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Rehabilitating Probation: Strategies for re-legitimation after policy failure

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Abstract

This article draws on insights from the organizational studies literature to make sense of the recent history of probation in England & Wales in the aftermath of the failed *Transforming Rehabilitation* reform programme. It considers that recent history as a crisis of legitimacy, necessitating active strategies of re-legitimation aimed at recovering from reputational damage. It argues that top-down plans to restructure the service will only go so far in this endeavour: the expanded National Probation Service must also be prepared to engage in legitimation work on its own behalf. However, this is likely to be challenging for a number of reasons that include the mixed constituency of external stakeholders whom probation seeks to satisfy, and important questions of identity, agency and voice.

Keywords: probation; legitimacy; *Transforming Rehabilitation (TR)*; organizational studies; reform.

Introduction

On 11th June 2020, Justice Secretary Robert Buckland announced a dramatic change to the government's plans for the further reform of probation services in England & Wales, following the ultimate failure of the *Transforming Rehabilitation* programme implemented in 2014-15 (Ministry of Justice 2020). Buckland explained that the future outsourcing of significant chunks of probation work (namely unpaid work and structured interventions) to the tune of contracts worth £280 million would not be going ahead as planned. Instead, responsibility for these areas of work, as well as the management of all those subject to probation supervision, would fall to the (public sector) National Probation Service (NPS) from June 2021. This policy U-turn was explained with reference to the disruptions to probation services caused by COVID-19, which threatened to delay the reform implementation timetable and prolong instability in the probation system. For many in and around the probation field, Buckland's

announcement will have been very welcome, if unexpected, news. Whilst not amounting to a wholesale acceptance of *Transforming Rehabilitation (TR)* as an instance of policy failure (Annison 2019), Buckland's announcement nonetheless signalled a greater expansion of the NPS than had been envisaged, the reunification of the majority of probation workers into a single organizational entity, and a significant reduction in the reach of the private sector into probation workⁱ. It remains the case, however, that probation has suffered a crisis of legitimacy in the wake of the *TR* reforms: a crisis that is essentially uncontested (e.g. see Beard 2019 for a full account of the emerging official critique of *TR*). That crisis has both internal and external dimensions: that is, it concerns both the self image of the service and its workforce, and the perceptions of external audiences and stakeholders.

The focus of this article is the latter, external dimension of legitimacy, which regularly features in political discourse as a problem of 'confidence' in probation (e.g. Ministry of Justice 2018, 2019). It considers the challenge ahead for probation in terms of rebuilding its external legitimacy, as well as the journey so far. It does so by drawing on insights from the organizational studies literature, pertaining to the strategies that organizations typically deploy to secure, maintain and (of special importance for the present discussion) re-build their legitimacy in the eyes of important external constituents. Whilst the topic of legitimacy has come to be recognised by criminological scholars as of great theoretical and practical significance in a number of domains (including in relation to the cooperation of prisoners with custodial regimes and of citizens with the police – e.g. see Bottoms & Tankebe 2012), criminologists have to date tended to draw upon literature and concepts from the disciplines of psychology and/or political science. Thinking about the legitimacy and legitimation of criminal justice organizations (which are neither individuals nor political actors) suggests however that there may be insights to be gained from the organizational studies literature, which has largely been ignored by criminologists to date. In this paper it is argued that insights from this literature are indeed very useful for making sense of recent developments in the probation context, as well as in thinking about future strategies that might help rehabilitate probationⁱⁱ. They are also useful in highlighting some particular aspects of the present day probation service in England & Wales that need to be understood and taken into account when thinking about strategies for the re-legitimation of this particular organizational entity. These are issues of agency, identity and voice, and of

the multiple stakeholders in and around probation work. Where the kinds of organizations which feature in the organizational studies literature are typically corporate entities with clearly defined external constituencies (or 'customers') and relatively autonomous, agentic leaders, the probation service today diverges markedly from this characterisation. Acknowledging these differences, it is argued, opens our eyes to some of the particular challenges that face probation as it seeks to recover legitimacy in the wake of *TR*.

