The Introduction of Community Service Orders: Mapping its ‘Conditions of Possibility’

SHANE KILCOMMINS
Professor of Law, School of Law, University of Limerick

Abstract: The Criminal Justice Act 1972 made provision for the introduction of community service orders in England and Wales. In describing the sanction, many commentators adopted the view that it was only in detail a novel disposal, given that work-based penal dispositions can be traced a long way back in penal history. This article rejects such an approach to understanding the sanction on the grounds that is is ahistorical and proceeds with the assumption that all penal work sanctions are governed by the same commitments and principles. Its conditions of possibility, it will be argued, can only be understood within a modern penal and social complex. Such an approach will be more sensitive to context and will enable the disposal to become a coherent object of analysis by opening up new avenues of enquiry in respect of its meaning and prospects.

Keywords: community service orders; punishment; history; conditions of possibility

It is now over 40 years since community service orders (CSOs) were first introduced in England and Wales following the enactment of the Criminal Justice Act 1972. The sanction was one of the key recommendations of the Wootton Advisory Council on the Penal System in 1970, a Committee petitioned by the then Home Secretary, Roy Jenkins, to consider what variations and annexations could be made to the existing range of non-custodial penalties. The appointment of the Committee may be regarded as the first all-embracing investigation of the adequacy of the existing powers of the courts to sentence offenders without recourse to the use of custody. The order itself required an adult offender, who had consented, to perform between 40 and 240 hours of supervised unpaid work in the community. The consent of the offender was thought necessary because of prohibitions on forced labour, and the prevailing view that such a sanction would be completely inappropriate in the case of an unco-operative offender. It was believed that constructive unpaid work in a participative environment could provide a means of altering the outlook of offenders (Home Office 1970a, p.13). It was also envisaged that the work of the offenders would be carried out in association with volunteers, as the
performance of such service by groups consisting entirely of offenders 'would 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 choose voluntarily to engage in these tasks' (Home Office 1970a, p.13). There was some initial debate as to whether the voluntary agencies, the prison service, local authorities, or the probation service, would supervise the work undertaken. Ultimately it was decided that the probation service would be the most fitting organisation since it was locally based with an extensive network of offices, and it already carried out a wide range of duties connected with the welfare and treatment of offenders in the community (Home Office 1970a, p.17).

The Wootton Committee submitted that the sanction represented a 'new and radical development', one which 'broke new ground in this country' (Home Office 1970a, p.12). Many commentators, however, have suggested that the sanction was not original since work has been embedded as a constituent element of punishment – in sanctions such as prisons, houses of correction, impressment, transportation, and hulks – for a very long time. CSOs were, accordingly, only a 'clone' of these historical sanctions, albeit more 'up-market' in appearance: it is only 'the shape of sanctions which undergoes a metamorphosis, not their substance' (Vass 1990, p.14). In addition to arguments about the sanction's long past, there also have been conflicting accounts of its contemporary origins, with New Zealand, California, Australia, Germany, and England and Wales all posited as its pioneering jurisdiction.

This article provides an argument for the construction of a more historical approach to the introduction of CSOs. It will attempt to write a 'history of the present' of the sanction, one which fits within a much broader effort to 'direct historical analysis away from the search for silent beginnings and the never ending tracing back to original precursors' in order to show that 'the history of a concept is not wholly and entirely that of its progressive refinement' (Foucault 1972, p.4). Instead of attempting to write a history of CSOs which is informed by a presentist interpretation of history evolving as 'growing perfection', I will seek to demonstrate its ‘conditions of possibility’ (Foucault 2007, p.xxiv) by examining the factors that shaped its formation and informed its assumptions. Such an approach will aid our understanding of the key issues and concepts inherent in community service and its relationship with other concerns and practices in the period in question.

The Lineage of the Sanction: A Long History or a Short Past?

The originality of CSOs as a penal sanction has provoked a considerable amount of debate. Many would argue, given that work has been employed as a means of expiation for offenders throughout the ages, that there is little new about the sanction. The European Committee on Crime Problems, for example, suggested in 1976 that the concept of community

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service was not new: 'it can be traced a long way back into penal history, in various jurisdictions' (European Committee on Crime Problems 1976, p.34). Warren Young (1979) also accepted that the lineage of CSOs can be traced back to past penal practices such as that embodied in houses of correction (p.23). In 1980, Pease argued that slavery, transportation, penal servitude and houses of correction could all be put forward as community service’s ‘less reputable forebears’, and that the sanction was only ‘in detail a novel disposal’ (Pease 1980, p.5; Pease 1985, pp.56–8). He believed that the practice of impressment in particular, was ‘eerily similar’ and that ‘the parallels with community service . . . are fairly remarkable’ (Pease 1980, p.5).

His contention found approval in Van Kalmthout and Tak’s (1988) book, Sanction Systems in the Member States of the Council of Europe, where it was also suggested that impressments and community service had a ‘remarkable similarity of purpose’ (p.12). Similarly, Vass suggested that a strong affinity existed between CSOs and sanctions such as bridewells, transportation, impressments, hulks, and penal servitude (Vass 1984, pp.6–9; Vass 1990, pp.14–15). In 1991, Hoggarth (1991, pp.40–51) also dedicated a chapter in her book on CSOs to antecedents and cited, among others, the German tribes of AD 98 and the Inca dynasty in the period between the 13th Century and 1582 – both of which used labour as a form of punishment – together with bridewells, workhouses, the Amsterdam Rasp-huis, and impressment.

