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# **Probation practice in a velvet cage? Specialist court work after probation privatisation in England & Wales**

**Gwen Robinson, University of Sheffield, UK**

## **Abstract**

This article presents findings of a study of pre-sentence probation work in Magistrates' courts in England & Wales in the wake of a process of partial privatisation of probation services in that jurisdiction. Specifically it addresses the subjective experiences of probation workers in two court teams and seeks to make sense of the finding that, despite clear evidence of a process of *McDonaldization* in the court setting, probation practitioners in this study experienced their work in terms that were largely positive. Using a Weberian analytical framework, it is argued that this finding can only be fully understood with reference to the recent history of unprecedented rupture in the probation arena, and to a generalised perception of the court team as a 'place of safety' in an otherwise hostile and turbulent field. Thus, whilst confined in Weber's metaphorical cage, practitioners experienced this less as a cage of iron than of rubber and velvet.

## **Key words**

Probation, Courts, Privatisation, McDonaldization, Weber

## **Introduction**

The English & Welsh probation service is among the longest established in Europe (Vanstone 2004), but its recent history is characterised by significant and rapid change. Not only has the probation service been exposed to the influences of the kinds of broad social and political developments which have affected the punishment field more generally (such as a 'punitive turn' in penal policies; the growth of managerialism and the rise of risk as a key concept in criminal justice and other public services), but it has also been subject to a number of specific strategies designed to change the way probation is organised and delivered. In the last twenty years in particular, there have been major changes affecting the organisation and governance of the service; the profile and training of its practitioners; the size and nature of practitioners' caseloads; and the official purposes of probation supervision (e.g. see Burke & Collett 2010; Raynor & Vanstone 2007).

Most recently, the probation service has been subject to sweeping and sudden reforms under the Coalition Government's *Transforming Rehabilitation (TR)* programme (MoJ 2013). This saw the implementation – at unprecedented speed – of a complete reconfiguration of existing probation services according to a rationality founded on the twin logics of marketization and risk (Robinson 2016). On 1 June 2014, the probation service (made up at that time of 35 public sector Probation Trusts) was replaced by a new, much smaller, public sector National Probation Service (NPS) and 21 Community

Rehabilitation Companies (CRCs) which in 2015 were contracted out to a range of providers dominated by private sector interests. To date, only a handful of studies have considered the views and experiences of probation workers as they have transitioned to the new organisational structures (e.g. Robinson et al 2016; Deering & Feilzer 2016; Burke et al 2017). Since these studies have focused mainly on the privatised CRCs, relatively little is yet known about the day-to-day experiences of staff in the new NPS.

One of the areas of work which the new NPS inherited was the provision of pre-sentence services in the criminal courts, an aspect of probation work dating back to the late 19<sup>th</sup> century (Vanstone 2004). This was retained in the public sector, to ensure that the provision of advice to courts around sentencing would continue to be “carried out impartially and in the interests of justice” (Ministry of Justice 2013: 22). Indeed, current legislation explicitly states that “the giving of assistance to any court in determining the appropriate sentence to pass, or making any other decision, in respect of a person charged with or convicted of an offence” is reserved to “a probation trust or other public body”<sup>1</sup>. This means that only the NPS and not CRCs can submit pre-sentence reports<sup>2</sup> and provide advice to the courts.

Despite its importance as an aspect of probation practice, court work has received very little research attention in England & Wales: the only empirical study to provide a direct insight into probation’s role in the Magistrates’ courts is now over 40 years old (Carlen 1976). Although there have been several studies of the main artefacts of court work (i.e. pre-sentence reports), these have tended to focus on issues of quality (e.g. Gelsthorpe & Raynor 1995) rather than the experiences of staff producing them, whether deployed in specialist court teams or in field teams responsible for a variety of probation tasks. This article presents findings from an ethnographic study of two teams of probation staff based in local Magistrates’ courts<sup>3</sup>, which set out to explore the contemporary nature of this type of work after *TR*. A key finding of the study was that this type of work was evolving rapidly under the influence of both *TR* and a parallel central policy programme (known as *Transforming Summary Justice*) aimed at increasing the efficiency and speed of criminal proceedings (Robinson 2018). For example, by early 2017 when the research commenced, the proportion of ‘traditional’, written pre-sentence reports (produced in the space of an adjournment between conviction and sentence of typically three weeks) prepared for the Magistrates’ courts had dropped to just 1%, while the proportion of reports prepared on the day of request and delivered orally in court had risen to 68%<sup>4</sup> (Ministry of Justice 2017; see also Robinson 2017). Another key development was that the NPS had taken a decision to implement a national model of

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<sup>1</sup> Offender Management Act 2007, Section 4.

<sup>2</sup> Pre-sentence reports are prepared under Section 156 of the Criminal Justice Act 2003, usually when a community or custodial sentence is being considered, with a view to assisting the court in determining the most suitable method of dealing with an offender.

