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**CONTESTING PROBATION IN SCOTLAND: HOW AN AGONISTIC
PERSPECTIVE TRAVELS.**

RUNNING HEAD: How an agonistic perspective travels

GOODMAN, PHILIP, PAGE, JOSHUA AND PHELPS, MICHELLE. (2017) Breaking the Pendulum: The Long Struggle Over Criminal Justice. Oxford: Oxford University Press.

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Abstract

In this review essay, I try to rise to one of the challenges that Goodman, Page and Phelps' (2017), *Breaking the Pendulum*, poses to other scholars. They invite us to explore whether and how well their 'agonistic perspective' on penal change travels. In response, I draw on original archival and oral history research on probation history in Scotland to explore their model's utility in the context of this particular and challenging test case. Although Scotland is often discussed as an anomaly because of a supposed consensus around an enduring commitment to penal welfarism, my analysis reveals precisely the kinds of contestation that Goodman, Page and Phelps (2017) describe. I conclude that their agonistic perspective seems to travel well, at least to this Atlantic edge of Europe, but that scholars in other jurisdictions will need either to undertake or revisit primary research to properly test the model and further refine it.

Introduction

Goodman, Page and Phelps (2017) are careful to locate their 'agonistic perspective' on penal change in the USA, drawing effectively from their individual studies of different aspects of its penal field/s, past and present. However, they also invite scholars from further afield to explore whether and how well their agonistic perspective travels. These are the questions I want to consider in this short essay by exploring and reviewing some of my own previous work on Scottish probation history (McNeill, 2005, McNeill and Whyte, 2007, McNeill, 2009), partly in the light of an illuminating and very recent contribution to the sparse scholarship on that topic (Kelly, 2017).

It might reasonably be asked why a topic as 'niche' as the history of Scottish probation should be of interest to an international readership – and why it is a good test case for the agonistic perspective. One answer is that, rightly or wrongly, Scotland has sometimes been seen as a paragon of what Garland (1985) termed 'penal welfarism' and that the development of probation in the UK was once described as welfarism's crowning achievement (Radzinowicz, 1958). Even today,

Scottish probation and parole services remain the responsibility of qualified social workers (employed by local authorities) whose principal duty is to promote social welfare (McAra, 1999; McNeill and Whyte, 2007; McNeill, 2015).

The apparent durability of Scottish penal welfarism over the last century has already been used to challenge over-generalized models of late-modern penal change driven by macro-level social forces. Indeed, in this respect, Lesley McAra's (2005, 2008) contribution to debates about penal transformation presages certain aspects of the agonistic perspective. She argues, like Goodman, Page and Phelps, *for* in-depth analyses of contestation and *against* the 'pendular logic' of accounts of change that stress swings or 'ruptures' in the penal field driven by external pressures. In somewhat similar vein but at the European level, Sonja Snacken has argued that the development of common values and institutions, particularly in the post-war era (since 1945), has significantly restrained the emergence of a 'Culture of Control' (Garland, 2001) in Europe (Snacken, 2010).

Evidence of an enduring European commitment to the importance of human rights in the penal sphere *might* seem to undermine Goodman, Page and Phelps' claims about the inevitability of penal contestation, raising the possibility that the agonistic perspective only applies in certain contexts. Here however, I will stick to the case I know best, examining whether in Scotland the apparent existence of long-standing consensus around penal welfarism (at least as far as this is represented in probation's development) does challenge the central thesis of 'Breaking the Pendulum'.

Contesting Scottish probation, 1905-1968

The standard narrative

The conventional account of Scottish probation (and social work) history has been a 'Whig history' of gradual progress underpinned by the inter-relationships between the development of social science and social work, steadily producing enlightenment and professionalization.

Readers in the USA might be intrigued to learn that the origins of Scottish probation – at least in Glasgow (then the ‘second city of the British Empire’) – owed much to the visits of a local town councillor, John Bruce Murray, to the USA. Although the details of his travels are unclear, Murray brought back to Glasgow the idea of developing a probation scheme to address significant concerns at the turn of the 20th century about very large numbers of people from the city going to prison for defaulting on court-imposed fines. In 1905, the Corporation (or city council) established a probation scheme in which 6 police officers with the rank of Detective Sergeant, working in plain clothes, acted as probation officers. By 1919, there were eleven (male) police-probation officers and five women officers (McNeill, 2005).