The article begins by setting out some key concepts from the organizational studies literature, and in particular the seminal work of the US sociologist Mark Suchman. This is followed by an account of *TR* and its aftermath which applies the concepts described by Suchman and others to make sense of the recent history of probation (post-*TR*) as a crisis of legitimacy, necessitating active re-legitimation work aimed at recovery or repair. The article then moves into a critical discussion of the road ahead, which highlights the importance of identity, agency, voice and the mixed constituency of external stakeholders whom probation seeks to satisfy.

Organizations and external legitimacy: strategic and institutional perspectives

There is a considerable body of literature in the field of organizational studies which considers the strategies typically deployed by organizations and their leaders to secure, maintain or enhance their (external) legitimacy in the eyes of their constituents. Much of this work takes what is known as a *strategic perspective*, viewing organizations and their leaders as agentic actors intent on manipulating their activities and messaging in order to garner social support (Suchman 1995). In one influential review of this literature, Ashforth & Gibbs (1990) suggested that the legitimation strategies of organizations fall into two main categories: *substantive* and *symbolic*. Substantive strategies involve material changes in organisational goals, structures and practices; whereas symbolic strategies are less about substantive change than about changing the ways in which an organization portrays itself to its constituents. "Whatever the method of legitimation", Ashforth & Gibbs argue, "the intent is the same: to foster the belief among constituents that the organization's activities and ends are congruent with the expectations, values, and norms of constituents" (1990: 182).

In another oft-cited synthesis of a wealth of literature, Suchman (1995) drew a distinction between three *types* of legitimacy that organizations seek. Firstly, *pragmatic legitimacy* rests on the self-interested or instrumental evaluations of an organization's behaviour or policies on the part of its key audiences or constituents: in other words, it flows from judgements about whether a given activity benefits the evaluator. *Moral legitimacy* differs in that it rests on judgements about whether that activity is 'the right thing to do', or in accordance with the value systems of its constituents regarding the practical consequences of the organization's behaviour or activities for them. Moral legitimacy, Suchman suggested, may derive from positive evaluations of four possible aspects of an organization: its outputs/consequences ('consequential legitimacy'); its techniques/procedures ('procedural legitimacy'); its categories/structures ('structural legitimacy'); or its leaders/representatives ('personal legitimacy'). Finally, *cognitive legitimacy* arises when an organization achieves a 'taken-for-grantedness' that insulates it from significant scrutiny or critique. Suchman argued that "as one moves from the pragmatic to the moral to the cognitive, legitimacy becomes more elusive to obtain and more difficult to manipulate" (1995: 585).

Suchman (1995) went on to consider the specific challenges organizations face as they seek to *gain, maintain* or *repair* their legitimacy. Each of these scenarios, he argued, presents particular issues and suggests subtly different strategies, as well as differential attention to each of the three dimensions of legitimacy outlined above (pragmatic, moral, cognitive). He observed that much more research attention had been devoted to the question of how new organizational entities set about gaining legitimacy, whilst relatively little research had addressed strategies for ongoing legitimacy maintenance or processes of re-legitimation after a crisis (1995: 599). In other words, the ways in which organizations recover or re-build their legitimacy had been relatively neglected in the extant literature. Nonetheless, Suchman suggested that as far as this question *had* been addressed, it appeared that the task of repairing legitimacy, in many ways, resembled the task of establishing it. Both establishing and repairing legitimacy, he argued, are processes that "call for intense activity and dramatic displays of decisiveness" (1995: 599). And crucially, he argued, the management of legitimacy – which encompasses its establishment, maintenance and repair – "rests heavily on communication" (1995: 586).

Suchman suggested that the first task in repairing a breach of legitimacy would usually be to formulate a *normalizing account* which serves to isolate 'the problem' from larger assessments of the organization as a whole. This may involve offering any or all of four main types of accounts: denials, excuses, justifications and explanations. Secondly, re-legitimation may further involve *strategic restructuring*. Suchman pointed to two particularly popular types of restructuring activity in this context: namely, the creation of *regulatory frameworks* to oversee future behaviour and offer some insurance against future problems; and *dissociation*, which employs structural change to symbolically distance the organization from delegitimated leaders, procedures or structures.