<sup>3</sup> In England & Wales, there are two types of criminal court: around 95% of defendants are sentenced in Magistrates’ courts, whilst the remainder (most serious offences) are sentenced in the Crown court (see Ashworth & Roberts 2017).

<sup>4</sup> The remainder were ‘Fast Delivery’ written reports, prepared within 5 days of request.

fully specialist court teams, such that members of field probation teams would no longer have the opportunity to provide pre-sentence reports or conduct 'court duty' as part of their wider role (NPS 2016). Instead, each court would have a dedicated court probation team, including both fully qualified Probation Officers and Probation Service Officers without a professional qualification.

On the basis of my research findings, I have argued elsewhere that the coincidence of *Transforming Rehabilitation* and *Transforming Summary Justice* – on top of longer-term trends associated with managerialisation – have jointly pressed probation work in the Magistrates' courts into a shape consistent with George Ritzer's *McDonaldization* thesis (Ritzer 1993/2015, 1998; Robinson 2018). The offices of contemporary court teams, I have argued, today resemble factory-like environments, in which the work is increasingly being shaped by efficiency considerations; being evaluated with reference to quantitative outputs; subject to predictable processes and routines; and controlled by structures and systems requiring pre-emptive compliance and largely negating the need for managerial oversight.

In the current article I turn my attention to the subjective experiences of the probation workers in the teams who participated in the research. To that end, I draw principally on interview data collected in the course of the study, and I utilise an analytical framework suggested by Ritzer but derived from Weber's metaphor of the 'iron cage of rationality'. Although much sociological scholarship (and Ritzer's original thesis) has suggested themes of deprofessionalisation and dehumanization in McDonaldized occupations, the analysis presented here takes as its starting point Ritzer's argument that such themes should not be regarded as inevitable and their salience (or otherwise) must be established empirically in particular contexts. In this article I seek to make sense of the finding that, despite clear evidence of a process of McDonaldization in their place of work (Robinson 2018), discontent among the teams was minimal. Not only did team members talk about their work in terms that were overwhelmingly positive, but as a researcher spending time with the teams my sense was of a happy workplace and a workforce that was largely contented. I argue that, whilst several aspects of court work help to explain this finding, it can only be *fully* understood with reference to the recent history of unprecedented rupture in the probation field, and to a generalised but largely unspoken perception among team members of the court team as a 'place of safety' in an otherwise hostile and turbulent field.

### **Analytical framework**

In the last 25 years, George Ritzer's (1993) *McDonaldization thesis* has proven a popular framework for making sense of broadly similar developments across a range of industries and occupations engaged in the production of goods and services. Presented as an explicit development of Weber's (1921/1968) theory of rationalization, and echoing Weber's characterisation of the 'bureaucracy' as the ideal-typical model of a rationalization process in the Western world of the early 20<sup>th</sup> century, Ritzer's original

thesis suggested that the fast-food restaurant had come to represent a dominant form of economic organisation that was creeping into a range of both low-level and 'middle-level' jobs in sectors such as banking, medicine, farming and education. Since Ritzer's original publication in the early 1990s, features of McDonaldization have been observed by researchers in a range of jurisdictions and criminal justice settings, from policing (e.g. Bohm 2006; Heslop 2011); to private security (van Steden & de Waard 2013); and, to a limited extent, courts and probation/corrections (e.g. Oldfield 1994; Schichor 1997; Robinson 2006). However, none of these accounts has included empirical data collected from workers employed in these settings; rather, they have privileged the researcher's interpretation of reality.

Although Ritzer's work explicitly follows Weber, strong resonances with Marxian labour process theory – and in particular the work of Harry Braverman (1974) – have been noted by commentators (e.g. Smart 1999; see also Ritzer 1998). Both perspectives suggest processes of deskilling, deprofessionalisation, dehumanisation and/or (in Marxian language) proletarianization (e.g. Derber 1982) among workers in a range of occupations affected by the increasing automation, specialisation and fragmentation of roles. Ritzer however maintains that such effects should not be regarded as inevitable but must be established empirically. In this regard Ritzer draws on Weber's popular metaphor of an 'iron cage of rationality' (see Baehr 2001). Toward the end of *The Protestant Ethic and the Spirit of Capitalism*, Weber (1930/1985) famously argued that the capitalist systems that were originally built by the Puritans as a means to pursue their spiritual vocation would tend to reproduce themselves, eventually becoming an oppressive 'iron cage' from which subsequent generations of workers would have no means of escape<sup>5</sup>. Ritzer, however, maintains that those who find themselves caged in a McDonaldized world may perceive their experience in different ways. Whilst Weber's metaphor of an iron cage communicates a sense of coldness, hardness, and great discomfort, Ritzer suggests that it is also possible to experience McDonaldized systems in less negative terms. For some people, he argues, McDonaldization may represent "not a threat but a nirvana" (2015: 159). They may experience not an iron cage but a 'velvet cage', in which comfort is derived from a high degree of predictability and freedom from excessive choices and options. Other people, Ritzer suggests, may experience a 'rubber cage', "the bars of which can be stretched to allow adequate means of escape" (2015: 159).