Although concern about the ‘demoralising impact of imprisonment’ and its effects on the ‘welfare of the community’ (City of Glasgow, 1955: 9) may have motivated the initiative, the initial emphasis was on delivering supervision rather than care or treatment. A very Whiggish history of the first 50 years of probation in Glasgow, published in 1955, implicitly characterised this model as being limited, noting that it was the Probation of Offenders (Scotland) Act 1931 that ‘completely revolutionised the Probation Service... the idea of treatment, training and reformation of Probationers superseded that of supervision’ (City of Glasgow, 1955: 11).

The Glasgow history seems to have been written by ‘treatment’ enthusiasts (presumably the modernisers of the 1950s). The significance for the authors of the new ‘science’ of social casework is evidenced, for example, in the assertion that treatment must be an individual process following some kind of selection (if not diagnosis). Their discussion of selection assumes that only some offenders are ‘reclaimable’; probation ‘should be applied only to those in whom wrong-doing is not habitual and whose age, record, or home circumstances, give reasonable hope of reformation’ (City of Glasgow, 1955: 7). The discourse of scientific practice continues in the description of the officer who, through interviewing and home visiting,

‘studies the habits and surroundings of the Probationer and, by the impact of his personality, ever-ready advice and the force of example, tries to influence the offender towards the normal in life and conduct.’ (City of Glasgow 1955: 8, emphases added).

According to the Glasgow history, after the 1931 Act the practitioners of this 'normalisation' were selected not as strict disciplinarians but rather for their 'knowledge and experience of young people gained as leaders in voluntary organisations and work with delinquents' (City of Glasgow 1955: 12).

Heterogeneity and conflict, not consensus

Though the Glasgow history presents a narrative of inevitable progress, through social work professionalization, towards a new consensus about 'modern' probation approaches, recent work by Christine Kelly (2017) paints a somewhat different picture. Her careful analysis of evidence submitted to a committee of inquiry appointed in 1925, chaired by Sir George Morton, K.C. and reporting in 1928, reveals the existence of very lively debate about 'the treatment and training of young people and young offenders requiring care and protection' (such was the inquiry's remit). It was the Morton Report (1928) that proposed the national organisation of Scottish probation, clearing the way for the 1931 Act.

Kelly (2017) provides the first comprehensive picture of heterogeneous and highly variable arrangements for probation services across Scotland. The police-probation arrangement in the Glasgow service was replicated only in one or two other towns. Some others used a hybrid arrangement, combining police probation officers and volunteers and some (like Edinburgh) relied mostly on volunteers supported by a small number of paid staff of philanthropic societies. In other areas, only one or two part-time officers were drawn from religious or philanthropic groups. Some local areas ('burghs') had no probation officers at all.

Most importantly for present purposes, the evidence presented to the Morton Committee suggests very lively contestation of the best model for probation delivery and about the sorts of people required to do the work well. Some strongly advocated the use of volunteers who, they argued, were better placed to offer the 'human touch' or a 'bond of friendship'. By way of illustration, Kelly (2017) discusses the evidence of Mr Stevenson (a businessman and an Edinburgh-based volunteer probation officer). Though his submission sometimes implies a degree of condescension

towards his charges, it is also refreshingly irreverent in places and underpinned by what Kelly (2017: 178) describes as:

‘carefree enthusiasm... His ideal method in helping a young offender is to “jolly him along until he begins to take a pride in himself”, appealing to his “sporting side” to encourage him to “play the game”’.

Stevenson’s approach was not just generous and kind-hearted; it was practical too – for example, in using his business contacts to find employment for his charges.

Illustrating the opposing view, Kelly (2017) cites evidence from John Bruce Murray (Glasgow’s probation pioneer) which sought to rebut the charge that police probation officers were too ‘callous’. Murray argued that police probation officers could combine discipline, care and professionalism more readily than volunteers; and, importantly, that the Glasgow police-probation scheme offered a more secure financial and organisational model for probation’s development.

