



ESRC Seminar Series

‘The Third Sector in Criminal Justice’

Seminar Three – 13th September 2011

‘Penal Reform and Service Provision

University of Birmingham

Report

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Programme

9.15-9.45	Registration and refreshments
9.45-10.00	Introduction to the seminar three <i>Anthea Hucklesby (University of Leeds)</i>
10.00-11.15	Reflexive engagements: the evolving dynamics of penal reform and 'community/academic' involvements. <i>Kelly Hannah Moffat (University of Toronto)</i>
11.15-11.30	Refreshments
11.30-12.30	Access, Influence and Embrace: Penal Reform Organisations and the Big Society <i>Stephen Shaw (Former Prison and Probation Ombudsman)</i>
12.30-1.15	Lunch
1.15-3.15	Reconciling penal reform and service provision: views from the Third Sector <i>Juliet Lyon CBE (Prison Reform Trust)</i> <i>Paul McDowell (Nacro)</i> <i>Andrew Neilson (Howard League for Penal Reform)</i>
3.15-3.30	Refreshments
3.30-4.30	Penal reform, the state and civil society <i>Mike Nellis (University of Strathclyde)</i>
4.30	Close

Acknowledgements

Thank you to the Third Sector Research Centre at the University of Birmingham for hosting the seminar. Particular thanks go to Becky Berridge.

Introduction

This seminar, the third of six ESRC seminars on the involvement of the third sector in criminal justice was held at the University of Birmingham on 13 September 2011. The focus of the day was on the issues raised by the third sector's dual role in campaigning/penal reform and in service provision. The seminar also explored the issues and tensions raised by third sector organisations (TSOs) providing core correctional services. The event was attended by representatives from voluntary organisations, government departments, statutory bodies and universities.

Summary of Content

The diversity of the third sector was acknowledged throughout the day's discussions. TSOs differ greatly in size, history, remit and mission. In terms of campaigning work, some position themselves as 'critical friends' of the state whilst others adopt more radical positions. This diversity was seen as a strength of the sector, but has the implication that policy developments will affect different parts of the sector in different ways.

The possible implications of current government policy (including marketisation, payment by results and a greater role for the private and third sectors in service delivery) for the values of TSOs were raised throughout the day. Possible risks for TSOs were seen as cooption by the state and the blurring of boundaries between private and voluntary sectors.

The importance of localism and the role of smaller TSOs that deliver services to specific groups of people and campaign on local issues were stressed throughout the day. Despite the current rhetoric about localism and volunteering, developments in commissioning and payment by results were seen as favouring larger TSOs and partnerships with large private sector companies. Commissioning arrangements need to be constructed to 'let a thousand flowers bloom'.

There was strong agreement that the service delivery and campaigning aspects of the third sector go hand in hand. TSOs have always had this dual role. Running services and working with offenders and victims brings credibility with service users and with policy makers. It is also a way of identifying emerging concerns and ensuring that campaigners understand the position on the frontline. Furthermore, those who are delivering a service have a duty to speak up about the way that policy is translated into practice, identify when reform is necessary and attempt to shape policy and its implementation.

Reflexive Engagements: The Evolving Dynamics of Penal Reform and Community/Academic Involvements

In her presentation, Kelly Hannah Moffat (University of Toronto) began by warning her audience 'be careful what you ask for: you might get what you want'. She examined the impact of 20 years of campaigning on the provision for female offenders in the Canadian correctional service. She used the case of Ashley Smith, a 19 year old woman who killed herself in prison in 2007, to illustrate her argument and asked whether, despite the best efforts of many people, reform had failed.

A number of points were made in the presentation and subsequent discussion. Firstly, having advocated a gender-responsive approach to women in prison, campaigners become complicit in its shortcomings and in the impact of the institution on its implementation. For example, there may now be female prison staff undertaking strip searches, but strip searches continue. Women offenders in Canada may seek to go to a Federal prison (and, therefore, receive a longer custodial sentence) because gender specific improvements mean that these prisons are seen as providing better facilities and services.

The relationship between the penal system and campaigners/experts is complex. Experts are seen as bringing legitimacy to processes and programmes, but the selection of experts is rarely transparent. Involvement with the system limits an expert's ability for critique. Institutional protectionism can lead to denying critical experts access to institutions if they are likely to be challenging. Similarly, developments such as human rights legislation and the Gladue provisions (which require Canadian courts to pay attention to the specific circumstances of Aboriginal offenders), may be seen as risks to be managed rather than entitlements for defendants and offenders.

