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What is This?

Consumer society, commodification and offender management

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Abstract

This article aims to set current developments in 'offender
management' services in England and Wales and in Scotland within
the contexts first of a discussion of Bauman's analysis of crime and
punishment in consumer society and second of wider debates about
the commodification of public services. Rather than examining the
formal commodification of offender management through
organizational restructuring, 'contestability' and marketization, the
authors examine the extent to which the *substantive commodification*
of offender management is already evidenced in the way that
probation's *products, consumers* and *processes of production* have
been reconfigured within the public sector. In the concluding
discussion, they consider both some limitations on the extent of
commodification to date and the prospects for the containment or
moderation of the process in the future.

Key Words

commodification • consumer society • offender management
• penality • probation

Introduction

In a rapidly changing policy climate, the commodification of probation or
'offender management' has been understood and interpreted differently by
different actors in the penal system. For politicians and policy makers (even

those who at one stage expressed concern at the privatization and commercialization of state services), commodification seems to have become almost synonymous with innovation and reform—a necessary feature of recent governments' relentless commitment to the modernization and 'continuous improvement' of public sector bureaucracies. For private industry, the commodification of probation presents an evolving opportunity to share in and, perhaps more significantly, shape a market previously demarcated as 'off limits'. For many within the probation service, commodification presents yet another challenge which, at best, will likely result in the further emulation of the mechanisms of the market in service delivery and, at worst, will see the emergence of a thoroughgoing mixed economy which 'intentionally and systematically destroys the near-monopoly of the public sector, in order to institutionalize a permanently competitive—and in the Government's terms more desirable—environment' (Nellis, 2006: 55). For these reasons, the future forms and functions of the probation service in England and Wales are currently the subject of much needed speculation and debate (for several important recent contributions to this debate see Hough et al., 2006).

Necessarily, much of this discussion has been concerned with the imminent threat of what we might term the *formal commodification* of probation through contestability, marketization and further organizational re-structuring. However, this is not the main focus of this article. Here, we aim to set these developments within the broader context of the emergence of consumer society, illustrating the extent to which consumer society has already affected the *substantive commodification* of probation both as a penal product and as a penal process, largely within the state sector. To this end, the article begins with a brief discussion of Zygmunt Bauman's analysis of crime and punishment in consumer society. We then examine three key aspects of the commodification of probation and offender management services in the UK, exploring how probation's products, consumers and processes of production have been reconfigured. In exploring each of these themes attention will be given to key problems intrinsic to the commodification of probation and, in closing, to potential opportunities for the containment or moderation of that process.

Commodification, crime and punishment

For Bauman, consumer society is inherently individualistic and insecure; indeed, it compels its citizens to sacrifice collective security in the pursuit of individual liberty. Individualism is itself the source of insecurity not just because, in the absence of collective provision, it compels us to look after ourselves, but because of the inherently competitive nature of consumption which 'sets individuals at cross purposes, often at each other's throats' (Bauman, 1997: 39). Whereas societies focused on production found mechanisms to discipline and regulate citizens through their productive roles,

consumer society generates both new problems of and new anxieties about social order. Bauman (like Young, 1999) sees rising criminality as an '*inescapable* product' not of social and material inequalities per se, but of 'market seduction' which is 'simultaneously, the great divider and the great equalizer' (Bauman, 1997: 40, emphasis in original). Consumer society 'integrates-through-seduction'; it creates common desires and it functions through high consumer demand, but because some are denied the means to satiate the desires thus created, it produces high levels of crime and disorder. Thus, for Bauman:

> The growing volume of behaviour classified as criminal is not an obstacle on the road to the fully fledged and all-embracing consumerist society; on the contrary, it is its natural accompaniment and prerequisite. That is so, admittedly, for a number of reasons; but I propose that the main reason among them is the fact that those 'left out of the game' (the *flawed consumers*—the unfulfilled consumers, those whose means do not measure up to the desires, and those refused the chance of winning while playing the game by its official rules) are precisely the embodiment of the 'inner demons' specific to the consumer life.
>
> <div align="right">(1997: 41–2, emphasis in original)</div>

For our purposes, the most important aspect of Bauman's analysis relates to how consumer society, for both instrumental and expressive purposes, goes about 'disarming, disempowering and suppressing' these 'flawed consumers' in and through the criminal justice system:

> The impotent, indolent players are to be *kept outside the game*. They are the waste-product of the game, but a product that the game cannot stop sedimenting without grinding to a halt and calling in the receivers. Also, the game would not benefit from halting the production of waste for another reason: those who stay in the game need to be shown the horrifying sights of (as they are told) the only alternative—in order to be able and willing to endure the hardships and the tensions which life lived as play gestates.
>
> Given the nature of the game now played, the hardships and misery of those left out of it, once treated as a *collectively caused* blight which needed to be dealt with by *collective means*, can only be redefined as individual crime. The 'dangerous classes' are thus redefined as *classes of criminals*. And so the prisons now fully and truly deputize for the fading welfare institutions.
>
> <div align="right">(Bauman, 1997: 41, emphases in original)</div>