Although Ritzer's comments are brief, and are not specific to the experiences of workers in McDonaldized occupations, they do suggest a need to attend to the subjective experiences of workers in settings which are – or appear to be becoming – McDonaldized. Yet there has been relatively little research in this vein, either within or

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<sup>5</sup> Whilst controversy surrounds the translation of Weber's metaphor of the *stahlhartes Gehäuse* (see Baehr 2001), it is nonetheless true that "few concepts in the social sciences are more instantly recognizable than the 'iron cage'" (Baehr 2001: 154).

beyond criminal justice settings (though see Leidner 1993). There have, however, been a number of studies of workers' subjective experiences of changing modes of practice described in terms of the framework of Feeley & Simon's (1992) *new penology* thesis. Although developed from a Foucauldian perspective, and with specific reference to the field of penology, the publication of Feeley & Simon's thesis coincided with the first edition of Ritzer's book, and may be understood as a cognate framework in many respects, with both emphasising efficiency, predictability, calculability and control (e.g. see Schichor 1997). The new penology thesis has been widely deployed in analyses of penal change in the last 20 years – particularly probation and parole - on both sides of the Atlantic, where researchers have debated its reach and impact on frontline practice. A number of empirical studies have illustrated workers' propensities to find spaces in which to exercise discretion and/or pursue more 'old penology' purposes (such as rehabilitation) within ostensibly highly managerial systems (e.g. Lynch 1998; Robinson 2002, 2003; Robinson & McNeill 2004). Reflecting on the findings of these and other studies, Cheliotis (2006) posed the question: 'How iron is the iron cage of the new penology?', concluding that Feeley & Simon's thesis downplayed both the role of human agency in implementing criminal justice policies, and the potentially positive aspects of managerialism. More recently, some scholars have used a Bourdieusian framework to support similar arguments, with reference to the persistence of a durable *habitus* among penal agents in the face of encroaching managerialisation (McNeill et al 2009; Deering 2011; Robinson et al 2014; Grant 2016).

### **The study**

The research on which this article draws was conducted by the author in the first seven months of 2017, in two English Magistrates' court centres. It took a broadly ethnographic approach, deploying two principal methods of data collection: overt observations of the everyday activities of the front-line practitioners, and semi-structured interviews with probation staff in a range of roles at the two courts. Access to probation teams was granted by the (now defunct) National Offender Management Service in late 2016, and two teams of contrasting size were approached and agreed to participate in the research. The first, based in a large city centre Magistrates' court centre, had around 20 practitioners, 7 support staff and a manager. The second team was based in a much smaller Magistrates' court centre in a town, and had 6 practitioners, two support staff and a part-time manager. Written information about the research was circulated to members of both teams prior to meeting with them to answer questions and elicit their consent to being observed and (potentially) approached for an interview, with no obligation to participate.

Both observations and interviews were approached purposively, with a view to capturing the maximum possible variety of roles, tasks and experiences. Periods of observation (81 hours in total on 13 separate days) took place on different days of the week, with a view to observing probation work in the context of variable court schedules. Some of the time was spent shadowing individual team members as they

pursued their routine activities, but I also responded to opportunities to observe specific activities, when these arose, such as pre-sentence report interviews with defendants (of which I observed 12)<sup>6</sup>, and the presentation of oral pre-sentence reports or breach prosecutions (of which I observed 28). Semi-structured interviews were conducted with 21 team members across the two teams, of whom 2 were team managers of Senior Probation Officer grade (SPO), 5 were Probation Officers (PO), 8 were Probation Service Officers (PSO) and 6 had administrative roles<sup>7</sup>. The practitioners in the sample were approached on the basis that they had varying amounts of experience of court work: among the POs this ranged from one to five years (with an average of two years) and for the PSOs it ranged from six months to eighteen years (with an average of six years). The majority of the interviews were conducted towards the end of my time with each team, such that questions were developed iteratively with a view to exploring some of the themes which emerged during the observations. All of the interviewees were people I had spent time observing or shadowing prior to approaching them for an interview, such that rapport had already been established, and no-one I approached to take part in an interview declined. Interviews were transcribed and in this article pseudonyms are used to protect the anonymity of interviewees.

### **Probation at court: exploring the *cage* metaphor**

“Cages are stultifying, confining, and claustrophobic, and these are certainly among the ideas that Weber was trying to impress upon his readers” (Baehr 2001: 169).

