Probation, Rehabilitation and Reparation*

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Summary: Both in Scotland and in England and Wales, recent reports and policy documents have sought to recast community penalties as 'payback'. Though the precise meanings of this term and the practices associated with it differ quite significantly in the two jurisdictions, it can be argued in both contexts that the concept of reparation may be supplanting rehabilitation as the dominant penal rationale within probation work. This paper seeks to place these current developments in historical context by exploring how rehabilitation has been understood, practised, celebrated and criticised over the course of probation's history. It goes on to examine what aspects and forms of rehabilitation we should seek to defend and retain, and what forms of reparation are most consistent with probation's traditions and values and most likely to be effective in delivering justice and reducing crime.

Keywords: Probation, punishment, rehabilitation, reparation, payback.

Introduction

At the heart of this paper lies a concern to consider and advance the contribution that probation and rehabilitation can make to curbing the worst excesses that emerge when we lose our reason in relation to penal policy: not an uncommon problem in a field that evokes strong emotions and tests the character of societies. Some commentators suggest that the game is already up for rehabilitation. For example, one of the greatest living sociologists, Zygmunt Bauman – a man twice exiled from his own country and, perhaps for that reason, a particularly acute observer of society and social change – offers this sentinel's warning:

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> … the question of 'rehabilitation' is today prominent less by its contentiousness than by its growing irrelevance. Many criminologists will probably go on for some time yet rehearsing the time-honoured yet never resolved *querelles* of penal ideology – but by far the most seminal departure is precisely the abandonment of sincere or duplicitous declarations of 'rehabilitating intent' in the thinking of contemporary practitioners of the penal system. (Bauman, 2000: 210–211)

Behind this conclusion lies a characteristically convincing argument too complex to review here. Although instinctively I cling to the belief that he is unduly pessimistic, my respect for Bauman's insight compels me to engage in looking more closely at what is going on with rehabilitation and probation (or as we stubbornly call it, 'criminal justice social work') in Scotland and in jurisdictions further afield.

To that end, this paper has three main purposes. First, I want to explore very briefly the history of the development of rehabilitation as a penal concept and a penal practice, using the history of Scottish probation as a case study. I also intend to review critiques of rehabilitation, and in looking at its varied forms, I want to expose the slipperiness of the concept. Secondly, I intend to discuss what I think is a highly significant and challenging shift in emphasis in criminal justice social work in Scotland and in probation in England and Wales – a shift from rehabilitation to 'payback' as the central and defining concept underlying community sanctions. This is a shift that has both significant potential and considerable risks. Towards the end, I will try to construct the beginnings of an argument that it may be both possible and desirable to combine rehabilitative and reparative perspectives and practices.

Rehabilitation: A very short history

It is very difficult to pin down exactly what rehabilitation means. Is it a concept or a theory or a practice? Is it a process – the process of *being* rehabilitated – or is rehabilitation the outcome of that process? Is it merely a means or mechanism, a way of bringing about change and restoration, or is the reinstatement of an errant citizen an end in itself? Is rehabilitation a right of the person being punished or is it their duty to rehabilitate themselves? Does the State have the right to compel or

require the offender to be rehabilitated, or is it a duty that falls on the State to make provision available to make rehabilitation possible? And in the midst of all these questions, when Bauman says that rehabilitation is dead or dying, which of these things does he have in mind?

Two decades ago, Edgardo Rotman (1990) produced a very useful book on rehabilitation called *Beyond Punishment*. In a brilliant and brief introductory chapter, he summarises the history of rehabilitation and elucidates four models, in rough chronological order. For Rotman the story begins with the rise of the penitentiary, as a place of confinement where the sinner is given the opportunity to reflect soberly on their behaviour and on how to reform themselves, perhaps with divine help. This ideal stressed the reformative potential of both contemplation and work, sometimes in combination. But the religious ideas of rehabilitation expressed in the penitentiary evolved rapidly in the nineteenth and early twentieth centuries with the emergence of the 'psy' disciplines (psychiatry, psychology and social work). The idea that rehabilitation was about reforming the sinner, bringing them to acknowledgement of their wrongdoings, invoking repentance and requiring some penance before restoration was progressively supplanted by a more scientific or medical model. Here, rehabilitation was understood as a form of treatment that could correct some flaw, physical or psychological, in the individual, thus remedying the problem of their behaviour. Moving through the twentieth century, this more medical or therapeutic version of rehabilitation was itself displaced, to some extent, by a shift in emphasis towards a model based on social learning in which our behaviours are understood as learned responses that can be unlearned. In this context rehabilitation is recast not as sort of quasi-medical treatment for criminality but as the re-education of the poorly socialised.