It is argued in this article that these attempts to provide a long, albeit prefatory, history of CSOs have little purposive effect and falsely proceed on the basis that penal work sanctions have, through time, always been governed by the same assumptions and commitments. Tracing continuities and affinities in this way is, in particular, ahistorical, in that it distorts the contemporary significance and character of CSOs whilst also obscuring the contextual usage of past penal work practices. One of the most useful authorities on the deficiencies in such an approach to history is that provided by Herbert Butterfield (1963) in a book entitled The Whig Interpretation of History. Keen to draw attention to the relativist character of historical interpretation and to the dangers of projecting modern ways of thinking backwards in time (presentism), he suggested:

The whig historian stands on the summit of the 20th century, and he organises his scheme of history from the point of view of his own day . . . [T]his 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. (p.14)

In addition to compartmentalising the historical process into a neat linear package of progress, historians who view the past with too direct a reference to the present in mind subdue their original objective which was to draw upon the past to illuminate the present (Butterfield 1963, p.62). There is, in effect, a circularity of argument: in order to highlight a phenomenon in the present, the (whig) historian makes certain
assumptions about the past which, in turn, find expression in any conclusions that are made about the phenomenon under scrutiny. Presentism is thus a narcissistic form of historiography which ‘cannot break free of the vicious circle of its own forms of consciousness and can only function to provide assurance of contemporary forms of identity’ (Dean 1994, p.29). This attention to relativity and presentism in history was picked up by Foucault, among others (Garland 1997, pp.11–56; Gordon 1997, pp.1023–9). Anxious to avoid the difficulties of viewing history as a linear structure from which growing perfection and evolution in reason and practice naturally unfolded, he noted:

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? . . .) are now being replaced by questions of another type: which strata should be isolated from others? what type of series should be established? What criteria of periodisation should be adapted for each of them? . . . And in what large-scale chronological table may distinct series of events be determined? (Foucault 1972, pp.3–4)

Thus, rather than seeking linear patterns, and the unity and timelessness of phenomena or practices across broad historical spans, Foucault (1972) urged, instead, that the focus, where possible, should be on highlighting ‘rupture’, ‘discontinuity’, and the ‘incidence of interruptions’ in order to produce a proper understanding of their meaning and operation (pp.3–4).

Mindful of the problems posed by presentist historiography, this article will attempt to understand the sanction in the intelligibility of the present. It will do so on the basis that the history of CSOs is comprised of something more than the simple marshalling of work-based penal dispositions of the past into a sequential order. Such present-centred accounts fail to understand that there are no timeless components or dateless knowledge and values with universal application which govern all penal sanctions. The introduction of the sanction in 1972 is not just another response, albeit a modern one, to a timeless and immutable objective set, always posing the same perennial questions. Instead, it is structured by assumptions, commitments and value choices – not to mention institutional contexts and cultural phenomena – that are quite distinct from earlier periods in history. Whilst it may have a ‘long past’ in that sanctions have embodied work since ancient times, it has a ‘short history’ in that it was driven by a particular and specific complex of strategies and practices which render anachronistic any superficial connections between it and past penal work practices (Kilcommins 1999, pp.223–55). The remainder of this article is dedicated to highlighting that history.

Whose Idea was it Anyway?

In addition to ahistorical arguments about lineage, there is also some debate as to the contemporary origins of the sanction. Jorg-Albrecht and
Schadler (1986), for instance, believe that it was a British innovation (p.vii). Similarly, American academics such as Carter, Glaser and Cocks (1987, pp.4–10), suggest that the specific use of community service emerged conceptually in England in the late 1960s and operationally in 1972. Such a belief was also supported in Germany. Fuchs (1985), for example, stated: ‘[i]m Gegensatz zu den Deutschen Experimenten ist das Englische Community Service Programm einzund allein darauf ausgerichtet, die Freiheitsstrafe als Primarstrafe zurückzudrängen [Contrary to German experiments, the English community service order was unique in that it was entirely focused on pushing custodial sanctions into the background]’ (p.359). Marc (1985, p.113), however, has suggested that the first programme of CSOs was established in 1966 in Alameda in California. In Ireland, a medley of points of origin have been posited. In 1983, the then Minister for Justice in Ireland, Michael Noonan, suggested that CSOs originated in New Zealand (Seanad Debates, vol. 101, col. 871, 7 July, 1983). Yet the Irish Whitaker Report (1985) stated that it was an Australian innovation (p.50). Some Dáil deputies (Irish parliamentarians), however, suggested that it was a British idea. Deputy Kelly, frustrated at the level of legislative and policy imitation occurring, for example, noted: ‘[T]his [Irish legislation introducing CSOs in 1983] is simply one more example in the ignominious parade of legislation masquerading under an Irish title . . . which is a British legislative idea taken over here and given a green outfit with silver buttons to make it look native’ (Dáil Debates, vol. 342, col. 169, 3 May 1983).

It is undoubtedly the case that ad hoc forms of CSOs existed prior to their inception in England and Wales in the early 1970s. In the 1950s in New Zealand, for example, a programme was initiated which combined a sentence of probation with a condition which required offenders to complete a number of hours of community work. The sanction of periodic detention was also introduced there in 1962. It compelled offenders to attend a designated centre during their leisure time in the evenings or at weekends, where they engaged in a number of constructive work activities in the community (Armstrong 1983, p.10). In Australia, too, a non-statutory ad hoc practice of employing a form of community service for juvenile offenders existed. For example, two young offenders who had stolen from a collection box for the Flying Doctor Service were sentenced by a juvenile court in Alice Springs to spend a period of Saturday afternoons doing chores for the Flying Doctor Service (Hansard, *HL Debates*, vol. 322, cols 612–13, 26 June 1972). Similarly, in the early 1950s in the Federal Republic of Germany, Judge Karl Holzschuh began the practice of sentencing young offenders to perform constructive work tasks in the community (Holzschuh 1960, pp.295–6). His efforts were greatly aided by the passing of legislation in 1953 which enabled German judges to apply a form of community service to juvenile delinquents (Rentzmann and Robert 1986, p.12). It also made the German government’s Youth Authority responsible for ensuring that the court orders were implemented (Dunkel and Meyer 1985, pp.245–56). In October 1966, a Court Referral Programme was established in Alameda County in the United States. This
programme, although not a formal part of the criminal justice system, was created so as to enable selected offenders to perform unpaid work in the community (Beha, Carlson and Rosenblum 1977, pp.6–7). It primarily served female offenders convicted of traffic and parking offences. Participation was voluntary and offenders could opt for a traditional form of sentencing.