To begin, it is worth posing a question about the ways in which the metaphor of a cage relates to the work of probation staff in the criminal courts. Arguably the most fundamental essence of a cage, as Baehr notes, is its power to confine; to restrict movement. As I have already noted, when the research commenced in early 2017, the NPS had recently taken a decision to create fully specialised court teams throughout England & Wales, which meant that NPS field teams (as well as CRC field team) had no involvement in pre-sentence report production or the delivery of court duties<sup>8</sup>. Both of the teams were housed on a permanent basis in self-contained suites of offices within the court buildings (NPS 2016). They were thus fully embedded within the court buildings, and physically separated from colleagues in the wider NPS, whose offices were in other parts of the city/town. The remit of the teams was then quite circumscribed, and centred on the preparation of PSRs (almost all of which were

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<sup>6</sup> Defendants whose PSR interviews were observed were asked to give their verbal consent to my presence as an observer. It was explained that the focus of the research was the work of probation staff and that no details about them or their case would be recorded. No notes were taken during these interviews.

<sup>7</sup> As noted above, Probation Officers and Probation Service Officers are both practitioner grade staff, but only Probation Officers have a professional qualification in probation studies or (in the case of those trained prior to the late 1990s) social work.

<sup>8</sup> In March 2016, 17% of NPS staff were deployed in court teams (MoJ 2018). More recent data are not available, but it is likely that this proportion has risen in light of the creation of specialist court teams in 2016-7.

prepared on the day of request); the subsequent allocation of new community sentences to the NPS or CRC; and the prosecution of offenders in breach of community-based sentences. These core functions were carried out by both PO and PSO grade practitioners (with POs taking responsibility for PSRs in cases of more serious offending); PSOs also performed a more general 'court duty' role which involved responding to the court's requests for information and recording pleas, requests for PSRs and outcomes of relevant cases as they progressed through the criminal process.

There was a recognition among team members of their relative isolation from the wider probation community, with some interviewees reflecting that court teams tended to be 'on the periphery', 'islands' or 'bubbles', and that this sense of disjuncture and isolation had intensified since the changes brought by TR. For example, Eva, a PO in the Town team, noted that when members of field probation teams had been involved in report writing (as they had been until recently), there had been regular contact between court and field teams because they would quality control each other's reports – "so I suppose it's even more cut off now". Several workers also reflected that the fledgling NPS which employed them seemed 'remote', 'faceless' or 'impersonal' and admitted that they knew almost nothing about the organisation, its structure or senior personnel.

As well as being cut off from their colleagues in the wider organisation, court teams were also structurally separated from former colleagues who were now working in local CRCs, with which they had minimal contact, none of which was face to face. As one interviewee put it, "Most of the cases we deal with here are CRC and we don't really know what the CRC do with people apart from not keeping very good records" (John, PO, City team). Furthermore, members of court teams were dislocated from offenders under supervision in the community, having no such responsibilities. Their roles were thus confined to the pre-sentence stage, and their contact with defendants given community-based sentences ended with the provision of information about which of the two organisations – NPS or CRC – would take on responsibility for the individual's supervision.

There was thus a dual sense of confinement and isolation in both the place of work and the roles themselves, rendering the cage metaphor quite apt.

### **A cage of iron?**

Weber's 'iron cage' metaphor suggests a number of qualities, but arguably its principal characteristic is inflexibility. In this research, the theme of inflexibility was most evident in respect of the commodity of time and the changing expectations of the principal consumers of the court team's labour – i.e. sentencers. This development is best understood as an instance of 'coercive isomorphism', whereby one organisation is subject to formal or informal pressure from another organisation on which it is dependent, and where its legitimacy is weak or unstable (DiMaggio & Powell 1983: 150). With the *Transforming Summary Justice* reforms creating new norms around speedy justice in the courts' management of cases, probation teams had adapted



remarkably quickly to pressure to speed up their own performance, to avoid 'unnecessary' delays. Under the influence of TSJ, a 'one-hour window' for PSR production – from request to oral delivery in open court - had already been established in the City, and the Town team was also moving towards this norm, albeit slightly later (Robinson 2018). Meanwhile, the NPS had set a target specifying that, by April 2017, 90% of PSRs should be completed on the day of request, and the vast majority should be delivered orally (NPS 2016).

The practitioners were at various stages in a process of cognitive adjustment to this new norm in relation to PSR production. In the City team, where one-hour oral reports were already well established, practitioners had accepted that the function (as well as the format) of the report had changed: its contemporary purpose, they explained, was to provide enough information to inform a sentencing recommendation, leaving a fuller assessment of risks and needs and the development of a supervision plan to the practitioner who would inherit the case in the event that a community-based order was made. As one interviewee put it, "you don't want to open a can of worms, but hopefully [any complex issues] could be looked into post-sentence" (Fred, PO, City). In the Town team, where the move toward a majority of fast, oral reports was still in progress, there was evidence of an ongoing struggle for the more experienced team members to adjust in this way. For example, Eva (PO, Town) commented: "I like to think about a proper assessment and a proper sentence for someone and they don't want us to do that any more and I find that challenging [...] because we're dealing with people's lives".