Rotman (1990) himself, writing in the wake of over 20 years of severe criticism of rehabilitation as a concept and as a set of practices, advanced what he calls 'rights-based rehabilitation', linking this to arguments about the proper limits of punishment and the duty of the State to provide the opportunity for the offender to be restored. For Rotman, the collateral consequences of punishment, including for example the social exclusion that follows release from prison, is morally intolerable because the legally mandated punishment ought to have ended. Whereas the pains of confinement may be legitimate, the pains of release are not.

How did these models play out in Scottish probation history? Documentary research suggests that we can distinguish five eras that cast

rehabilitation in quite different ways – ways that are broadly consistent with the scheme that Rotman outlined (McNeill, 2005; McNeill and Whyte, 2007). Initially probation begins in Glasgow in 1905 as a result of concerns about the excessive use of imprisonment, particularly for fine default. To divert such offenders in some constructive way, plain-clothes police officers provided a period of supervision over selected offenders on behalf of the courts. There is little notion at this time of treatment, and no attempt to 'correct' other than through 'mere' oversight. By the time of the Probation of Offenders (Scotland) Act 1931, however, ideas have moved on to such an extent that the Act prohibits serving or former police officers from being probation staff – perhaps because of the emergence of the therapeutic ideal and a related move away from paternalistic and robust supervision. That said, evidence from an ongoing study exploring oral histories of Scottish probation (conducted by the author) suggests that, as late as the 1960s, the battle between the 'scientific social caseworkers' and the 'boys' brigade lobby' was still raging. One of the most interesting emerging findings from the oral history study is how slow practice can be to respond to changes in official discourse.

In the 1960s, the Scottish juvenile justice system was also reshaped as a result of the Kilbrandon Report (1964). In response to Kilbrandon, The Social Work (Scotland) Act 1968 created the Children's Hearing System, a radically different way of dealing with juveniles, but it also brought probation services within social work services where the common duty was to promote social welfare. Offenders were thus defined as a group in need, just like people with disabilities, children in trouble, children who were neglected or frail older people.

These organisational arrangements still pertain, but that fact belies significant changes in the ethos and practice of criminal justice social work in the 1990s. If we were following Rotman's prescriptions, we might have expected the emergence of rights-based rehabilitation. Instead, the national standards (Social Work Services Group, 1991) counterbalanced the emphasis on the offender's welfare with the recognition of the need to hold the offender responsible for his behaviour. This was linked to the familiar concept of offence-based or offence-focused practice: doing something about the offending, not just attending to the needs of the offender.

This focus on a 'responsibility model' (Paterson and Tombs, 1998) lasted only six or seven years. In 1997 the first major criminal justice

social work disaster, the murder of a seven-year-old boy called Scott Simpson by a sex offender on a supervised release order – Stephen Leisk – triggered a new focus on public protection and risk management and led the Minister then responsible (Henry McLeish – more on whom later) to declare that 'our paramount purpose is public safety' (Scottish Office, 1998 – see also Robinson and McNeill, 2004).

To summarise, Rotman's account of the history of rehabilitation maps fairly well onto the history of Scottish probation – or at least onto its official discourses – but his prescriptions for the future of rehabilitation have been unheeded in the context of the sorts of late-modern insecurities around risk that underlie Bauman's pessimism.

Rehabilitation: Critique

I will return to developments in Scotland shortly, but first it is useful to remind ourselves of what went wrong with rehabilitation and why it became so heavily criticised in the 1970s. This story is not so well known in Scotland, and I think it might not be so well known in Ireland; I suspect that in both jurisdictions, when the English and the North Americans were struggling with the 'nothing works' agenda, the Celts were not paying much attention. It may not be an exaggeration to suggest that, at least as far as probation was concerned, the 1970s and 1980s involved a kind of hibernation of rehabilitation in Scotland (see McNeill and Whyte, 2007). Primarily because of organisational changes wrought by the Social Work (Scotland) Act 1968, rehabilitation was not being practised enough to be critiqued and so the 'nothing works' movement did not have the impact in Scotland that it did elsewhere. Nonetheless, critiques of rehabilitation are as important now as they were in the 1970s.