Embryonic forms of the sanction were, therefore, in existence prior to its introduction in England and Wales. Baroness Wootton, author of the Wootton Committee Report which heralded the introduction of the sanction in England and Wales, openly acknowledged their relevance. For example, in 1973 she stated the following about the sanction: ‘[t]he sentence is frankly experimental. But there are parallels in the European, the American and the Australian continents, though in some cases they only involve juveniles’ (Wootton 1973, p.18). She also made specific reference in the House of Lords to the New Zealand experiment of periodic detention and to the ad hoc practice that had developed in Australia (Hansard, HL Debates, vol. 322, cols 611–13, 26 June 1972). The Wootton Committee itself recognised that such practices were in operation (Home Office 1970a):

In some State and Municipal Courts in the USA . . . it is common practice to require offenders to carry out works in hospitals; and in West German juvenile courts the power to issue directives to young offenders has been used for similar purposes in an imaginative and sometimes striking fashion, e.g. by sending youth drunks to help in homes for inebriates in order to bring home to them the consequences of alcoholism, or by sending those who rob old people to help at weekends in old people’s homes. We are alive to the attractions of such proposals but it is not our primary intention to make the punishment fit the crime . . . We are particularly anxious to avoid decisions that smack of gimmickry and so undermine public confidence. (pp.14–15)

Despite these international influences, England and Wales must be credited with the establishment of the first sui generis community service programme which formed part of the formal criminal justice system. It was only after the introduction of the sanction in 1972 in England and Wales that the jurisdictions mentioned – with the exception of Germany – established a sanction employing a similar blueprint. In effect, they provided impetus for the creation of the prototype, a prototype which they subsequently adopted. For instance, as a result of the Criminal Justice Amendment Act 1980, CSOs were introduced in New Zealand. The model which was adopted was an English and Welsh one, a good deal of attention being devoted to Barbara Wootton’s ‘widely publicised’ report (Armstrong 1983, p.11). Similarly, much of the legislation for CSOs in Australia was founded on the English and Welsh model. Community service was introduced in Western Australia in 1977, ‘where it was closely modeled on British law’ (Jones 1983, p.71); in Queensland and New South Wales in 1980; and in Victoria (on a pilot basis) and South Australia in 1982 (Bevan 1983, p.2). Moreover, by the mid-1980s in the United States, it was believed that the sanction of community service was on the verge of becoming a ‘permanent
institution’ (McDonald 1986, p.9), ‘based on a British programme’ (Silberman 1986, p.132). Germany, however, proved to be a more reluctant imitator of the English and Welsh prototype. This reluctance to introduce the sanction as a sentence for adult offenders can, in part, be explained by the expansive use of fines as a penalty in Germany, which appears to have filled the role played by CSOs in other jurisdictions (Bishop 1988, p.207). Moreover, doubts existed about whether or not an independent sanction embodying labour would be prohibited by the constitutional ban on forced labour as provided for under Article 12(2) of the German Constitution (Van Kalmthout and Tak 1988, p.499).

After the introduction of CSOs in England and Wales in 1972, other jurisdictions – which did not have a history of employing community service practices – also quickly imitated the model. For example, some individual judges in Canada in the mid-1970s began to use CSOs as a condition of probation. Such a practice was sporadic, however, with many judges sceptical about its legality. Once its legality was upheld (R v. Shaw (1977) 26 CRNS 358), the practice became more widespread. In June 1977, the Minister of Correctional Services and the Attorney General ‘set out to initiate the English experience’ by introducing pilot projects in six areas and petitioning the federal government of Ontario to create community service as a sanction independent of probation (Menzies and Vass 1989, p.208; Menzies 1986, pp.157–69). Scotland introduced CSOs in legislation in 1978, which was also ‘comparable to the earlier legislation that had been introduced in England and Wales’ (McIvor 1992, p.8). Similarly, Ireland, the Netherlands, France, Denmark, Belgium, Norway, Portugal, and Luxembourg, all introduced the sanction, imitating closely the design adopted in England and Wales.

It is hoped that a stage has now been reached where it is established that England and Wales was the pioneering jurisdiction in introducing the sanction. The causal forces that brought about its initial formulation there still, however, remain to be explained. These forces, as has already been pointed out, are not a simplified, linear history of all work-based sanctions. The section that follows will attempt to provide a contextually-accurate account of the historical conditions of emergence of CSOs in England and Wales. Mapping these conditions will provide a means through which to highlight continuity and change over the last 40 years in both the operation and perception of the sanction.

The Conditions of Emergence of CSOs in England and Wales

The introduction of CSOs was structured around certain causal factors that provided both impetus and shape. At a very general level, the sanction emerged within a ‘modern’ paradigm of criminal justice – commencing in the late 19th Century – that was committed to certain principles, values, and strategies. These included the rejection of moral free will perceptions of criminal behaviour, a greater appreciation of the part played by the social environment in offending, demands for greater levels of knowledge.
about offenders, and the rise of more individualised and measured penal disposals that resulted in the prison being decentred (Wiener 1990; Saleilles 1968). Garland (1985) described this transformation in the penal process 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’ (p.28). More particularly, and the focus of this section, CSOs were shaped by certain specific determinants operating within this modern framework of justice. They can be divided into a simple, but useful, taxonomy of push and pull determinants.

On the pull side, and at broad social level, support for voluntarism and community participation steadily grew in the 1960s in England and Wales as a result of a growing sense of anomie and frustration about the isolatory effects of advanced industrialised societies. The ideology of community had also gained in momentum in the period in question. Involving community as a panacea became compelling for a whole range of societal difficulties: community care; community work; community policing; community development; community education; community politics; and architecture, may all be cited as examples of this increased appeal to the ideology of community. Not surprisingly, by the early 1970s social control discourse and practice had embraced the ideology of community (and reparation to the community) as a means of promoting a sense of belonging and inclusion among offenders. 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 undertaking constructive work in the community. It was only with the creation of a particular leisure environment, as existed after 1945, when leisure was increasingly defined as a right of individuals, that the authorities could justify depriving offenders of it as a means of punishing them for their wrongdoings. More specifically, the community service programmes that had emerged in borstals, prisons and detention centres in the late 1950s and 1960s in England and Wales provided a strong impetus for replicating such practices in a non-custodial setting. The decision to introduce CSOs was also aided by a number of push factors. These included the need to restrict the exponential growth in prison committals and the number of prisoners sleeping two or three to a cell. Concerns about gross overcrowding were heightened by the pressures placed on the provision of services in prisons, the degrading conditions found in many of them, and the developing sociological awareness of the contaminating effects of imprisonment. There was also a strong desire to reduce gross prison expenditure in the criminal justice system in the early 1970s.