All of the above is useful as far as providing conceptual tools for thinking about probation reformⁱⁱⁱ, and it is worth noting at this juncture that many of the ideas in Suchman's work are echoed in more recent, highly influential scholarship concerning legitimacy and legitimation work in disciplines beyond organizational studies. For example, the communicative aspect of legitimacy has received particular attention in Bottoms & Tankebe's (2012) 'dialogic approach', developed in relation to criminal justice; and strategies of blame-avoidance on the part of politicians and organizational leaders are the subject of Christopher Hood's book *The Blame Game* (2011).

But before we go any further and start to apply these ideas in the probation context, it is worth pausing to consider the perspective taken in the above. Suchman for example is explicit about adopting the perspective of "a manager seeking legitimacy for his or her organization" (1995: 586). Similarly, Ashforth & Gibbs (1990) assume an agentic organisation that speaks and acts for itself. As noted above, this is known as the 'strategic' perspective in organizational studies. When we begin to look at strategies of re-legitimation in the probation context, however, it is necessary to acknowledge that here we are dealing not with a discrete or independent organization with an autonomous, agentic leader. Rather, probation services co-exist and depend upon other organisational entities in an *organizational field*. This concept, inspired by Bourdieu's field theory, has been developed by scholars of organizational institutionalism (DiMaggio & Powell 1983; Scott 1991). This perspective downplays managerial agency and focuses instead on the domains in which organizational actions are structured, and the networks of relationships in which they are embedded (Wooten & Hoffman 2017). The idea of a 'probation (organizational) field' makes sense for a number of reasons,

among which are the fragmented reality of the contemporary ‘probation service’, which crosses traditional sectoral boundaries and makes up a network of semi-independent providers. In other words, probation cannot be understood as a singular organization or entity, nor as a collection of similarly constituted bodies. But perhaps more important for the purposes of the present discussion, is the relative lack of autonomy of probation services in the wider penal field, where the penal state (in the form of the Ministry of Justice) is the principal agentic actor. For these reasons – the latter in particular – we need to at least begin by looking at the responses of government actors in the wake of probation’s crisis of legitimacy.

‘Transforming Rehabilitation’ and probation’s crisis of legitimacy

Transforming Rehabilitation was a programme of criminal justice reform which fundamentally reconfigured the architecture of probation services and created a new bifurcated organizational structure (Robinson 2016a). On 1 June 2014 the staff and caseloads of the then 35 public sector Probation Trusts were divided between a new National Probation Service and 21 new Community Rehabilitation Companies (CRCs), contracts to run which were subject to a competition managed by the Ministry of Justice. In early 2015 the CRC contracts were awarded to 8 different providers dominated by private sector interests. This radical reform of probation services was led by the then Secretary of State for Justice, Chris Grayling. Grayling drew heavily on a narrative of what, following Suchman, we might call a decline of *pragmatic legitimacy*. In essence, the probation service was criticised for failing to bring down ‘stubbornly high’ rates of reoffending, and thereby both failing to protect communities and placing a heavy economic burden on society at a time of economic austerity. Grayling’s (and colleagues’) ideological preference for opening up public services to competition, enabled by the 2007 Offender Management Act, also challenged the *moral legitimacy* of probation as a predominantly public sector service.

Perhaps not surprisingly, to the extent that the literature since the implementation of *Transforming Rehabilitation* has addressed the organizational legitimacy of probation, the focus has been on the creation of CRCs as new (privately run) organizational entities in the criminal justice field, and the challenges to them in terms of gaining or establishing their *moral legitimacy* (Carr & Robinson 2020; Robinson et al 2017; Fitzgibbon & Lea 2018; Deering & Feilzer 2017). However, since the transformation of

probation services in 2014-15 a broader critique has emerged, with critical voices from a range of official bodies including HM Inspectorate of Probation; the Audit Commission; the National Audit Office and the Justice Committee (see Beard 2019). This critique, supported by a range of evidence accumulated over several years and relating to virtually all parts and aspects of the reconfigured probation system, has extended well beyond (mostly academic) challenges to the moral legitimacy of the largely privately run CRCs. Indeed, it has amounted to a significant crisis of *pragmatic* legitimacy for the whole probation system. This crisis culminated in the launch, in July 2018, of a consultation exercise entitled *Strengthening Probation, Building Confidence* (Ministry of Justice 2018). The aim of the consultation was “to seek views on the future structure and services provided by the probation system”^{iv}. Read alongside Suchman’s analysis, the consultation can be understood as an implicit acceptance on the part of the Ministry of Justice of a crisis of legitimacy on the part of the probation system, and a first step toward repair. Below I revisit some of the concepts from Suchman’s overview of the literature on strategies for repairing legitimacy and analyse the consultation process and its outcomes in light of these.