A central point in this connection is that, if rehabilitation has so many meanings and so many forms, we need to take great care when we attack it or when we defend it as a penal practice. This argument was particularly well developed in a book by Gerry Johnstone, where he sums up as follows:

> I have suggested that the types of therapeutic programme and discourse which are usually discussed are the types which are least common in practice, and that the types which are usually ignored are the most common in practice. (Johnstone, 1996: 178–179)

Table 1. Two versions of rehabilitation

	Medical–somatic	*Social psychological*
Causes of crime	Material	Environmental
Role of the individual in relation to their condition	Object	Subject
Role of the individual in relation to their treatment	Passive	Active
Treatment targets	Individual	Individual and other social systems

Source: Johnstone (1996).

As Table 1 illustrates, Johnstone (1996) distinguishes between what he calls a medical–somatic version of rehabilitation (the one that gets critiqued) and a social psychological version (the one that gets practised). Briefly, in the medical version, the causes of crime are material; that material cause operates on the individual, who is conceived as an object on whom these forces operate. Evidently this is a very deterministic model. The role of the individual in relation to their treatment is passive; they are a patient in the same way that they would be in respect of any other material medical problem. The treatment targets are highly individual; little attention is paid in this model to the environment or to the social context and the social pressures that might relate to human behaviour. As a Dutch colleague put it to me recently, this is a 'between the ears' model of rehabilitation.

The social psychological model is significantly different. The causes of crime it posits are in the environment and the way that the environment operates and influences the individual. Nonetheless, the individual is not a passive object on which social forces operate; rather, the individual has agency as an active human subject engaging with those pressures. Hence, the offender is also an active subject in relation to their treatment or the intervention that they are receiving, which is not something done to them but with them. Moreover, the treatment targets do not merely aim to 'fix' something between the ears; they extend 'beyond the ears' and include the social context and the problems that give rise to the behaviour.

The significance of the distinctions between these two models rapidly becomes clear when we examine critiques of rehabilitation. In this respect, an edited collection by Bottoms and Preston (1980), ominously entitled *The Coming Penal Crisis*, emerges as a remarkably prescient piece of work. Bottoms (1980), in a chapter that deals with the collapse of the

rehabilitative ideal, sums up its flaws and failings. First of all, rehabilitation was seen as being theoretically faulty in that it misconstrued the causes of crime as individual, when they are principally social and structural, and it misconstrued the nature of crime, failing to recognise the ways in which crime is itself socially constructed. Secondly, rehabilitative practices had been exposed as being systematically discriminatory, targeting coercive interventions on the most poor and disadvantaged people in society. Thirdly, rehabilitation was seen as being inconsistent with justice because judgements about liberty had come to be unduly influenced by dubious and subjective professional judgements hidden from or impenetrable to the offender. Through the development of the 'psy' disciplines, experts emerged with the supposed capacity to 'diagnose' what was wrong with the offender, and the offender was cast as a victim of his or her lack of insight. By implication, unless and until the offender was 'corrected' by the expert, s/he could not be treated as a subject. Fourthly, it was argued that rehabilitation faced a fundamental moral problem concerning coercing people to change. Finally, at the time when Bottoms was writing, the empirical evidence seemed to suggest that, despite its scientific pretensions, rehabilitation did not seem to work.

Of course, this last point has been significantly revised in the decades following, but in the rush to celebrate evidence of effectiveness, Bottoms' (1980) first four criticisms, it seems to me, have been increasingly overlooked. That said, it also seems to be critically important to grasp that what Bottoms is criticising is Johnstone's (1996) medical–somatic model of rehabilitation; the treatment model. As Johnstone (1996) points out, that was not the predominant model in practice, even by 1980. The social psychological paradigm arguably was more influential by the 1960s, at least in some jurisdictions.

