the longstanding effects of disclosure on those convicted as juveniles, particular within the context of the comparably low age of criminal responsibility in England and Wales. Carr also notes the paradoxical situation in which measures intended to 'protect the public', and children in particular, often cause harm to life chances of those who were only children themselves when their criminal record was acquired.

Whilst precise figures on the numbers of people in the population with *unspent* convictions are not publicly available, the charity Unlock (2014) have previously estimated that this was in excess of 735,000 people in England and Wales alone. The Ministry of Justice (2020) reported growth in the prison population of England and Wales between 1993 and 2020 of some 35,239 people, a figure driven largely by a sizeable increase in the number of people serving indeterminate sentences and determinate sentences of more than four years. Sentences over four years' imprisonment are significant because they exceed the threshold under the ROA at which a conviction can eventually become spent. Over 7,000 people each year now receive such a sentence (Henley, 2018b). These trends are likely to have contributed to a steadily growing population of people with unspent convictions who remain vulnerable to possible discrimination based on their criminal record long after their sentence has been served in full and formal contact with criminal justice agencies has ceased.

This special edition of the *Probation Journal* explores these issues further, examining the extent to which the acquisition of a criminal record is compatible with the successful transition of supervised subjects into citizens of equal merit. Abigail Stark explores the anticipation of future citizenship amongst men preparing for post-prison life, highlighting how imagined future citizenship is inhibited by both formalised restrictions associated with release and the long-lasting impacts of imprisonment on self-perception. Beth Weaver and Cara Jardine present findings from a survey of those under community supervision in Scotland, highlighting the various enablers and barriers encountered by people with criminal records when seeking, starting, and sustaining employment. Hannah Wilkinson examines the difficulties faced by 'veteran offenders' and the

complex 'dance of disclosure' which they must negotiate in relation to both their military service and criminal records during life after punishment. Caroline Bald, Aaron Wyllie and María Inés Martínez Herrero discuss the role of criminal background checks in admissions to social work education programmes, highlighting the tension between inclusive occupational values of social justice and the cultural salience of risk within the social work profession. Lauren Bradford-Clarke, Rhiannon Davies and Andrew Henley explore the extent to which criminal records can restrict access to statutory compensation designed to support those who have been victims of serious crime. Finally, Rob Canton considers the role of the Probation Service in promoting social inclusion and desistance in the context of myriad barriers faced by people with criminal records. In keeping with the theme of the special edition, the book review section then contains reviews of three titles connected to issues of rehabilitation, criminal records and citizenship. As ever, the journal welcomes comments and feedback on these contributions.

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