Clearly, this latter view did not ultimately hold sway since the 1931 Act proscribed the employment of police as probation officers. In the Morton Report (1928), the committee argued that the position of police officers as authoritarian agents of the criminal justice system undermined their capacity to win the trust and confidence of probationers. However, though trust and confidence were seen as critical to the success of probation, Kelly (2017) argues that this may have been less to do with ideals of treatment or social casework and more to do with a certain view of the qualities of moral (and sometimes spiritual) character and social conscience that marked out a good probation officer (on which see Buchanan [1934, 1936]). Kelly’s (2017) careful archival work suggests, in consequence, that my own characterisation of the 1931 Act as marking a decisive shift ‘from supervision to treatment’ (McNeill, 2005) may have been unduly influenced by the version of probation development that suited the writers of the Glasgow history (City of Glasgow, 1955).

Revising Scottish probation history

Indeed, an oral history study of Scottish probation in the 1960s that I undertook with Beth Weaver (in 2008-09), confirms that treatment ideals had taken only a tenuous hold on probation practice even by that time. That British Academy-funded study was inspired by an initial meeting with Vera Hiddleston, who had established professional probation training in Scotland in the 1960s. I had sent her a copy of my 2005 paper in draft form and she invited me to her home to share what remained of her archive of probation training material and to talk about my paper. She consented to the audio-recording of our discussion which took place in September 2004.

Regarding the debate over practice approaches, and with typical acuity, Hiddleston remarked:

'I was wondering... who actually wrote this thing that you had based, you know, most of your research on because that interests me. I thought "Who actually wrote that?" because it was, as you say in your paper, sort of pushing the idea of treatment which was by no means fully accepted by the Probation Service at the time but the person who wrote it clearly was saying this is the - either is the "in-thing" or believed in it'.

She went on to discuss two camps that existed in 1960s probation. The advocates of social casework or treatment approaches were, broadly speaking, more academic in their backgrounds and interests, and were influenced by a small number of dynamic and influential women in the social work field (like Hiddleston), some of whom had training and experience in psychiatric social work. Hiddleston described the opposing camp thus:

'It was almost like, you know, the Boys' Brigade¹ kind of approach to things. Going on to the history... I think it was very significant that it was the Glasgow police that started it off and that is really, you know, that was the background to it all. And there was still this sense of how the police would see things, you know, doing the right thing and obeying what you had to obey'.

¹ The Boys' Brigade is a uniformed youth organisation with historical links to protestant churches; somewhat similar to the Boy Scouts.

This initial interview encouraged me to use oral history methods to explore the interstices between 'official' histories and frontline accounts of probation, interviewing 12 former probationers and 13 probation staff or educators about probation in the 1960s.

Their accounts were complex and highly variable. Perhaps most pertinent in the context of this discussion of the contestation of probation practice, are the accounts of the officers and educators we interviewed. Broadly speaking, they confirmed the existence of the two camps that Hiddleston discussed. However, most of the former officers reported that, most of the time, their approach was neither strict and disciplinarian nor 'treatment' focused. Rather, it was intensely practical. Indeed, although they were salaried professionals, their approach very much echoed that which Mr Stevenson had reported to the Morton Committee; they tried to get to know, get alongside and encourage their 'clients'; they worked in their neighbourhood 'patch' with and through parents, beat police officers, local churches and local businesses to develop networks of both supervision and practical support. Some used former probationers to informally mentor their current charges. Though the diagnostic model informed their approaches to assessment, treatment – in the psychological or psycho-dynamic sense – was generally reserved for the small proportion of the adult caseload with mental health problems. As one remarked, 'you never saw yourself as a person with a magic wand but you saw yourself as the shepherd, you know?'

Though there may be an element of self-justification in these former officers' accounts, several of the probationers to whom we spoke credited their officers with providing life-changing support at key moments. Some even recognised the benefits of the constraints that supervision imposed, hard though they were to accept at the time. But a few others related painful experiences of what they perceived as an illegitimate exercise of authority; one or two reported verbal, physical or sexual abuse at the hands of probation officers (see McNeill, 2009).

In her efforts to steer the development of Scottish probation towards a more professionalised and scientific approach, Hiddleston travelled to California, visiting the probation service in Los Angeles and also meeting with Elliot Studt, the

pioneering social worker and first woman governor of a men's prison in the USA. However, despite her travels, her energies and her best efforts, Hiddleston recognised that probation education alone could not change probation culture. That recognition made her a supporter of the move to disband Scottish probation services, integrating them with generic social work departments under the provisions of the Social Work (Scotland) Act 1968. The debates over that pivotal reform lie beyond the scope of this paper, though they provide another compelling case study of contestation.

