IMPRESSION AND ITS GENEALOGICAL CLAIMS IN RESPECT OF COMMUNITY SERVICE ORDERS IN ENGLAND AND WALES

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The originality of community service orders as a penal sanction has provoked a considerable amount of comment over the past three decades. Given that work has been employed as a means of expiation throughout the ages, many would argue that there is little new about the sanction. For example, in 1981, Pease argued that because the ‘wages of sin’ were often work, one was entitled to ask what was new about community service. Slavery, transportation, penal servitude and houses of correction could all, he suggested, be put forward as community service’s ‘less reputable forebears’. But rather than provide us with an appraisal of these various penal sanction, Pease, by relying almost wholly on Radzinowicz, simply described the practice of impressment which he believed had remarkable parallels when perpend with community service. At the outset, he alluded to a Commission of 1602 which recommended that, with the exception of offences of burglary, rape and murder, offenders might be reprieved from execution and impressed in the navy ‘wherein, as in all things, our desire is that justice may be tempered with clemency and mercy . . . our good and quiet subjects protected and preserved, the wicked and evil disposed, restrained and terrified and the offenders to be in such sort corrected and punished and even in their punishment they may yield some profitable service to the commonwealth’. Pease regarded the strands of thought in the quoted passage as ‘eerily similar’ to those of the Wootton Report – which heralded the introduction of the sanction of community service – where it was suggested that:

[Community service] should appeal to adherents of different varieties of penal philosophy. To some, it would simply be a more con-

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structive and cheaper alternative to short sentences of imprisonment; by others it would be seen as introducing into the penal system a new dimension with an emphasis on reparation to the community; others again would regard it as a means of giving effect to the old adage that the punishment should fit the crime.

Moreover, Pease also argued that, like community service, impressment embodied a consensual element. The Insolvent Debtor Acts of 1670 and 1696 made impressment voluntary for certain categories of debtors. Indeed he proposed that for these prisoners at least, impressment was more 'humane than the present scheme, in that prisoners were more aware of the alternative to community service orders in 1978'. In addition, he also had an answer for readers who argued that impressment was an indeterminate sentence whereas community service is limited at 240 hours. He suggested that the degree of indeterminacy was reduced by a statute in 1703 (Insolvent Debtors Relief Act) in which enlistment of debtors was for the duration of a war rather than for an indefinite period. Finally, Pease also believed that besides having similar 'rehabilitative overtones', references to the quality of the work of those impressed and the desire not to mix offenders with the 'older corps' had a remarkably 'modern ring' and 'the parallels with community service here are fairly remarkable'.

These analogies, in particular, led him to the conviction that community service was not inimitable but rather had a lineage dating back some 400 years. As such, albeit that the sanction of community service was more 'up-market', 'innovative' and 'desirable' penal measure, it was essentially a 'clone' of previous models and was, accordingly, only 'in detail a novel disposal'. His views were subsequently endorsed by Van Kalmthout and

4. Pease, 'A Brief History of Community Service' in Pease and McWilliams, eds., Community Service by Order, pp. 3-4.
5. Ibid., p. 5. Similarly, whilst discussing the lineage of community service, Vass suggested: "From the Bridewell, the workhouses, the hulks, transportation, impressment ... and beyond, the social forces behind the expansion of controls show a remarkable affinity ... Old and new penal sanctions always appear to share similar backgrounds. New models are like new models of motorcars. As long as they are new they offer, for a temporary period, some novel excitement. We look after them, care for them and polish them with some pride, and ceremonially display them for others to see and envy. When the ageing process sets in, they begin to lose their lustre. Occasionally they let us down, the ride gets less comfortable, and our pride in their efficiency and reliability withers away. What do we do then. We usually search for an alternative motor car. We consider our finances. We compare options - what make, what model, to what end. That our choice is a better alternative; in shape, glamour, specification, performance, refinement, mechanical layouts which offer a pinch of innovation and sophistication and new assurances about reliability and durability and low maintenance costs ... The process remains the same, car after car. The same with the criminal justice system. Penal options come and go ... They may look different and their mechanical (operational) layouts may have a higher degree of sophistication, but
Tak who also accepted that community service and impressment demonstrated a remarkable similarity of purpose.\textsuperscript{6} Others might argue, however, that whilst community service may have a \textit{long past} in that sanctions have embodied work since ancient times, it has a \textit{short history} in that it was driven by a particular and specific complex of penal strategies, agencies, representations and techniques which render anachronistic any unqualified collations between it and past penal work practices.\textsuperscript{7} As Fuchs suggested:\textsuperscript{8}

In my opinion, it is wrong to want to trace historical examples of contemporary community service. One can simply say that it is wrong to portray a new sanction in this way because there is a great danger that the penalty appears in a totally false light. (Translation by the present author)

In developing Fuchs’ assertion, I want to argue that attempts at providing a contextual analysis of community service through the utilisation of a prefatory, narrative account of the history of penal work sanctions has little purposive effect. The broad span of its processual approach, and the uncomplicated and undeviating course of execution which it adopts, is spurious in that it either distorts or discounts key forces acting consciously or subconsciously on penal work sanctions at particular moments in time. Furthermore, this method of analysis proceeds as if penal work sanctions have always been governed by the same principles and assumptions. Under this framework of understanding, community service was, in effect, a sanction always fated to appear in the statute books: all that was required was a sufficient degree of sophistication and \textit{savoir faire} to make it happen. This article, then, is an argument for the construction of a more historical approach to the introduction of community service orders. Two final points can be made, however, before commencing with this analysis. First, the article is quite narrow in that it only concentrates on Pease’s \textit{prefatory approach} to community service orders, an approach which has been accepted, without question, by most other commentators on the penal disposition. Thus, the article only focuses on the genealogy of community service and no attempt is made to investigate the contemporary operation of the

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\item they are essentially clones of previous models”. A. Vass, \textit{Alternatives to Prison: punishment, custody and the community} (London, 1990), pp. 14-15.
\item C. Fuchs, \textit{Der Community Service Order als Alternative zur Freiheitsstrafe}, (Pfaffenweiler, 1985), p. 137.
\end{itemize}
sanction. Indeed, in this regard, the author accepts that Pease has been one of the leading commentators on the operation of community service orders over the last 25 years, particularly in respect of its position in the range of sentencing alternatives, its employment by the courts, the selection of offenders, the nature of the work tasks, and the reconviction rates of offenders ordered to perform community service. Secondly, the analysis that follows is contentious in that historical interpretation necessarily involves a multiplicity of truths and the possibility of choice. As the relativist E.H.Carr noted:

The world of the historian . . . is not a photographic copy of the real world, but rather a working model which enables him more or less effectively to understand it and to master it. The historian distils from the experience of the past as is accessible to him, that part which he recognises as amenable to rational explanation and interpretation, and from it draws conclusions which may serve as a guide to action.

In a sense, therefore, the purpose of the article is to establish credibility or verisimilitude rather than truth in historical terms: what is meant by credibility or verisimilitude in historical terms 'is not that it actually happened, but that it is as close to what actually happened as we can learn from a critical examination of the best available sources'. Before commencing with a scrutiny of Pease's claim, it may, at this juncture, be appropriate to look at the nature of the working model being advocated in more detail.

METHODOLOGICAL PROBLEMS WITH PROGRESSIVIST ANALYSIS

One of the main problems inherent in an approach which seeks the historical antecedents of a contemporary phenomenon such as community service is that it tends to eschew the polymerous nature of proper diachronic analysis. In our case, it is my contention that tracing continuities and affinities over time between various penal work sanctions, in order to highlight the lineage of community service, is ahistorical in that it distorts the contemporary significance and character of community service whilst also obscuring the contextual significance and usage of past penal work practices. One of the most useful polemics on the deficiencies in such a tele-


ological approach to history was published by Butterfield in 1931 in a book titled, *The Whig Interpretation of History*.12 Attacking Protestant whiggery – on the grounds that it attempted to write the history of politics and religion in terms of the triumph of Enlightenment and progress and ignored the problems of historiographic anachronism – Butterfield was keen to draw attention to the relativist character of historical interpretation and to the dangers of projecting modern ways of thinking backwards in time. He suggested:13

The whig historian stands on the summit of the 20th century, and organises his scheme of history from the point of view of his own day; and he is a subtle man to overturn from his mountain-top where he can fortify himself with plausible argument. . . . The fallacy lies in the fact that if the historian working on the 16th century keeps the 20th century in his mind, he makes direct reference across all the intervening period between Luther or the Popes and the world of our day. And this immediate juxtaposition of past and present, though it makes everything easy and makes some inferences perilously obvious, is bound to lead to over-simplification of the relations between events and a complete misapprehension of the relations between past and present.