Pull Factors

Community Service Practices in Penal Institutions. In the late 1950s and early 1960s, penal institutions began to embrace community service as an important element in their employment and social training programmes.
Prisons, notably Pentonville and Shrewsbury, began to co-ordinate and plan schemes of voluntary social service (Home Office 1965a, p.15). By 1967, the leisure time of prisoners in many institutions throughout the country was taken up with archaeological digs, donating blood, maintaining churchyards, helping local organisations, working in hostels, making toys for children with disabilities and assisting the elderly (Home Office 1968, p.8). The Report of the Advisory Council on the Employment of Prisoners in 1962 also recommended that borstal inmates had a substantial contribution to make through community work (Home Office 1962a, p.7). Within a short space of time, most had developed community service schemes, with one borstal governor noting in 1965 that 'service to the community has been the exciting development of the year' (Home Office 1966a, p.22). The materialisation of this community service ideal in borstals in the 1960s was chronicled by the prison department in 1969 (Home Office 1970b):

[T]he most encouraging developments have been in social welfare work and community projects. These range from gardening and decorating work for the elderly and needy to helping run holidays for paraplegic patients and they can be of great value in helping trainees to develop insights into the needs of the physically and mentally handicapped. Such activities can also provide trainees with an opportunity to mix with young people of their own age, coming in many cases from a very different background and range of experience, and these contacts often prove to be of considerable benefit to both sides. (p.19)

By the late 1960s, the ideal was also evident in the training projects of some detention centres. In 1968, for example, one detention centre reported that some of its youths had engaged in tasks which included cleaning up cemeteries and churchyards, assisting at church bazaars and helping old people with their gardens (Home Office 1971, p.22; Home Office 1970c, p.22). The community service ideal was thus already embedded in penal thinking in England and Wales in the late 1960s and early 1970s. Whilst not grounded in any criminological or penological analysis, community service for inmates in prisons, borstals and detention centres was viewed favourably for a number of reasons: it would enable offenders to ‘pay back’ for their wrongdoing; it would help combat their experiences of alienation by providing them with the opportunity to perform constructive work in the community; and it would promote social integration by enabling them to associate with volunteers and the recipients of their assistance.

The Ideology of Community. The ideology of community had become an important facet of both social and correctional processes by the late 1960s in England and Wales. As early as 1962 the Morison Report, a Home Office Departmental Committee report on the probation service, suggested 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. Such a system is also desirable on social and economic grounds. A priori the system will be better . . . if it brings helpful influences
to bear upon the offender while at liberty’ (Home Office 1962b, p.9). The endorsement of community as a social control technique quickly found expression in various penal statutes in England and Wales. Parole, for example, which was provided for under Sections 59–64 of the Criminal Justice Act 1967, permitted the early release from custody of suitable offenders into the community under specified conditions contained in the parole licence.

By the early 1970s, the symbolic power of the ‘community’ was repeatedly called upon to portray the criminal justice system in Manichean terms. The forces of light of the community (open, inclusive, natural, and facilitating the cultivation of a sense of belonging and fraternity) were increasingly ranged against the forces of darkness of ‘total institutions’ (stigmatising, closed, and promoting alienation). As Vass (1990) noted: ‘Prisons punish, but alienate. Community punishes, but reintegrates: it helps to create a moral conscience and assists offenders in rebuilding their social networks; boosting their morale; engaging in good deeds for others; and treating themselves and others with the respect they deserve’ (p.41).

The belief in the employment of community as a panacea for criminal deviancy was thus firmly entrenched by the early 1970s. Indeed, participation by offenders in the community was regarded as an integral component of the sanction of CSOs. As one commentator noted, it embodied that ‘maxim of work with the community as opposed to work for the community’ (Winifield 1977, p.127). In particular, it was hoped that offenders would benefit from associating with members of the public and that they would be encouraged to foster a sense of social responsibility; work with the community would help to restore their self worth and facilitate their reintegration into society from which they had become alienated (Hansard, **HC Debates**, vol. 838, cols 1964–5, 15 June 1972).

**The Voluntary Boom.** There was a marked growth in enthusiasm for the employment of volunteers in the late 1950s and 1960s in England and Wales (Sheard 1992, p.11). This was brought about, in part, as a result of a growing concern about young people and youth subcultures, typified by Teddy Boys, Mods, Rockers and Bootboys. Scuffles between Mods and Rockers, as occurred at east coast seaside resorts in August 1964, magnified such concerns (Brake 1980, p.75). Given these circumstances, there was an upsurge of interest in ‘participation’ as a political and social issue. It was against this background that ‘volunteering began to be perceived in a new role: as a safe, constructive outlet for the otherwise unpredictable and destructive energies of a disaffected young people’ (Sheard 1992, pp.12–13). As was noted in the House of Commons in 1964 (Hansard, **HC Debates**, vol. 697, cols 268–9, 23 June 1964):