The very broad sweep and the dystopian tone of Bauman's analysis has been rightly criticized both for being insufficiently differentiated in relation to varied forms and socio-cultural contexts of consumption (even within western societies) and for underplaying countervailing dynamics and means of resistance. None the less, many of his themes resonate through contemporary discussions of crime (Young, 1999) and punishment (Garland, 2001) in general, and in the emerging literature on the commodification of specific penal services and practices. Precisely because it seems, in some

senses, counter-intuitive to talk of *consuming* punishment, the field of penality represents a particularly interesting site within which to examine both processes of commodification and means of resisting them. However, to date discussions of the commodification and the consumption of penality have tended to address mainly the privatization or contracting out of penal services. Recent articles have discussed, for example, the rise of private prisons (Feeley, 2002; Genders, 2002), security and policing (Loader, 1999; Lynch, 2002) and the development and administration of new surveillance technologies (Feeley, 2002; Nellis, 2003, 2006). Although the impact of consumer society (through commodification) is easiest to identify where whole services are being contracted out to private providers, as for example in the cases of private prisons, prison escorts, private security and electronic monitoring, processes of commodification also operate *within* the state sector through the disciplines of managerialization, marketization and standardization employed in the process of developing mixed economies of penal provision (McLaughlin and Muncie, 2000). The possibility of such an ongoing process of *substantive* commodification is implicitly recognized by Leys (2001), in his analysis of governments' push to commodify services traditionally deemed 'non-market spheres'. Leys argues that the process of commodification is complete when four conditions are met:

1. The services produced must be changed into commodities—that is they must be 'broken down and "reconfigured" as discrete units of output that can be produced and packaged in a more or less standardised way' (2001: 84).
2. There must be a change in public understanding of the service, so that it is regarded as something whose value is comprised only of use-value to its consumer, which value, Leys argues, should also be large enough to justify its price.
3. Commodification must be accompanied by a redefinition of the nature of work, so that an existing labour force is redefined as 'wageworkers producing commodities to generate a surplus for stakeholders' (2001: 84).
4. Governments will take steps to minimize the risk that is borne by private firms as they enter into newly marketized spheres.

With this in mind, we now turn to an analysis of how far the substantive commodification of probation *within* the state sector has progressed.

Products[1]: what is probation selling?

What Garland has referred to as 'the crisis of penal modernism' (2001: 53) plays a central role among the multiple and diverse forces underpinning the commodification of probation. The failure (perceived or otherwise) of the modernist project's grand rehabilitative ambitions resulted in a profound loss of faith in the legitimacy of the traditional aims and purposes of probation (among policy makers if not practitioners (Vanstone, 2004)). In terms of public sensibilities, Garland (2001) argues that penal welfarism has been

eclipsed in large part because of the decline of support for its measures among the middle classes, now increasingly insecure as they navigate the risks and uncertainties of late modernity. In this context, and given Bauman's (1997) similar analysis of the decline of collective provision and the privatization of risks, it becomes clear why probation's traditional justification—as a means of reclaiming or helping disadvantaged people through rehabilitation, in all of our collective interests—has lost its cultural purchase. Although rehabilitative and socially inclusive probation *practices* survive, they are increasingly subsumed by and subordinated to policy discourses that increasingly stress that probation's intended product is 'reduced re-offending' (Scottish Executive, 2004a, 2004b). For many managers and practitioners working within the context of an insecure society, the pursuit of reduced re-offending in fact re-legitimizes helping offenders, focusing on the relational aspects of their work and setting individual change processes within their wider social context (Robinson and McNeill, 2004; see also O'Malley, 2004; Hannah-Moffat, 2005). However, while there is certainly evidence of welfarist concerns and practices surviving in the pursuit of reducing re-offending, it is perhaps more accurate to conceptualize rehabilitation in this reconfigured field less as an end (or product) in its own right and more as a means to an end (or as a 'process of production'—more of which later). As Lewis observes:

> The key texts [of the new penal policy] give the impression that rehabilitation is just one means of achieving 'the overall aim of crime reduction'. Rather than having a duty to provide rehabilitation then, the state may decide to do so if such strategies are deemed the most likely means of reducing recidivism.
>
> (2005: 126)

