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The Marketisation of Rehabilitation: Some economic considerations

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Abstract

This paper considers criminal justice policy in English and Wales since the Transforming Rehabilitation, TR, agenda implemented in 2013. TR rested on the proposition that probation services are best provided in a market context. Motivated by profit and extrinsic rewards, private sector consortia, and their employees, theoretically act efficiently to deter and rehabilitate offenders from crime.

However, there is evidence that marketisation itself undermines the prospects of efficient social policy. Over-reliance on markets may undermine pro-social norms through emphasising individualism and extrinsic returns. Outsourcing is also associated with increasing inequality, which may also undermine pro-social norms. Further, the emphasis placed on self-interest in framing market-based incentive structures is associated with declining public welfare support for the economically marginalised and increased use of relatively expensive incarceration.

In application, TR proved unsustainable. The innovation involves increasing reliance on the para-state sector, in which private profits rely on public payment. However, the profits expected under TR fell short of expectations; in part due to changes in wider society. The early cancellation of TR contracts highlights the inflexible nature of such public sector procurement.

On the basis of theory and practice, we suggest a reconsideration of the government's position on probation and set out reasonable steps to address shortcomings in the current system.

1. Introduction

The England and Wales' criminal justice system is undergoing a period of rapid and unprecedented change. This process is informed by a body of political theory sometimes called neo-liberalism; that is to say, that body of theory emphasising market-based solutions to social and economic problems.

This paradigm, introduced into the UK political economic landscape as monetarism and/or neo-classical economics by Thatcher's Conservative government of 1979 (Hall, 1993) was mirrored by the Reagan administration's supply-side economics in the USA (Feldstein, 1986). It continued through the Blair years (Hall, 2011) and since through the continued emphasis on marketisation and privatisation and such programmes as New Public Management.

Here, we consider the use of marketised solutions in the criminal justice sector, particularly in the area of probation under the UK government's Transforming Rehabilitation, TR, agenda. TR was a market-oriented innovation which, it was argued, would achieve efficiency gains and cost savings in the criminal justice sector, particularly in probation. Despite the Ministry of Justice's stated commitment to evidence-based policy (Ministry of Justice 2014d: 3), TR was rolled out without being piloted. At the time of writing, however, it is clear it has failed to deliver on its promise.

In the following, we present a theoretical and practical critique of TR and suggest an alternative approach which might address some of the short-comings of the policy. In section 2 we give a brief history of TR and summarise the state of play of probation in England and Wales. In section 3 we contrast the incentive structures of the people, the public sector, and the corporate sector. We theorise the drive for marketisation in section 4, in particular considering matters of cost effectiveness, promoting innovation and localism. The negative social and moral impacts of marketisation are discussed in sections 5 and 6. The role of evaluation is discussed in section 7 and the implications of our analyses are presented in section 8. Section 9 concludes the paper.

2. A Brief History of TR

Under the UK Coalition Government (2010-15), early ideas on reform of the probation service envisaged a number of probation innovation pilot projects subject to Payment by Results and devolution of the commissioning of community offender services to the existing 35 Probation Trusts.

Under the provisions of the 2007 Offender Management Act (HM Government 2007), (initially) 42 free-standing local Probation Trusts were to be created. The act gave the Secretary of State power to commission probation services and allowed for the marketisation of whole trusts. The aim was to encourage new market entrants from the voluntary, private and public sectors (Ministry of Justice, 2012). Probation Trusts would continue to deliver services to high-risk offenders and could compete to run other services.

However, following a change of Secretary of State,¹ these approaches were discontinued (Bannister *et al.* 2016) for the more radical Transforming Rehabilitation, TR, strategy (Ministry of Justice 2013a, b). Probation Trusts were abolished and provision of the majority of community-based offender services were subcontracted. Work with high-risk offenders, assessments and court reports passed to a new (public sector) National Probation Service, NPS.