Conclusion: Recognising and analysing contestation

In a sense, this brief account reveals the complication of my own initially simplistic understanding of the development of Scottish probation – and more generally of Scottish penal welfarism. Perhaps I too had been socialised into the professionalised, scientific and welfarist version of social work history that was always most likely to have been written and promulgated by the academic educators and professional leaders in the field who wrote its history. Both Kelly's (2017) examination of evidence submitted to the Morton Committee and the oral histories reported above help to reveal both the contestation that lies behind the myth of a developing consensus around Scottish penal welfarism and the messiness of welfarism's meanings. This is *neither* a history of pendulum swings *nor* one of sustained consensus. Rather, there are, contra pendular logic, clear elements of continuity in Scottish welfarism, but there is also, contra the notion of a settled consensus, clear evidence of continuous contestation both of what Scottish welfarism should mean and entail, and of whether and in what form it should develop and persist.

Overall therefore, the evidence presented here tends to endorse the call, in the conclusion of *Breaking the Pendulum*, to 'examine the spaces in between' the ruptures that often attract the attention of scholars. Goodman, Page and Phelps' capacity for such analyses evidently owes much to the quality and depth of their previous studies; it is these studies that – for the most part – provide the most compelling accounts of the complexities of US penal change, partly by insisting that

we problematize and examine (apparent) penal stability as much as penal ‘ruptures’. Beneath an apparently calm and settled surface, we may find a lot of turbulence. Indeed, the surface only appears calm until we dive through it, into the depths.

Having explored these submerged micro- and meso-level struggles, we also need to analyse how and why the long struggle over criminal justice unfolds as it does. Again, the authors are right to implore us to ‘map it out’; showing how and why battles are (temporarily perhaps) won and lost and with what ‘real’ consequences. That mapping requires a complex analysis of the distribution of capital within the field, examining how its different forms (economic, symbolic, cultural and social) are distributed and redistributed and with what effects. Academics educators and professional leaders may be endowed with the kinds of cultural and symbolic capital that help them to ‘win’ arguments about models of practice that shape reform programs. However, the reserves of social capital in occupational groups and the economic resources available in particular organisational settings may exercise a more powerful influence over whether, how and to what extent, such models come to be implemented. We need to map out not just rhetorical victories and defeats, but also penal realities.

Equally – and again as Goodman, Page and Phelps conclude – penal fields must be understood in context; they are not independent of their situations – rather, their internal dynamics shape and are shaped by adjacent fields and by wider macro-social forces. The penal field cannot be understood in isolation from the welfare field, the juridical field, the legal field, the bureaucratic field, and so on.

David Garland’s (2001) ‘Culture of Control’ is rightly regarded as one of the finest accounts of late modern penal transformation. But he himself has recognised that an analysis of the distal social and cultural forces that shape penalty is insufficient; we also need analyses of proximate ‘penal states’ through which these forces exert their influence (Garland, 2013). Such analyses, he argues, must include mapping the extent to which the state in question is shielded from or exposed to wider social forces; the degree of independence of the penal state within the state itself; how and by whom control of the penal sphere is exercised; how penal power (whether

incapacitating or capacity-building) is distributed and employed; and what resources and capacities (institutional, professional and academic) are available.

Breaking the Pendulum offers a complementary analysis, better equipping us to explore the social forces, penal states and penal fields in and through which criminal justice is contested and constructed. By digging deep and building from their own fine-grained, local examinations of penal change, Goodman, Page and Phelps construct a model of penal change that is capacious and sophisticated enough to accommodate penal diversity. I hope I have done enough in this short essay to suggest that their model can travel. But, of course, wherever the model travels, similar foundations will need to be excavated if the building is to stand. Scholars will have to either undertake or revisit primary historical research to generate and test the kind of analyses so compellingly modelled in Breaking the Pendulum.

This essay has barely scratched the surface of that task by re-examining research about a small part of a small nation's penal field. But at least it suggests that, thanks to Breaking the Pendulum, we now have a decent plan to guide more elaborate analyses.

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