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'Trends and Issues in Probation in Europe'

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My presentation to the PACCOA conference was based on PowerPoint slides and some notes. I do not have a record of what I said but what follows has been written up from my notes and should bear a close resemblance to my presentation, though with some anecdotal and illustrative detail un-recovered. It is also important to note that I spoke about probation in Europe and had neither the knowledge nor the experience to relate this to the position in Australia.

John Walters, September 2003.

My aim is to present six themes about current developments in probation in Europe and to relate them to the theme of this year's PACCOA conference: 'Collaboration to Reduce Re-offending'. It is an interesting time in Europe as established probation services are re-examining themselves while new services are being set up in central and eastern Europe. The established services are under, largely internally generated, pressure to respond to research evidence about effectiveness. They are also subject to political pressures as crime is increasingly a high profile issue. There are pressures to provide more and higher quality services, often with a reduced budget. As a result the well-established services are engaged in a process of re-visioning at a time when new probation services elsewhere in Europe are developing a vision for the first time.

What is probation?

'Community measures and sanctions' is the term used in the Council of Europe but it is rather elaborate. I intend to use the term 'probation'. What this means is very different in different countries of Europe. It ranges from Dutch 'early help' where the probation service is informed if an arrested person is held in police custody for more than a certain number of hours to the supervision of life sentenced prisoners in the UK. In between are sentencing reports, community measures as a diversion from prosecution, community sanctions, work with prisoners, supervision of released prisoners - in other words anything a probation service does.

Who am I?

I worked for 35 years in probation services in London before retiring in 2001. For 16 years I was the chief officer of the Middlesex Probation Service which covered the north and western parts of London - about a quarter of London and a population of nearly two million and very ethnically diverse. For six years before retirement I had been a member of the board of the CEP and since I retired I have acted as the Secretary General of the CEP.

What is CEP?

The Conférence Permanente Européenne de la Probation is a European network of probation services. Its members are the ministries responsible for probation or probation organisations in 22 countries in Europe. We organise workshops, publish a twice yearly bulletin and maintain a website on which you will find a great deal more information about CEP:

<http://www.cep-probation.org>

We commissioned the publication of a source book about probation services in Europe to which I refer you if you want a detailed account of probation in the countries of Europe with established probation services.

Probation and Probation Services: A European Perspective, edited by Anton M. van Kalmthout & Jack T.M. Derks
December 2000 ISBN: 90-5850-008-x
Euro 42.50 (postage and packing not included).
Wolf Legal Publishers, P.O. Box 31051, 6503 CB NIJMEGEN, The Netherlands
Tel. +31.24.355.19.04, Fax. +31.24.355.48.27, E-mail: wlp@hetnet.nl

A companion volume has just been published about probation in the European Union accession countries but CEP did not commission this and I do not have further details at present.

What the CEP stands for - Crime Reduction through Social Inclusion

You will find the full text of our statement of what the CEP stands for on our website. It opens

‘The CEP believes that a society built on the principles of social inclusion provides the best protection for communities from the harm and distress caused by crime’.

I do not propose to attempt an account of all that the probation services of Europe do but to draw out some themes and identify developments. For an account of the detail I refer you to the book edited by van Kalmthout and Derks. My plan is to describe what I have observed with limited evaluative comment.

FIRST THEME FROM WELFARE TO CORRECTIONS

I propose to present this theme from two perspectives: how probation services are organised and what probation services do.

Many probation services had their origins in the work of volunteers and in NGOs working with discharged prisoners. Some services - such as those in The Netherlands and Finland, both of whom have celebrated their 175th anniversary in recent years - go back to the first half of the 19th century. Over the years their tasks have diversified to include the supervision of community sanctions and this has been seen as inappropriate for an NGO: it has been seen as inappropriate that an NGO should have the powers over citizens associated with the enforcement of sanctions. But also, as budgets have been largely provided by the State, governments have, understandably, wanted greater control over probation services.

As I understand it the story of NGO to state organisation is true of all the four Scandinavian countries with the transition having taken place as late as 2001 in Finland. Similar developments are apparent even where probation services had been public services for many years. In England and Wales a decentralised system with 54 probation services accountable to local probation committees was replaced with a centralised national service in 2001. However, NGOs have not been wholly superseded and the work of probation is still undertaken by independent organisations funded by the state in The Netherlands and in Austria.

There has also been a trend for probation services to be administered as apart of a combined department dealing with both prison and probation. Mostly responsibility for the two arms of 'corrections' - not really a European word - divides near the top but in Sweden and in France the management of prison and probation is united down to regional level.

