Giving compliance back: re-analysing and re-orientating the debate

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> *It is common to describe people who hold important positions in society as 'somebodies' and their inverse as 'nobodies' – nonsensical terms, for we are all by necessity individuals with identities and comparable claims on existence. But such words are apt in conveying the variations in the quality of treatment meted out to different groups. Those without status remain unseen, they are treated brusquely, their complexities are trampled upon and their identities ignored. (2004:12)*

The above quotation, taken from Alain De Botton's (2004) text *Status Anxiety,* aptly captures the nonsense, the reality and (some of) the consequences of the differential treatments afforded to those routinely involved in contemporary criminal justice systems and processes. In this context, those with status typically include criminal justice policy makers, professionals and academics, and those without include both the victims and perpetrators of criminal activity. In this paper I wish to revisit the status afforded to offender actors in the context of community penalties, and more specifically in the increasingly salient context of compliance. I begin by charting the recent rise of compliance as an area of policy, practice and research interest within criminal justice contexts, while also acknowledging the virtual absence of any meaningful attention to the experience of those routinely engaged in compliance efforts (that is offenders themselves). I will then consider the contribution of Nils Christie's (1977) seminal paper: *Conflicts as Property,* as a potential framework for re-analysing the compliance dynamic and for re-orientating the compliance debate. In conclusion I advocate an approach to compliance policy, practice and research enquiry in which professionals take greater cognisance of their *supporting* role in compliance efforts and actively engage in a process of 'giving compliance back'.

THE RISE OF COMPLIANCE

While there is clearly some appeal in constructing compliance as a recent concern in criminal justice contexts, even a cursory reading of probation's history and development attests to the reality that compliance is an old-new concept. That is, that the

pursuit of compliance has long occupied a central position in probation's projected identity, purpose and practice (see for example, McNeill and Whyte, 2007; Vanstone, 2004; McCulloch, 2010).

The more recent *rise* of compliance – observable from the mid 1980s onwards – tells a somewhat tangled story of successive, often contesting and largely unsuccessful efforts on the part of governments to instil community penalties with credibility, confidence and, to a lesser extent, effectiveness (for a fuller discussion see Hedderman and Hough, 2004; Loumansky et al 2008). From the early 1980s to the late 1990s this was predominantly pursued via an array of policies, practices and strategies of 'tougher and tougher' enforcement – most vividly demonstrated in the perpetual revision and 'toughening up' of prescribed National Standards for community sanctions (Hedderman and Hough, 2004).

The consequences of this persistent ratcheting up of enforcement practice are not difficult to fathom. In England and Wales breach rates for community penalties soared, prison rates escalated and the existing link drawn between *effective* enforcement practice, offender compliance and reduced reconviction collapsed under the force and myopia of a 'strategy' of enforced compliance. More significantly, as the above messages began to impact on the UK government's much acclaimed 'What Works' project – which then risked derailment on the basis of the service's inability to retain sufficient numbers of offenders on orders for sufficient periods of time – politicians, policy makers and probation chiefs were forced to look beyond strategies of enforcement towards the adoption of more participatory modes of engagement (Hearnden and Millie, 2004).

Most recently, clear and consistent enforcement practice continues to be very closely aligned with notions of effectiveness and credibility in community penalties. Yet, at the same time we have witnessed a distinct 'relaxing' of enforcement practices, alongside explicit attempts to restore reasonable levels of discretion to offender managers and criminal justice social workers (see for example, Ministry of Justice 2011; Scottish Government 2010). In research terms we can observe a related shift in attention from the practicalities of enforcing and securing compliance towards a more conceptual engagement with compliance as a complex and multi-dimensional dynamic (Bottoms 2001; Robinson and McNeill, 2008; McCulloch 2010). In summary, compliance appears to have shifted from being an outcome to be enforced, towards a 'dynamic' to be understood.

On the whole this more exploratory engagement with compliance is a welcome one and has contributed to a more considered, holistic and research informed engagement with both the dynamic of compliance and efforts to support that (at least in some spheres). Yet, even acknowledging recent progress made, for the most part, debate and discussion in this area has evolved in the absence of any meaningful attempt to engage or involve those who, day by day, find themselves grappling with the compliance dynamic (that is offenders themselves). In other words, to return to our opening text, those who might reasonably be described as lead compliance actors in the context of community penalties remain, with a few notable exceptions, 'nobodies' in the compliance debate.

RE-ORIENTATING THE DEBATE: GIVING COMPLIANCE BACK

There are many rationales that might be drawn upon in an attempt to explain the virtual neglect of compliance actors in recent efforts to better understand and support the process of compliance in community penalties, and many more which might be used to justify greater attention to this area in the future (see for example Bottoms, 2001; Farrall, 2003; Ugwudike, 2010; Weaver 2011). For reasons of space and relevance none of these rationales will be considered here. Rather I wish to introduce and consider the potential of Nil's Christie's (1977) seminal paper: *Conflicts as Property*. Though Christie's paper is not directly concerned with the dynamic of compliance *per se* (though, arguably, his concern to provide modern justice systems with an alternative paradigm for the practice of 'conflict [re-]solution' fits well with recent efforts to secure longer-term substantive compliance) there is much within Christie's analysis, critique and argument that connects well with our discussion here.