As such, apart from the fallacy of anachronism, whiggism, through the ‘principle of exclusion’, compartmentalises the historical process into a neat linear package of progress with little or no attention devoted to dissociation or resistance – what Butterfield would term the ‘crooked and perverse ways of progress’.14 Moreover, such an approach presents history as an ‘unfolding logic’.15 for our purposes, community service is portrayed as an eschatological point in the history of penal labour sanctions which gravitated ever closer to the introduction of the sanction in 1972 as ‘sophistication’, ‘innovation’ and the ‘up-market’ nature of the late 1960s and early 1970s permitted. Finally, according to Butterfield, whig historians who view the past with too direct a reference to the present in mind subdue their original telos which was to draw upon the past to illuminate the present: ‘if we seize upon those things in the 16th century which are most analogous to what we know in the 20th, the upshot of all or history is only to send us back finally to the place where we began, and to ratify whatever conceptions we originally had in regard to our own time’.16 There is, in effect, a circularity of argument: in order to highlight a phenomenon in the

15. Ibid., p. 42.
16. Ibid., p. 62.
present, the whig historian makes certain assumptions about the past which, in turn, find expression in any conclusions being made about the phenomenon being explained. Accordingly, Butterfield called for the need to be mindful when we are attempting to abridge history that the paths we take cut across a panoply of labyrinth interactions which will not fit neatly into any linear present-oriented vista of understanding.\footnote{Nietzsche has made a similar point on what he would regard as Hegelian historical optimism which measures the course of history according to the idea of temporal progress towards an eschatological fulfilment at the end of time. Such a philosophy, in Nietzsche’s view, fosters a very dangerous trend: “I believe that there has been no dangerous vacillation or crisis of German culture this century that has not been rendered more dangerous by the enormous and still continuing influence of this philosophy, the Hegelian. The belief that one is a latecomer of the ages is, in any case, paralysing and depressing: but it must appear dreadful and devastating when such a belief one day by a bold inversion raises this latecomer to godhood as the true meaning and goal of all previous events, when his miserable condition is equated with a completion of world-history. Such a point of view has accustomed the Germans to talk of a ‘world-process’ and to justify their own age as the necessary result of this world-process . . . Here and there one goes further, into cynicism, and justifies the course of his history, indeed the entire evolution of the world, in a manner especially adapted to the use of modern man, according to the cynical canon: as things are they had to be, as men now are they had to become, none may resist this inevitability”. F. Nietzsche, ‘On the uses and disadvantages of history for life’ in R.J. Hollingdale, ed., \textit{Untimely Mediations} (Cambridge, 1983), pp. 104-107. Thus, for Nietzsche, instead of furthering the creative mind—through questioning and scepticism—linear, progressivist history encourages an uncontested acceptance of the fulfilment and inevitability of history.} Not surprisingly, historical syntheses quickly began to exhibit a more heightened awareness of relativist interpretation. Such an outlook manifested itself most distinctly among historians of political thought. For example, Pocock’s work in 1957, \textit{The Ancient Constitution and the Feudal Law}, urged academics engaged in the history of ideas to appreciate that major political philosophers of the past could only be understood against a historically specific backdrop; in Pocock’s case this involved the illumination of the common law interpretation of English history, which he believed was the predecessor, and indeed parent of the whig interpretation.\footnote{J.G.A. Pocock, \textit{The Ancient Constitution and the Feudal Law} (Cambridge, 1957), p. 46.} Skinner’s critique on the history of ideas in 1969 also focused on the problem of present-centredness and the absurdities of interpretation which it can result in. In criticising such an approach, he cogently argued that there were no ‘timeless elements’ in the form of ‘universal ideas’, or a ‘dateless wisdom’ with ‘universal application’, to which all classic thinkers of political thought addressed themselves.\footnote{Q. Skinner, ‘Meaning and understanding in the history of ideas’ (1969) VIII \textit{History and Theory} 3-53.} In addition to falling into the trap of anachronism, Skinner believed that present-centredness as a methodology in political thinking was ahistorical in that it accredited classic writers
with anticipating later doctrines, thus resulting in a *mythology of coherence*:\(^\text{20}\)

[A]ny attempt to justify the study of the subject in terms of the 'perennial problems' and 'universal truths' to be learned from the classic texts must amount to the purchase of justification at the expense of making the subject itself foolishly and needlessly naive. Any statement, as I have sought to show, is inescapably the embodiment of a particular intention, on a particular occasion, addressed to the solution of a particular problem, and thus specific to its situation in a way that can only be naive to transcend . . . There is a tendency . . . to suppose that the best, not merely the inescapable, point of vantage from which to survey the ideas of the past must be that of our present situation, because it is by definition the most highly evolved. Such a claim cannot survive a recognition of the fact that historical differences over fundamental issues may reflect differences of intention and convention rather than anything like a competition over a community of values, let alone anything like an evolving perception of the Absolute.

Thus the meaning of any text was to be derived from the complex intention of the political thinker in question; the aim of the historian of ideas, therefore, was to reconstruct the particular complex intentions (which arose in a specific environment) of that political thinker so as to give effect to proper historical analysis.

This attention to relativity and time boundness in all histories was picked up upon by Foucault. Influenced by Nietzsche and the *Annales* school – particularly the development of the 'history of mentalities' as witnessed in Phillippe Ariès' 1962 study on the sense of childhood – Foucault was keen to avoid the foibles of viewing history as a teleological structure from which growing perfection and evolution in reason, consciousness and thought naturally unfolded:\(^\text{21}\)

The old questions of the traditional analysis (what link should be made between disparate events? How can a causal succession be established between them? What continuity or overall significance do they possess? Is it possible to define a totality, or must one be content with reconstituting connections?) are now being replaced by questions of another type: which strata should be isolated from


21. But see Habermas who suggests that Foucault's attempt to 'leave behind modernity's presentist consciousness of time' is in fact presentist because it is a historiography 'that is narcissistically oriented toward the standpoint of the historian and instrumentalises the contemplation of the past for the needs of the present'. J. Habermas, *The Philosophical Discourse of Modernity: Twelve Lectures* (Massachusetts, 1987), pp. 248-278.
In order to demonstrate that our present practices and institutions are by no means eternal and immutable, Foucault attempted to write histories not of 'growing perfection' but of their 'conditions of possibility'. In other words, he attempted to draw up the rules of formation which govern particular forms of knowledge as well as the transformation from one to another. The need to deny the importance of progress based perspectives and to highlight discontinuities can be seen quite clearly in *Folie et déraison. Histoire de la folie à l'âge classique*, first published in 1961. Here, Foucault was keen to demonstrate how the 'consciousness of madness' had transformed from the 1400s where the mad were not interned but expelled from the limits of towns and cities to lead a wandering existence in the country (symbolised in *Stulifera Navis*); to the classical period beginning in the mid-seventeenth century when exclusion was replaced by confinement (as symbolised by the *Hôpitaux Généraux* of France, the Houses of Correction of England and Wales, and the *Zuchthäusern* of Germany) when social undesirables and the animality of the mad began to be perceived as a threat to bourgeois sensibilities; to Pinel's releasing of inmates in 1794 in Bicêtre which represented the supposed beginning of the new age of the asylum and the more humane treatment of the insane. But for Foucault, this transformation did not represent the ineluctable progress of humanity or scientific objectivity: 'it did not evolve in the context of a humanitarian movement that gradually related it more closely to the madman's human reality, to his most affecting and most intimate aspect; nor did it evolve under the pressure of scientific need that made it more attentive, more faithful to what madness might have to say for itself'. Rather, the modern conception of madness was constructed both from the very nature of confinement itself which continued to impose bourgeois values on the inmates and from the inversion of madness perceived as animality to madness perceived as a natural phenomenon which was repressed by human society.