What is needed is for a far greater number of good citizens to spend some of their time outside their homes and families in all kinds of voluntary movements . . . One of the failings of our modern society is that there is a lack of people to take part in all kinds of voluntary work. If more were prepared to engage in voluntary work, we would create a new ethic in society which would help conquer this problem.
By the mid-1960s, this 'new ethic' was, in part, realised through voluntary community service schemes. In 1962, Alec Dickson founded Community Service Volunteers, with the objective of altering the public perception of young people by demonstrating what they could actually achieve in environments such as psychiatric hospitals, Chesire Homes and approved schools (Dickson 1976). The Newsom Report on Education suggested in 1963 that community service in 'local hospitals, decorating a community centre, making and repairing toys for nursery and infant schools and individual service in schemes for helping elderly or invalid persons' was of double value to school children in that they performed useful tasks in the community and derived benefit from their participation (Ministry of Education 1963, p.68). In 1964, Anthony Steen established Task Force with the aim of mobilising young volunteers to assist the elderly. It was based upon Steen’s experience of recruiting teenagers to visit householders in the east end of London in the previous three years (Hadley, Webb and Farrell 1975, p.15). It was hoped that the spirit and enthusiasm of young volunteers could be harnessed to tackle pressing social problems. By June of 1969, 3,500 elderly people were receiving assistance from Task Force, involving 8,000 volunteers and 164 schools (Dartington 1971, p.9). Task Force was extended nationwide in 1969 (Hadley, Webb and Farrell 1975, p.15). Volunteers also became more prominent in the criminal justice system. For example, the Report on the Work of the Probation and After-Care Department, 1962 to 1965, recommended that the number of volunteers acting as assistants to the probation service should be increased, noting that there were a number of constructive, worthwhile tasks in which they could engage (Home Office 1966b, p.41). In 1966, it was estimated that there were only 794 volunteers known to be working with the probation service and less than half the Probation Committees for England and Wales claimed to be using them (Barr 1972, p.41). By 1970 the number of volunteers had risen to 2,176 (Home Office 1974, p.134), and only four out of 68 Probation Committees stated that they did not employ volunteers (Barr 1972, p.41). Indeed, Lady Wootton and her colleagues recognised that the idea of voluntary service had come into ‘fresh prominence’ with the emergence of organisations such as Community Service Volunteers and Task Force, and with the involvement of young volunteers still at school (Home Office 1970a, p.12). Moreover, and very much in keeping with the core objectives underpinning organisations such as Community Service Volunteers and Task Force, the idealism underpinning the use of CSOs was premised, in part, on the notion that it would provide offenders with the opportunity to participate in society and to develop a sense of social responsibility through contact with volunteers and with members of society.

The Ideology of Reparation. Reparation as an ideology was also gaining increased support from the late 1950s onwards. In 1957, the Advisory Council on the Treatment of Offenders questioned whether it would be feasible to provide greater scope in the penal system for offenders to pay compensation or make restitution for the damage they had done (Home
Office 1957). In 1959, the White Paper, Penal Practice in a Changing Society, noted the redemptive merits of reparation, particularly in an era of increased concern about the fragmentation of the social fabric (Home Office 1959, p.7). Such fragmentation was thought to be the result of the breakdown of family discipline, the decline of religion, the ‘get rich quick’ ethos of ‘acquisitive society’, ‘growing impersonality’, the opportunities for impulsive and organised crime that industrialised nations provide, and the lack of international wars which ‘meant that the aggressive instinct of our young people breaks out in other forms’ (Labour Party 1964, p.56; Conservative Party 1966, pp.9–15). Reparation was posited as a panacea for such breakdown. For example, in an opinion poll in the mid-1960s on how best to punish the criminal activities of Mods and Rockers, reparation was the dominant response of those questioned (Cohen 1973, pp.90–1). In 1970, the Widgery Committee noted that reparation was an ‘essential element in the punishment of crime’ (Home Office 1970c, p.3). In championing CSOs, the Wootton Committee justified it, in part, by emphasising its reparative qualities. It believed that the sanction would provide the opportunity ‘for introducing into the penal system a new dimension with an emphasis on reparation to the community’ (Home Office 1970a, p.13).

The Cultural Determinant of Leisure. The functioning of community service is also 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. The notion of depriving an individual of his or her leisure time as a penal expression is, however, culturally and historically contingent. Cultural phenomena are often afforded little or no status in penal discourse, but they are influential, often helping to shape and determine what is acceptable in terms of the form that a punishment may take (Garland 1990, pp.195–6).

Work centrality in industrialised society, with its emphasis on clock time sentience, labour differentiation, and spatial and disciplinary rationalisation, has shaped significantly conceptions of leisure and also the activities which comprise the culture of leisure. The 20th Century, and in particular the period following the Second World War, witnessed a widespread reduction in work schedules from one averaging 60 hours a week in the early 1900s to one averaging 40 hours a week by 1970 (Department of Employment 1971, pp.28–36). Furthermore, these years may also be characterised as a period when the rationalisation of people’s time intensified and the distinct boundaries between work time and free time grew ever stronger. As one commentator noted: ‘Leisure in its modern sense as a sphere of positive non-work activity enjoyed by the mass of the working people is thus a modern phenomenon and a product of modern industry’ (Sayers 1989, p.46). It was only with the creation of a particular leisure environment, as existed after 1945, that the introduction of CSOs which embodies the deprivation of leisure as one of its defining characteristics became attainable or conceivable. It was only when society had become consciously aware of leisure as a ‘distinct element in its rhythm of life’
(Roberts 1970, pp.89–90) that it was permissible to rely upon its specific cultural meaning and acceptable to claim that ‘the penalty involved is the deprivation of leisure, and nothing else’ (Hansard, *HL Debates*, vol. 322, col. 610, 26 June 1972).

**Push Factors**

Alongside specific germs and cultural and social idioms which operated as a helpful influence in formulating the sanction, there was also a series of powerful push factors that pressed reformers in the direction of finding new penal solutions. In the late 1960s there was, in particular, a growing realisation that there was an urgent need to develop non-custodial sanctions. It was brought about by the belief that there were too many offenders in prison for lack of an appropriate alternative and that levels of expenditure on criminal justice had to be curtailed. Growing concern about the degrading conditions in which many prisoners had to live was also apparent and there was an increasing awareness that imprisonment actually promoted dehabilitating socialisation consequences. Somewhat ironically, this drive towards decarceration occurred in a period of rapidly-increasing crime rates and a growing anxiety among the British public about disorder and degeneracy. It resulted in a twin-track policy, a bifurcated stratagem in which decarceration would be employed at the lower end of the prison continuum and longer incarceration at the more serious end.