The TR strategy also extended offender services provision to 45,000 adult offenders released after serving sentences of less than 12 months. Those serving such sentences previously received no probation support on release. The Ministry anticipated the efficiency gains necessary to support such an expansion could be realised through marketisation (Ministry of Justice, 2013a: 5).

Under TR, innovation remained a stated aim of reform. There are nine references to 'innovation' or 'innovating' in the Strategy. However, compared to the 2010 Green Paper, the scope of innovation had narrowed (Fox and Marsh 2016). There was one reference to giving "front-line professionals the flexibility and resources to innovate and do what works" (Ministry of Justice 2013b: 3). There were five references to setting up the conditions to allow commissioned service providers to innovate.

¹ Chris Grayling succeeded Kenneth Clarke CH QC in September 2012.

There were three references to innovation around payment mechanisms and financing. Innovation was assumed to arise from the application of technology to improve business processes, and a focus on achieving outcomes. (Ministry of Justice 2014a).

It is noticeable these references indicate the expectation that innovation will come from commissioned service providers (*i.e.* predominantly providers from the private and not-for-profit sectors) and the use of technology and/or 'back office' efficiencies, not from the new publicly run National Probation Service. Neither, in these documents, were there references to innovation involving social entrepreneurs and local communities (Fox and Marsh 2016).

In a reversal of the earlier emphasis on local services, there was a national competition to provide geographical 'bundles' of probation services through Community Rehabilitation Companies (CRCs). Contracts for CRCs included an element of Outcomes Based Commissioning. Despite their sectoral experience, existing Probation Trusts were excluded from bidding. Probation staff might bid through their setting up new independent entities such as employee-led mutuals (Cabinet Office 2013). However, the formation of such mutuals was regulated (Cabinet Office 2014) and in practice, few were formed.

The new organisations, the CRCs and the NPS, were launched in June 2014, and originally publicly run. From February 2015 new 'owners' began their contracted period of management of CRCs. Virtually all the main contractors were from the private sector. Only one CRC was led by a consortium in which the main or 'prime-contractor' was a not-for-profit organisation and employee-led mutuals or staff Community Interest Companies were part of only 7 out of 21 winning bids to run CRCs (Fox and Marsh 2016).

However, the TR revolution failed to deliver on its ideological premise. By 2017 it was clear contractors had underbid to run CRCs and were struggling financially, despite many having invested little in new service delivery (HM Inspectorate of Probation and HM Inspectorate of Prisons 2017: 10).

This necessitated the injection of additional taxpayer funds to the tune of £342 million (National Audit Office 2017) to address systemic failure of the innovation. A further £170 million will be needed to stabilise CRCs and improve service delivery until 2020 (Times 2018) when the current contracts end, two years ahead of the original schedule. The Ministry of Justice will indeed spend less on delivering probation services than they had planned, given the much reduced demand for CRC services. It is not clear, however, whether cost savings will be achieved relative to pre-existing provisions.

The benefits of the TR experiment are, at best, unclear and it is clear the current system is unsustainable financially. The government has recently engaged on a public consultation to determine an appropriate way forward for probation in England and Wales (Ministry of Justice 2018).

3. Motivations: Citizens, corporations and states

Political economic analysis of modern capitalist democracies highlights a tension between political aims of government and the aims of business and industry on which national prosperity depends

(*c.f.* McIver, 1947). Democratic government, responding to and reflecting – and in some degree shaping – the will of the citizens, is social in terms of the output which stakeholders (voters) demand (*ibid.*). Democratic government may, of course, own and operate economically productive resources, (so-called ‘nationalised’ industries), but in theory, only insofar as this ownership promotes social goals.

Capitalist industry, on the other hand, responding to and reflecting – and, where capitalists enjoy market power, shaping – markets, reflects the will of owners and managers irrespective of citizenship; its outputs are financial. Capitalist industry might generate social returns, for example, employment, but according to classical economic theory (Friedman 1962: 113, 1970), only insofar as social output increases financial returns.