The broad position is that most probation services are now criminal sanctions agencies with a dual role in enforcing sanctions and reducing recidivism or re-offending, though there are some lingering doubts about combining the two and enforcement is commonly by report to a competent judicial authority such as the *juge d'application des peines* in France.

But even where the probation service is a long established public organisation there has been a move from the social work ethos of voluntarism and a focus on the welfare needs of offenders in the '60s and '70s to an acceptance of an enforced relationship and a clear focus on offending behaviour.

In parallel with these moves it is observable that probation services are working more closely with prisons and police in addition to their more traditional roles with judicial authorities: judges and prosecutors.

For a further information see the reports on the CEP website of a workshop in Helsinki in October 2002 'Probation and Prison: Co-operation to Reduce Recidivism' and of a workshop in London in January 2003 'The Management

of Dangerous Sex Offenders: a European perspective' - the second dealing with collaboration with the police.

SECOND THEME A MORE SCIENTIFIC PROBATION SERVICE

As a chief probation officer leading a service to respond to the challenge of evidence about effectiveness it sometimes seemed to me that my task was to turn storytellers into scientists. I do not need to remind you of the 'What Works' movement and the response to the perception that research had shown that nothing works. The response has sometimes been a search for a simple answer when the truth is that particular things work with particular people in particular circumstances. There is no philosopher's stone. There are, however, some key principles of What Works:

- a focus on criminogenic factors which need to be identified through research and not just intuitively
- the use of structured assessment focussing on the risk of re-offending and action needed to reduce risk
- programme integrity - do what is designed and monitor its effectiveness
- multi modality - it is unlikely that any single intervention will be effective.

All this is well understood in many probation services in Europe but its practical application has been disappointingly limited and there are still few examples of evidence-based practice as the mainstream work of a probation service. For the most part we are still in the realm of promising projects. From my observation the most promising developments are in the UK, in the Scandinavian countries and in Switzerland but the list may be longer. The strongest developments are in cognitive behavioural group work and in the implementation of structured assessment tools. We held a CEP workshop on structured assessment tools in Vienna in September 2002 while the report of a CEP Seminar in Edinburgh in September 1996 'Developing and Evaluating Programmes for Reducing Offending' remains an excellent text on the principles of evidence based practice.

Two general observations are that a more scientific probation service tends to be rather expensive and that practice needs to be culturally sensitive. It cannot be bought 'off the peg' or from travelling salesmen.

THIRD THEME THE SUCCESS OF COMMUNITY SERVICE

My claim here is that community service has been the most successful innovation of the last quarter of the twentieth century in the field of criminal sanctions. It is conceptually very simple and yet very broad in its relevance to the principles of sentencing. The concept is simply that of doing good where harm has been done. But it is also a sentence capable of meeting all three elements sentencing: retribution, reparation and rehabilitation. At its best community service holds all these elements in balance. Retribution requires tight supervision and enforcement. Reparation is only rarely to the victim of the offence but the retributive value of the work done for communities is huge. For a time it seemed that rehabilitation was in danger of being lost but there are signs that it is being recovered and, in England and Wales for example, a proportion of the hours of a community service order can be devoted to training. In France there are some interesting projects which relate community service programmes to specific offences. There is growing experience in using community service to improve work related skills and to assess and certificate these.

Community service has been introduced in many countries in Europe and is very recognisable with marked similarities between countries. If there is a major difference it is between those countries, like Finland and Sweden, which rely substantially on individual placements with all the associated potential for social inclusion and countries like England and Wales which rely much more on supervised work groups.

The report of a CEP workshop in Malta in November 2001(see the CEP website) gives an account of how community service operates in several countries in Europe and is a useful reference for the points just made.

FOURTH THEME SOCIAL INCLUSION OF OFFENDERS

It is widely observed that many offenders come from among the socially excluded, either socially excluded individuals or, more commonly, individuals from socially excluded groups and communities. In all the countries which I have visited ethnic minorities are over represented among those prosecuted for offences and, to an even greater extent, in those sent to prison. Securing the social inclusion of individual offenders and working with others to combat the social exclusion of minorities is a key challenge for probation services in Europe.

The involvement of communities in the work of probation services is critical if social exclusion is the focus. Probation services need to be working with others to empower excluded communities. This emphasis on community involvement sits uneasily with the present direction of 'What Works' where the work seems for the most part to take place behind closed doors.

Offenders' access to mainstream services is a measure of the effectiveness of steps taken to secure their social inclusion. Most important of all is to secure offenders' access to employment. Getting a job that you want to keep is still

the best evidence supported way of reducing re-offending. In a number of countries in Europe there is good experience in training offenders for employment and in skilled employment placement.