25. Ibid., p. 224.
Notions of discontinuity and the ‘incidence of interruptions’\textsuperscript{27} are also very much in evidence in Foucault’s book, \textit{Discipline and Punish}, where he sets out to write a history of the present of prisons, mindful of the need to avoid ‘writing of the past in terms of the present’\textsuperscript{28}. In order to demonstrate the discontinuous nature of penal history, Foucault began by juxtaposing the execution of Damiens in 1757 with the rules drawn up by Leon Faucher 80 years later for the House of Young Prisoners in Paris. For Foucault, the dissimilar nature of both sanctions represented a distribution in the ‘entire economy of punishment’\textsuperscript{29}: it denoted the movement from a punishment of the body to a punishment of the soul, the latter of which was composed of ‘a whole new system of truth and a mass of roles hitherto unknown in the exercise of criminal justice’.\textsuperscript{30} According to Foucault, it was only in this latter penal system that we could begin to understand the ‘present scientifical-legal complex’ with its particularistic corpus of knowledge, techniques and discourses.\textsuperscript{31}

The purpose of this article is to demonstrate the way in which academics, such as Pease, have misrepresented the links between the past and the present in order to accentuate the continuities and affinities which they believe exist over time between various penal work sanctions. It will be argued that their approach to community service orders is anachronistic, employs the ‘principle of exclusion’ by gathering information which supposedly supports their cause whilst ignoring that which does not, leads to a

\textsuperscript{27} Foucault, \textit{The Archaeology of Knowledge}, p. 4.
\textsuperscript{29} Ibid., p. 7.
\textsuperscript{30} Ibid., p. 23.
\textsuperscript{31} For other attempts to demonstrate that the history of penality is not entirely that of its progressive refinement, see D. Melossi and M. Pavarini, \textit{The Prison and the Factory: origins of the penitentiary system} (London, 1981) who attempted to demonstrate that the system of social control is premised upon changing relations of production; M. Ignatieff, \textit{A Just Measure of Pain: the penitentiary in the Industrial Revolution} (London, 1978) who focused on the modern norms governing the exercise of power in prisons which he believed manifested themselves in the period between 1775 and 1840 and were brought about by religious, philosophical and philanthropic impulses; D. Garland, \textit{Punishment and Welfare: a history of penal strategies} (Aldershot, 1985) who argued that any genealogy of the modern concrete system of punishment must begin in the years between 1895 and 1914 when a new form of penalty founded upon the logic of ‘welfare/control’ emerged; A. Scull, \textit{Decarceration: community treatment and the deviant} (Englewood Cliffs, 1977) who argued that efforts to deinstitutionalise deviant populations from the mid 1960s onwards amounted, in part, to a reversal of Foucault’s great transformation from a corporal to a carceral modality of punishment, and; S. Cohen, \textit{Visions of Social Control: crime, punishment and classification} (Cambridge, 1994) who argued that new community treatment programmes must be seen as a continuation of the original Foucauldian transformation, rather than its reversal, in that they represent the spread of state control ever more deeply into the social network.
‘mythology of coherence’ in that a sanction such as impressment is credited with characteristics and motives which it never actually had (this, it will be demonstrated, amounts to the ‘purchase of justification’ at the expense of proper historical analysis), and gives the impression that penal authorities faced the same perennial questions in the 1600s as they did in the late twentieth century, albeit with a lesser degree of success given that houses of correction, transportation, penal servitude and impressment were viewed as community service’s ‘less reputable forebears’. Moreover, under such a progressivist, presentist form of analysis, community service is portrayed as an apogee in the history of penal labour sanctions which little by little edged ever closer to the introduction of analysis in 1972 as ‘sophistication’, ‘innovation’ and the ‘up-market’ nature of the late 1960s and early 1970s permitted. In a sense, community service’s genealogy becomes the genealogy of every work based penal sanction and the meaning of these earlier penal dispositions is adapted to fit this perspective. By focusing on the specific sanction of impressment, I will attempt to reject such an approach to understanding community service on the grounds that it is too broad and proceeds with an ahistorical methodology which views penal labour sanctions as always being governed by the same principles and assumptions. This rejection of progressivist analysis, it is hoped, will assist commentators of criminal justice (and community service, in particular) to avoid distorting the complexities of the past so as to make them conform with perceptions of the present. In this way, we can pay proper attention to context and open up, in the future, avenues of enquiry not touched upon by previous interpretations of the introduction of community service orders. Let us begin then by providing a contextual synopsis of the sanction of impressment in the navy.

CONTEXT, CONTINGENCY AND THE SPECIFIC PRACTICE OF IMPRESSMENT IN THE NAVY

By the seventeenth century, trading by sea had become so prevalent that its advancement and preservation were acknowledged as being of fundamental national significance. Britain, because of its insular geographical position, did not, unlike France or Holland, have to preserve a large army to protect itself from invasion by land. It was free to concentrate its resources on maintaining the ‘great highway’ between itself and trading posts in America, Asia and Africa; these resources would be employed to establish and maintain a strong naval fleet to protect trade routes and prevent the

32. For a brilliant attempt to provide a proper diachronic analysis of criminology which was sensitive to both context and contingency, see D. Garland, ‘Of Crime and Criminals: the development of criminology in Britain’ in M. Maguire et al, eds., The Oxford Handbook of Criminology (Oxford, 1994).
threat of invasion by sea. Significantly, however, Britain had nothing approaching a full-time naval crew. In times of international harmony, its warships remained docked in naval ports and were operated by skeleton crews. The outbreak of hostilities or the threat of hostilities was always a crucial affair because the search for a sufficient number of sailors proved to be a continual shortcoming of naval administration. The lack of any cogent structure regarding the recruitment of sailors was as a result of government anathema to the huge financial costs involved as well as the absence of any central machinery to ensure proper recruitment and retention procedures. While the government would accede to expenditure on all other forms of naval outlay, it would not endorse the use of a naval reserve or register. The navy, as a consequence, found itself having to turn to the skills of maritime sailors in the form of merchant seamen, fishermen, boatmen and lightermen. Indeed a number of resourceful techniques were employed to ensure that the wartime fleet was adroitly prepared for conflict.

In 1694 Greenwich hospital was founded. It was an endeavour to encourage seamen to enter the Royal Navy by providing medical care for them when they were wounded or crippled whilst serving their country. In 1696 an unsuccessful attempt was made by the Admiralty to create a registry scheme for seamen in which each individual who voluntarily registered was given two pounds. 24 years later a bill was introduced in Parliament for the compulsory register of seamen but it was rejected; the same fate befell another bill aimed at initiating a mandatory register in 1740. In 1758, a statute for the recruitment of seamen was enacted. It may be viewed as a further calculated attempt at enticing professional seamen to volunteer for the Royal Navy by authorising a proper method of wage payment and establishing facilities which enabled seamen to remit their salaries back to their wives and children. Larger bounties were also provided as a carrot to encourage volunteers with seafaring skills to enlist and greater efforts were made at conserving manpower by increased attempts at enforcing higher standards of diet and hygiene.

37. (1758): 31 Geo. II c. 10.
38. S. Gradish, The Manning of the British Navy during the Seven Years War, (London, 1980), pp. 1-2. The Army, for the most part, ensured it had sufficient numbers in times of war through voluntary enlistment – the most prominent method was ‘beating-up’ for volunteers – or drafting which involved lifting soldiers from one corp which was unlikely to see action to another corp already in the field, or
Press gangs were also employed to secure an adequate supply of seamen for the Royal Navy. The pressing of seamen was accomplished in a number of ways: homeward-bound sailors employed by trading companies were the prey of warships or specially hired tenders operating in the Medway, the Downs, or Spithead; villages and towns along the coast were foraged for experienced deck-hands; and fishermen and watermen operating anywhere in the country or along its coasts were often abducted to support the war effort. In certain instances, the Navy felt compelled to invoke the demarche of embargo. This measure, known as compounding, forced ship owners to relinquish a percentage of their crews in return for the protection the Royal Navy afforded to merchant shipping. This technique, however, could not, as Baugh noted, be employed for a long duration as it had a detrimental effect on commercial trade. Moreover, the Royal Navy would, on occasion, impress foreign seamen in the South China Seas or in ports such as Lisbon and Madeira. Most of the foreigners, however, who served on British naval ships were drawn from among non-French seamen onboard French captured warships. Finally, the Quota Acts of 1795 and 1796, enacted when the manning situation was at its nadir, compelled the authorities in various counties in England to provide additional quotas for the fleet from their own districts.

There were many protests at the practice of abducting men for service at sea. Obviously those impressed objected and viewed it as a restraint upon their natural rights. Ship owners and merchants also resented it in that it greatly weakened their sailing crews. But on the whole it was seen as a public good in that it preserved the safety of the entire nation. This perception is evidenced in Mr Justice Foster’s judgment in R v. Broadfoot in 1743:

War itself is a great evil, but it is chosen to avoid a greater. The practice of pressing is one of the mischiefs war bringeth with it. But it is a maxim in law, and good policy too, that all private mischiefs about to see action. J.A. Houlding, *Fit for Service: The Training of the British Army, 1715-1795* (Oxford,1981), p. 120.