So what do we do about these criticisms? Bottoms (1980) – and this is where his prescience is really striking – suggests five directions we could take in the wake of the crisis around rehabilitation. First, we could revisit rehabilitation and try to fix what is wrong with it; that is, by attending to consent, by committing adequate resources and by conducting our rehabilitative activities in a way which is respectful of liberty. In other words, we could ensure that the intrusions that rehabilitation imposes on the offender are never greater than is merited by their offending behaviour. Secondly, we could embrace a justice model, focused on proportionality and the elimination of arbitrary discretion; at

least if we cannot get rehabilitation right we can try to get fairness in the system. Thirdly, we could take a more radical perspective, a kind of penal abolitionist position, and confront the problem that you cannot have 'just deserts' in an unjust society because the cards are stacked against some people. Their pathways into the criminal justice system are not just the result of their choices, and when we fail to respect the social context within which their behaviour emerges, we are not doing justice at all. Fourthly, and this is a more conservative response, we could pursue incapacitation and general deterrence and try to eliminate the threat that offenders pose, embracing overt social control. Finally, we might turn towards a more reparative ideal that takes the rights and interests of victims more seriously.

The story that unfolded in the 1980s and 1990s is, of course, a complex one. There was in fact a flurry of writing about new approaches to rehabilitation, including Rotman's (1990) work (see also Cullen and Gilbert, 1982). The new rehabilitationists (see Lewis, 2005) proposed four principles to guide rights-based rehabilitation: the assertion of the duty of the State to provide for rehabilitation; the establishment of proportional limits on the intrusions imposed; the principle of maximising choice and voluntarism in the process; and a commitment to using prison as a measure of last resort. I have argued elsewhere (McNeill, 2006) that in policy and practice, however, in both Scotland and (especially) England and Wales, what emerged was a 'what works' paradigm increasingly influenced by the preoccupation with public protection and risk reduction. Under this paradigm, probation officers intervene with or treat the offender to reduce reoffending and to protect the public. What is critical about this paradigm is that the 'client', if you like – the person or social group that the probation service is serving – is not the offender. Rather probation is trying to change offenders to protect the law-abiding (see McCulloch and McNeill, 2007). Within this paradigm, practice is rooted in professional assessment of risk and need governed by structured assessment instruments; the offender is less and less an active participant and more and more an object that is being assessed through technologies applied by professionals. After assessment comes compulsory engagement in structured programmes and offender management processes as required elements of legal orders imposed irrespective of consent (at least in England and Wales, if not in Scotland as yet).

If we take this to be a morally and practically flawed paradigm (on which see McNeill, 2006), then what alternatives confront those of us labouring in the shadow of a larger neighbour whose influence we both respect and resist?

From rehabilitation to payback?

In other papers, I have tried to outline alternative approaches to rehabilitation and offender supervision, particularly drawing on empirical evidence about desistance from crime and how it can be best supported (most recently, McNeill 2009a, 2009b). In this paper, I want to take a slightly different tack. That said, the desistance paradigm compels us to hold to the notion of engaging with the person who has offended as a human subject, with legitimate interest to be respected and with both rights and duties, rather than as an object on whom systems and practices operate in the interests of others. As we will see, this notion is as relevant to reparation as it is to rehabilitation.

My interest in reparation has various roots, but most recently it has been revived by the report of the Scottish Prisons Commission (2008), a commission appointed by the Cabinet Secretary for Justice to examine the proper use of imprisonment in Scotland. The Commission was chaired by Henry McLeish, the abovementioned one-time Minister for Home and Health in the Scottish Office (pre-devolution) and later a First Minister of Scotland. The report (often referred to as the McLeish report) was published in July 2008; the Criminal Justice and Licensing Bill currently before the Scottish Parliament contains a range of measures that respond to the recommendations of this report. The report contains a very sharp analysis of why the Scottish prison population has risen rapidly in recent years, to a level roughly twice that of Ireland. The key conclusion and central recommendations of the report are these:

> The evidence that we have reviewed leads us to the conclusion that to use imprisonment wisely is to target it where it can be most effective - in punishing serious crime and protecting the public.
>
> 1. To better target imprisonment and make it more effective, the Commission *recommends* that imprisonment should be reserved for people whose offences are so serious that no other form of punishment will do and for those who pose a significant threat of serious harm to the public.