‘Strengthening Probation, Building Confidence’: the consultation (July 2018)

In *Strengthening Probation, Building Confidence* (Ministry of Justice 2018) it is very easy to discern several of the strategies described by Suchman^v. Consider the following extract from the (new) Justice Secretary’s Foreword:

We have already seen a reduction of two percentage points in the reoffending rates of individuals supervised by CRCs, and some positive examples of good joint-working between the NPS, CRCs, and their local partners. However, as the Justice Select Committee’s recent report makes clear, *the first set of CRC contracts have faced a number of challenges*. While difficulties were to be expected in such a significant and complex programme of reform, *I want to address these issues sooner rather than later* (Gauke 2018: 3, emphasis added).

In the last few words of this extract the Justice Secretary seeks to display the ‘decisiveness’ Suchman anticipates: he resolves to act rather than delay, and the decision to launch a consultation suggests a phase of ‘intense activity’, in which the views of stakeholders would be duly sought, collected and analysed. Gauke also offers a

normalising account of the problem. Although he concedes that there is a problem, he seeks to both minimise it (which is a form of denial – see Salter 1988) and isolate it as a specific issue with the CRC contracts. Not only do the complex contracts *explain* the problem; but the problem is also *justified* as somehow inevitable in the context of such an ambitious programme of reform.

Furthermore, the actions Gauke promises centre upon *strategic restructuring*. This is promised, principally, by means of a physical reconfiguration of the existing probation system:

We intend to align NPS and CRC areas in England, facilitating the development of closer local partnerships, and aim to recognise the distinct delivery environment seen in Wales by bringing the NPS and CRC into one combined probation service, while creating space for a range of providers to compete to deliver rehabilitative services (Gauke 2018: 3).

Here, Gauke conveys a message that there will be no retreat from the contracting out of probation services: this is not acknowledged as part of the problem. Indeed, the title of the consultation itself conveys a very strong message that the system is not ‘broken’, but rather requires ‘strengthening’. That process of strengthening was to be realised, Gauke suggested, via different types of restructuring in the jurisdictions of England and Wales. But in both contexts, the CRC contracts would be terminated (Ministry of Justice 2018: 6). In Suchman’s terms, this is an instance of *dissociation*: by terminating the CRC contracts, the Ministry reinforced the idea that the contracts were to blame. The contracts were cast as ‘delegitimated structures’ that must go, in order for the probation system to recover its external legitimacy.

A further and important example of *strategic restructuring* in the consultation document appears in the proposal for a new *regulatory framework* for the probation workforce. Specifically, a national professional register for probation practitioners is proposed, alongside a framework of recognised training, in order to “maintain standards across the profession” – regardless of the employing organization (Ministry of Justice 2018: 28). This pursuit of regulation, and in particular the narrative around ‘professionalisation’ in the probation setting, echoes developments in a more obviously ‘tainted trade’ – namely the private security industry – in which substantive and

symbolic types of legitimation work have been examined (White 2010; Thumala et al 2011). For example, in their study, Thumala et al (2011) revealed a process of ‘legitimation by professionalization’, whereby concerns about reputation and credibility in the industry were addressed via strategies which included the development of education and training (what we might call ‘credentialing’) for members of the workforce, as well as regulation through licensing and inspection. Thumala et al (2011) argued that a narrative of ‘professionalisation’ had been an important (if not wholly effective) part of a cluster of strategies aimed at dissociation from the popular negative image of private security firms as ‘cowboy traders’, and of ‘thugs’ and other low quality staff dominating the workforce. In the probation context, we are arguably seeing something rather different: a gesture of reassurance that is more akin to *re*-professionalising the service, oriented toward a *re*-legitimation of an organization that has become fractured and (potentially) under-regulated, by virtue of its fragmentation and outsourcing to a variety of parent companies with different policies and practices around staff recruitment, training and so on.