42. Gradish, *The Manning of the British Navy during the Seven Years War*, p. 80.


must be borne with patience for preventing a national calamity. And no greater calamity can befall us to be weak and defenceless at sea in time of war, so I do not know that the wisdom of the nation hath hitherto found any method of manning our navy, less inconvenient than pressing; and at the same time, equally sure and effectual.

The important point to bear in mind is that impressment was founded, for the most part, on the Navy’s proficiency in singling out accomplished seafarers. Shipboard life and shipboard duty necessitated such an arrangement. Captain Matthew Connolly, referring to the employment of landsmen on board warships, stated that ‘to suppose that such men as these will ever make sailors is mere delusion – they will never do so – a sailor must be bred to it from a child, as all our officers and smart men-of-war are; but to take a man from the ploughtail and think, by the mere fact of sending him on board ship, to make a sailor of him, is, as I said before, a mere delusion’.\footnote{M. Connolly, ‘Remarks on Manning the Navy’ in J. S. Bromley, ed., The Manning of the Royal Navy: Selected Public Pamphlets, 1693-1874 (London, 1974), p. 247.}

Similarly, Rodger, albeit perhaps overstating the case, noted in respect of criminals:\footnote{N.A.M. Rodger, The Wooden World: an anatomy of the Georgian Navy (London, 1986), p. 150. In respect of the Army, it was noted: “Most of those obtained by duress were not criminals but rather came from the next category in the current state of values – ‘that is, all such able-bodied, idle and disorderly persons who cannot upon examination prove themselves to exercise and industriously follow some lawful trade or employment’; and these the J.P.s and the Constables took up and pressed into service”. J. A. Houlding, Fit for Service: the training of the British Army, 1715-1795 (Oxford, 1981), p. 118. It does appear, however, that the Army was more susceptible to accepting criminals than the Navy was. See Gradish, The Manning of the British Navy during the Seven Years War, p. 83.}

In no part of the Sea Service were criminals ever accepted, and an attempt by London magistrates in 1759 to dispose of a notorious gang of pick-pockets, the Black Boy Alley Gang, was firmly countered. Nothing more quickly destroyed the mutual trust of a happy ship’s company than the presence of a thief among them, and it was the one crime for which a prime seaman might be discharged without hesitation.

Thus, for purposes of morale and efficiency, the Navy, where possible, only wanted seafarers on board their ships. This is not difficult to understand. Seafaring men required no elaborate training or instruction when they were transferred from a merchant ship to a man-of-war. A landsman, on the other hand, had no seafaring experience whatsoever. Maritime skills could only be acquired after years of sailing, something which the Royal Navy could not afford those it impressed during a mobilisation.\footnote{These skills included: “a vocabulary of several hundred words unrecognisable to...}
It is no surprise, then, to learn that impressment was directed first and foremost towards those who had specific seafaring skills. The principle, however, of only recruiting men with nautical experience was not always feasible during wartime and the authorities were sometimes pressurised into exercising more drastic techniques of manning. In some instances, they had to recruit landsmen and criminals in order to meet the numbers demanded of each ship's company. With regard to criminals, the Admiralty was always interested in procuring the release of seamen from gaols and it was even disposed to settling their fees and debts so as to gain their discharge. Apart from actual seamen it was also willing to take the smuggling fraternity on board because of their undoubted seamanship skills and because their transgressions were not perceived as belligerent in the same way that crimes such as theft and murder were.

Debtors, too, were admitted and could gain their release from prison by using their bounty to pay off creditors. But aside from these, the Navy was always careful to restrict the reception of offenders. It is necessary to highlight this detail, as Rodger suggests, 'to counter the hyperbole which has sometimes passed for fact'. During the French Revolutionary Wars, however, the manning of the Royal Navy proved to be an intractable dilemma. In 1793 Britain found itself in a war with the French which lasted for 23 years and which occupied all of its efforts. Numbers of seamen rose from the peace time 16,000 to a peak of 145,000 in 1810-12. Financial funding for the Navy was even more graphic and rose from £1,943,882 in 1792 to a height of £20,096,709 in 1813.

Faced in the early years of the

49. Gradish, The Manning of the British Navy during the Seven Years War, p. 61.
51. Ibid.
53. P. Webb, 'Construction, repair and maintenance in the battle fleet of the Royal
war with the crisis of having ships tied up without sufficient resources to man them, the authorities sanctioned an Act which required several counties to raise and levy able-bodied and idle persons to serve in his Majesty's Navy.\textsuperscript{54} This, together with the Quota Acts, provided a nonpareil opportunity for the magistrates to dispose of undesirables, such as vagabonds, paupers and criminals, from their parishes. In this way 42 men were sent from Dublin in November 1795 and 30 were impressed from Newgate in April of the same year.\textsuperscript{55}

The principle stumbling-block for the magistrates was convincing the Royal Navy to take their disreputable characters. By all accounts it was averse to employing such individuals during the French Wars and only a 'trickle of men' were taken from the gaols and the courts.\textsuperscript{56} Indeed the Royal Navy often had to reject such men on the ground of their unsuitability for life and work on board a man-of-war. The Admiralty believed that such persons not only brought 'distempers and immoralities among their companies', but also discouraged 'men of irreproachable characters from entering her Majesty's service', seeing that they were 'to be ranked with common malefactors'.\textsuperscript{57} The Army felt somewhat similar. Viscount Barrington, for example, suggested in the 1760s that 'the commanding officers of the several corps abroad are very much averse to accept men under such circumstances'.\textsuperscript{58} He went further and stated that it would introduce 'great uneasiness and confusion into the service if these convicts should be put into his Majesty's regiments for a limited period of time, when the honest volunteer engages to serve for life'.\textsuperscript{59} Indeed it was criminals who were held accountable for the mutinies of 1797, and in subsequent years the Royal Navy became even more attentive and particular about who it recruited from prisons and those it accepted from magistrates\textsuperscript{56} In particular, it appears that the Admiralty were not susceptible to accept offenders accused of Jacobinical offences, seditious behaviour, homosexual offences or theft.\textsuperscript{61} But even if the Royal Navy was recalcitrant about accepting

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\item \textsuperscript{57} C. Emsley, 'The Recruitment of Petty Offenders during the French Wars, 1793-1815' (1980) \textit{The Mariner's Mirror: The Journal of the Society for Nautical Research} 199.
\item \textsuperscript{59} Ibid.
\item \textsuperscript{60} C. Gill, \textit{The Naval Mutinies of 1797} (London, 1913).
\item \textsuperscript{61} Emsley, 'The Recruitment of Petty Offenders during the French Wars, 1793-1815', p. 205.
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them, there is also evidence to suggest that during the French Wars, magistrates, in some counties at least, would not give their more ignominious parishioners the opportunity to enlist. Emsley, for example, noted during a detailed study of the records of eight borough and 36 county sessions during the wars between 1793 and 1815 that seven of the sessions (Bedford, Bedfordshire, Cambridge, Cumberland, Herefordshire, Norwich and York) had no record of any men being enlisted from the court-room:

There appear to have been considerable differences in policy between different county benches. In the populous, and often turbulent, county of Lancashire, magistrates appear to have given very few offenders the opportunity to enlist. In the neighbouring West Riding, however, whose populous, industrialised villages were also contributing enormously to the burgeoning industrial revolution, magistrates gave the opportunity to many more. Within the county of Lincolnshire the Parts of Holland and Kesteven each sent only one man, while Lindsey sent twenty-five.

Thus, the practice appears, to some extent, to have been an anomalous and discrepant means of disposing of offenders.

What can be elicited from the brief discussion on the practice of impressment in the Navy? To begin with, it should be apparent that it was simply a stratagem used to enable the Royal Navy to maintain control over the High Seas. Secondly, it should be evident, given the skilled nature of the work involved, that the Admiralty, where possible, was only amenable to admitting seafarers: the wholesale ransacking of crews from the Merchant Navy by the press service both on inward and sometimes outward journeys bears testimony to this historical practice. Seafarers could also be procured by searching the prisons for mariners and smugglers and the Admiralty would, on occasion, tolerate debtors who were regarded, to some extent, in the same light as landsmen. In times of a severe manning crisis, such as the commencement of the French Revolutionary Wars in 1793, the authorities were given licence to draw upon all types of offenders, idlers and paupers from local gaols and parishes. However, they were staunchly opposed by the Navy itself who believed such offenders merely offered the menace of mutiny, lowered the morale on board ships, and lacked the requisite nautical skills necessary to serve on board. As such, impressment was strictly exploitative in motive and rather arbitrary and unsystematic in character. It did not have objectives which were explicable or indeed tolerable in terms of modern day punishment. But one must not seek to understand it in terms of modern day penal phenomena. Instead, impressment must be construed in its historical context, free from the fabrications and fabrications and

62. Ibid., p. 200.
falsehoods of a presentist historian who endeavours to understand it from the perspective of community service. With this in mind, the article will conclude with an analysis of Pease’s assertions vis-à-vis the use of impressment and its genealogical claims in relation to community service. In doing so, I intend to demonstrate that Pease’s soi-disant similarities are in fact dissimilarities. I am mindful that such an approach is also ahistorical – and may be viewed as a photographic negative of the whig presentation I have sought to criticise – in that it too disregards historical specificity. But since impressment has already been placed in a context, it is felt that by highlighting these dissimilarities, it will, in keeping with the leitmotiv of the argument, facilitate the shattering of myths concerning the lineage of community service.

