

Sanctions, Support and Change: Lessons from Criminal Justice?

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Boundaries and borders

- There is a longstanding recognition of the need to attend critically to the multiple relationships between punishment and welfare (e.g. David Garland, Loic Wacquant, etc.).
- But, even sociologists of punishment who recognise these symbiotic relationships are surprisingly myopic about and preoccupied with the prison.
- Hardly anyone looks sociologically at community sanctions and even fewer sociologists have studied fines. And we neglect punishment outside the CJS.

More boundaries and borders

- When sociologists study punishment, they tend to examine its forms, functions, institutions, cultures and practices, and (sometimes) its lived experiences
- When criminologists study punishment, they tend to study effects, impacts and alternatives
 - Sometimes they link crime and desistance theories with punishment
- When philosophers talk about punishment, they talk about its (formal) justifications
- But the questions are obviously inter-dependent

Justifying Punishment [Justifying conditionality?]

- Retribution and just deserts
 - A limiting principle?
- Denunciation
- Deterrence
 - General and individual
- Rehabilitation
- Incapacitation
- [Public protection/risk management]

Theorising punishment [Theorising conditionality?]

- **Structural accounts**
 - Political economy; ‘varieties of welfare’ regime
- **Cultural accounts**
 - Public sensibilities
 - Penal ideologies and professional ideologies