In recent decades, a consensus has developed in an attempt to reconcile these competing goals. Sometimes termed neo-liberalism, or the ‘Washington Consensus’ (Williamson, 1999), this paradigm suggests democratic governments ‘incentivise’ the efficient provision of social goods through markets. In its role of market creator, the state must step back from providing goods and services directly: This involves either the sale of public assets (privatisation) or through sub-contracting existing social services (marketisation).

There remains a role for the state in neo-liberal theory, where government is able to provide social goods demonstrably more efficiently than might amoral market forces or the self-interested actions of individuals and corporations (HM Government, 2011: 29).² Policies informed by the neo-liberal paradigm in general promote: globalised ‘free’ markets; private property; the application of individual incentive structures; and a circumscribed role for democratically accountable government (Gore, 2000).

Based as it is on private property, the maintenance of the rule of law is a primary goal of neo-liberal theory. As set out in Friedman (1962), Becker (1968) and Ehrlich (1973, 1996), for example, such an approach argues that it is the responsibility of the public, through the state, to create an incentive structure such that it is in individuals’ and corporations’ best interests to commit no more than an optimal amount of crime.

In sum, the two goals of promoting market solutions and limiting the size of democratic government – in part justified through questioning the efficacy of the state – suggest the provision of public goods be facilitated through the processes of privatisation and marketisation. Neo-liberalism as a project of economic and social transformation has also driven market-based institutional arrangements in the public sector through New Public Management (Connell *et al.* 2009).

Here we are concerned with the process of marketisation, the out-sourcing of the delivery of social goods to the para-state sector, the sector of the economy in which private corporations are publicly funded (Buchanan *et al.* 2009).

² It should be noted that many of the early neo-liberal theorists were concerned that, where natural monopolies exist, for example in utilities and public services, state provision should be preferred over private provision on the grounds of the democratic accountability a liberal state may provide over the abuse of monopoly power (*c.f.* Van Horn and Mirowski 2008).

4. Theorising Marketisation

The UK government's motivation for privatisation in general has been summarised for the House of Commons Library (Rhodes *et al.*, 2014) as motivated by the desire to: raise funds without having to increase tax or borrowing; improve business efficiency; and promote democratic capitalism. Alongside of this, the private sector may seek (Fraser *et al.* 2018) to: increase profits; diversify revenue streams; demonstrate corporate social responsibility; and (Albertson *et al.* 2018) promote social innovation. There may well also be ideological reasons: Some have argued government has no role to play in any profitable activity (Harvey 2012).

Of the government's motivations in the matter of outsourcing we can set aside for the purposes of this argument the raising of funds and the promotion of democratic capitalism. Insofar as promoting efficiency is concerned, three themes seem to dominate in criminal justice procurement: The desire to drive down costs (Cameron 2013); to encourage more innovation; and to transfer the risk of policy failure to the private sector (Albertson *et al.* 2018).

This transfer of risk is facilitated, in part, through Outcomes Based Commissioning, OBC. OBC, such as Payment by Results, PbR, formed a substantial element in the TR process. In theory, PbR links payment for public services to the outcomes achieved by the private contractor (Cabinet Office 2011). In theory, by making some or all of the payment for a service contingent on independent verification of the delivery of agreed outcomes, PbR encourages efficiency and innovation.

According to classical economic theory, the advantages of marketisation require that the market is sufficiently large that no provider can influence the terms and conditions under which trade takes place. Theory also suggests, where the state contracts out for public provision, such contracting should be at as local a level (Friedman 1962: 11), and with as many diverse suppliers, as possible. Irrespective of ideological positions taken on public out-sourcing, micro-commissioning differs from, and (in theory) is more likely to lead to real innovation than, macro-commissioning (Albertson 2014).