ANACHRONISM, AHISTORICISM AND IMPRESSMENT’S GENEALOGICAL CLAIMS VIS-À-VIS COMMUNITY SERVICE

What is particularly striking about Pease’s attempt to draw analogies between impressment and community service – thereby arguing that the latter disposition was only in detail a novel disposal – is his complete lack of reference to historical works on the subject of impressment. He unashamedly professes to rely almost solely on the work of Leon Radzinowicz as countenance for his suppositions. Leaning entirely upon one individual’s views to buttress his argument is surprising in itself. It is particularly so when it is considered that the individual concerned, Radzinowicz, left himself open to a particular type of criticism – that of Whiggish analysis. His monumental five volumes on the history of criminal law was assessed essentially from the standpoint of a modern criminologist anxious to delineate the developments that had occurred throughout the ages. He displayed little or no inclination to elucidate the social, economic and cultural history of the society he was representing, or of correlating such a history with the prevailing perceptions of crime and punishment. His history was a ‘simple linear view of reform as progress’. 64 Radzinowicz’s progressivist, presentist view can be discerned from his belief that in England, ‘as a result of the uninterrupted continuity in its developments, the past, the present, and the future of every important legal institution are intimately interconnected’. 65 It can also be discerned from the opening passage of Volume I of A History of the English Criminal Law and its Administration from 1750: ‘Lord Macaulay’s generalisation that the history of England is the history of

65. L. Radzinowicz, ‘Some Sources of Modern English Criminal Legislation’ (1944) 8 Camb LJ 181.
progress is as true of the criminal law of this country as of the other social institutions of which it is a part'. As Rawlings suggested:

The chief problem with this perspective is that it looks at history backwards. The historian [Radzinowicz] takes an event ... and sifts through history looking for those things which seem to fit in well with that event. Two piles of information are built up. The first and most important, is of those things which seem — or made to seem — to predict the event. The second is of those which seem opposed to the event: those either are discarded or are included so that the path to the selected event can be shown to have been a struggle, even if the end result has an air of inevitability.

Because Pease is so influenced by Radzinowicz's perception of the development of criminal justice history, he, too, is guilty of operating in a teleological paradigm. As a result, any of the analogies he has drawn between community service and impressment must be treated with the greatest of scepticism.

Take, to begin with, the notion that both impressment and community service should appeal to adherents of 'different varieties of penal philosophy'. The broadness of community service's objectives, it is submitted, must be construed in the context of the social, economic, penal and political milieu of the late 1960s and early 1970s, and, in particular, in the context of the historically specific determinants of increased crime rates, the sensitisation of moral panics, the politicisation of law and order, the crisis of hegemony which manifested itself in the prison system (i.e. overcrowding and prison escapes), increased calls for the need to return to eco-


68. Barbara Wootton of the Wootton Committee later described this statement, of which she was always 'slightly ashamed', as an 'undisguised attempt to curry favour with everybody'. B. Wootton, Crime and Penal Policy: reflections on fifty years experience (London, 1978), p. 228.

69. In 1944, for example, the daily average prison population stood at 12,915; by 1970, the figure had risen to 39,028. Such a change militated, to some extent, against effective security and the implementation of the proper custodial function of imprisonment. One sign of the strain manifest in the prison system in the 1960s can be discerned from the increasing number of escapes and attempts at escape. In 1946 only 864 such attempts were made but by 1966 this had grown to 1,871, an increase of 116.5% in the space of 20 years. Such an increase became all the more
nomic and social laissez faire as growing discontentment with the Welfare State – and its combination of Bevredgism and Keynesianism – evidenced itself, and the declining influence of the rehabilitation ethos. It was against this whole purview of referents which were all at work in shaping the penological and social climate of the late 1960s and early 1970s that the sanction of community service had to be justified in order to satisfy the public at large and meet the demands of a pressurised penal system. This is not to imply that some local parishes did not find themselves impelled to eliminate their criminal classes in the 1600s and 1700s: they undoubtedly did. But impressment was not specifically designed as a measure to palliate these exigencies; rather it provided an opportunity for magistrates, as a result of the pressures of war, to disgorge its complement of disreputables. The historical reality was that impressment was primarily exploitative in nature – whatever the rhetoric it was dressed up in – in that it provided a ready-made panacea for the manning problems that obtained for a government antipathetic to maintaining a navy during peace time. It was not specifically created as a means of punishing offenders; rather offenders were seen as one further means (albeit a means of last resort) of manning crews in times of emergency. To suggest otherwise, or to propose that it would appeal to a variety of different penal philosophies which were akin to those proffered in the early 1970s is to fail to appreciate the more historical motives of impressment and community service and the more historical nature of the societal complexes in which they endured.

Moreover, Pease also insists that for debtors, at least, impressment is analogous to community service in that they both embody a consensual element. He fails to appreciate, however, that debtors, prior to the mid-nineteenth century, were regarded as a special class of prisoners. Imprisonment of a debtor was primarily regarded as being of a coercive nature, as a means to compel payment rather than as punishment for the previous failure to discharge a debt. This position was summed up by Mr Justice Page alarming with the escape of high profile inmates such as Charles Wilson from Birmingham prison in August, 1964, Ronald Biggs from Wandsworth prison in July, 1965, and George Blake from Wormwood Scrubbs in August, 1966. See Home Office, Report of the Commissioners of Prisons and Convict Prisons for the Year 1946 (London, 1947), Cmd. 7271, p. 14; Central Statistical Office, Annual Abstract of Statistics (London, 1973), No. 110, p. 86; J. Thomas, The English Prison Officer since 1850: a study in conflict (London, 1972), pp. 185-187; T. Newburn, Crime and Criminal Justice Policy (London, 1995), p. 23.


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in his charge to the jury during the trial of John Huggins, Warden of the Fleet, for the murder of Edward Arne in 1729:

A prisoner for debt is only taken like a distress, and kept there till he or his friends can pay the debt for him. Imprisonment is no punishment, it is not taken as part of the debt . . . He [the debtor] is kept only in such manner as he may be forthcoming and safe.

One must bear in mind that the economy during the seventeenth and eighteenth centuries was founded upon an extended and diverse network of credit and debit and it was the function of the courts to regulate the repayment of outstanding debts. This demand for credit is succinctly summed up by Cornish and de N. Clark: ‘in a world where income was often seasonal or spasmodic, where currency could still be hard to find, where sources of borrowing were limited, credit was an inevitable aspect of daily living at every level, as well as of agriculture, industry and commerce’. Any individual who threatened the debtor/creditor nexus was confined in prison. The courts viewed such an arrangement as necessary to uphold the spirit of commercialism that prevailed. Yet, as already noted, imprisonment of debtors was not designed as a strict punishment, but as a medium through which they could be detained until payment of the debt. Indeed certain privileges, not ordinarily given to convicted felons, were afforded to imprisoned debtors. These included extended visiting rights (Lady Hamilton, mistress of Admiral Lord Nelson, who found herself a debtor after the battle of Trafalgar, played hostess to the Duke of Sussex whilst imprisoned), the opportunity to work at their chosen trades, day trips out of the prisons, and the right, in some instances, to live outside the prison walls – for example, several square miles around the King’s Bench prison in London was assigned as an area (called ‘the Rules’) in which debtors could settle.