- **Political accounts**
 - Governmental rationalities and technologies
 - Political systems, institutions, capacities
- **Conjunctural accounts (e.g. Garland)**

- Not **punishment** so much as **regulation**?
- 'Bottoms noted that **there was little or nothing disciplinary about the fine**, the non-incarcerating sanction that was expanding rapidly at the time. To explain this Bottoms made use of Foucault's (1984) distinction between discipline and regulation. Discipline is the axis of power focusing on the individual, working to normalize behaviour through retraining. **Regulation, its orthogonal axis of power, works to shape distributions by behavioural means**' (O' Malley, 2009: 73).

- ‘Those that are filtered out of the **disciplinary** criminal justice system are those who do not represent a problem, and who can be **regulated** through summary justice and the behaviourist justice technologies such as the fine. This includes the vast mass of motoring offenders. **Those who are filtered in, however, are in need of correction rather than merely regulation**’ . (O’ Malley, 2009: 75)

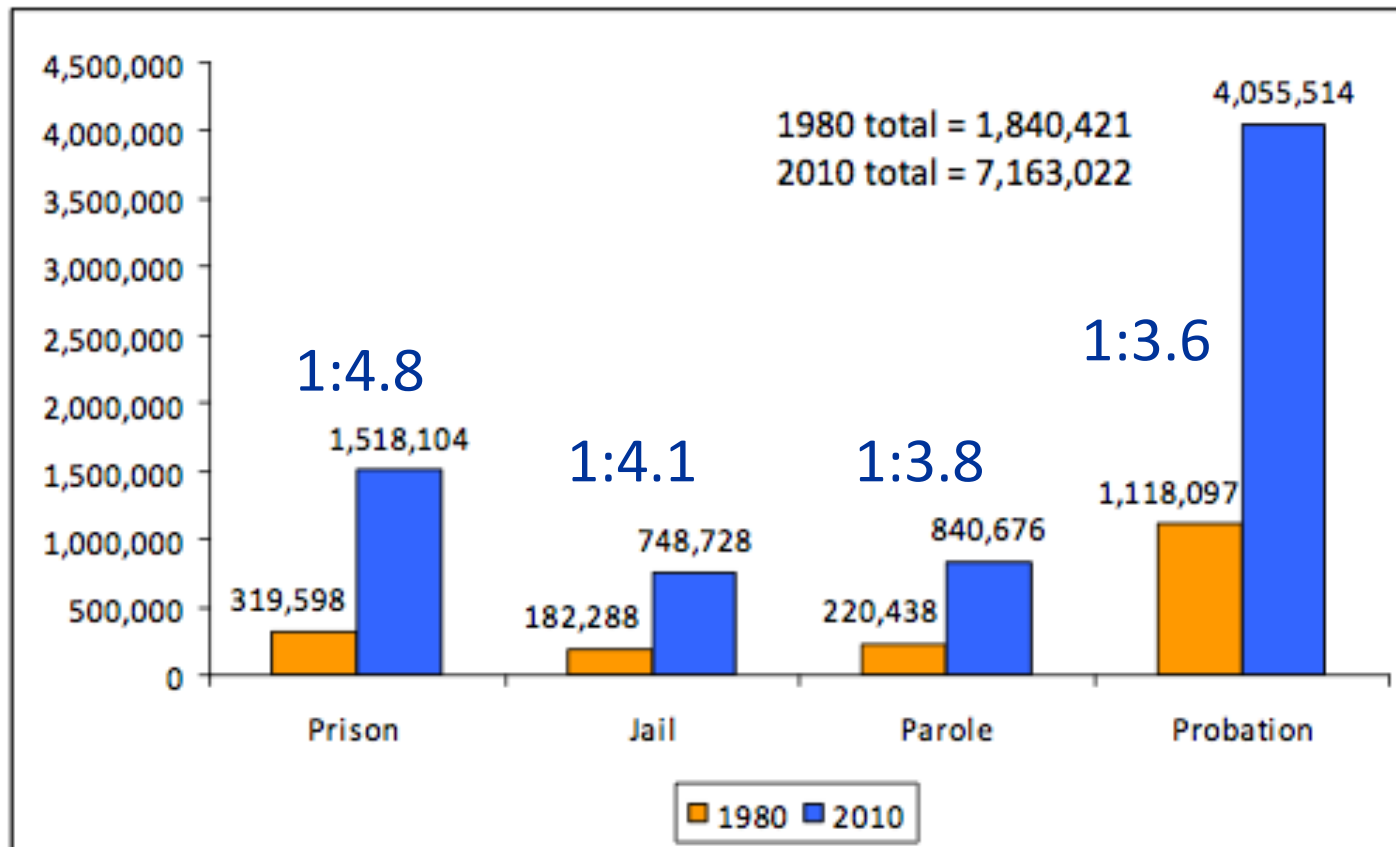
- An auto-penalty requiring no judge: strict liability and category based
- The fine as the price of crime?
 - A price one can choose to pay
- De-humanised regulation of (de-humanised) ‘dividuals’ – undifferentiated
- A penalty for a ‘consumer society’ ?
- A ‘limit sanction’ that defines where the ‘culture of control’ kicks in?
 - A sanction for those who are of and in the market, not those who are beyond its disciplines.