Both interview and observational data indicated not only that team members felt there was little flexibility in relation to time, but also that the proven efficiency of the teams was fuelling unrealistic expectations on the part of the courts. In interview, several team members provided examples of dissatisfied or angry Magistrates' benches on the rare occasions when a combination of the team's finite resources and particularly busy court schedules meant that there was no-one immediately free to interview a defendant for a PSR. Sarah, a PSO in the City team, reflected that "we're almost setting a precedent, that we can do everything straight away". Sarah's comment suggests an observation of Ritzer's in relation to the expectations of instant gratification on the part of fast food customers, which can produce consumer displeasure in the face of even the slightest delay (2013: 123-126; see also Tata, forthcoming). Although they did not express it in these terms, workers quite clearly felt that they were, to a great extent, servants of the (court's) clock, and they were reluctant to disappoint their principal 'customers' and put at risk their own legitimacy (see Robinson et al 2017).

The subjective experience of operating in an iron cage was also very evident in the exceptionally high level of dependence of court team workers on the technological infrastructure which scaffolded their work (see also Phillips 2017). When not interviewing defendants or sitting in courtrooms, practitioners spent the majority of their time in front of PCs, accessing offender databases, populating templates with data, and completing electronic case records and assessment tools. To a large degree, these

had become taken for granted features of the teams' work, but I observed considerable variations in levels of comfort with technology within teams, with some (generally older) individuals navigating their way through these systems much more slowly than others. The negative aspects of this high level of dependence on the technological infrastructure were however most powerfully illustrated on one of the mornings I spent with the Town team. On arriving at her desk, Eva (PO) found that she was unable to log in to her account. Despite spending about an hour on the telephone talking the problem over with an IT advisor (located in a distant city), the problem remained unresolved. Unable to access her saved files or databases, and having no remit beyond the court (and no caseload), Eva was rendered completely redundant until her account could be unlocked, or the court required a PO to interview a defendant. On this occasion, Eva's frustration was palpable, and this experience reinforced her wider sense – expressed later that day in interview – that as a PO her professional skills were being stifled.

Although Eva's particular experience was not observed again during the research, members of both teams did quite regularly voice frustrations related to the increasing number of mandatory processes involved in the PSR production process. Dave (City PSO), one of the fastest workers, expressed this well:

First it was having to interview the person and report back in 60 minutes. Then it was, you have to do your RSR score. And now it's your RSR score, OGRS score, tiering system, and still be ready to feed back in an hour. In my eyes a lot of the systems we have to do involve data duplication which is unnecessary and time-consuming.

In this extract, Dave refers to two actuarial risk assessment tools, one of which (the Offender Group Reconviction Scale) was used to guide decisions about defendants' suitability for particular programmes offered by the CRC, and the other (the Risk of Serious Recidivism tool) to determine the allocation of defendants given community-based sentences to either NPS or CRC. The 'tiering system' Dave refers to was being introduced when the fieldwork commenced, and required workers to indicate the level of supervision appropriate to new community-based orders prior to their allocation to one of the new organisations. Towards the end of the fieldwork, workers were having to contend with another tool (designed to assist with sentencing recommendations), to their evident chagrin. As John (PO, City team) put it:

It's put our backs up because our judgement is more valid than that and it just seems to state the obvious. You do wonder whether it's really necessary and where it's coming from as well.

These processes were then not just an issue because of their perceived *weight* (placing a heavy burden on practitioners) but latterly also because they invoked fears about the future redundancy of human probation workers in the PSR production process – a process of dehumanisation - hence a sense of *tightness* was invoked in potentially squeezing out the workers entirely (cf Crewe 2011).

There were other expressions of discomfort among practitioners regarding the introduction of new decision technologies like the RSR and 'tiering system', both mentioned by Dave in the above extract, which reflected a deeper disquiet about TR and the marketization of probation services. As one practitioner put it:

The [tools], I don't see the relevance of them. I don't need a tool to tell me if someone's going to the CRC or NPS; but it's all about who gets what now, and it's all about money again and it grates on me (Victoria, Town PSO).

In this extract, Victoria is expressing her anger about a process of 'ideological proletarianization' (Derber 1982), whereby the 'ends' of her labour have been revised without her consent. Victoria was not alone in voicing her opposition to the contracting out of formerly public probation services to the new CRCs, which were the recipients of the vast majority of new community-based orders made in the Magistrates' courts. Team members were aware that their own labour involved feeding new cases to the local CRC, a for-profit organisation about which they felt variable degrees of discomfort and suspicion.

### **Bars of rubber**

Ritzer's notion of a rubber cage invokes notions of flexibility, potential escape and/or resistance to the structures which workers inhabit and in which they daily operate. As previously noted, there is a body of research which has illustrated probation workers' propensities to find spaces in which to exercise discretion within ostensibly highly managerial systems. Researchers have also argued that a strong, traditional *habitus* among probation workers has tended to endure, acting as a protective factor in the face of both encroaching managerialisation and attempts to render probation more punitive (e.g. Robinson et al 2014; Grant 2016).