The reason why debtors received concessions over and above those awarded to ordinary prisoners was down to the considerable sympathy they

invoked in the public at large. Moreover, critics of imprisonment for debt in the late 1600s (the period in which the Insolvent Debtors Acts, that Pease refers to, were enacted) pointed out that it was ‘paradoxical to confine a debtor who lacked assets for the ostensible purpose of compelling him or her to pay . . . debts’. Society recognised that individuals were not always entirely culpable for their insolvency: ‘some suffered through accidents of fire or theft; trade or health, or even from the vindictive action of an enemy who had chosen to exploit a debt unfairly’. It is within this context that we can begin to understand Parliamentary initiatives at discharging debtors from prisons. By enabling them to enlist, it eased public conscience regarding their plight in prisons, removed them from the clutches of their creditors who they were often completely incapable of reimbursing, and provided the navy with a means of manning its crews in times of difficulty.

Now let us focus more ardently upon the consensual element of community service. There are two reasons for this provision: (i) it was thought that such a sanction would be completely inefficacious in the case of a dissatisfied and uncooperative offender; (ii) it was also introduced to enable the authorities to circumvent prohibition on forced labour. In respect of point (i), it is necessary to provide a snapshot of the correctional and social ideologies at work during the 1960s and early 1970s in England and Wales. To begin with, the ideology of ‘community’ had gained in momentum in the period in question to become an important facet of the correctional process, founded as it was on the existence of a range of social relationships which authorised and encouraged mutual aid, co-operation and interaction, the reduction of stigma, and the furtherance of integration. Indeed, involving communities in the pursuit of panaceas became compelling for a whole purview of societal difficulties; community care, community work, community policing, community development, community

78. In respect of the impressment of non-debtor offenders, there appears to have been considerable differences in sentencing policy vis-à-vis any consensual element. For example, in Gloucestershire (presumably in the 1790s), William Brown was given the choice of six months in gaol or joining a regiment overseas. On the other hand, Joseph Burn, a shoemaker in Northumberland, was found guilty of larceny in 1793 and was ordered to be sent on board a warship. Finally, William Maxwell was convicted of misdemeanour at the Devon Assizes in 1794 and his sentence recorded that he was to be imprisoned until such time as he entered his Majesty’s Seas Service. Emsley, “The Recruitment of Petty Offenders during the French Wars, 1793-1815”, pp. 201-203.
79. S. 14(2) of the Powers of the Criminal Courts Act 1973, provides that a court shall not make an order in respect of an offender unless the offender consents.
education, community politics, and architecture may all be cited as examples of this increased appeal to the ideology of community. From a correctional standpoint, the Morison Report, for example, noted as early as 1962 that there was a moral case ‘in a society founded upon respect for human rights, for a system which allows an offender to live and work in the community’.80 Indeed the powerful impetus that the ideology of community provided quickly became evident, *inter alia*, in the establishment of real life social experience groups in Norwich Prison and Pollington Borstal, in the establishment of a therapeutic community in Grendon psychiatric prison, and in the creation of a number of dispositions such as intermediate treatment, day training centres, bail hostels and probation homes. Through, in part, the iconography of Tönnies’s *Gemeinschaft* which consisted of all kinds of association in which natural as opposed to rational will predominated, the correctional process began to be portrayed in Manichean terms with the forces of light of the community (open, inclusive, natural, cultivating a sense of belonging and fraternity) ranged against the forces of darkness of the prison (stigmatising, closed, cultivating a sense of alienation and estrangement).81 Not surprisingly, by the early 1970s, social control discourse and practice had embraced the ideology of community and perceived it, among other things, as capable of promoting a sense of belonging and the promise of inclusivity for a wide variety of miscreants.82 Moreover, a new enthusiasm for voluntarism and community participation began to manifest itself in the social process during the same period as a result of a growing frustration with the isolatory nature of advanced industrialist society. Indeed Durkheim’s illumination of *anomie* – embracing the notion of dissociation from the social order which consequenced itself in a sense of alienation in the individual – and its symbolisation as one of the characteristic problems of modernity is, to some extent, evident in the comments of the Aves Committee in 1969:83

The degree of control over parts of our lives and the loss of some of the personal element, particularly at work, has produced a desire to counteract these effects by undertaking activities which give scope for spontaneity, initiative and contact with other people.

Not surprisingly, there was an upsurge of interest in participation as a political and social issue in the 1960s. Participatory measures were viewed as beneficial in a number of ways: they would provide those involved with a sense of dignity and self-respect; they could enhance an individual's capacity by helping him or her to cope intelligently with a range of issues; they could assist individuals in discerning their own real interests, and; they provided an expressive function in that they enabled ordinary people to voice their opinions in respect of policy issues. Indeed participatory programmes were quickly advocated by a variety of different interest groups as a means of counteracting the threat posed by consumerist society. For example, in 1960 the Albemarle Committee recognised the advantages of voluntarism given the changing social and industrial conditions; Alec Dickson established Community Service Volunteers in 1962, and; the Newsom Report, in 1963, suggested that community service (non-penal) was of 'double-value' to school children in that they performed useful tasks in the community and derived benefits from the undertaking of more adult responsibilities. Belief and support for the idea of participation is also evident in Anthony Steen's decision to establish Task Force in 1964 and in the 1968 Schools' Council Report, titled *Community Service and the Curriculum*. Both the correctional and participatory elements are inherent in the consensual element of community service – albeit an element sometimes more imaginary than real. By ensuring that the offender consented to a community service order, it was hoped, in keeping with community and participatory ideologies, that her work relationships with volunteers, supervisors and those in need of assistance could be cultivated in an *esprit de corps* thereby reducing her alienation from society and promoting her self-worth in a co-operative, approving and interactive environment.

In relation to point (ii), when introducing community service orders in England and Wales, it was necessary to ensure that the sanction complied with international conventions concerned with forced labour. For example, Article 2(2) of the 1930 Forced Labour Convention, ratified by the United Kingdom on June 3, 1931, stated that work or service exacted from any person as a consequence of a conviction in a court of law is exempted from the convention provided that the said court is carried out under the supervision and control of a public authority and that the said person is not hired or placed at the disposal of private individuals, companies or associations. Similarly, Article 4 of the European Convention on Human Rights, ratified by Britain on the November 4, 1950, prohibits forced or compulsory labour, albeit that it does not apply to any work undertaken in the ordinary course of detention or conditional release from such detention.

The introduction of the sanction, then, may have been prohibited by the International Labour Convention of 1930 in that the participation of voluntary organisations on community service order schemes may be deemed to be private associations. The sanction may also have been contrary to the European Convention on Human Rights in that it is possible to construe the work as of a type which was not carried out in the ordinary course of detention or during conditional release from such detention. It may now also violate Article 8 of the International Convention on Civil and Political Rights for the same reason – breach of Article 8, however, was not a relevant consideration at the time of introducing community service, as the Covenant was not ratified by Britain until May 20, 1976. Thus, it was partly to avoid the issue of forced labour that legislation in England and Wales provided that an offender could not be required to carry out an order without her consent. By consenting to the order, the offender offered herself voluntarily, thereby enabling the criminal justice process to neatly circumvent the difficulty of forced labour.

Of course, these conventions must be construed against the historically specific background of the late nineteenth and early twentieth century which witnessed, for the first time, the emergence of substantive rules concerning the rights of individuals in international law. It was in these years that National States set about cultivating and promoting such rights through the forum of international law. The predominant view prior to this was that each State had an authoritarian right to govern its citizens as it deemed appropriate. In the late nineteenth and early twentieth century, however, the growth of a more welfarist philosophy began to manifest itself, albeit in a dilatory and fragmented manner, in an international setting. Across a broad spectrum – including labour, science, education, refugee assistance, civil aviation, communications, agriculture and banking – the substructure of international law began to shift from a formalised State oriented approach to one which was increasingly willing to acknowledge the rights of citizens. After World War One, in particular, the impetus for such a shift included the notion that the most appropriate means of preventing further outbreaks of war was to restrict the abilities of States to engage in warfare, the gradual opening up of democracies in some Western European countries and the decline of individualistic and utilitarian notions of liberty, the demotion of Europe to the rank of merely one of the areas of power, and the advocacy of principles by the Soviet Union after 1917 such as the right to self-determination, the substantive equality of States and socialist internationalism.\textsuperscript{88} The rate of this transformation accelerated after the Second World War as a result of the creation of the atom bomb and its potential for widespread destruction, the developing political power of the United States and its anti-colonialist ideology, the movement towards a Welfare State in many countries, and the perpetration of acts of the most

outrageous kind in Josef Stalin’s development of full Marxist-Leninst collectivist socialism and Adolf Hitler’s development of national socialism. What was now clear was that the ‘international community constituted by all States, could not afford to continue to leave it to each of them to choose alone, in the exercise of its unfettered sovereignty, between the absolutist strand and the strand of constraints: a superior and extended set of constraints had to be imposed on each of them in the interests of all’. Of course, in recognising that fundamental changes have occurred, it is necessary to emphasise that the success of a more welfarist approach to human rights encountered – and still encounters – resistance, dramatic interruptions, continued injustice and inadequate implementation in many instances. Yet it undoubtedly remains the case that international law has undergone a metamorphosis in respect of individual citizens and the imposition of international standards established by common consent.