The Government’s response to the consultation (May 2019): Volte face I

Between the release of the Government’s consultation in July 2018 and the publication of its response in May 2019, Dame Glenys Stacey’s final annual report as Chief Inspector of Probation was published (HM Inspectorate of Probation 2019). In this report, the outgoing Chief Inspector – an influential actor in the probation field - was highly critical of the two-tier structure of probation services, which she damningly described as “irredeemably flawed”. Furthermore, she wrote, although the intention to terminate CRC contracts early and move to better-funded and better-structured contracts would be likely to improve matters, it would not be enough. Stacey’s comments were highly publicised^{vi} and dealt a powerful blow to the Ministry’s *re*-legitimation strategy for probation which, the consultation document suggested, would not (other than in Wales) entail any radical restructuring. To return momentarily to Suchman:

Unlike legitimacy creation [...] legitimacy repair generally represents a *reactive* response to an *unforeseen* crisis of meaning. Such crises usually befall managers who have become enmeshed in their own legitimating myths and have failed to notice a decline in cultural support, until some cognitively salient trip wire [...] sets off alarms (Suchman 1995: 597, emphasis in original).

If there was a cognitively salient trip-wire in this scenario, it was Stacey's report of March 2019. Some two months later, the Ministry published its response to the consultation. This announced that although the Ministry had not consulted directly on the current split in functions between the NPS and CRCs, "widespread support" had been voiced by respondents for an integrated model of delivery, as already proposed for Wales, and a decision had thus been taken to adopt that model in both jurisdictions. In this process, the Chief Inspector's central critique was addressed head on^{vii}:

Since the consultation, we have carefully considered our approach and how to build on the benefits introduced through the TR reforms. We have listened to the feedback in the consultation as well as wider stakeholder feedback and analysis of system performance. In our future approach, we intend that responsibility for all offender management services - for low, medium and high-risk offenders - will be held by the NPS. This will see the model set out in the consultation for Wales now adapted across England too (Ministry of Justice 2019: 8).

This volte-face amounted to a shift from one type of *dissociation* to another: where initially the Ministry had sought simply to cast off the problematic CRC contracts, it now proposed, in effect, to extinguish the CRCs entirely, and to dissociate itself from the 'irredeemably flawed', two-tier structure of probation provision which *TR* had ushered in. In effect, the Ministry was admitting that the 'delegitimated structures' at fault were far more fundamental than a set of rather complicated contractual arrangements: the bifurcated model of probation, predicated on risk, would have to go.

The response to the consultation also went further than initially indicated with regard to the (re-) professionalisation agenda, promising the establishment of an "independent statutory register for probation professionals" (Ministry of Justice 2019: 4). It explained:

The professionalism of probation staff is not in any doubt; however we want to take this opportunity *to ensure probation is recognised as a profession by others* in a way that nurses, doctors, and social workers are [...] The statutory professional framework is an opportunity to promote the professionalism of those working in the probation service - evidencing lifelong learning and *showing that our staff*

are experts within our field [...] This will increase confidence from key stakeholders and the public (2019: pp. 32-33, emphasis added).

Volte-face II (June 2020)

On 11 June 2020, a further U-turn was announced by the Ministry of Justice (now under the leadership of Robert Buckland), with the cancellation of the competition for 'Probation Delivery Partners' (bidders from the private and third sectors) to run two large chunks of probation activity: unpaid work and the delivery of accredited offending behaviour programmes. This meant that whilst more than £100 million per year in contracts would remain open to the private and third sectors (to deliver locally-based interventions for individuals subject to probation supervision), and the government stated that it remained "committed to a mixed market" (Ministry of Justice and HMPPS 2020), the NPS would assume responsibility for unpaid work and offending behaviour programmes, expanding its remit considerably compared with the position set out in the government's response to the consultation in 2019.