Within this discursive reconfiguration focused on reducing re-offending, probation services' more traditional preoccupations with the production of saved, cured and, more recently, rehabilitated offenders (see McWilliams, 1983, 1985, 1986) are reshaped and subsumed within the promotion of a 'new', or at least newly super-ordinate, product; the promise of public protection (Criminal Justice and Court Services Act, 2000; Justice Department, 2001). Significantly, this product is designed primarily to appeal to and to reassure society's 'non-offending' citizens. However, despite the broad consensus which now appears to surround public protection as probation's chief purpose (McCulloch, 2004; Robinson and McNeill, 2004) there remains some uncertainty—or as Robinson and McNeill (2004) observe, 'elasticity'—around what precisely 'public protection' means. First, there is the issue of which members of society are to be included within probation's notional 'public'. Does it relate to all 'citizens' (a problematic concept in itself), or does it refer primarily to victims and future victims of crime? Moreover, are offenders to be permitted access to and inclusion within this consumer grouping? Second, and from a different perspective, we might ask what precisely is being promised in this offer of 'protection', and is it something which probation, even in

partnership with others, has the capacity to deliver? For the time being these questions have been largely silenced by a climate in which the *promise* of public protection has become almost more important than the product itself. This is perhaps unsurprising, for as Goldman observes, in a society increasingly structured by commodity relations, 'what a product stands for is more important than what it is' (1992: 19).

Given Bauman's analysis of the pervasiveness of insecurity within consumer society, probation has little choice but to stand for the promise of protection, but the question remains open as to what kind of protection and which mechanisms of protection it can or should promise to deliver. Because most of the academic, policy and practice literature about probation and public protection focuses on the technicalities of delivering on this objective more effectively, much of the debate rests on an implicit (and highly optimistic) assumption that the public will *feel* better protected by a more effective service. Of course, as recent research on high-crime communities and public punitiveness suggests, there is no straightforward relationship between experiences of crime and attitudes to punishment (Bottoms and Wilson, 2004). Recognition of the need to address directly insecurity and anxiety about crime at the local level underpins the use of high-visibility patrols, the targeting of 'signal crimes' and the development of informal controls through communities that characterize 'reassurance policing' (Innes, 2004). If, as Bottoms and Wilson (2004) suggest, probation were to target these same insecurities and anxieties, in part by responding to signal crimes with 'control signals', then perhaps the measure of its success would not necessarily be communities that were 'objectively' better protected from crime, but rather that communities were subjectively less anxious about crime and, more specifically, less anxious about the management of offenders within the community. Put simply, it might be that probation's intended product should not be communities that are objectively better protected, but rather communities that *feel* safer. At the practical level, the implication that probation would need to engage more visibly and more effectively with local communities raises interesting possibilities, as well as significant problems (Dickey and Smith, 1998).

In the absence of the development of an approach to public protection and community safety focused on such forms of community engagement and involvement, what might seeking to protect and re-assure the public as consumers of probation mean in practice? Fundamentally, the service would have to weigh up the relative merits of two core strategies; one involving the promise of producing more effectively controlled and contained offenders in the community, the other offering to produce more effectively changed or rehabilitated offenders. While these two approaches are neither incompatible nor mutually exclusive, they do suggest divergent emphases for the service and they make different kinds of appeals to the public as the service's consumers. Community-based control appears to offer a form of protection that is more immediate and more reliable but which is only as good as the technologies for surveillance and enforcement on which it

depends; moreover, it offers little prospect of longer-term protection when the control measures are removed. Change-based forms of protection are more incremental and perhaps less reliable in their short-term effects, but where they work they may offer better protection in the longer term.[2] However, as Bauman's analysis suggests, the relative appeal (or lack of appeal) of each of these strategies is likely to be determined less by rational calculations of long-term cost-effectiveness, than by the more urgent and more subjective need of consumers to feel safer now. In any event, existing research on public attitudes to community penalties (recently reviewed by Maruna and King, 2004) tends to suggest that neither of these strategies represents a strong sales pitch for probation managers. Indeed, there is evidence that the wider public are frankly sceptical of probation's capacity to protect and are somewhat ambivalent, at best, about the complex notion of rehabilitation.

Even leaving such public scepticism aside, as Robinson and McNeill have suggested, there is a more fundamental 'paradox at the heart of public protection' (2004: 293). Successfully selling an offer of protection *from* offenders simultaneously depends upon and seeks to address the public's fear *of* offenders. In turn, the ever more intrusive and demanding measures imposed on offenders in pursuit of protection (intensive supervision, tagging, partnership working and so on) serve only to confirm the existence of a threat, the potency of which can only be partly mitigated, even by the best policies and practices. Thus, when research evidence of *general* effectiveness is set against inevitable but spectacular 'failures' to protect in *specific* high-profile cases (consider, within the last year or so, the murders of Marian Bates, Mary-Ann Leneghan, John Monckton and Naomi Bryant by offenders under supervision) the credibility of agencies of protection must suffer, increasing public anxiety and diminishing public trust. Particularly when set against a backdrop of penal populism, this dynamic has driven both policy makers and perhaps the leaders of these agencies in the direction of ever more coercive, constraining and incapacitating methods of protection (see also Rutherford, 1998) in order to sustain popular, political and fiscal support for their activities. Thus there is an inherent dynamic towards control and containment within the prioritization of public protection as probation's overarching purpose or intended product. In Bauman's (1997) terms, appealing to and thus reinforcing public insecurities may prove 'seductive' for consumers, but it will ultimately enflame desires that cannot be satisfied by probation services (at least as we currently conceive them), necessarily resulting in the supplanting of such services by more satisfying and more certain means of controlling 'flawed consumers'.