In early plans for marketisation the growing of the supplier base was a central part of the new commissioning strategy (Ministry of Justice 2010: 8). In practice, this aspiration was not realised. As a result of the adoption of PbR models only large organisations with substantial capital reserves, or access to substantial flows of credit, could take on the risk of relying on payments for reductions in re-offending rates. Such reductions take some time to be assessed implying substantial delays between the up-front costs of service delivery and subsequent payment (House of Commons Justice Committee 2014:77).

Ultimately, over half of all 21 CRC contracts were awarded to two large out-sourcing corporations (Ministry of Justice 2014b). A third of all probation services are delivered through the NPS, a national, rather than localised, service. The involvement of the voluntary sector in the new CRC supply chain is limited and declining (HMIP 2018: 11-12) and voluntary sector capacity and experience has been lost to the sector. The transformation process has also increased the risk of closure of service providers (Clinks 2016).

The government's chosen approach to probation marketisation appears rather to be concentrating, not growing, the suppliers of rehabilitative services and centralising, rather than localising, provision.

5. The Social Impact of Marketisation

In the supposed cause of efficiency and innovation the Ministry of Justice has cast criminal justice provision as a market. The role of the state is to serve as a “market creator rather than a service deliverer” (Gough 2012: 20). However, both economic theory and recent history indicate the emphasis on markets is fraught with unexpected complexity.

In the first place, the explicit introduction of the profit motive into social provision creates a tension between the state’s desire to reduce expenditure, and the incentive of the para-state sector to lobby for increased public spending on out-sourcing (Bell 2011; Ludlow 2014: 67; Fitzgibbon and Lea 2014:24).

Notwithstanding the political and corporate appetite for outsourcing, the UK public are rather more sceptical. Since 1979, the majority of the public have disapproved of UK privatisation and marketisation policies (Institute for Government 2012) and, in the area of provision of public goods, still do (YouGov 2015, Elliott & Kanagasooriam 2017). It is only by ignoring voters’ views government can proceed with this agenda.

The electorate may be right to be cautious. Past privatisations have resulted in both winners and losers: In general the public and staff of privatised corporations being in the latter category; and investors; bankers, CEOs and corporate stock-holders being in the former category (High Pay Centre 2014). Recent evidence suggests the traditional HR approach of newly privatised industries – the shedding of staff and deterioration in terms and conditions – are being observed in the probation sector as a whole (Kirton and Guillaume 2015).

Similarly, in the public sector, Connell *et al.* argue New Public Management’s emphasis on labour market ‘flexibility’ has produced a growing workforce of part-time, casual and contract labour at the bottom of organisations along with a shift from “many-levelled, finely graded bureaucratic pyramids with strong professional specializations, to ‘flat’ organizational structures and generic skills” (Connell *et al.* 2009: 334). This is accompanied by an increased emphasis on organisational, team and individual performance management (*ibid.*).

There is evidence outsourcing in general, whether in the private or public sector, is a major driver of the increasing incomes inequality and poverty under which the citizens of the UK and USA have suffered since the 1980s (Weil 2014; The Equality Trust 2014; Schmieder & Goldschmidt 2016; Appelbaum 2017). Insofar as terms and conditions are reduced in marketised or privatised industries, there is less money (through employees’ salaries) flowing into local economies and this is likely to reduce economic growth (Greenwood 2014).

As Mullainathan and Shafir (2013) note, scarcity generally increases the tendency of human beings to react more in line with the theory of homo-economicus, which is to say, amorally. A host of other social problems associated with inequality has been highlighted by, for example, Wilkinson & Pickett (2009), Atkinson (2015) and Dorling (2017). At a national level, when a society is not achieving material progress for the broad cross-section of its citizens, it is also less able to make progress in moral dimensions (Friedman, 2006).

6. The Moral Impact of Marketisation

The reliance on marketised transactions in society are often presented as being morally neutral, or even morally improving (see, e.g. Thatcher 1977, 1986, Cameron 2012). However, the general promotion of market-based principles, with the associated implicit acceptance of self-centred behaviour, carries risks with it. There is a distinction between the intrinsically motivated observance of social contracts (Hobbes 1651), moral self-image maintenance (Mazar and Ariely 2006; Mazar *et al.* 2008) and the self-serving maximisation of extrinsic rewards through the market (Gneezy and Rustichini 2000a, b; Levitt and Dubner 2005; Ariely 2008).