Access, Influence and Embrace: Penal Reform Organisations and the Big Society

Stephen Shaw (formerly Prison and Probation Ombudsman and chief executive of the Prison Reform Trust, now Chief Executive of the Office of Health Professions Adjudicator) argued that whilst TSOs could certainly be innovative, flexible and cost effective, they could also be ideologically inflexible and frightened by competition. The approach to the electronic monitoring of offenders in the UK was given as an example of the conservatism of the penal reform sector. He suggested that the advent of the 'Big Society' brings a number of opportunities for TSOs: traditional projects (e.g. accommodation and drug treatment), new projects (e.g. mentoring and circles of support) and, most controversially, working in partnership with the private sector. He identified the following challenges and contradictions for TSOs delivering criminal justice services: the potential for 'capture' (it is hard to campaign against a partner or funder) and the role of TSOs in delivering core criminal justice services rather than simply the 'nice bits' (like accommodation or mentoring). He also asked

why the private sector is considered less benign and less acceptable to engage with than the state.

The role of the private sector in the community as well as in custody was raised in the subsequent debate. If there is less money for custodial options and a focus on community disposals, then the private sector will be interested in community orders and interventions. Penal expansionism is possible in the community as well as in the provision of prison places.

Wider questions about the impact of private sector involvement in criminal justice were raised in discussion. Contrasting views were expressed. Some speakers argued that the need to make a profit was a key difference between TSOs and private sector companies. Others suggested that the difference between the private sector and the third sector, where organisations are also required to survive and grow, was not so clear cut.

Reconciling Penal Reform and Service Provision: Views from the Third Sector

This session of the seminar was addressed by representatives from three TSOs: the Prison Reform Trust, Nacro and the Howard League for Penal Reform. The focus of the session was on the opportunities and threats to TSOs from current developments in criminal justice policy. For example, Andrew Neilson from the Howard League spoke about the concerns that TSOs may be used by large private companies as 'bid candy' (a way of making bids look more attractive to commissioners) and of the prospect that voluntary organisations could be drawn into uncharitable activity.

Payment by results (PBR) emerged as an important theme in this session. Slightly different models of PBR are now being piloted in England. The first projects are the social impact bond scheme at HMP Peterborough, a scheme for prisoners released from HMP Doncaster and schemes based on justice reinvestment principles in Greater Manchester and London. Discussion focussed on some possible problems with PBR including the difficulty of defining and measuring results in the criminal justice setting and the potential for 'cherry picking' (giving providers an incentive to pick work that is likely to be measured as a success). One feature of PBR schemes can be that payment is made after the work has been done, making it hard for small organisations without the money required to launch a project to enter this market. Juliet Lyon (from the Prison Reform Trust) questioned whether the current arrangements for commissioning and contracting are up to the task of managing PBR. A number of contributors to the discussion made points about the values underpinning PBR, for example asking who has the power to define a 'result', how results achieved by small providers (like women's centres) can be measured and querying why it is necessary to pay for good practice with offenders.

By contrast, some speakers (including Paul McDowell from Nacro) argued for the potential of PBR to transform the way that services are delivered and reduce current high rates of recidivism. He argued that innovation was necessary as the current

system for offenders in the community does not work well. Other speakers acknowledged that PBR was a key policy of the current government and so organisations providing criminal justice services did have to find a way to make it work. Not all PBR schemes work in the same way and it may be possible to influence the way it is implemented in criminal justice.

Penal Reform, the State and Civil Society

In the final session of the day, Mike Nellis explored the development of the penal reform movement from the work of Elizabeth Fry to the present day and highlighted some important concepts and themes. He made the point that early penal reformers (including Fry and John Howard) were involved in both practical action and political influence.

This session considered the Christian roots of penal reform work and the influence of these values on the secular humanism that has been important in more recent approaches to penal reform. It also highlighted the links between penal reform work and philanthropy, with much early work being funded by wealthy individuals and the subsequent importance of grant making foundations. It identified that campaigning penal reform work now needs to reach the wider public rather than seeking to influence the political elite. The rise in campaigning by, and on behalf of victims of crime, has undermined any claims that it is only the rehabilitation of offenders that matters.

Mike Nellis concluded his presentation by considering some ways forward for penal reform. Drawing on Etienne Wenger's work on communities of practice and applying it to community justice, he suggested that offender management, a task now increasingly undertaken by a range of organisations, had become a community of practice by default but that this potentially offers a framework for developing coherent practice. Community justice is an approach that can incorporate the key ideas of localism, justice and community safety.