Conditionality, suspension and fines

- Is welfare conditionality aimed at discipline, regulation or cost-saving/diminishing eligibility?
- How does withholding income differ from levying fines, if at all?
- Does the suspension of claims have something more in common with community sanctions (and other ‘sword of Damocles’ suspensions of punishment)?
- Common themes about conditional citizenship perhaps?

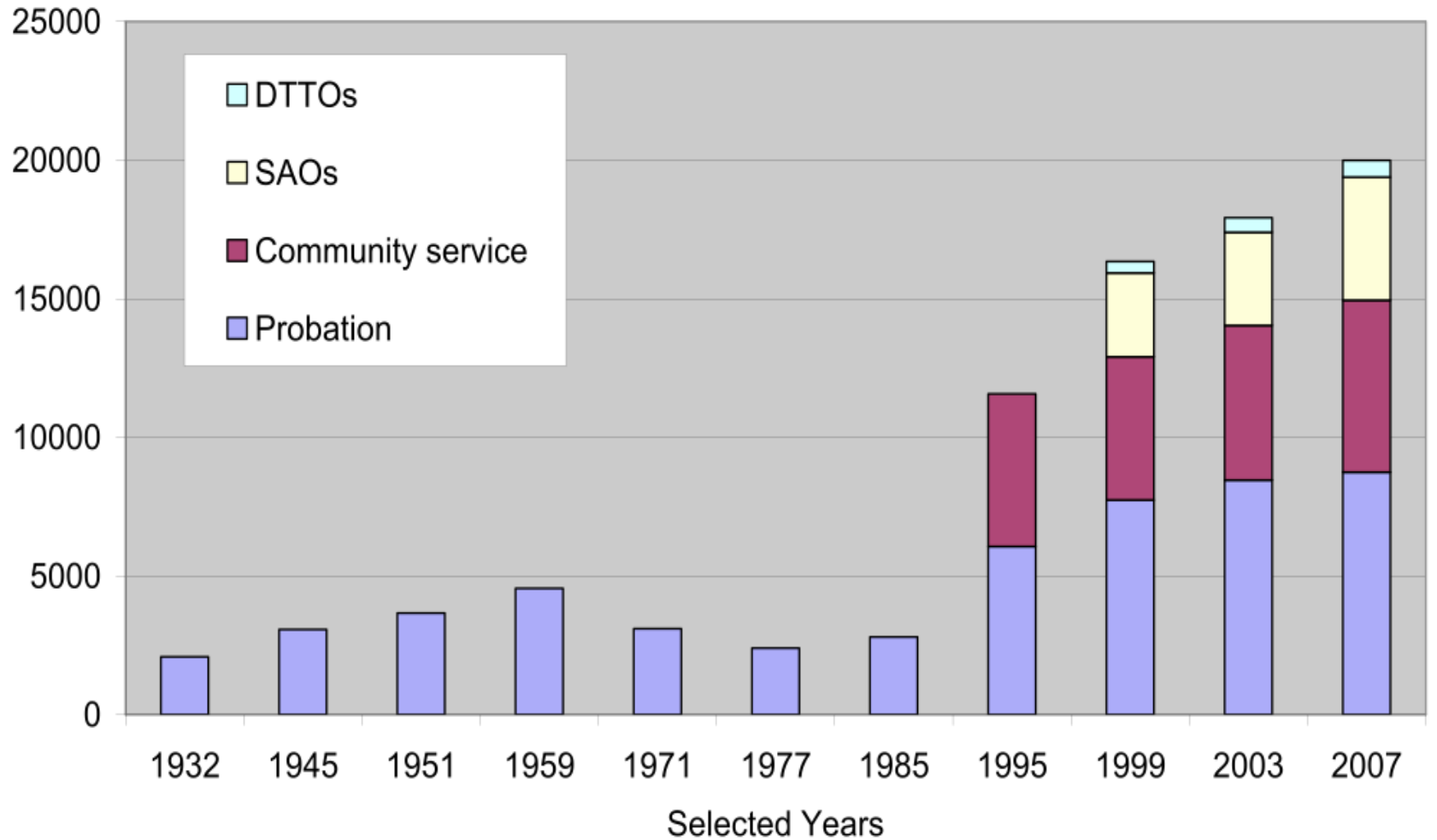
Community corrections USA, 1980 & 2010

POPULATION UNDER CONTROL OF THE U.S. CORRECTIONS SYSTEM, 1980 & 2010



Source: Glaze, L. E. (2011). *Correctional Population in the United States, 2010*. Washington, DC: Bureau of Justice Statistics; *Corrections: Key Facts at a Glance*. Washington, DC: Bureau of Justice Statistics.

Number of Orders



So what happened?

- The number of probationers in the US grew from 3 million in 1995 to over 4 million by the end of the decade (and 5 million by 2007).
- ‘... Community corrections experienced some of its most vicious public criticism, but it was also during this time that it experienced unprecedented growth and diversification’ (Wodahl, et al., 2011)
- Similar patterns elsewhere

- In most jurisdictions, CSM are deeply associated with and embedded in penal welfarism
- Penal welfarism, at least in some places, has been said to be eclipsed by a new penology or a culture of control
- So how and why are CSM apparently thriving? How have they adapted to survive a potentially hostile social and penal climate?

- Four key strategies (sometimes pursued simultaneously)
 - Managerial CSM
 - Punitive CSM
 - Rehabilitative CSM
 - Reparative CSM



Sanctions as penal power

Negative power/ Slicing off

- Imposing harms
- Taking away life
- Taking away (negative) liberty
- Taking away time or demanding effort
- Taking away worth/money

Costs?

Positive power/ Grafting in

- Requiring goods
- Life enhancing
- Developing (positive) liberty
- Constructive time and work
- Enhancing worth/Compensating loss

Risks?