2. To move beyond our reliance on imprisonment as a means of punishing offenders, the Commission *recommends* that *paying back in the community should become the default position in dealing with less serious offenders.* (Scottish Prisons Commission, 2008: 3; emphasis added)

The idea that we should pursue a parsimonious approach to imprisonment in particular and punishment in general is not a new one but it is a good one, for all sorts of reasons. The Commission's remedy for our collective over-consumption of imprisonment centres on a range of measures that it considers necessary to enact its second recommendation and make 'paying back in the community' the 'default position' for less serious offenders. Although we might certainly question the extent to which the development of sentencing *options* changes sentencing *practices*, many of these measures speak directly to the nature, forms and functions of probation or criminal justice social work, whether in relation to its court services, the community sanctions it delivers or its role in ex-prisoner resettlement.

Leaving aside the important question of resettlement on this occasion, the Commission's report seeks to recast both court services and community penalties around the concept of 'payback', which it defines as follows:

> In essence, payback means finding *constructive* ways to compensate or repair harms caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, *one of the best ways for offenders to pay back is by turning their lives around*. (Scottish Prisons Commission, 2008: 3.28; emphasis added)

Several ways of paying back are identified here and elsewhere in the report – through restorative justice practices, through financial penalties, through unpaid work, through restriction of liberty (meaning in this context electronically monitored curfews) and, perhaps most interestingly in this context, through 'paying back by working at change'. Working at change in turn is linked to engagement in a wide range of activities that might seem likely to address the issues underlying offending behaviour (drug and alcohol issues, money or housing

problems, peer group and attitudinal issues, family difficulties, mental health problems, and so on). The report also recognises the need for offenders to opt-in to rehabilitative modes of reparation; their consent is required for both practical and ethical reasons.

In setting out a process for paying back, the Commission's report suggests a three-stage approach to sentencing. In stage 1, the judge makes a judgment about the level of penalty required by the offence with information from the prosecutor and the defence agent. By implication, this is no business of social work, no business of probation; rather, it is a legal judgment about the appropriate level of penalty. But stage 2 considers what kind of payback, what form of reparation, is appropriate and this requires a dialogue not just between the judge and the court social worker, but one that actively engages the offender too. Stage 3 involves checking up on the progress of paying back; here, the report proposes the establishment of a particular kind of court, a progress court, where specially trained judges who understand issues around compliance and around desistance from crime would have mechanisms at their disposal for handling setbacks and lapses without undue recourse to custody. This court would also have the power to reward compliance and positive progress through early discharge or the lightening of restrictions. Clearly this model owes much to the development of problem-solving courts in many jurisdictions (see McIvor, 2009).

Around the time of the publication of *Scotland's Choice* (Scottish Prisons Commission, 2008), the UK Government published a report on *Engaging Communities in Fighting Crime*, written by Louise Casey. This sought solutions to perceived problems of public confidence in criminal justice in general and community penalties in particular. The research evidence about public attitudes to punishment in general and to probation in particular is, in some respects, complex (see Allen and Hough, 2007). First of all, there is no public opinion; there are different opinions from different members of the public; different opinions from the same people depending on what you ask them, how you ask them, what mood they are in and, probably, what has happened to them in the past 24 hours. There is strong evidence that it is something of a myth to suggest that 'the public' are universally punitive in response to offenders. Though most people tend to say that sentences are too lenient, if they are provided with case histories and then asked to suggest a sentence, they tend to sentence similarly to or more leniently than real judges.

With regard to community sanctions, the fundamental problem is ignorance. The most recent British Crime Survey (Jansson, 2008), for example, suggests that only 20 per cent of people surveyed thought that probation in England and Wales was doing a good job. Allen and Hough (2007) sum up the problem beautifully by quoting a focus group respondent who said: 'I don't think probation means anything to many people'. This is a common finding in many jurisdictions; people don't really know what probation is, they don't know what it involves, they don't understand what it is trying to achieve.