A growing crisis in the form of prison overcrowding was evident in the criminal justice system in England and Wales from the late 1960s onwards. The daily average prison population in 1955 stood at 21,010 (Home Office 1958, p.9). This figure had almost doubled in 15 years, rising to 39,028 in 1970 (Central Statistical Office 1971, p.70). This had a massive impact upon the internal administration of prisons. In 1966, for example, the number of prisoners sleeping three to a cell rose from 5,177 in January to 7,026 in December, and the number sleeping two to a cell increased from 364 to 1,494 over the same period (Home Office 1967, pp.1–2). In 1969, the number of prisoners sleeping two or three to a cell was 10,539, rising to 14,174 in 1970 (Home Office 1978, p.4). Prison overcrowding was recognised as ‘the worst feature’ of the criminal justice system by the late 1960s (Home Office 1969a, p.104). It led *The Times* (14 October 1970, p.11) to state in an editorial piece: ‘The overcrowding in British prisons has become an affront to human dignity and a threat to the efficiency of the penal system . . . The degrading conditions in which some prisoners are forced to live, cooped up two or three to a cell in which they may have to spend up to two thirds of their time must be disturbing to any civilised society’.

There was also a rapid expansion in prison building programmes. In 1958/59 £822,000 was spent on prison building (Central Statistical Office 1964, p.74). This outlay had increased to £4,257,000 in 1961/62 (Central Statistical Office 1964, p.74), to £5,250,000 in 1964/65 (Central Statistical Office 1967, p.107), to £7,088,000 in 1968/69, and to £8,738,000 in 1969/70 (Central Statistical Office 1973, p.86). Gross prison expenditure
also increased from a figure of £23,068,000 in 1961/62 (Central Statistical Office 1964, p.74) to £66,880,000 in 1970/71 (Central Statistical Office 1973, p.107). Not surprisingly, the economics of the criminal justice system began to assume greater importance, giving impetus to the search for alternatives to custody (Hawkins 1975, p.70; Scull 1977, p.152). Concerns about the inelastic nature of government resources and the rising costs of the criminal justice system are evident in the Wootton Report (Home Office 1970a):

Imprisonment is not only inappropriate and harmful for many offenders for whom it is used; often it is a wasteful use of limited resources. Cost is not the only factor but it is worth observing that, quite apart from the increased risk that the State would have to support the family of an offender deprived of liberty, the cost of maintaining an inmate in a prison establishment is on average about £22 a week. No official estimate has been made of the average cost of supervising a probationer but we would judge it to be of the order of £1 a week. (p.3)

This escalation in prison numbers must also be understood in the context of a growing sociological awareness of the ‘total institution’ and its limitations in terms of rehabilitation. In 1958, Gresham Sykes published a book entitled The Society of Captives, in which he demonstrated the contaminating effects of prison life in a New Jersey maximum-security prison and the extent to which it worked ‘in the direction of the prisoner’s deterioration rather than his rehabilitation’ (Sykes 1958, p.134). Similarly, Terence and Pauline Morris, writing about Pentonville prison in 1963, suggested that many prisoners are ‘anaesthetised to the pains of imprisonment by frequent exposure to it resulting in their being in an advanced stage of prisonisation or institutional neurosis’ (Morris and Morris 1963, p.183). By the late 1960s, it was also increasingly recognised at an official level that offenders could not be rehabilitated in prisons. For example, the Home Office publication, Penal Practice in a Changing Society, still cherished the notion of providing effective training programmes for prisoners as its primary goal in 1959 (Home Office 1959, p.21). By 1965, another Home Office publication, The Adult Offender, put forward the view that whilst long periods of imprisonment may punish and deter offenders, it certainly did not fit them ‘for re-entry into society’ and every additional year that they are detained ‘progressively unfit them’ (Home Office 1965b, p.3). In 1969, the White Paper, People in Prison, accepted that the first task of the prison service was ‘humane containment’, with other tasks, such as rehabilitation, playing a secondary role (Home Office 1969b, p.7). This was supported by a number of academic commentaries in England and Wales during this period, all of which confessed to a ‘profound scepticism’ about imprisonment’s ability to rehabilitate offenders (Cross 1971, pp.84–5; Mattick 1967; Jepson 1971).

In these circumstances, non-custodial sanctions began to appear attractive, as time spent in custody could not be shown to produce ‘any better results than supervision in the community’ (Home Office 1974, p.5). The Wootton Committee itself acknowledged that its recommendations ‘could not be definitely known to be more effective than existing measures’, but
they could be justified on the grounds that they were unlikely to be more ineffective, and would be considerably cheaper than imprisonment (Home Office 1970a, p.3: Wootton 1978, p.132). The need to alleviate the prison crisis by generating a broader menu of alternative sanctions began in earnest in 1967. In that year, a Criminal Justice Act was introduced with a single objective, ‘that of keeping out of prison those that need not be there’ (Hansard, HC Debates, vol. 738, col. 64, 12 December 1966). Measures included the introduction of the suspended sentence for sentences of imprisonment of less than two years; mandatory suspended sentences in circumstances where a prison term of not more than six months was passed on an offender who had no prior experience of imprisonment or borstal; the introduction of parole; the introduction of restrictions on the power of courts to refuse bail; restrictions on the use of imprisonment for fine default; and increases in the maximum fines which magistrates’ courts could impose for a wide range of offences.

The Criminal Justice Act 1972 also embodied a desire to alleviate the ‘crisis caused by the astonishing, almost overwhelming, growth of the prison population’ (Conservative Party 1971, p.6). The Act introduced CSOs, deferred sentences, medical treatment centres for offenders affected by alcoholism, and day training centres as part of probation. It also authorised Probation and After-care Committees to establish probation and bail hostels; provided that no court should pass a sentence of imprisonment on a person aged under 21 years who had not previously been sentenced to imprisonment, unless it was of the opinion that no other method of dealing with him or her was appropriate in the circumstances; abolished mandatory suspended sentences; the restatement of the decision in R v. O’Keefe ([1969] 1 ER 427–8) that an offender should not be dealt with by means of a suspended sentence unless the case appeared to be one in which a sentence of imprisonment would have been appropriate in the absence of a power to suspend sentence; and the introduction of suspended sentence supervision orders.