Once again, we see here clear evidence of Suchman's "intense activity and dramatic displays of decisiveness" (1995: 599), with a press release entitled: 'Government to take control of unpaid work to strengthen community sentences', and an introduction to the new model which announced "*the decisive step* to streamline the reforms to secure their implementation for June 2021" (HMPPS 2020: 2, emphasis added). The rationale put forward for this particular decisive step to "streamline the reforms" was the impact of COVID-19, which it was said had created a need "to place probation services on a more stable footing", enabling them "to respond to any further disruption and enable swift recovery and transition to a reformed probation service" (HMPPS 2020: 2). In the discourse of organizational studies, COVID-19 can be understood as a 'field reconfiguring event': an enabler of significant change in a specific field (Meyer et al 2005). Whether it has also served as a Trojan Horse to make possible an otherwise politically unacceptable decision, we may never be sure.

The challenges ahead

Probation is now at a key juncture. From June 2021, responsibility for the management of all individuals subject to probation supervision will transfer to the NPS. Probation services will be re-organised into 12 divisions (there are currently 7), each with a

Divisional Director who will oversee both NPS and contracted delivery in their region. A Probation Workforce Programme will seek to provide clarity about professional standards and expectations and support the development of probation practitioners. At the same time, a new resettlement model will come into force (HMPPS 2020: 6-10). As we have seen in the above analysis, the organizational studies literature helps us to understand the coming reforms as a process of *strategic restructuring* (Suchman 1995). This process deploys significant structural change to dissociate the service from the ‘fundamentally flawed’ design of the system under *TR*, and dissolves the 21 CRCs which have presented particular problems of both *moral* and *pragmatic* legitimacy (Robinson et al 2017). The process of reform also promises the creation of a new *regulatory framework* centred on ‘re-professionalisation’: the ‘Workforce Programme’ serves to reassure probation’s constituents of the competency of its practitioners via the introduction of new controls governing their recruitment and training. These substantive strategies (Ashforth & Gibbs 1990), particularly involving material changes in the organisation of probation work, offer a potentially powerful signal to external constituents of a break with the past, and a resolve to do better.

All of this is potentially positive as far as the rehabilitation of probation goes; or, in the official discourse, ‘strengthening probation’ and ‘building confidence’ (Ministry of Justice 2018, 2019). But, as probation practitioners know better than most, rehabilitation is not a process that can be accomplished overnight – especially when the concept is taken to mean (as it is here) a process of recovering from reputational damage and (re-) forming trusting relationships. Just as offender rehabilitation takes place in a social context, so the rehabilitation of probation will occur in a relational space: the *organizational field* referred to above. That field has multiple dimensions: local, regional and national; and it is made up of a growing variety of stakeholders. This complexity presents challenges for the re-legitimation of probation. If, as Suchman suggests (but also see Bottoms & Tankebe 2012), the management of legitimacy “rests heavily on communication” (1995: 586), then it is necessary to think about enabling effective communication at all of these levels, and with the full range of interested parties, who include other agencies of criminal justice (e.g. courts, police); other statutory organisations (e.g. social services; health authorities); organisations within the voluntary and community sector; service users; victims of crime and members of the public. This cannot be achieved entirely from the top down – not least because few

of these parties are likely to read consultation documents or have a detailed understanding of the changes that are on the way. Nor can it be achieved, I suggest, on behalf of the NPS by the Ministry of Justice or its executive agency HM Prison and Probation Service (HMPPS)^{viii}. Rather, the NPS must be prepared to engage in legitimation work on its own behalf, and to understand and manage the complexities and challenges presented by the multi-dimensional field in which it operates. Whilst there is not sufficient space here to explore all of these challenges in depth, I will highlight some which I consider to be of particular importance.

Firstly, it is important to acknowledge that probation services do not have well defined or homogeneous 'consumers'. As argued elsewhere, probation exists in a 'polyarchic context' (Zald 1987) whereby it is answerable to a number of different constituents, which may have conflicting expectations or perceptions (Robinson et al 2017). Writing almost 20 years ago, Rod Morgan (2003) identified four groups of key external constituents in relation to probation services: the public, service users and victims, ministers and civil servants, and sentencers. Two decades on, these constituents remain, but we also see that new actors have entered the organizational field, including Police and Crime Commissioners, who are explicitly mentioned (alongside courts) as 'strategic partners' of probation in current policy documents (e.g. HMPPS 2020). Given that the legitimation work of organizations seeks "to foster the belief among constituents that the organization's activities and ends are congruent with the expectations, values, and norms of constituents" (Ashforth & Gibbs 1990: 182), herein lies a dimension of complexity for probation going forward. How and what will the NPS need to communicate to these various constituents in order to persuade them of its legitimacy? And how will it manage the potentially different (or even conflicting) expectations, values and norms of the different constituents? To what extent, for example, do criminal justice partners, victims and service users have the same vision of a legitimate probation service? To take just one domain of probation work - the preparation of pre-sentence reports - courts and victims may concur in valuing speedy justice; but at least some service users will want an opportunity to explain their offending behaviour and communicate their needs at some length, which does not suggest a hasty process. In this example we also see a conflict between the pragmatic and moral dimensions of legitimacy delineated by Suchman, which becomes visible we begin to think about the perspectives of different audiences.