Casey's solution was the rebranding (yet again) of community service, this time as 'community payback'. But Casey's concept of payback is quite different from the Scottish Prisons Commission's; it centres on making community service more visible and more demanding. She suggests that it should not be something the general public would choose to do themselves (in other words, it should be painful or punishing) and that offenders doing payback should wear bibs identifying them as such (in other words, that it should be shaming). Contrast these suggestions with the following statements from the Scottish Prisons Commission's report:

> … it is neither possible nor ethical to force people to change. But we are clear that if people refuse to pay back for their crimes, they must face the consequences. (Scottish Prisons Commission, 2008: paragraph 3.31b)

> The public have a right to know – routinely – how much has been paid back and in what ways. This does not and should not mean stigmatising offenders as they go about paying back; to do so would be counter-productive. But it does and should mean that much greater effort goes into communication with the communities in which payback takes place. (Scottish Prisons Commission, 2008: paragraph 3.31c)

In a recent paper exploring the available research evidence about public attitudes to probation in the light of Casey's recommendations, Maruna and King (2008: 347) come to the following conclusion:

> Casey is absolutely right to utilise emotive appeals to the public in order to increase public confidence in the criminal justice system. Justice is, at its heart, an emotional, symbolic process, not simply a

> matter of effectiveness and efficiency. However, if Casey's purpose was to increase confidence in community interventions, then she drew on the exact wrong emotions. Desires for revenge and retribution, anger, bitterness and moral indignation are powerful emotive forces, but they do not raise confidence in probation work – just the opposite. To do 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 is particularly interesting in this context to note that those who we might expect to be most angry and even vengeful in their emotive responses to offenders – crime victims – often seem able to draw on some of these more positive and cherished values. The recently published evaluation of restorative justice schemes in England evidenced this very clearly, though the findings are consistent with many earlier studies of victims' views and wishes:

> In approximately four-fifths of the conferences [n = 346] that we observed, offenders' problems and strategies to prevent reoffending were discussed, whilst discussion of financial or direct reparation to the victim was rare … This was not because victims or their wishes were ignored but rather because *victims, in common with other participants, actively wished to focus on addressing the offenders' problems and so minimizing the chance of reoffending.* In pre-conference interviews … 72 per cent of victims said it was very or quite important to them to help the offender. (Robinson and Shapland, 2008: 341, emphasis added)

So, although many of us may have grave reservations while looking south (or east) at Casey-style payback, McLeish's concept of 'paying back by working at change' seems to have strong resonance, not just with probation's rehabilitative origins and affiliations but with what many victims want from justice processes.

Moving forward: Alternatives to punishment or alternative punishments?

Historically, in many jurisdictions, probation and criminal justice social workers have tended to consider themselves as providers and advocates of (usually rehabilitative) *alternatives to punishment*, rather than as

providers and advocates of *alternative punishments*. Somehow the notion of punishing, as opposed to supporting, supervising, treating or helping – or even challenging and confronting – seems inimical to the ethos, values and traditions of probation and social work. Certainly, that was once my view, but now I confess I am not so sure. The penal philosopher Antony Duff (2001) has argued convincingly that we can and should distinguish between 'constructive punishment' and 'merely punitive punishment'. Constructive punishment can and does involve the intentional infliction of pains, but only in so far as this is an inevitable (and intended) consequence of 'bringing offenders to face up to the effects and implications of their crimes, to rehabilitate them and to secure … reparation and reconciliation' (Duff, 2003: 181). This seems very close in some respects to the ideas of challenging and confronting offending that have become widely accepted in probation work in recent years, partly in response to political pressures to get tough but also, more positively, in response to the legitimate concerns of crime victims that their experiences should be taken more seriously.

But Duff's work also helps us with a second problem, since he recognises, as we have already noted and as probation and social workers have understood for decades, that where social injustice is implicated in the genesis of offending, the infliction of punishment (even constructive punishment) by the State is rendered morally problematic, because the State is often itself complicit in the offending through having failed in its prior duties to the 'offender'. For this reason, Duff suggests that probation officers or social workers should play a pivotal role in mediating between the offender and the wider polity, holding each one to account on behalf of the other. Again, this discomfiting space is one which many probation and social workers will recognise that they occupy and through which, with or without official or public support, they seek to promote social justice within criminal justice.