In this research, examples of flexibility were found in team members' approaches to 'getting things done', even in the tightly circumscribed space for PSR production. In the City team, Peter explained how each of the three probation officers had developed their own individual routines within the one-hour PSR window:

Well we're all different. I've noticed John does it different to Fred and I do it different to them both. John does a lot of prep beforehand but he can just go into court and talk without a script, whereas I can't do that, I need a structure I can rely on. So I do less checking – I do some – spend a short period of time with the person, then think about what I'm going to say. So in that hour I probably spend about 15–20 minutes checking [information], then about 20 minutes with the person, and 20 minutes writing it up.

I also observed countless examples of a traditional probation *habitus* at work as practitioners went about their daily activities. Although their interactions with defendants were time limited, practitioners relished the experience of meeting and

dealing with individuals whose circumstances could be complex and/or unpredictable. As Victoria (PSO, Town) commented: “we’re dealing with people, and people are unpredictable, and you don’t know what you’re going to get once you start talking to somebody”. The practitioners also found plenty of opportunities to express or demonstrate an ethic of care in their daily work. To give just one of many examples I observed, Mike (PSO) - whilst performing court duty in the City court one day - crossed a very still courtroom to pass a box of tissues to a defendant who was crying in front of the Magistrates’ bench. Furthermore, in both informal conversations and the more formal interviews, team members demonstrated their continuing identification with a generalised idea of ‘probation’ that they understood as distinct from other roles in the ‘multi-disciplinary workshop’ of the court (Carlen 1976). This was the case not only among the professionally qualified (PO) and/or longer-serving members of the teams where it was arguably most likely to be found. For example, William (City PSO), who was just six months into his role, said the following:

You’ve got your prosecution and your defence, and then you’ve got us. They’re not us. I’m not sure that all court staff fully get what probation do; I think it’s lost on some people. I think if you work in probation you should want to help people to change and help reduce reoffending, help people change their lives. Because not all offenders are scumbags. I’m not sure the court staff would look at it the same way we do.

Like William, several interviewees referred to values that they saw underpinning their role, which centred very firmly on being impartial, non-judgemental and empathic, and securing the ‘right outcome’ for the defendant. They also made connections between the expression of these values and their own job satisfaction. There was, in other words, sufficient elasticity in the bars of the cage to enable practitioners to enact their roles, most of the time, with integrity and in accordance with the traditional habitus of their occupation.

Where practitioners encountered structures or rules which they felt were inconsistent with their professional habitus, examples of resistance were found. This was particularly evident among the POs, who had responsibility for preparing PSRs in cases of more serious offending. All of the POs said in interview that they would be prepared to request an adjournment in a case that proved more complex than anticipated, for example because mental health issues had surfaced when interviewing a defendant, or it was deemed essential to talk to third parties who could not be reached immediately. The PSOs were, however, rather less confident about doing this. For example, Victoria (an experienced PSO in the Town team) spoke of the discomfort she anticipated when requesting more time for a report in a case of quite serious domestic violence:

We will ask for an adjournment. That’s where the conflict comes. [Our manager] will be on at us [for not meeting targets]. But another thing in probation is defensible decisions, and I couldn’t defend doing it on the day. That’s where my

anxiety comes from. I do try [to comply]. We've all been told off, like for recommending supervision when his [risk of reoffending] score was low.

Victoria's comment, above, provides a further illustration of the strong grip practitioners retained on their traditional habitus: in this example, the concept of the *defensible decision* (Kemshall 1998) was invoked to justify behaviours that fell short of the expectations of more powerful actors.

Overt acts of resistance were however glimpsed only rarely. For example, Sarah and Sam, both PSOs in the City team, were open about their refusal to comply with an expectation that team members log in to the NPS's online process management system at least monthly to update themselves on any changes to operational processes. Sam commented:

So much onus is put on [this system] but it's the most boring work tool I've ever come across. The system is so user-unfriendly – and no-one's ever shown us how to use it, ironically.

These small acts of resistance communicated a shared concern among members of both teams about the lack of opportunities for face-to-face briefings or training which would have been much more likely in the pre-TR environment.

Finally, an escape route was available to the POs, in the form of regular opportunities to prepare PSRs for the neighbouring Crown court team. This gave them opportunities to work with different colleagues, with defendants who had committed more serious sexual and violent offences, and to produce some full, written reports. This element of variety was appreciated by the POs, who on a regular day in the Magistrates' court team might be required to produce up to four same-day, oral reports in very similar types of case (most commonly domestic violence). Thus, although the Crown courts had their own probation teams, there was a recognition that the variety of cases at Magistrates' court would be limited, and that some sharing of the workload across the teams both enhanced efficiency and helped to preserve the professional skills of the POs.