Unlike its 1967 counterpart, however, the Criminal Justice Act 1972 was not solely focused on decarceration. In addition to attempting to remove as many as possible from the prison system (the ‘soft end’ of the system), it also demonstrated a strong commitment to getting tougher at the ‘hard end’ – by increasing, for example, the maximum penalties available for firearms offences. By the late 1960s, the British public had become increasingly concerned about the rising incidence of crime (McClintock and Avison 1968, p.272). Indictable crime offences had risen from a figure of 114,294 in 1949 to 283,825 in 1969. Notions of disaffected youth as exemplified through the Mods and Rockers (Cohen 1973, p.192), the intensity of football hooliganism (Chibnall 1977, p.33), increased racial consciousness (Marwick 1998, pp.231–8), the growing phenomenon of illicit drug use (Hall et al. 1981, p.240), images of anarchy and violence emerging from Northern Ireland, and a whole series of high-profile crimes, such as the accounts of child murder in the Brady and Hindley trial, the violent lives of the Krays and Richarsons, and the attempt by anarchists to kill Robert Carr, architect of the Industrial Relations Bill, in
August 1971, all helped to compound the feeling that British society was increasingly witnessing a period of subversion and moral degeneracy. The 1970 general election, in particular, witnessed the emergence of the Conservatives as the law and order party with 60% of its candidates mentioning the issue (as opposed to 15% of Labour candidates) (Butler and Pinto-Duschinsky 1971, p.90). This marked the commencement of a gradual drift towards a more authoritarian, control-orientated culture. The 1972 Act, therefore, enabled the Conservative government to reduce the pressure on the prison population, thus minimising State expenditure and the burdening effects of overcrowding on the physical conditions of prisons, whilst also allowing them to claim to be getting tough on crime through empowering the courts to deal ‘with offences on a basis which would appeal to modern society’ (Hansard, HC Debates, vol. 826, col. 976, 23 November 1971).

The Actual Decision-making Process

All of these push and pull factors were interpreted and understood within a particular conjunctural criminal justice environment. Post-Second World War England and Wales had established a penal-welfare correctional model of justice. As already noted, this had a number of core tenets and principles which included: an increased appreciation of the part played by the social environment in offending behaviour; the embracement of correctionalist criminology in the search for socially-engineered solutions; a growing dependence on experts (psychologists, social workers, probation offices, educationalists, criminologists) who increasingly socialised criminal justice practices; and the adoption of individualised punishment programmes designed to rehabilitate offenders and facilitate their re-entry into society (Garland 2001, p.34).

A review of the Wootton Committee report reveals much about penal policy in the period in question. The 1959 White Paper, Penal Practice in a Changing Society, in outlining the direction of the criminal justice system for the succeeding decades, had advocated a quasi-scientific approach which would be founded upon research into the causes of crime and reinforced by careful appraisal of the results already achieved by existing methods (Home Office 1959, p.7). According to its recommendations, any substantial changes being considered in the penal system would need to be justified by reference to criminological and penological knowledge and should provide an analysis of why existing methods were insufficient or inadequate. These guiding principles were distinctly absent in the 1970 report, demonstrating a marked disjuncture between rhetoric and reality. This is evident in the pragmatic, speculative language of much of the report which was directed more by intuition and pragmatic concerns rather than by evidence-based policy formulation. For example, the Committee itself acknowledged that its recommendations ‘could not be definitely known to be more effective than existing measures’ (Home Office 1970a, p.3). It also noted that it had ‘not attempted to categorise precisely
the type of offender for whom community service might be appropriate, nor do we think it possible to predict what use might be made by the courts of this new form of sentence’ (p.14).

The Committee recommended that CSOs would be a ‘welcome alternative in cases where at present a court imposes a fine for want of a better sanction or again in situations where it is desired to stiffen probation by the imposition on the offender of an additional obligation’ (Home Office 1970a, p.14). The sanction could also be justified on the grounds that it was cheap (Wootton 1973, p.20), humane (Wootton 1973, p.18), contained an element of ‘bite’ (Young 1979, p.90, and was flexible (Home Office 1970a, p.13). Such sweeping and hackneyed declarations constituted the outer limits of the analysis provided by the Committee. As Hood (1974) noted: ‘The proposition that such service would be effective must, of course, have been based upon some assumptions about why crimes are committed or, indeed, why they are not committed. But none of them are made explicit’ (p.409).

Moreover, a review of the report reveals no firm assurances of any kind, no long-term strategy goals, and no priority choices. Apart from devising alternatives, it does little more than repeat the same truisms that were being voiced in the parliamentary debates, media, and to some extent across society as a whole. It had, for example, little or nothing to say on the relationship of CSOs to other non-custodial sanctions, or whether the length for a CSO was to be determined on the basis of the offence committed or the treatment thought necessary. The Committee’s conclusions and recommendations were ‘a potpourri of intelligent suggestions: their acceptance or rejection will depend more upon their political appeal than their likelihood of making a major impact . . .’ (Hood 1974, p.417).

The sanction was thus primarily grounded in a sentimental, intuitive appeal to the ideology of community service. There was no attempt to justify its introduction by reference to criminological or penological considerations. The agenda was driven almost entirely by political expediency and pragmatism, and decision making occurred in a ‘largely private world where professional experts, civil servants and their political masters quietly decided what was best for the public’ (Ryan 1999, p.6). Penal policy making in the early 1970s in England and Wales continued to operate in a cosy, closed environment embracing shared ‘expert’ views on the social support and welfare direction to be undertaken (Ryan 2003, pp.21–2). The disciplines of criminology and penology, accordingly, were at best a mere ‘screen’ behind which lay the real governing principles – expediency, pragmatism and ideology (Zedner and Ashworth 2003, pp.12–13).8

Conclusions

This article has attempted to demonstrate that the history of CSOs is not the history of all work-based penal sanctions. Such an approach, which consumes without qualification the entire history of penal labour
sanctions, fails to highlight more accurate claims of relevance in respect of
the genealogy of CSOs. The article has sought to provide a more accurate
account of the sanction’s specific conditions of emergence. The conditions
identified include the remarkable growth of voluntary and participatory
programmes in the 1950s and 1960s brought about as a result of mounting
disquiet about the activities of young people, and a general desire to
combat the anomie associated with advanced industrial capitalism; the
development of specific community service practices in penal institutions
in the late 1950s and 1960s in England and Wales; the emergence of the
correctional community ideology as a panacea for deviant behaviour;
developments in respect of intermediate treatment in domestic law and
teresting experiments with community work in Australia, America,
New Zealand and Germany; the growing ideological appeal of reparation;
and the perception of leisure as a right of each individual as a separate and
distinct component of daily routine. They also include the problems posed
by the massive growth in prison numbers in the 1960s in England and
Wales and the developing sociological awareness of the contaminating
effects of imprisonment.