It may be, therefore, that Duff's work provides some of the conceptual resources with which to populate the concept of payback constructively. To the extent that the new centrality of reparation compels criminal justice social work to engage in punishing offenders, his notion of constructive punishment and his insistence on the links between social justice and criminal justice might help to buttress a Scottish social work version of payback from drifting in the punitive and probably futile direction of its namesake south of the border. There are other sources that we could also draw upon usefully. Shadd Maruna's (2001)

groundbreaking study of desistance, *Making Good: How Ex-convicts Reform and Rebuild their Lives*, is one of several desistance studies that have begun to reveal the importance for ex-offenders of 'making good', and of having their efforts to do so recognised. In a sense, the relevance of the concept of 'generativity' – referring to the human need to make some positive contribution, often to the next generation – hints at the links between paying back and paying forward, in the sense of making something good out of a damaged and damaging past (see McNeill and Maruna, 2007). Bazemore's (1998) work on 'earned redemption' examines more directly the tensions and synergies between reform and reparation, and the broader movements around 'relational justice' (Burnside and Baker, 2004) and restorative justice (Johnstone and Van Ness, 2007) provide possible normative frameworks within which to further debate and develop these tensions and synergies.

Clearly the closer examination of these synergies and tensions that now seems necessary is beyond the scope of this paper. But in terms of the practical applications for probation, these ideas and developments evoke Martin Davies' (1981) notion of probation as a mediating institution. We can understand this in two ways. Firstly, probation mediates between the sometimes conflicting purposes of punishment – between retribution (but not of the merely punitive kind), reparation and rehabilitation. But equally probation mediates between the stakeholders in justice – between courts, communities, victims and offenders, much in the manner that Duff (2003) suggests.

I worry that under the rubric of public protection and risk, probation risks losing sight of the obligation to try to maintain some kind of balance between these purposes and these constituencies. When public protection is too dominant, probation services find themselves requiring something of the offender but with less recognition of the obligations that flow in the other direction. I understand very well the lure of recasting rehabilitation as risk management and protection; I can see why it seems to make sense to probation services to try to reconstruct their business around making a contribution to public protection when we live in an age of insecurity. Maybe making good to offenders does not have much cachet or cannot seem to attract much public or political support in these conditions. But, as I have argued elsewhere (McCulloch and McNeill, 2007; McNeill 2009b), there is a paradox with protection and there are risks with risk. The paradox is that the more that probation promises to protect, the more vulnerable the public will feel; the promise to protect

us confirms the existence of a threat to us. Even an exceptionally effective probation service will sometimes have to deal with serious further offences, and when it does its credibility as an agent of protection will be too easily dismantled. The political dangers of this position have become obvious in the wake of recent events in England.

But there is also an ethical problem with the dominance of public protection. When probation accepts the lure of risk management and public protection, it preoccupies itself with things that may happen, with the offender's future behaviour, with potential victims and with the future impacts on communities. I think there is a danger that the more that we preoccupy ourselves with these imaginaries, the less we concern ourselves with the real victims and real offenders and real communities that are with us now. For all of those reasons I am attracted to the idea of reconfiguring rehabilitation with a reparative focus – I can even live with the word 'payback'. But I can only buy into reparation if it is a two-way street; otherwise, to me it seems morally bankrupt.

To return to where we began, my challenge to you is that probation can wait and see how other stakeholders redefine or replace rehabilitation, or, attending to Bauman's warning, probation practitioners, managers and academics can work out how to do that for ourselves. If we accept that challenge we can rest assured that we can draw on the accumulated and collective knowledge, values and skills that owe so much to Martin Tansey and others like him; the knowledge, values and skills that also represent such an important part of his legacy.

References

Allen, R. and Hough, M. (2007), 'Community Penalties, Sentencers, the Media and Public Opinion', in L. Gelsthorpe and R. Morgan (eds.), *The Handbook of Probation*, Cullompton, UK: Willan

Bauman, Z. (2000), 'Social Issues of Law and Order', *British Journal of Criminology*, vol. 40, no. 2, pp. 205–221

Bazemore, G. (1998), 'Restorative Justice and Earned Redemption: Communities, Victims, and Offender Reintegration', *American Behavioral Scientist*, vol. 41, no. 6, pp. 768–813

Bottoms, A. (1980), 'An Introduction to "The Coming Crisis"', in A. Bottoms and R. Preston (eds.), *The Coming Penal Crisis*, Edinburgh: Scottish Academic Press

Bottoms, A. and Preston, R. (eds.) (1980), *The Coming Penal Crisis*, Edinburgh: Scottish Academic Press