Rather than ratcheting up the technologies of control to which they subject offenders therefore, probation services might be better advised to confront the challenge of finding ways to moderate consumer demand by fostering more modest and realistic expectations about the extent of protection that they can provide. Optimistically, we might hope that, in due course, recognition of the paradox of protection may drive both policy

makers concerned with the burgeoning costs of increasingly incapacitating sanctions and probation managers in this direction. Indeed, there are alternative futures for probation, even within an increasingly commodified penal field. As well as working to moderate expectations of its public protection 'product', probation services might also seek to offer other products. Two obvious possibilities might be the promise (to consumers) of producing offenders who had been appropriately punished (in the community) and the promise of producing offenders who have been held to account for making good in other ways (for example, through restorative processes). Of course, the first of these options was indeed imposed, in England and Wales, on a reluctant service in the mid-1990s (Worrall, 1997), but the available evidence about whether the wider public ever bought into community penalties as a robust form of punishment is ambivalent at best. Reviewing the research evidence on this question, Maruna and King pithily observe: 'No matter how tough the restrictions, community penalties simply cannot compete with the iron bars, high walls and razor wire of the prison in the battle for being the "toughest"' (2004: 104).

In speaking both to issues of punishment and protection, and more generally to both the instrumental and the expressive aspects of penal sanctions, this quotation neatly sums up the difficulties of marketing probation against other sanctions which are more visible in various forms of cultural discourse (news media, literature, television and films) and, therefore, more present in the public mind. However, there are recurring themes in these same forms of cultural discourse that could lend themselves to the re-marketing of probation. Intriguingly, Maruna and King's (2004) recent work on public attitudes points to the significance of belief in redeemability as a key predictor of support for community penalties. Earlier public attitudes research suggests that the related notions of restitution, restoration and reparation—both as punishment and as evidence of reform—seem to be penal processes and products that the wider public might be willing to buy into (see, for example, Mattinson and Mirlees-Black, 1998; Stead et al., 2002). While Bauman's (1997) analysis might suggest that, in consumer society, insecurity is ultimately a more powerful driver of penal consumption even than any need to see justice done in some positive sense, the latter need, when allied to the remarkable durability of our common cultural interest in 'redemption stories', may leave open the possibility of an ongoing market for probation-as-restitution-redemption.

Consumers: who is buying probation?

If the above discussion has tried to explore what products probation might sell, then the logically proceeding question is: who is buying these products? In the discussion above, we have tended to write as if the public are the presumed consumers of probation services. However, as others have noted (Williams, 1999; Morgan, 2003), the concepts of customer or consumer sit

easily neither within the context of criminal justice in general nor within the context of probation in particular. Morgan suggests that we would do better to ask: 'who does the probation service principally have to satisfy in order that its services continue to be demanded?' (2003: 8). One might also ask who is intended to benefit from provision of these services? Part of the answers to these questions is apparent in the above discussion. In the commodification of probation's purposes we very clearly see the ascendancy of an 'insecure public' who now occupy the position of the service's primary and most 'legitimate' customer. Thus, in the Home Office (2004) response to the Carter report (Carter, 2004), it is clear that the National Offender Management Service (NOMS) exists to provide a *service* to the law-abiding public both by punishing offenders and by reducing re-offending (Home Office, 2004: 4). As its name makes clear, this service exists not *for* offenders, but to manage 'them' for 'us'. In Bauman's (1997) terms, NOMS has been created to help consumer society to manage its 'inner demons'. But beyond this very public polarization and dichotomization of the public *versus* offenders, there are others who might be considered legitimate consumers and beneficiaries of probation.