In general, the costs and benefits of decisions are assessed differently depending on the context in which these decisions take place. Stout (2011) suggests people use different neural pathways when they make selfish and unselfish decisions and “the trigger seems to be something social psychologists call social context” (*ibid.*: 96). As self-centred behaviour becomes an increasingly acceptable social norm, the emphasis on extrinsic rewards tends to drive out altruism and erode conscience (Stout 2012; Ariely 2008).

Such an analysis, alongside the increasing inequality associated with neo-liberal policies, may explain a long-term hardening of public attitudes towards redistribution and welfare (Park *et al.* 2012). The 2014 British Social Attitudes Survey (Park *et al.* 2014) data highlights these trends in attitudes have become exacerbated since the onset of the global financial crisis. Also, the increasing emphasis placed on individuality and self-interest has seen the state’s response to social marginality shift from welfare support to incarceration (Cavadino and Dignan, 2006, Currie, 2013, Wacquant 2009; 2012). As Garland (1996: 445) points out, in general weak states require harsher punitive sanctions.

In sum, classical economics fails to consider the detrimental effects of using price incentives for social goods. These detrimental effects arise because reliance on fiscal incentives can discourage conscientious behaviour and instead encourage opportunism and even illegality (Stout 2012): thus (the appearance of) compliance is promoted above – or instead of – ethics. As ethical and social constraints on illicit behaviour erode, we may expect to see relatively more illicit activity (Mazar *et al.* 2008) and relatively less efficient markets (Zak 2011). Ultimately, the over-reliance on markets in social transactions (of which criminal justice outsourcing is just one symptom) is itself socially destructive (Röpke 1952) and criminogenic (Reiner 2007). Such reliance is neither approved by, nor in the interests of, the people of England and Wales.³

7. Evaluation in and of TR

The theoretical driving force behind the efficiency of markets is through the coordination of economic activity. The theory of marketisation, however, ignores the difficulty of creating appropriate incentives. In practice, there is little evidence past governments, whether Conservative, New Labour or Coalition, have managed to achieve value for money on behalf of the British taxpayer in their attempts to align corporate and public interests (King and Crewe 2014).

Where society incorporated in the state is theorised as a customer of private enterprise, it must be clear what is being bought and sold, and at what price, if the market is to work effectively. In the

³ Scotland’s criminal justice sector and wider public sector is increasingly diverging from England and Wales and Northern Ireland is a special case where different considerations apply.

case of the purchase of a commodity of criminal justice, there must be some kind of measure which will indicate the degree of justice which has been delivered. Under TR, CRCs were to be paid in part for managing the cases allocated to them with a proportion of their payment dependent on their performance with respect to an appropriate indicator of results. The use of such indicators motivates the whole concept of Outcomes Based Commissioning, in general and Payment by Results in this case.

In TR, the 'results' which would trigger PbR were based on a binary metric (the reoffending rate; the percentage of offenders in a cohort that reoffend) and a frequency metric (the frequency of reoffending; the number of reoffences per reoffender). The binary reoffending measure provided the initial 'hurdle' to be cleared: Unless the reoffending rate was below the reoffending baseline, no payment was made on the frequency metric (Ministry of Justice 2014c).

Even leaving aside the technical challenges associated with such performance metrics (Fox and Albertson 2011), the adoption of targets as a substitute for effectively operating markets has been shown to lead to inefficiency (Campbell, 1979: 34). In general, the market will deliver the most efficient way of hitting any target, whether or not this target accurately reflects the goal of interest to the customer (*ibid.*). This is known in general parlance as 'hitting the target, but missing the point' or 'gaming' (Bevan and Hood 2006, McLean *et al.* 2007, Patrick 2011).