Casey, L. (2008), *Engaging Communities in Fighting Crime*. London: The Cabinet Office. Available online at: www.cabinetoffice.gov.uk/newsroom/news_releases/2008/080618_fighting_crime.aspx

Cullen, F. and Gilbert, K. (1982), *Reaffirming Rehabilitation.* Cincinnati, OH: Anderson

Davies, M. (1981), *The Essential Social Worker*, Aldershot, UK: Ashgate

Duff, A. (2001), *Punishment, Communication and Community*, New York: Oxford University Press

Duff, A. (2003), 'Probation, Punishment and Restorative Justice: Should Altruism Be Engaged in Punishment?', *The Howard Journal*, vol. 42, no. 1, pp. 181–197

Jansson, K. (2008), *British Crime Survey: Measuring Crime for 25 Years*, London: Home Office

Johnstone, G. (1996), *Medical Concepts and Penal Policy*, London: Cavendish Publishing

Johnstone, G. and Van Ness, D. (eds.) (2007), *The Handbook of Restorative Justice*, Cullompton, UK: Willan

Kilbrandon Report (1964), *Children and Young Persons (Scotland)*, Cmnd 2306, Edinburgh: Her Majesty's Stationery Office

Lewis, S. (2005), 'Rehabilitation: Headline or Footnote in the New Penal Policy?', *Probation Journal*, vol. 52, no. 2, pp. 119–135

McCulloch, P. and McNeill, F. (2007), 'Consumer Society, Commodification and Offender Management', *Criminology and Criminal Justice*, vol. 7, no. 3, pp. 223–242

McIvor, G. (2009), 'Therapeutic Jurisprudence and Procedural Justice in Scottish Drug Courts', *Criminology and Criminal Justice*, vol. 9, no. 1, pp. 29–49

McNeill, F. (2005), 'Remembering Probation in Scotland', *Probation Journal,* vol. 52, no. 1, pp. 25–40

McNeill, F. (2006), 'A Desistance Paradigm for Offender Management', *Criminology and Criminal Justice*, vol. 6, no. 1, pp. 39–62

McNeill, F. (2009a), *Towards Effective Practice in Offender Supervision*, Glasgow: Scottish Centre for Crime and Justice Research, available online at: www.sccjr.ac.uk/documents/McNeil_Towards.pdf

McNeill, F. (2009b), 'What Works and What's Right', *European Journal of Probation*, vol. 1, no. 1, pp. 21–40

McNeill, F. and Maruna, S. (2007), 'Giving Up and Giving Back: Desistance, Generativity and Social Work with Offenders', in G. McIvor and P. Raynor (eds.), *Developments in Social Work with Offenders. Research Highlights in Social Work 48.* London: Jessica Kingsley

McNeill, F. and Whyte, B. (2007), *Reducing Reoffending: Social Work and Community Justice in Scotland*, Cullompton, UK: Willan

Maruna, S. (2001), *Making Good*, Washington, DC: American Psychological Association

Maruna, S. and King, A. (2008), 'Selling the Public on Probation: Beyond the Bib', *Probation Journal*, vol. 55, no. 4, pp. 337–351

Paterson, F. and Tombs, J. (1998), *Social Work and Criminal Justice: Volume 1 – The Impact of Policy*, Edinburgh: Scottish Office Central Research Unit

Robinson, G. and McNeill, F. (2004), 'Purposes Matter: The Ends of Probation', in G. Mair (ed.), *What Matters in Probation Work*, Cullompton, UK: Willan

Robinson, G. and Shapland, J. (2008), 'Reducing Recidivism: A Task for Restorative

Justice?', *British Journal of Criminology*, vol. 48, no. 3, pp. 337–358
Rotman, E. (1990), *Beyond Punishment: A New View of the Rehabilitation of Criminal Offenders*, New York: Greenwood Press
Scottish Office (1998), *Community Sentencing: The Tough Option – Review of Criminal Justice Social Work Services*, Edinburgh: Scottish Office
Scottish Prisons Commission (2008), *Scotland's Choice*, Edinburgh: Scottish Prisons Commission
Social Work Services Group (1991), *National Objectives and Standards for Social Work Services in the Criminal Justice System*, Edinburgh: Scottish Office Social Work Services Group