It should be apparent, then, that any collation between the consensual element of impressment and the consensual element of community service is a misconception in that it distorts the significance and character of consent in respect of community service whilst also obscuring the contextual significance as it applied (or did not apply as was more often the case) in respect of impressment. As I have sought to delineate, the manner in which consent is utilised by a society vis-à-vis offenders at any period in history is determined by a pot-pourri of objectives and determinants which emerge in conjunction with what is socially, economically and culturally feasible. In this regard, Pease’s teleological view of the shared consensual elements community service and impressment is methodologically flawed in that he examined the surface histories of both sanctions but ignored, through a process of exclusion, a whole plethora of determinants and specificity of details which reflect not the essential sameness of the consensual elements inherent in both, but their differences of intention and convention. As such, as well as being wholly anachronistic, Pease’s approach is an over-simplification of the relations between both sanctions in that it lends itself to a ‘mythology of coherence’ whereby the sanction of impressment is accredited with certain characteristics that it never actually embodied or aspired to embody.

Pease also argues that, like community service, impressment was to some extent determinate in that enlistment was for the duration of the war

rather than for an indefinite period. There is nothing determinate, however, about the duration of a war. Indeed, one of the reasons cited for the greater number of desertions in the Navy was the lack of a stated period of enlistment. As Usher noted in respect of the period between 1792 and 1814:

While it is true that all but 20,000 men were discharged after the war [the American Revolutionary War], there was no guarantee to any individual that he would not be held on after the duration. In those days a seaman had few privileges, and with a little ill-luck one might remain in the navy a lifetime, and against one's will.

The essential point to be cognisant of is that the explicit quantifying of a penal sentence in leisure hours (ranging from 40 to 240 hours) is very much a feature of contemporary Western societies in which temporal organisation, order, and synchronisation form integral elements. It is only in such a quantified, spatialised setting that the determinacy of community service can be envisaged. Moreover, the functioning of community service is clearly dependent on the cultural phenomenon of leisure in that it compels an offender (who has consented to the order) to spend a fixed period of leisure time (calculated in hours) undertaking constructive work in the community. However, this cultural phenomenon of leisure has not remained invariable throughout history but has undergone and continues to undergo a metamorphosis which has not only altered its shape but also its substance.

In general terms, leisure was not a demarcated and separate segment of an individual's daily routine prior to the Industrial Revolution. Rather it was available in the interstices of the work day which was more often than not determined by agrarian and seasonal rhythms. Between the eighteenth and nineteenth centuries, however, and as a result of the concentration of labour in specialised institutions, and the increased emphasis on temporal precision, on time-related as opposed to task-related toil on the cash nexus relationship between employers and employees, and on individual and collective work discipline, a marked disjunction manifested itself, in broad terms, between leisure and work, albeit that leisure was still viewed as a

92. Usher, 'Royal Naval Impressment during the American Revolution', (1950-51) XXXVII The Mississipi Valley Historical Review, 686. If Pease was conversant with his history of impressment, he would have been mindful of a statute in 1835 which provided that no person would be liable to be detained against his consent in the naval service for a period longer than five years (1835: 5 and 6 Will IV. c. 24). At least this form of impressment was more determined than that which he proposed. Nonetheless, even this five year duration was not thoroughly fixed in that the commanding officer was given power in any special emergency to detain an impressed man for a further six months or until such an emergency ceased.

threat to the work ethic; ‘rational recreation’ (libraries, museums, music), however, was tolerated in that it implied both order and control and could be contrasted with boisterous popular culture which often involved wild saturnalia and the pursuit of ‘primitive pastimes’.

As such, it was only in the twentieth century that demarcations between work-time and free-time became more palpable. Leisure, in its modern sense, was brought about as a result of the substantial reduction in the hours of work, the growing belief that leisure was a suitable non-monetary compensation for work and should, where possible, be a matter of personal choice, the introduction of holidays with pay, increases in the holidays taken, the emergence of a leisure industry, the enshrinement of leisure as a right, increases in discretionary income, and the declining role of the Church.

As Roberts noted, the population has been made consciously aware of leisure as a distinct element in its rhythm of life, and particular pursuits can now be valued purely for their worth as leisure activities. Leisure values, in this way, are incorporated into society’s culture, and people are able to think in a way that was formerly impossible.

Herein lies the crucial point. It was only when society had been made consciously aware of leisure as a distinct element in its ‘rhythm of life’ that the authorities could begin to deprive an individual of it as a means of social control. Thus, rather than viewing the sanction of community service as simply the unfolding progressive logic of penal labour history, we must, through a process of inclusion, also be prepared to construct the specific cultural code in which it was shaped if we wish to appreciate its historical conditions of emergence and its complex and interrelated configuration. In this regard, the broad span of Pease’s processual approach, is contrived in that it disregards particular and specific cultural forces which acted as determinants on the shaping of community service orders.

Two final points can be made. First to suggest that ‘rehabilitative overtones’ are present in both community service and impressment is anachronistic and untenable. The modern appearance of the rehabilitative ideal can be differentiated from earlier reformatory appearances in that it emanates from occurrences in other scientific disciplines engrossed in human

behaviour and it has been influenced by academic inquiry. Garland, for example, in outlining the rules of formation of the modern penal welfare structure, described it "as a move from a calibrated hierarchical structure, into which offenders were inserted according to the severity of their offence, to an extended grid of non-equivalent and diverse dispositions into which the offender is inscribed according to the diagnosis of his or her condition and the treatment appropriate to it." It was only in this archetypal or concrete system of punishment which included among its characteristics an increased willingness to adopt scientific methods (aided no doubt by positivist criminology), the decline of moral free will perceptions of offending, the decline of the idea of attempting to stimulate a spiritual awakening in the offenders, and the rise of more individualised and measured rehabilitative techniques. Indeed the adoption of science as a proper means of reclaiming offenders can be seen from the following comments of Ruggles-Brise in 1924:

The modern school of *L'hygiene preventive* holds the field to-day – i.e. prevention which will operate (1) by the elimination of the social causes which create an unhealthy environment (2) by the encouragement of scientific treatment of the feeble in mind or body (*faibles d'esprit et arières*) so that, if possible, before it is too late, the germs of anti-social conduct may be diagnosed and, if possible, destroyed by appropriate handling and treatment.

This medico-psychological approach to criminals together with a growing appreciation of the part played by the social environment began to dominate penal discussions from the late nineteenth century onwards. Examples of legislation which exemplified this appreciation of the complexities of human behaviour include the Inebriates Act 1898, the Reformatory Schools Amendment Act 1899, the Probation of Offenders Act 1907, the Prevention of Crime Act 1908, the Mental Deficiency Act 1913, and the Criminal Justice Administration Act 1914. All of these statutes denoted, in part, a move to a new mode of normalisation which demanded greater levels of knowledge of the offender before diagnosis and treatment could commence. Post-war penal policy accelerated this trend towards the ideological appeal of rehabilitation. In 1959, for example, a White Paper, *Penal Practice in a Changing Society*, noted that methods of training in prisons had expanded, particularly in the application of psychology and psychiatry, in the advancement of skilled industrial training, in engaging prisoners in


associated activities, in the creation of evening education classes, and in the preparation for release through pre-release programmes. In outlining the direction of the criminal justice system for the succeeding decades, the White Paper advocated a quasi-scientific approach which would be founded upon research on the causes of crime and reinforced by careful appraisal of the results already achieved by existing methods.100 Similarly, the Morison Report noted in 1962 that the duty of probation officers to 'advise, assist and befriend' offenders obfuscated many of the major transformations that had occurred in the ways in which probation officers established and employed the personal relationships upon which their success was based. By the 1960s, a probation officer’s dichotomy of duties had to be discharged in an era of increased understanding of the complexities of human behaviour. This, in turn, had resulted in a more professionalised approach being employed in the practice of social work. Accordingly, ‘the probation officer must be seen, essentially, as a professional caseworker employing, in a specialised field, skill which he holds in common with other social workers, skill which, if it opens up to him hopes of constructive work which were not enjoyed by his predecessors of twenty years ago, also makes more complex and subtle demands upon him, reflecting as it does, growing awareness of the difficulty of his task’.101 As such, rehabilitation is very much part of the modern penal welfare structure, prompted as it was by the rise to prominence of psychologists, probation officers, social workers and educationalists; by the movement, where possible, from encellulment to association; by the displacement of the moral consciousness concept of criminal behaviour (moralism) with a more inductive, individualised approach (causilism); and the adoption of science as a proper means of reclaiming offenders.102

Given these criteria – criteria which have not remained constant and continuous overtime – it is submitted that it is a historical myth to propose that an analogy can be drawn between community service and impressment vis-à-vis rehabilitation.103 Once again, it illustrates the problem of


102. Of course, as has already been noted, the chameleonic nature of penal policy and its distrust, to some extent, of the malleability of human nature became evident in the late 1960s as a result of the widespread impression of growing disorder and increasing crime rates. See R. Hood, ‘Criminology and Penal Change: a case study of the nature and impact of some recent advice to governments’, in R. Hood, ed., *Crime, Criminology and Public Policy: essays in Honor of Sir Leon Radzinowicz* (London, 1974).