In addition to providing a more accurate historical account of the
emergence of CSOs, this exercise can also act as a starting point for deeper
engagement with the contemporary operation of the sanction. Albeit
beyond the scope of this article, juxtaposing its conditions of emergence
with current practices and perceptions facilitates analysis of the little shifts
in ways of thinking and understanding of the sanction which, when con-
figured, can demonstrate the transformation over the last 40 years in the
manner in which such punishment in the community is articulated, opera-
tionalised, practised and understood. This can occur at a number of
different, though overlapping, levels. It can highlight, for example, the
movement away from a quasi-therapeutic penal welfare regime – ‘as the
hold of the social over our political imagination is weakening’ (Rose 1999,
p.136) – towards a more fragmented model that emphasises ‘securitisation’
(Rose 1999, p.249) and ‘responsibilisation’ (Garland 2001, p.124). At the
‘top down’ level of management and governance, it can include the relent-
less drive of risk management thinking (Garland 2003) – as embodied in
the ‘Offender Assessment System’ – and the increasing drift towards pri-
vatisation of supervision. At the ‘bottom up’ end of the binary, it can
incorporate the growing perception of the community as locale where
offenders are ‘managed’ rather than integrated (Raynor 2012, p.947), and
the increasing ‘exclusion’ of offenders from civic participation (Shearing
2001, p.211). The emphasis, for example, is no longer on offenders
working in association with volunteers or on inclusion, given that they are
now required to wear stigmatising visibility jackets that mark their crimi-
nality for all (Pratt 2000). At the level of policy making, it can be used to
demonstrate the growing ‘gulf between [correctionalist] criminological
research and penal policy’ (Hood 2001, p.2), the increased engagement
with the public in decision making as ‘elitist’ Advisory Committees on the
Penal System are no longer engaged to direct penal policy initiatives (Ryan
1999, p.6), and the decline in confidence in the ability of experts to
produce socially-engineered solutions (Garland 2001, pp.10–151). It can also mark changing institutional perspectives – the rise to prominence of the notion, for example, that ‘prison works’ particularly in terms of political credibility and public protection, and the constant de-emphasis of the social work ethos of the probation service (Nellis 2004, pp.115–34). Finally, it can be used to track the re-emergence of expressive punishment, exemplified by increases in hours of work (from a maximum of 240 to 300) and length of sentences (from one to three years); the shift from consensual to compulsory work; the requirement to wear uniforms; and the rebranding of the sanction initially as ‘community punishment orders’ and then ‘community payback’.

Notes

1 The Criminal Justice Act 1982 reduced the age of offenders who could be so sentenced to 16 years but they could only perform a maximum of 120 hours. The Criminal Justice Act 1991 increased the total number of hours for 16-year-olds to 240. CSOs were then provided for under Section 46 of the Powers of the Criminal Courts (Sentencing) Act 2000. The sanction was renamed ‘community punishment order’ under the Criminal Justice and Court Services Act 2000. It is now provided for under Part 12 of the Criminal Justice Act 2003, which provides for a generic community order including ‘community payback’ (up to 300 hours’ work).

2 Section 15(2) of the Criminal Justice Act 1972. See also Section 14(2) of the Powers of the Criminal Courts Acts 1973, which largely consolidated and superseded the 1972 Act. The consent of the offender was required because of a concern about possible breaches of forced labour provisions such as Article 4 of the International Labour Convention 1930, Article 4(5)(a) of the European Convention on Human Rights, and Article 8 of the International Covenant on Civil and Political Rights. This last provision was not, however, a relevant consideration in the early 1970s, as Britain did not ratify the Covenant until 20 May 1976.

3 The programme attracted interest in England and Wales. An anonymous article written in 1958, in the Journal of Criminal Law stated: ‘[w]hether the English courts should enliven their comparatively humdrum methods by the introduction of Judge Holzschuh’s intriguing practices is a matter perhaps worth considering by those interested in the problems of juvenile crime’ (Anonymous 1958, p.170).

4 Schemes of intermediate treatment, provided for under the Children and Young Persons Act 1969, also incorporated the use of community service for young persons under the age of 17 years. The objective of intermediate treatment was to bring young persons into contact with new environments by participation in a wide variety of constructive activities of a social, educational and therapeutic nature.

5 See also Lord Windlesham (1993), who stated: ‘To the politicians of the 1970s, the notion of community service by offenders was an attractive one. Combining relative novelty with practicality, it seemed evidently constructive as a way of repaying society for a wrong done, while at the same time bringing the offender within reach of the voluntary organisations which are a peculiarly English way of providing services of value to a wider community’ (pp.122–3).

6 An early research investigation into the use of the suspended sentence under the Criminal Justice Act 1967 indicated that it was being employed not only in lieu of imprisonment, but also in place of fines and probation. It was estimated that if the suspended sentence had not been available to the judiciary, a further 40% of offenders would have been given fines and about 12% would have been placed on probation (Sparks 1971).

7 This is an adjusted figure. Direct comparisons between 1969 and those of earlier periods are not possible given that the Theft Act 1968 redefined theft and incorporated virtually all offences of larceny, breaking and entering, robbery, embezzlement,
and fraudulent conversion. The real figure for 1969 was calculated as 304,070 (Central Statistical Office 1973, p.82).

One of the unintended consequences of such an approach to penal policy making is that it may have contributed to a heightening of intervention and an expansion in the social control network in that there is evidence that CSOs were employed not only in lieu of imprisonment but also as an alternative to other non-custodial sanctions. After conducting empirical research on the six community service order pilot schemes, Pease (1975) noted that: 'sentencers in many cases seems to regard community service as an alternative to non-custodial sentences at least as much, and possibly more than, alternatives to custodial sentences’ (p.68).

On 9 May 2013, the Secretary of State for Justice, Chris Grayling, announced plans to privatise the supervision of low- to medium-risk offenders in the community. Management of those offenders who pose the highest risk of serious harm will remain with the public sector.

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Date submitted: January 2014
Date accepted: April 2014
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