### **A cage of velvet**

To summarise thus far, the research revealed elements of experience that were consistent with both the iron *and* rubber cage metaphors. Although the workers sometimes experienced the rigidity and discomfort of an iron cage, they also found regular opportunities to practice in ways they felt were consistent with a traditional probation habitus (which sometimes meant resisting/defying rules) and there were regular (but limited) opportunities for some to escape the cage altogether. What, then, of the velvet cage? Ritzer does not deal with this metaphor at length; nor does he discuss it specifically in relation to workers in McDonaldized systems. His comments go only so far as to suggest that some individuals may derive comfort from a high degree of predictability and structure in their environment, which frees them from the tyranny of

excessive choices and options. This is especially likely, he suggests, for people who have been socialised within 'McDonaldized' systems and have limited or no experience of alternatives.

As previously noted, one of the key findings of this research was that, despite its cage-bound qualities, court work was predominantly experienced by those in the two teams in very positive terms. Not only was this my general impression from observing the two teams going about their daily work, but it was also communicated very powerfully in all of the individual interviews. When asked to sum up how they experienced their role, the following adjectives were dominant: *interesting, enjoyable, satisfying, rewarding, fulfilling, motivating, stimulating, exciting, fun*. Several interviewees said they loved "everything" about their role. Even the minority who said that they had initially resisted a move (from other roles) to a court team, told me that they were now glad to be there. The predominance of comments like these suggest a 'velvet' experience for the majority, much of the time.

One of the explanations for this that emerged very explicitly from the interviews chimed somewhat with Ritzer's 'velvet cage' hypothesis in that it was related to the appreciation of a relatively high degree of structure in the workers' environment. However, this was less to do with the 'McDonaldized' aspects of the work, than with the temporal structure imposed on the probation teams by the courts' working hours. With the courts opening for business at 10am and generally concluding at around 4pm, the court team members tended to work a 9-5 shift. In every practitioner interview, the theme of temporal/psychological structure was raised by the interviewee themselves. For example, Fred (City PO) said: "Every day's compartmentalised: it's stressful, but it's a different sort of stress. For me it's manageable stress; I can get away from it". John, another PO, said "You can go on leave and come back without having a pile of emails requiring two 70-hour weeks to catch up". He added: "It's less flexible time-wise but it is a better work-life balance; I go home and have more mental energy". His colleague Peter similarly emphasised the different experiences of doing court work and field-based probation, managing a caseload:

[In the field team] the pressure is constant and there can be a constant feeling of dread around all that you know you have to do. Court work is easier in that respect, because you do the work, you get the work done, and then you go home and you don't think about it (Peter, PO, City team).

Members of the court teams thus felt somewhat protected from the problem of 'spillover' into their personal lives or out-of-hours time, which has been found to be an issue in probation roles centred on the supervision of a caseload (e.g. Westaby et al 2016). With reference to the cage metaphor, court-based staff valued their daily ability to mentally, as well as physically, escape from the circumscribed space in which they conducted their roles. In this regard, then, the cage was lined with velvet, with this acting as an effective 'buffer' against excessive stress.

Members of the court teams were of course only able to fully appreciate this aspect of their role because they had experience of other probation roles *beyond* court. The vast majority had come to court teams with some experience of more generic fieldwork (involving the supervision of offenders in the community) and several had also experienced other specialist roles (e.g. in drug teams, prisons or youth offending teams). The variety of lengths and types of prior experiences casts doubt on the idea that the majority had been professionally socialised in a 'McDonaldized' environment, nor that they had little or no experience of alternative work environments. To the extent that court teams experienced their work in accordance with a 'velvet cage' metaphor, then, it was not in accordance with Ritzer's suggestion regarding subjects with little or no experience of alternatives.

What was arguably relevant, however, was team members' experiences – both direct and vicarious - of realities in the wider probation field in the wake of the *Transforming Rehabilitation* reforms. In short, it became apparent that the team members shared a perception of the contemporary probation field as a precarious and daunting place, in the context of which they were relatively content to be sequestered in the court's cage. For example, I began interviews by asking individuals about their employment history with probation and the role in which they had been deployed when decisions were beginning to be made about staff deployment after TR. Several of those I interviewed explicitly stated that they had manoeuvred themselves into a court role – or remained in one – in the months leading up to TR, specifically to enhance their chances of transfer not to one of the new Community Rehabilitation Companies (destined to be sold to a range of providers) but rather to the new (public sector) National Probation Service (NPS). The research data also revealed a very explicit, generalised perception that the NPS – whilst far from perfect - was a preferable, more secure and ideologically less problematic employer than the new privately owned CRCs. This produced both a collective sense of having had a 'lucky escape' in the TR process, but also hints of 'survivor's guilt' for some. Both in interviews and in the context of informal conversations, several practitioners described negative experiences relayed to them by former colleagues now employed in CRCs, and expressed not just sympathy for their former colleagues but also a sense of relief in having avoided a similar fate. Meanwhile, colleagues in the wider NPS, in field teams, were known to be managing (post-TR) caseloads made up entirely of high risk individuals, which prompted other kinds of concerns about colleagues' wellbeing. Peter, a PO in the City team, expressed in interview his frustration in respect of what he saw as the inefficiency of the NPS operating model, which left court teams at times with nothing to do while field teams were struggling with large, high risk and highly stressful caseloads. Although very little research has yet been conducted in the new NPS, a small-scale study by Phillips et al (2016) has characterised the experience of field officers as involving 'relentless' pressure.