But above all the challenge of working to combat the social exclusion of offenders requires that the services provided by probation services are designed and monitored for their accessibility to all.

The CEP website carries a link to that of the European Offender Employment Forum. A CEP workshop in Barcelona in November 2001 dealt with the subject of immigrants and the penal system.

FIFTH THEME VICTIM CONCERNS ARE CRITICAL

I propose to approach this theme by reminding ourselves of the victim's perspective, that many victims have felt alienated by the process of the investigation and prosecution of their hurt; that their questions - why did this happen to me? - who did it and will they come back? - have been unanswered; that, at its worst, the criminal justice process has amounted to substantial secondary victimisation. All this is familiar to us both from the victims' rights movement and, in a different way, from the movement for restorative justice. There has been a great deal of interest in restorative justice but overall a disappointing degree of its practical implementation.

That said, it is important that I draw attention to the considerable progress in victim offender mediation in Austria, Belgium, Norway, parts of Germany and in the Czech Republic. The Czech service which works with offenders in the community carries the title Probation and Mediation Service and there is no question but that mediation is a major part of its work. There is also interest in the UK and elsewhere in conferencing as an approach to young offenders. Many of these approaches have been used particularly as a diversion from prosecution and the powers of the prosecutor in the continental European system are relevant here.

There is also victim-focussed work at the other end of the penal process and in the UK there is a requirement to check victim concerns before releasing certain serious offenders on parole.

It seems to me that it is politically of great importance not to have ever more dissatisfied victims. Great damage is done to the reputation of the criminal justice system by victims who are left feeling hurt or disregarded. So far in Europe the victims' agenda has not distorted the treatment of offenders as observed in the USA. But we need to accept that recognition of the impact of crime on victims has changed forever the way offenders are seen and treated.

Why is practice development in the implementation of restorative justice approaches often disappointing? Here I am indebted to a presentation at a CEP workshop in Prague in May 2003 by Ivo Aertsen of the Catholic University of Louvain in Belgium and of the European Forum for VOM and Restorative Justice (*a link to their website can be found on the CEP website*).

He made a number of observations about obstacles to development including the following:

- organisations with an offender focus often have problems engaging with the victim's perspective.
- there can be a conflict between a social work rehabilitative paradigm and a restorative justice participatory one
- there is a need for the community to be more visible in the process as is the case in Norway
- actuarialism and managerialism can be inimical to empowering the victim which means loosening control and accepting unexpected outcomes.

SIXTH THEME ARE THERE ALTERNATIVES TO PRISON?

In countries considering introducing or expanding community sanctions the case is commonly made for them as alternatives to prison with unarguable advantages in terms of cost and humanity. There is, however, a clear difficulty in achieving a displacement effect. It is clear to me that

there has been great progress in the effectiveness of probation services accompanied by increases in use of prison in many European countries where there has been no increase in crime.

England and Wales offers a sobering example of a well-established and well-funded probation service supervising very large numbers of offenders while the prison population grows relentlessly. This is the current position in many countries in Europe including some with long traditions of progressive criminal justice policy such as Denmark and the Netherlands. The story from Finland has been seen as a classic example of a planned reduction in the prison population and this was accompanied by the introduction of community service. Finland set about, with notable success, to reduce its incarceration rate to the Scandinavian norm. What is clear from an account by Tapio Lappi Seppälä of how this happened is that the introduction of community sanctions was part of a much wider initiative. In an article in the June 2003 edition of the *CEP Bulletin* he sets out the things which he argues need to be in place if community sanctions are to act as genuine alternatives to prison. These include:

- legal barriers to net widening - in Finland only prison sentences may be commuted to community service
- clear implementation criteria for the courts probably on a statutory footing
- resources and proper infrastructure
- good control and supervision of those subject to community sanctions
- the offender's consent and cooperation - 'explicit and well informed consent is a highly motivating factor for the offender'
- issues of equality and justice require attention

- ‘the idea has to be sold over and over again’ to judges, prosecutors and the public.

My conclusion is that

the use of prison will only decrease if community sanctions are introduced as part of a wider initiative to reduce the use of prison requiring a clear statutory framework, political and judicial support and the absence of negative public reaction.

COLLABORATION TO REDUCE RE-OFFENDING

To relate all this to the subject of your conference I would observe that there is no place for the probation service as a kind of laboratory for working the wonders of What Works on its own, however fascinating the new science is. We need to work in collaboration with others and critically we need

- collaboration with politicians to define the business of probation in a changed political climate
- collaboration with prison and police services in the supervision of high risk offenders
- collaboration with community based organisations to secure social inclusion
- a wider still collaboration to recognise the victim’s perspective and to work with the principles of restorative justice.