For Morgan (2003), sentencers constitute probation's primary and only 'real' customers, on the basis that it is they to whom probation services are promoted and offered:

> Like suppliers, or producers, in any commercial market place, the probation service, steered by its Home Office budget-holder, seeks to condition sentencer opinion. New sentencing options are introduced or withdrawn, by statute. New programmes are made available … and programmes are *branded*.
>
> (2003: 10, emphasis in original)

While Morgan (2003) is right to identify sentencers as *a* core customer, in fact their position as consumers of probation is peculiar and problematic in many respects. On the one hand, it is clear that sentencers are, by definition, the arbiters of the public interest in making decisions about sanctioning and that they therefore control the *demand* for community penalties; in this sense at least, sentencers are also, for practical purposes, the pre-eminent judges of the *value* of these services. However, despite the provisions of section 170 of the 2003 Criminal Justice Act (which requires the Sentencing Guidelines Council in England and Wales to take into account the costs and effectiveness of different sentences), in so far as sentencers are purchasers of community penalties, they are purchasers with little or no concern about *prices* and for whom services have no real *cost*. Another key peculiarity of the sentencers' position is that s/he need not necessarily be particularly concerned with the effectiveness or quality of the services that s/he consumes; if a sentencer is operationalizing a primarily expressive or retributive approach (as many are when they impose prison sentences—see Hough et al., 2003), then the consequences of the punishment need not be of much concern, so long as the penalty is just, proportionate and sends 'the right message'.

By contrast, the Home Office in England and Wales (and the Scottish Executive in Scotland) concerns itself very much with the costs, prices, quality and effectiveness of sentences. It is the State after all which, using tax payers' money, allocates resources to probation services; one might argue then that, at the macro level, it is the State that is the primary and most powerful customer or consumer of probation services (and of all justice services). Thus, though the individual sentencer selects a particular sentence in a given case, to a significant extent the State governs the sentencer's range of options, whether by statute, through guidelines or by determining which options to make available and at which levels in each locality. Indeed, the increasingly frequent interventions of government within the field of criminal justice might suggest a Baumanesque frenzy of consumption of penality *by* the State. Thus, despite the suggestion that the governance of crime in late-modern neo-liberal states involves forms of responsibilization which fundamentally alter the State's role from 'rowing' to 'steering' in terms of crime *prevention*, the State's position in relation to *punishment* is different:

> … the 'minimal state' of neo-liberalism—the state which is … in some degree 'hollowed out' by globalization—is also a penal state in ways that are often more intense and more politically central than was the case for its predecessor 'state regimes' of the post-war period.
>
> (Loader and Sparks, 2002: 95)

As Bauman (1998) argues, deprived by globalization of control in other areas of government, neo-liberal states collude with and encourage the associations between insecurity and criminality precisely because these associations allow the weakened state to bolster its flagging legitimacy by flexing its atrophying muscles against flawed consumers.

In this context, an unlikely fourth candidate for consumer status would be 'flawed consumers' or offenders themselves. Although probation has always been a mediating institution (Davies, 1981), working for both society and offenders and operating, Janus-faced, in the space between them, we have noted already the ways in which probation's relationship with offenders has been reconfigured. Thus, earlier conceptions of the offender as a legitimate individual subject, service user and even partner (Bottoms and McWilliams, 1979) have been supplanted by a new discourse in which the offender is re-branded as an object of risk-reducing intervention. That said, a number of recent studies would suggest that probation agencies and, more significantly, probation practitioners, have been less than wholesale in their adoption of centrally prescribed reconstructions of the probation officer/offender relationship (Robinson, 2002, 2003). Indeed, while still HM Chief Inspector of Probation, Morgan (2003) acknowledged the still prevailing insistence among probation staff to construe offenders as 'core customers' of probation, or, at the very least, 'stakeholders', 'beneficiaries', 'consumers' or 'clients'. Despite this, the drift in both policy and practice is towards constructing the 21st-century offender as a predetermined set of risks/needs, at which a discrete suite of rationed intervention products are then targeted and evaluated.

Driven by the complementary rationales of 'what works?' and managerialism, this convenient commodification of offenders from legitimate and complex individuals to standardized 'portable entities' is increasingly apparent within contemporary probation practice and, as Robinson argues, reveals a process of production more akin to 'pass-the-parcel supervision' (2005: 312) than skilled professional intervention. In this context, the offender is quite clearly neither subject nor consumer but rather the object or 'material' on which the process of production operates. As Morgan clarifies:

> Offenders can scarcely be considered the customers of the probation service. It is not they who decide whether or not to have contact. Others do that for them. Offenders are instructed to comply. They constitute the *material* on which the service works. If the probation service can be said to have a *product*, it is 'changed' or 'controlled offenders'.
>
> (2003: 9, emphases in original)

While for many (see, for example, Pease, 1999; Hudson, 2001; Mantle and Moore, 2004), Morgan's depiction of offenders might reflect the 'corruption of care' now considered to be firmly established within the probation service, for Morgan, to gloss over this reality reflects the 'seriously woolly thinking within the probation service'; which, if allowed to prevail, severely 'prejudices its future operation' (Morgan, 2003: 8).