Secondly, whilst Ministry of Justice decisions and communications have centred on the national level and the introduction of a new divisional structure for the NPS, much of the required re-legitimation work will need to be done at a much more local level, by the practitioners and managers who work at the interface(s) with other agencies in the organizational field (Burke et al 2018). It is here, in everyday interactions, and not in policy announcements, that probation work is real and tangible to these other agencies, and where perceptions of legitimacy will be formed (McNeill & Robinson 2012). Whilst probation has been subject to increasing centralisation since the 1980s, it has continued to operate at the level of Local Delivery Units, different clusters of which have made up larger regional structures (areas, Trusts, regions) over the years^{ix}. In its relations with partner agencies, courts and so on, these smaller operational units are important because they present the 'face' of probation and it is here that what Suchman call 'personal legitimacy' (perceptions of the legitimacy of representatives of the organization) is as important as other components of moral legitimacy (consequential, procedural and structural). Practitioners and managers in roles at important interfaces with other organizations in the field are therefore key actors as far as legitimation work is concerned, and they must be equipped to explain what is different and what will be done better (and how) by the reformed service.

Relationships between the NPS and the judiciary are a case in point. As Morgan (2003) has noted, the judiciary are the 'commissioners' of probation work, without whom the service would be redundant. A decade of sentencing statistics indicate that sentencers' use of community sentences has been steadily declining, and there is some evidence to suggest that this trend has been exacerbated by a lack of understanding of, and confidence in, probation arrangements since the implementation of *TR* (e.g. see Centre for Justice Innovation 2019; Robinson 2018; HMIP 2017). Legitimation work is clearly crucial here, and effective communication with sentencers has perhaps never been more important. In this context, the NPS needs to be thinking about how best to communicate what will change in the delivery of community sentences, and how it proposes to deliver those sentences in ways that inspire confidence on the part of the judiciary. This is a task that arguably needs to be done, first and foremost, at a local level, via communication between NPS court teams and their local benches/District judges. Whilst there is also important work to be done at regional and national levels, the importance of these locally-based relationships should not be underestimated, and

the NPS would be wise to attend seriously to the local structures that are available, or could be revived, to effectuate important legitimization work with this key constituency.

None of this will necessarily be easy. For one thing, the coming reform programme will coincide with probation's recovery from the Covid-19 crisis, which has exacerbated longstanding staff shortages and high caseloads, and created a backlog of cases with requirements (such as unpaid work and offending behaviour programmes) which have not been able to be completed (Justice Committee 2020). At the same time, the constitution and culture of the NPS will be undergoing considerable change, as its remit expands to take on the management of medium and low risk cases (formerly managed by the CRCs), as well as the high risk cases for which it has been responsible since its inception. It will also be absorbing staff from all of the 21 CRCs, many of whom will have no experience of probation work outside that particular setting. Given that the 21 CRCs have eight different parent companies, it is to be expected that there will be at least eight different operating models and practice cultures in play, which could diverge quite considerably. An urgent task facing the NPS therefore concerns identity work: working through questions about what and who it is – and wants to be - as an organization. These are questions of purpose and culture that are at least as important as questions about structure, resourcing and the like (Robinson & McNeill 2004). But the foundations for this work are not easily accessible to the organization's stakeholders: for example, it is extremely difficult to gain an understanding of the NPS, its 'mission' or its value base from the internet: its only 'official' web presence currently is on the gov.uk site, where content is rudimentary at best (Carr & Robinson 2020).