The distortion of PbR indicators is an example of a problem which results from the application of performance based pay. In general, where there is a complicated result outcome, poorly designed contracts can erode conscience and the use of performance measures may promote (incentivise) distortions (Stout 2012).

Curiously, for an innovation which is supposedly based on evidence, the appeal to PbR by the UK government is itself lacking in evidence as "neither the Cabinet Office nor the Treasury currently monitors how PbR is operating across government." National Audit Office (2015: 13). Because of this lack of evidence (*ibid.*: p.8), "PbR contracts are hard to get right, which makes them risky and costly for commissioners".

In practice, however, despite the potential for gaming, the 'results' anticipated by the government and the CRCs are disappointing. In their evaluation of "Through the Gate", an integral part of TR, HM Inspectorate of Probation and HM Inspectorate of Prisons (2017: 10) noted, "It is hard to see any impact of the prospect of future payment by results for reducing reoffending rates", despite the commitment of staff to meeting contractual targets.

The recent release of data allowing the preliminary evaluation of TR indicate the reoffending rate is lower than the baseline rate in most CRCs. However, only in two CRCs was the decline in frequency of re-offending sufficient to trigger payment for results (Cattell 2018). In the other 19 CRCs, the frequency of reoffending has increased (*ibid.*). The Ministry of Justice (2018) reports, with continuing increases in the frequency of re-offending affecting their PbR income, most CRC owners were expected to end up paying the Ministry "a substantial amount of money" (*ibid.*: 19) over the remaining years of their contracts.

Citing a variety of reasons, including overall performance not being good enough, the Ministry of Justice (2018) has decided to terminate the current CRC contracts in 2020; two years early. In the

meantime, the government has invested an additional £342 million in TR, including waiving a proportion of the performance related fines (National Audit Office 2017).

8. Implications

It is clear that the government's TR experiment has failed the public, who were reasonably entitled to expect either reduced payments or results, and the para-state sector who, despite being bailed out by the government, have failed to realise expected profits. Neither have offenders been well served by the transformed probation services with the Chief Inspector of Probation highly critical of the quality of service experienced by many offenders (Stacey 2017). Yet lessons remain to be learned.

In their consultation document on the future of probation services in England and Wales, the Ministry of Justice (2018) refers to the "sound principles" of TR on which they hope to build in yet another transformation. These include: the extension of post-release supervision to short-sentenced prisoners; opening up the probation market; creating new incentives to reduce reoffending; and ensuring a stronger focus on higher-risk offenders. Of these, the first was an innovation, but there is no reason why it could not have been achieved in the pre-existing service. TR clearly failed in its second principle, as documented by Her Majesty's Inspectorate of Prisons (2017) and acknowledged in the Ministry of Justice consultation document. There is only limited evidence of progress in achieving the third principle. Insofar as TR did create new incentives to reduce reoffending, these are likely largely to be abandoned after 2020 as probation moves rather more to a 'pay for inputs' rather than a pay for results funding model. Ultimately, the creation of the NPS has, arguably, created a stronger focus on high-risk offenders, but, again, there is no reason why this could not have been a goal of the pre-existing system.

Despite this lack of progress, the government remains ideologically committed to the overall model of outsourcing and consolidation of probation services as indicated by the limited terms of the consultation document (*ibid.*). The Ministry intends to reduce still further the number of CRCs, to ten in England, while retaining the unitary CRC for Wales. Other than in Wales, where the CRC is to return to the public sector, the government's trust in the private sector to innovate and reduce costs remains firm and there is no indication the English CRCs will be publicly run but will rather continue to be managed by para-state corporations.