Arguably, such developments further attest to the impact of consumerism on probation policy and practice—most notably through processes of individualization. While it might have been hoped that the trend towards individualization could have pushed the probation service towards a more participative, needs-led and individually tailored service, the reality, at least for offenders, has been bleaker: offenders have been placed in a lose–lose situation. As Bauman (2002) observes, individualization is characterized by two evolving trends; that of the disintegration of previously existing social forms and collective provisions (such as class, family, neighbourhood, state, etc.) and the emergence of a new construct in which 'social' responsibilities, controls and constraints are now placed very firmly upon individuals (regardless of whether those individuals have the opportunity or capacity to deploy these new found options or responsibilities). In this brave new world, offenders now find themselves grappling with the full weight of their status as flawed consumers. On the one hand, they find themselves culpable for their own 'offending' actions—past, present *and* future—and thus for their share in the 'blight' of crime generally. On the other hand, they are charged with the challenge of 'making good' in an increasingly punitive, competitive and regulated environment; an environment which, by affording them neither the resources or supports necessary for participation as citizens (Vaughan, 2000)—far less change—not only actively excludes them from 'the game being played' but effectively removes any incentive to play by its rules. While the contradiction and disconnection at the heart of this penal trend may be familiar in our late-modern landscape, it would appear to be yet another step towards a penal climate in which concepts such as

justice, inclusion and reintegration become the casualties of the insecurity that lies at the heart of consumer society.

The process of production

There are many possible examples of the commodification of probation's processes of production and space does not permit the detailed analysis required to do justice to the depth and breadth of this process. However, in an attempt to capture the main features of this area of development, our attention focuses on two complementary trends currently evident in probation's evolving processes of production—that of, 'the practice of managerialism' and 'the managerialization of practice'.

The development of managerialism within probation pre-dates the current administration but has arguably reached its apotheosis as part of New Labour's broader modernizing project, a project that has sought to address the perceived inadequacies of semi-autonomous, inefficient and allegedly self-serving public sector agencies. Public sector reform under the Conservatives in the 1980s and 1990s heralded a new era of centralized control and bureaucratic governance, operating through the disciplines of the New Public Management; under New Labour the relentless pursuit of modernization since 1997 has refined rather than replaced managerialist disciplines (Newman, 2000). Key features of the progress of managerialism within probation have included the early erosion of the service's social work (vis-a-vis welfare) affiliations in favour of an organizational culture and framework more malleable to the late-modern penal discourses of punishment and control; the introduction and revision of national standards (in England in 1992, 1995 and 2000 and in Scotland in 1991, 1996 and 2000) and the related 'audit explosion' which accompanied, and more importantly secured, the routine implementation of this new framework of governance; through to more recent innovations, not least the emerging National Offender Management Service itself.

In addition to these '*meta*-commodifications', the probation process has also seen the introduction of numerous '*micro*-commodifications' to its methods and technologies of production—a process which might helpfully be construed as 'the managerialization of practice'. Examples of these new technologies include the introduction, adoption and increasing reliance upon: practice checklists, standardized procedures, risk assessment tools and accredited programmes—each vying to provide consistency and assure 'security' in areas of production where consistency, security and certainty of outcome cannot be guaranteed. As Robinson (2003) observes, this increasingly technicized and reductionist process of production has been seen by many as ushering in a new climate of ideological and technological 'proletarianization'—a process which sees the increasing devaluation of practitioner expertise and influence in the process of production, in favour of prescribed, standardized and routine practices.[3] Further examples of the

managerialization of practice include the recent ascendancy and adoption of select 'knowledge' structures—most visibly demonstrated in the adoption and dissemination of 'what works' (Robinson, 2001)—and the related reliance in policy and practice on bought-in external 'expertise' (McNeill, 2001). If, as seems likely, increasing levels of centralized political control will become apparent in NOMS, these trends seem likely to continue and develop—inevitably advancing the continued subordination of 'experiential knowledge'—that is, 'knowledge' arising from the experience and practice wisdom of practitioners and offenders themselves.

The net effect of the managerialization of both probation services and probation practices is an increasingly micro-managed process of production in which officially prescribed 'tools', 'programmes' and 'knowledges' (each now products in their own right), come to be bestowed with more invest-ment, status and 'trust' than the practitioners—or 'obedient functionaries' (Nellis, 2003)—reluctantly entrusted to use them. It requires then only a very small leap of the imagination to conceive how such processes might lend themselves to a future service in which the component parts of the production process, now more discrete and more mechanized, are more readily outsourced or contested.