103. Indeed it is submitted that impressment was strictly exploitative in motive with occasional lip-service being paid to reformative values. For example, Thomas Barnes, in 1626, argued for the impressment of vagrants on the ground that it was both pious and prudent ‘to spend the worst first, and spare the best to the last extremity’. T. Barnes, *Vox Belli* (1626), in W. Hunt, ed., *The Puritan Move-
historiographic anachronism and the distortions to which viewing the past with the present very much in mind give rise. As such, there is a need, as this paper has sought to demonstrate, to develop a more diacritical methodology which recognises that whilst the present is constructed out of the past (and is in some respects continuous) also recognises that the modern penal structure (and it was from such a structure that community service orders emerged) is composed of a series of distinctive strategies and representations, so as not to reduce penal history to a triumphant, progressivist crusade.  

Secondly, the suggestion that the policy of mixing offenders with regular soldiers has a ‘remarkably modern ring’ and in this regard the ‘parallels with community service are fairly remarkable’, fails to appreciate the motives for mixing or the practices of mixing in both community service orders and impressment. Indeed, with regard to impressment, there is evidence to suggest that certain regiments in the army were entirely composed of offenders. The Secretary of State, Richard Ryder, referred in Parliament in 1812 to three regiments consisting entirely of offenders. Sir Samuel Romilly objected to such a method of recruitment on the grounds that ‘it would appear more like a certain number of recruits being wanted for the army, than if it was the good conduct of such a number that had recommended them to a more honourable situation’. Wilberforce suggested that it would be dangerous to leave these men in regiments of their own and recommended instead that they should be mixed with other corps (and not ‘older’ corps as Radzinowicz and Pease suggested) to form special regiments. General Tarelton, however, disapproved of mixing those men in the army as they did not want ‘gaol-birds’ to lower the tone of the regular regiments now that their moral prestige ‘had been much improved’. It is difficult to elicit from these parliamentary debates that mixing was a method: The coming of Revolution in an English County (Cambridge, 1983), p. 14. A similar view was expressed by a correspondent, ‘Lenita’, who published a letter in The Gentleman’s Magazine in 1762 in which he noted that undesirables should be impressed on the grounds that they ‘might stop a ball, and prevent the loss of better men’. Lenita, The Gentleman’s Magazine (London, 1762), pp. 53-54.  

104. Foucault has made a similar point in respect of discursive formation: “To say that one discursive formation is substituted for another is not to say that a whole world of absolutely new objects, enunciations, concepts, and theoretical choices emerges fully armed and fully organised in a text that will place that world once and for all; it is to say that a general transformation has occurred, but that does not necessarily alter all the elements; it is to say that statements are governed by new rules of formation; it is not to say that all objects or concepts, all enunciations or all theoretical choices disappear”. Foucault, The Archaeology of Knowledge, p. 173.  

105. Cobbetts Parliamentary Debates (1812), cols. 1255-1256.  
106. Ibid., cols. 1257-1258.  
107. Ibid., col. 1258.  
108. Ibid.
clear policy with regard to impressment. On the contrary, it appears that offenders, if they were to be taken (bearing in mind that impressment was utilised as a ratio ultima) were recruited into separate regiments so as to maintain the morale and stature of the regular army.

In respect of community service orders, the Wootton Committee did not ‘rule out entirely the performance of community service by groups consisting entirely of offenders’. But it regarded it as a ‘mistake if this became the normal style of the new proposal, for this would, in our view, be likely to give the whole scheme too strong a punitive flavour and would cut off offenders, both from the more constructive and imaginative activities, and from the wholesome influence of those who chose voluntarily to engage in these tasks’. The reason for mixing offenders on a community service order scheme with volunteers, then, are as follows: to ensure that the sanction did not embody too many punitive characteristics, to conceal, to some extent, the identity of the offenders and to enable them to be influenced by those who voluntarily gave their free time to perform constructive and imaginative tasks in the community. The motives and practices of mixing under a community service order are, accordingly, incomparable with those under impressment.

CONCLUSION

What this article has sought to demonstrate is that impressment and community service orders are not structured by the same principles, assumptions or constitution and should not, in genealogical terms, be viewed as part of the same system of relations. In this regard, Pease’s prefatory, progressivist approach is ahistorical in that he distorts – through a process of exclusion – the complexities and significance of community service orders whilst he also – through a mythology of coherence – obfuscates the contextual meaning of impressment. Moreover, in adopting such a teleological interpretation of history, Pease, it is submitted, subdues his original telos which was to highlight the historical conditions of emergence of community service orders. Yet because of the broad span of his approach (which consumes, without qualification, all penal labour related dispositions from the historical process), Pease is unable to illuminate some of the more positive, genuine and historical claims of relevance in respect of the germs of community service. Thus, rather than viewing impressment as a proto-community service order, it is submitted that the latter disposition must be construed – if we are to understand its constitution – as being governed by a specific complex of penal, social and cultural representations which do not always lend themselves to unqualified collations over time. Similarly, the former disposition must be construed free from the falsehoods of a pro-

gressivist historian who seeks to understand it simply in terms of its soi-disant relationship with community service orders.

What is essential therefore, as the Annalist Braudel noted, is the need to remove ourselves from the belief ‘that history is nothing but a monotonous game, always changing yet always the same, like the thousand combinations of pieces in a game of chess – a game constantly calling forth analogous situations and feelings which are always the same, with everything governed by the eternal, pitiless recurrence of things’,110 How then do we overcome this version of history? How, more importantly from our perspective, should we begin the process of examining more positive and historical claims of relevance in respect of the germs of community service orders? In the first instance, and what may be referred to in Braudelian terms as une histoire lentement rythmée, it is important to recognise, however loosely, the modern penal conjuncture in which community service was introduced.111 Such an approach, no doubt, will reveal certain characteristics such as, inter alia, the growth of a more homogenised and professionalised penal apparatus, a developing awareness of etiology which embodied a more inductive and individualised approach in respect of the treatment of criminal behaviour. All of these phenomena – which have been highlighted by revisionists such as Garland – are incapable of being justified or conceived of in terms of sentiments or principles of former penal conjunctures, but undoubtedly impact at a general level on both the shaping and introduction of community service orders.

Having performed this historical catharsis, it is then possible, it is submitted, to locate the specific conditions of emergence of community service within this modern penal conjuncture – this may be referred to as a history of ‘short, sharp, nervous vibrations’.112 Such a history would include events or trends such as the remarkable growth of voluntary and participatory programmes in the 1950s and 1960s as a result of the deficiencies in the state system of social welfare, mounting disquiet about the activities of young people, and a general desire to combat the increasingly isolated feelings associated with advanced industrialist capitalism; the development of a more policy oriented outlook vis-à-vis community service in penal institutions in the late 1950s and 1960s with the emergence of the correctional community ideology as a panacea for deviant behaviour; developments in respect of intermediate treatment in domestic law and international experiments with community work in Australia, America, New Zealand and Germany; the crisis of prison overcrowding from the mid 1960s onwards; the growing ideological appeal of reparation; and the emergence of leisure as a right and as a separate and distinct component of daily routine. Such an approach, it is argued, will aid our understanding of the key

111. Ibid., pp. 3-4.
112. Ibid.
issues and concepts inherent in community service and its relationship with other concerns and practices in the period in question. Moreover, it is hoped that such a history will be viewed as being more sensitive to context and will enable the disposition of community service to become a more coherent object of analysis by opening up new avenues of enquiry in respect of its meaning and prospects.

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