At the heart of Christie's paper is a deep questioning and critique of highly industrialised justice systems that remove or steal 'conflicts' – that is the conflict that occurs between offenders, victims and communities in the criminal act – from their rightful owners. More specifically, much of his argument is directed at the criminal justice professionals who, he argues, effectively 'steal' conflicts from those originally involved, or at least monopolise the handling of them. Christie's challenge to those professionals is to give the conflicts back, that is to restore participants' right to their own conflicts (and resolutions) and to make conflicts useful:

> *Conflicts ought to be used, not only left in erosion. And they ought to be used and become useful, for those originally involved in the conflict (1977:1)*

As argued, the relevance of Christie's paper for our discussion here lies in its capacity to reframe and re-orientate the compliance debate at a critical point in its evolution. By way of summary, the above described rise of compliance charts a process in which the pursuit of compliance has, for the most part, been driven by the state, devolved by policy makers, enforced by professionals and variously measured, debated and discussed by researchers and theoreticians. Somewhere in the midst of these processes those required to comply – often constructed as the 'objects' of compliance interventions (Morgan, 2003; Robinson, 2005) - are required to grasp what is required of them, demonstrate compliance and/or face the full force of state imposed consequences for non-compliance. The outcome of this approach to securing compliance has, broadly speaking, been one of failure. Moreover, as hinted at in Christie's paper, it might be argued that the process and outcomes of enforcing such an approach has further contributed to the experience of disconnection, disenfranchisement and disillusion known to lie at the heart of both offending and substantive non-compliant behaviour.

Christie's paper offers the potential of a different approach and a different practice. Most significantly, it reminds us that both the action and pursuit of compliance (or non-compliance) is *owned* by the offender/desistor actor. Secondly, it foregrounds that the pursuit of compliance ought to be an explicit, useful and constructive process for that actor. Finally, we are reminded that the role of the professional in this process is a secondary and supporting one. As Christie urges in respect of the appropriate place of criminal justice professionals:

> *[I]f we find them unavoidable in certain cases or at certain stages, let us try to get across to them the problems they create for broad social participation. Let us try to get them to perceive themselves as resource-persons, answering when asked, but not domineering, not in the centre. They might help to stage conflicts, not take them over (p.12).*

In summary, Christie's paper prompts a re-analysis of our engagement with the compliance dynamic. Moreover, it advocates an approach to *supporting* compliance that involves us 'giving compliance back'; that is, a process in which we as professionals relinquish our assumed status as lead actors in compliance efforts and act to restore that status to its rightful owners. Examined in the context of our longstanding history as 'professional thieves' this is a substantial challenge. My hope in this short paper is that each of us will reflect on and engage with this challenge as seems appropriate to our role.

REFERENCES

Bottoms, A. (2002). Compliance and community penalties. In: Bottoms, A., Gelsthorpe, L. and Rex, S. (eds) *Community Penalties: Change and Challenges*. Cullompton: Willan.

Christie, N. (1977). 'Conflicts as Property' *British Journal of Criminology,* 17: 1-15.

De Botton, A. (2004). Status Anxiety, London: Penguin.

Farrall, S. (2003). 'Long-Term Absences from Probation: Officers' and Probationers' Accounts', *The Howard Journal of Criminal Justice*, 41(3): 263-278.

Hedderman, C. and Hough, M. (2004). 'Getting tough or being effective: what matters?' in Mair, G. *What Matters in Probation*, Cullompton: Willan.

Hearnden, I. and Millie, A. (2004). 'Does Tougher Enforcement Lead to Lower Reconviction?', *Probation Journal*, 51(1): 48-58.

Loumansky, A. Goodman, A. and Feasey, S. (2008). 'Enforcement and Compliance', In Green, S., Lancaster, E. and Feasey, S. *Addressing Offending Behaviour: Context, practice and values,* Cullompton: Willan.

McCulloch, T. (2010). 'Exploring Community Service: Understanding Compliance'. In McNeill, F., Raynor, P. and Trotter, C. (eds), Offender supervision : new directions in theory, research and practice. Cullompton :Willan.

McNeill, F. and Whyte, B. (2007). *Reducing Reoffending: Social Work and Community Justice in Scotland*, Cullompton: Willan.

Ministry of Justice (2011). *National Standards for the Management of Offenders*. London: Ministry of Justice. Available at:http://www.justice.gov.uk/publications/corporate-reports/moj/noms-standards/index.htm.

Morgan, Rod (2003). 'Thinking about the Demand for Probation Services', *Probation Journal* 50(1): 7–19.

Robinson, G. (2005). 'What Works in Offender Management?', *Howard Journal of Criminal Justice* 44(3): 307–18.

Robinson, G. and McNeill, F. (2008). 'Exploring the dynamics of compliance with community penalties', *Theoretical Criminology,* 12(4): 431-449.

Scottish Government (2010). *National Outcomes and Standards for Social Work Services in the Criminal Justice System*. Available at: **http://www.scotland.gov.uk/Resource/Doc/925/0103556.pdf**

Ugwudike, P. (2010). Compliance with community penalties: the importance of interactional dynamics'. In McNeill, F., Raynor, P. and Trotter, C. (eds) *Offender Supervision: New Directions in Theory, Research and Practice,* Cullompton, Willan.

Vanstone, M. (2004). 'Mission Control: The Origins of a Humanitarian Service', *Probation Journal,* 51(1): 34-47.

Weaver, B. (2011). 'Co-Producing Community Justice: The Transformative Potential of Personalisation for Penal Sanctions', *The British Journal of Social Work,* 41(6): 1038-1057.