Problems in commodifying probation

On the basis of the above discussion it might appear that the commodifica-tion of probation and offender management is already well advanced. At the outset, we noted Leys' (2001) four preconditions for concluding that a process of commodification has been completed—the services produced must be changed into standardized and discrete units of output; public understanding of the service must be altered so that its value is comprised only of use-value to its consumers; the nature of work itself must be re-defined so that an existing labour force is recast as 'wageworkers producing commodities to generate a surplus for stakeholders' (2001: 84), and; gov-ernments must have taken steps to minimize the risk that is borne by pri-vate firms as they enter into newly marketized spheres.

The immediately preceding discussion of probation's 'processes of pro-duction' might suggest that the first and third of these conditions are close to being met to a significant extent, both in the increasing standardization of practice and, albeit to a lesser extent, in the reconfiguration of the workforce, even if the nature of their surplus production remains unclear. The second condition is more problematic, largely because, as our discussions of proba-tion's products and consumers revealed, there remains a considerable degree of debate and uncertainty both about probation's 'use-value' and about who might constitute its consumers. In respect of the fourth condition, the prece-dents in relation to the privatization of prisons and the use of the private sec-tor in electronic monitoring provide ample evidence that this condition is likely to be met in relation to offender management more generally.

However, to assume that probation is now a wholly commodified enterprise, or even that its commodification is nearing completion, is to ignore the numerous problems and points of resistance equally evident in this evolving process. For example, a number of problems can be associated with the buying and selling of 'punishment', not least the marginalization of fundamental issues of morality, social justice and social citizenship in the 'competitive fray' of the market (Loader, 1999; Leys, 2001). As Loader observes, with reference to the commodification of policing services, though with equal relevance to probation:

> The more the police resort to market imperatives as a means of reconfiguring police–public relations, the more difficult it will be for them to speak and act as the ultimate guardians of order and security; to stand above the competitive fray and appeal successfully to other principles and loyalties.
>
> (1999: 377)

From another perspective, and as Bauman's (1997) analysis of consumer society might suggest, Feeley (2002), Lynch (2002) and Vaughan (2002) argue that far from ushering in a new era of efficiency, effectiveness and responsiveness, the ascent of consumerism and the related commodification of corrections has *contributed to* a notable increase in public punitiveness, an exploitation of public fears and an ever expanding, unregulated and entirely profit driven, industry of social control—which, they argue, has expanded not only the control functions of the State but also its associated costs. Perhaps the most obvious example in this respect is the ever expanding and largely uncritical use of electronic monitoring—a sentencing option initially sanctioned as an alternative to punishment for medium to high-risk offenders though increasingly emerging as the private sector panacea for almost all offenders at almost every stage of the criminal justice process (Scottish Executive, 2004b).[4]

Beyond the realms of punishment and control, the commodification of probation poses considerable problems when considered in relation to the continuing objective of 'producing' changed offenders. This much coveted, though defiantly resistant, 'individualized outcome' seems to be far from amenable to the ministrations of cost-effective, standardized and 'offence-focused' technologies of production—each of which it would seem are designed to produce measurable but largely inconsequential 'generalized outputs' (such as, programme attendance and completion) (Garland, 2001). Indeed, as our knowledge of the complex process of desistance grows, what emerges is an inherently subjective, interactive and often perilous process which, if valued, will need to be supported accordingly (McNeill, 2006). Additional problems can be identified in the longstanding challenge of attributing 'cause' and 'effect' within the individual change process, including the ability to distinguish between technical and moral variables in supporting change. There are good grounds, for example, for supposing that the rendering of the offender as a mere object of increasingly standardized interventions, robbed of their relational and normative qualities, will progressively

undermine the legitimacy (from the offender's point of view) of probation work and thus its potential to support desistance (see Bottoms, 2001; McNeill, 2006). While it may be tempting in a punitive climate for probation services to strip offenders of their status as 'clients', 'consumers' or even 'stake-holders', given the problems of programme attrition in particular (Kemshall et al., 2002) and non-compliance more generally (Hearnden and Millie, 2004; Hedderman and Hough, 2004), the politically required neglect of the question of 'what's in it for offenders?' is paradox-ically likely to jeopardize significantly its future success.

A similar argument can be made in relation to practitioners who, after two decades of 'reform', have inevitably become demoralized, inward looking and, to some extent, disengaged from the prescribed probation enterprise (Farrow, 2004). While such characteristics may be acceptable, even desirable, in the clockwork administrations of punishment and control, they are unlikely to be conducive to the attainment of the already elusive product of changed offenders. At the time of writing, few, if any, of these issues appear to have been acknowledged, far less addressed, in recent developments.

Conclusions

In summary, we have suggested that rehabilitation has survived the advent of consumer society, but not as an intended product in its own right. Rather, it has become a mere process of production; one among many techniques for reducing re-offending and thereby delivering public protection. However, *over-selling* the promise of public protection poses serious risks for offender management services by creating a dynamic that drives up consumer demand for more controlling and incapacitating measures. Closer examination both of the extent of protection that probation might properly promise and of the mechanisms of protection that it might properly use is required.