This brings me to a final challenge for the rehabilitation of probation, which is particularly relevant to its standing vis a vis the general public: namely, its lack of an independent voice. As we have already seen, in the discussion of recent steps toward probation reform, those in leadership roles *within* the service do not enjoy the autonomous voices of the kinds of corporate entities that organizational studies scholarship tends to deal with, and this is especially true of those employed in the public sector. The NPS which was created in 2014 is an arm of the Civil Service, accountable to a Director General of Probation and ultimately to the Secretary of State for Justice, via the Chief Executive of HMPPS. Leaders within the NPS do not enjoy the relative operational independence of their predecessors (Chief Probation Officers) who in the

decade prior to *TR* were represented by a Probation Chiefs Association (PCA), the stated purpose of which was “to promote confidence in and increase understanding of the vital work that probation does to protect the public and reduce re-offending”^x.

Contemporary leaders within the NPS are bound by a Civil Service Code, such that they are not in possession of an independent professional voice with which to represent probation – for example to the news media^{xi}. This makes the job of communicating probation’s values, mission and accomplishments to the general public – either now or in the future - extremely problematic. Those within and allied to probation have for decades lamented its low public profile, which does nothing to engender support or confidence (e.g. Roberts 2002; Robinson 2016b). Today, the voices most likely to be heard representing probation are those of the Chief Inspector of Probation, the Trade Union Napo, or a government minister – those directly involved in the delivery of probation work are rarely either seen or heard (e.g. see Justice Committee 2020).

The argument that the NPS should be independent of HMPPS and that leaders of probation areas should be endowed with the same operational independence as Police and Crime Commissioners and Metropolitan Mayors has been put forward recently by a ‘Probation Alliance’ made up of several campaigning and professional bodies, including the Probation Institute which was set up as a centre of excellence for probation practice in 2014^{xii}. The reassertion of the importance of probation’s independence has also found expression in recent academic commentary on the coming probation reforms (e.g. Priestley & Vanstone 2019; Burke et al 2018). It seems highly unlikely that these calls for independence will be heeded. Nonetheless, questions around agency and voice urgently need to be addressed if the expanded service is to succeed in enabling its own rehabilitation. As probation reform enters its next phase, it is going to be crucial that the NPS has a voice in and beyond the organizational field, and that this is accompanied by a clear understanding of the identity it wishes to project in that space.

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Notes

ⁱ The private sector continues to manage Electronic Monitoring contracts and will be able to bid for resettlement work alongside voluntary sector organisations (e.g. see Nellis 2020).

ⁱⁱ Here I deploy rehabilitation to refer to a process of overcoming a spoiled identity, or recovering from reputational damage (e.g. see Maruna 2011).

ⁱⁱⁱ XXX have previously deployed concepts from Suchman's work to chart the evolution of probation after the crisis of legitimacy brought about by the collapse of the rehabilitative ideal in the 1970s.

^{iv} <https://www.gov.uk/government/consultations/strengthening-probation-building-confidence>, accessed 19/06/20

^v Though see also Hood (2011)

^{vi} The press release which accompanied the publication of the report was entitled: 'The Transforming Rehabilitation model for probation service is irredeemably flawed' (28 March 2019) <https://www.justiceinspectorates.gov.uk/hmiprobation/media/press-releases/2019/03/reportofthechiefinspectorofprobation/>

^{vii} The Chief Inspector's final report is referred to directly in several places.

^{viii} HMPPS replaced the National Offender Management Service (which previously had responsibility for probation services) in 2017.

^{ix} In 2008-10, 42 probation areas became 35 trusts and then (in 2014) 21 CRCS and 7 NPS divisions.

^x <http://probationchiefs.org/about-us/> (accessed 03/08/20).

^{xi} <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code> (accessed 03/08/20).

^{xii} Probation Institute; Napo; UNISON; Howard League for Penal Reform; Centre for Crime and Justice Studies; Centre for Justice Innovation; BASW Criminal Justice England. The Probation Alliance released a document entitled 'Principles for a Future Model of Probation' in March 2019. This is available via: <https://www.probation-institute.org/news/letter-to-minister-about-probation-integration> (Accessed 14/08/20).

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[SEVERAL REFERENCES HAVE BEEN REMOVED FOR ANONYMISATION]