Personal Reintegration

- The re-development of the self
- Capacity building

Social Reintegration

- The re-development of social identity
- Informal de-labeling

Desistance

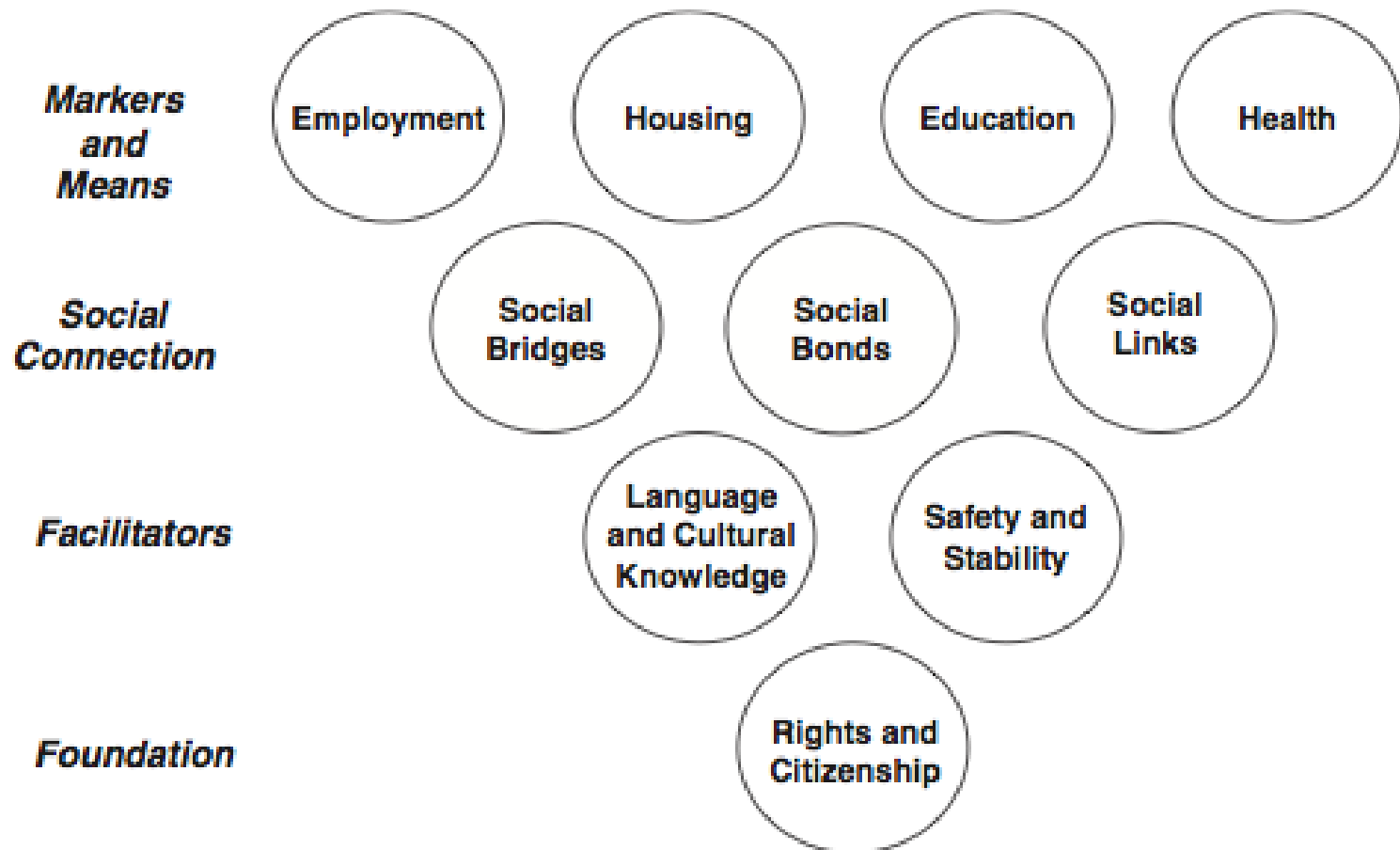
Judicial Reintegration

- Formal de-labeling
- Re-qualification

Moral Reintegration

- Provision of redress/reparation
- The restoration of good character

A Conceptual Framework Defining Core Domains of Integration



Some problems for this framework

- Varying notions of nationhood and citizenship
 - I want a cosmopolitan republican version
- Looking beyond or behind social capital
 - The nature of reciprocity, trust and social connection
- Seeing integration as a two-way process
 - One that policy can disrupt as well as support (cf. similarities between discourses of ‘bogus’ asylum seekers, benefits ‘scroungers’, ‘criminals’).
- The dynamics of integration
 - ‘Resource acquisition (or loss) spirals’

- Legitimacy and compliance in supervised sanctions
 - Dynamic processes: formal, substantive and long-term compliance.
 - Different ‘motivational postures’ and different ‘compliance mechanisms’ in play.
 - Legitimacy is relational and critical to success... it is hard to win, easy to lose and even harder to recover once lost.
 - Compliance isn’t always good.

- **Constitutive:** Imposing just sanctions in good conscience requires a prior just order and should seek to restore it
- **Communicative:** What do sanctions say about us, for us and to us?
- **Productive:** What sorts of social goods do sanctions produce... *or destroy?*
 - Not merely the reduction of costs/harms
 - Not economic/market goods; moral goods