More generally, by positioning the public as the notional consumer of probation, the State has created and exploited an increasingly antagonistic dichotomization of the 'law-abiding' public and offenders. The balance that probation services have historically tried to maintain, as 'mediating institutions', between offenders' needs, rights and interests and the wider public's needs, rights and interests, seems in serious danger of being lost in this process. One corollary of this un-balancing has been the objectification of offenders as the 'raw material' *on which* probation works, rather than one of the intended beneficiaries *for whom and with whom* it works. As we have seen, this fundamental shift does not merely exclude the offender as Bauman suggests; rather, through the process of individualization, it installs a far more demanding (and far less rewarding) relationship between the State and the offender in which the obligations of conditional citizenship flow princi-pally *from* the offender *to* the State rather than vice versa. In terms of the technologies and processes imposed on offenders as the raw materials

increasingly compelled to engage in this exacting process, probation has been managerialized in two senses; first, its management and organization has been subjected to managerial disciplines and, second, its practice processes have become increasingly prescribed and standardized in the pursuit of consistency, quality and effectiveness. However, there is some evidence that these very disciplines have already begun to frustrate their own ends, principally because the processes of change through which they seek to protect the public are inherently individualized and affective; requiring human warmth and moral legitimacy as well as technical competence. Relegating these features of intervention to the margins seems to have left both practitioners and offenders predictably disaffected. Thus, the net effect of the commodification of production has been to undermine the pursuit of positive changes in the lives and behaviour of offenders.

Ultimately, it may be that, in the field of offender management at least, a 'change' product is less reducible to routine production processes than a control or punishment product. While this may represent an opportunity for the containment or at least the moderation of the commodification of probation's practice processes, in a penal climate where the commodities of 'change' and 'rehabilitation' seem to possess declining appeal, the greater danger is that the market solution to these problems will be simply to dispose of an overly troublesome product. As Bauman observes: 'the question of "rehabilitation" is today prominent less by it contentiousness than by its growing irrelevance' (2000: 210). Though this is a chilling observation, it need not lead to a loss of faith in the potential of probation services to continue to offer genuinely rehabilitative services to offenders. Rather, Bauman's warnings about the marginalization of rehabilitation and the intensification of insecurity in consumer society should direct probation's supporters to look within and beyond public protection discourses for opportunities to preserve the best of the service's past. The strongest glimmer of hope that we discern in this regard is to be found in the emerging evidence that, through the development and exploitation of enduring belief and interest in people's redeemability, probation services might be able to recast themselves as producers of community justice, delivered through constructive restitution, reparation and restoration which, in the longer term, may make communities safer and which, if located within effective forms of community engagement and development, may also make communities *feel* safer. In an increasingly individualistic consumer society, it may be that these kinds of processes represent the only real chance of reintegrating 'flawed consumers'.

Notes

This article is based on the authors' contribution to a panel on 'The Commodification of Probation', which took place at the British Society of Criminology's annual conference in July 2005 at the University of Leeds. We are grateful to Anthea Hucklesby for the invitation to participate in this panel discussion and to the other contributors for their stimulating presentations.

1   To talk of 'services' rather than 'products' might seem to reflect better the similarities between probation (and other social) *services* in contrast to the obvious differences between probation and, for example, manufacturing industries. However, we persevere with the term product because we are primarily interested (in the context of Bauman's analysis) in what it is that the service ultimately delivers as a product to and for its consumers. In this sense, all service industries none the less aim to generate, to market and to sell 'products'; arguably the product is not the service per se, but rather whatever the service produces within and for the consumer.

2   We are grateful to Mike Nellis for pointing out the significance of this important distinction and for his other helpful comments on an earlier draft of this article. Richard Jones, Barry Vaughan and an anonymous reviewer also provided very useful feedback on an earlier version.

3   However, it should be noted that Robinson's study—drawing on a case study examination of the implementation of a structured risk/needs assessment tools in two area probation services—concludes, albeit with some caution, that the increasing use of standardized tools and technologies does not necessarily herald the deprofessionalization of probation and its practitioners.

4   That said, in the Scottish context, it has been interesting to note just how sceptical the press and the public have been (fairly or otherwise) about the work of Reliance, the only private sector firm significantly involved in the justice system, through the provision of prison escorts and electronic monitoring. Indeed, high-profile 'failures' in relation to a convicted murderer who escaped during a prison escort and in relation to a tagged offender who committed a murder seem to have created (or sustained) a widespread presumption against the capacity of the private sector to provide effective public protection. Indeed, within the past year Reliance has lost its contract with the Executive and has been replaced by Serco.

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