Against this backdrop, it seems reasonable to infer that the court team could be experienced as a refuge, or a 'place of safety' – albeit that this was only explicitly

articulated by one participant. Jessica, a PO with the Town team, made the following passing comment towards the end of her interview: "I think that in today's probation climate it's a bit of a respite niche compared to the field". Here, Jessica hints at the significance of developments in the wider organisational context to an understanding of the contemporary subjective experiences of probation workers in court teams. It was, I suggest, this wider reality, and the practitioners' direct and vicarious experiences of it, which to a large degree made sense of why court-based roles were *predominantly* experienced as a 'velvet cage' for the workers in this study. This, coupled with the physical and psychological 'containment' of probation work at court, supports Jessica's observation about court work as a 'respite niche' for practitioners whose occupation can be said to be in a post-traumatic state (Hopper 2011; Hormann & Vivian 2013; see also Robinson et al 2016). To return to Ritzer's brief characterisation, I would suggest that the practitioners found comfort in their roles *despite* McDonaldization, not because of it.

## **Conclusion**

Over a decade ago, Liebling (2004) observed that whilst much had been written about the managerialisation of criminal justice and its impact on those caught up in criminal justice processes, much less attention had been focused on the experiences of managerial processes among those employed in criminal justice settings. Although some work has subsequently been done to fill that gap (e.g. Durnescu & McNeill 2014; McNeill et al 2009), it is crucial that we continue to ask questions about how structural, technological and ideological changes are impacting on those who operate at the coalface, particularly given the pace and scale of change in jurisdictions like England & Wales. These macro-level changes can have significant consequences for the subjective experience of workers, and they challenge us to reconsider what we think we know about penal cultures.

This article has engaged with the rapidly changing culture of a specialist area of probation practice – court work - in a single jurisdiction. It has shown how the recent restructuring of probation services and the subsequent creation of specialist court teams has physically repositioned a significant proportion of public sector probation workers, confining and isolating them in court buildings and placing them on the periphery of their organisation at the same time as their roles have become more specialised, more circumscribed and more 'McDonaldised'. Using Weber's 'cage' metaphor, this article has demonstrated a somewhat mixed experience for members of court teams, with elements of their experiences consistent with each of the qualities of iron, rubber and velvet described by Ritzer. Because of their unique position in the new probation framework, however, we cannot read across from their experiences to the wider domain of the National Probation Service, nor to the larger field of contemporary probation work, much of which is now occupied by private companies. Rather, the findings of this study suggest the likely emergence of a variety of practice cultures in an increasingly fragmented and variegated field, in which market logics are jostling for



position alongside the pursuit of public interests. Although this study makes its principal contribution to knowledge in a specific area of contemporary probation practice in one jurisdiction, some of its lessons are relevant much more widely. Crucially, the findings of this study reiterate the point that there is no substitute for empirical research when it comes to making sense of the subjective experiences of penal practitioners. How penal practice is experienced cannot and should not be inferred from policy documents alone, and experience in particular penal contexts cannot necessarily be fully understood with reference to experience in different contexts, whatever similarities may be apparent on the surface. Furthermore, it is vital that theoretical models which exist to help us understand the realities of penal practice are subject to empirical testing. In relation to the current study, the finding of 'McDonaldization' in the probation suites in the lower courts of England & Wales *theoretically* suggested a workforce feeling deskilled, dehumanised and alienated. Not only was the subjective reality found to be rather different from this characterisation, but it was further found that none of the three metaphors (of iron, rubber or velvet) derived from Weber's theorising was sufficient to capture the nuances of contemporary probation court work. For the workers in this study, comfort derived not simply from aspects of predictability and structure in their environment, nor from a lack of alternative types of practice experience. Indeed, the study's findings suggest that it was the workers' vicarious experience of the wider probation field which contributed to the 'velvet cage'. In other words, some key explanatory factors lay beyond the immediate workplace, in the wider context of the probation field.

This important finding adds support to Lerman & Page's (2012) argument that we must not lose sight of the 'embedded' nature of penal practice in broader penal and political environments that can have a significant impact at the subjective level. Although their research was concerned with explaining variations between the attitudes of prison officers in different US states, their 'embedded work role perspective' is useful in the contemporary context of English probation practice, where an understanding of the wider field of practice emerged as crucial to an understanding of why specialist probation court workers are so appreciative of and largely content in their roles, despite a high degree of McDonaldization in their workplaces. It is such a perspective that helps us make sense of the fact that, whilst doubtless confined and relatively isolated in a metaphorical cage, court-based probation workers were largely contented captives.

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