Insofar as the government's long-standing commitment to privatisation and marketisation has any theoretical framework, our analysis suggests that progress is more likely if the following principles are adopted:

- i. *Public provision of public goods.* Hand overall responsibility for the delivery of probation services back to the public sector, but allow for a mixed economy of provision that includes opportunities for both private and not-for-profit providers to contribute where they are best placed to deliver specific services (Fox *et al.* 2013). In the UK there has always been a mixed economy in the provision of 'public services' in terms of the balance between public and private provision, finance and control (Hills 2011). However, New Public Management, with its emphasis on private sector management, marketization and performance management, is the wrong model for conceptualising the next round of transformation in public services,

including criminal justice services. New Public Governance (Osborne 2006), which recognises the plural and pluralist nature of the State and with its focus on inter-organizational governance and emphasis on service processes and outcomes – recognising that desired social outcomes are emergent properties of complex systems (Lowe 2017) –, offers a more appropriate theoretical framework.

- ii. *Emphasise localism.* Localism is supported, in theory, both by classical economics and the government's stated goal of opening up provision. However, current centralised sub-contracting of probation services rather undermines this (Albertson and Fox 2014). If there is to be out-sourcing, rather than adopt a prime-contractor model of tendering, the government ought to facilitate Police and Crime Commissioners, PCCs, to contract on behalf of the public for probation services. This would support more devolved models of probation. The pooling of criminal justice budgets would allow a more strategic approach to reducing re-offending with more emphasis on early intervention and preventative approaches and a stronger place-based approach (Fox *et al.* 2013). This model is likely to be particularly effective in areas where PCCs are also 'metro-mayors' and devolution deals are in place – allowing a more integrated service in which to support the offenders' rehabilitation needs. This will, in turn, facilitate the realisation of our third recommendation.
- iii. *Building relationships.* Government must place the development of effective, individual relationships at the heart of probation. There is both evidence (*e.g.* Smith *et al.* 2018) and theory (*e.g.* Weaver 2012) that supports such an approach. It follows offenders ought to be the responsibility of a specified probation officer throughout supervision: There should be one person to oversee the rehabilitation process on behalf of the public and the offender. The ineffectual model of TR adopted in 2013 is very much a top-down experiment. It failed to consider the point of view of offenders and probation staff. A more effective approach might involve mandated elements of co-production and co-creation of services. Such models have been developed in other sectors, most notably social care, and are being piloted in the criminal justice sector (Fox *et al.* 2018).

9. Conclusions

The neo-liberal political paradigm has suggested, with limited empirical support, private provision of public services is generally more efficient than state provision. In practice, however, the market often falls short of delivering on its theoretical promise.

However well founded ideologically was the UK government's original intention to allow local probation trusts to subcontract at the local level, the ultimate outcome of the TR agenda in probation is financially unsustainable and (socially) sub-optimal.

Marketisation, like most policy proposals, is neither an effective or ineffective policy in its own right; much depends on the scale. Economic theory – and the history of UK marketisation – suggest smaller and localised is better. Yet, in practice, TR is associated neither with increasing the number of providers, nor the localisation of criminal justice. The first round of the innovation saw 35 local probation trusts replaced with a National Probation Service and 21 Community Rehabilitation

Companies. The next round will see ten fewer CRCs and a corresponding increase in the centralisation of provision.

Financially, the inflexibility of the TR contracts meant staff could not be moved from supervising less- to more-serious offenders as the crime mix changed. This created problems of under-resourcing in the NPS and insufficient throughput in CRCs. Further, CRCs were unable to produce the 'results' under which PbR contracts would meet their financial requirements. This necessitated increased public expenditure to maintain probation provision. Ultimately, the experiment proved unsustainable and was abandoned ahead of schedule.

Socially, there is a deal of evidence that the process of privatisation and marketisation itself, and the government's rhetorical promotion of self-interest and the profit principle, are counter-productive. Market-based incentive structures, focussed as they are on cost saving subject to the profitability of the corporate sector, are associated with the undermining of generalised prosperity and the evolution of asocial norms. The process of marketisation is socially divisive. The ethical underpinnings of a liberal democracy are thus incrementally undermined.

In rehabilitation, it is possible to do more justice with less privatisation and marketisation.

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