

PROBATION IN PAPUA NEW GUINEA : A FUNDAMENTAL  
RE-ORIENTATION OF ATTITUDES AND INSTITUTIONS.

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and Maev O'Collins\*\*

[*Editorial Note: Under ss.36(2)(b)(iii) and 46 of the Child Welfare Act 1961-75 (No. 34 of 1961) a Children's Court may commit a child inter alia to 'probation on such conditions (if any) as the court orders'. According to Joint Working Paper No. 14, Young Persons in Conflict with the Law, published jointly by the Law Reform Commission and a Committee called by the Minister for Home Affairs (November 1978), p.9, there is at present in Papua New Guinea only 'an informal type of probation' which operates 'in a very limited manner'. Under s.608 of the Criminal Code Act 1974 (No. 78 of 1974) and s.138 of the District Courts Act 1963 (No. 19 of 1964) the courts may release adult offenders on a good behaviour bond, and under s.613 of the Criminal Code Act 1974 adult first offenders may be awarded a suspended sentence. However, no provisions exist for the release of adult offenders on probation.*]

*Introduction.*

This is a two-part article in response to a request from the Department of Justice and the Law Reform Commission of Papua New Guinea for comments on proposed legislation to set up a probation service.

In Part A, Stewart MacPherson explores the fundamental causes of delinquency and criminal activity and suggests that community probation or other attempts at social control are certain to fail unless there is a 'fundamental re-orientation of attitudes and institutions', as called for in the Constitution.<sup>1</sup> He points out that the goals of the society can be stated, as they have been in Papua New Guinea, but they must be made real.

In Part B, Maev O'Collins accepts to some degree the reality of the inequalities and injustices in Papua New Guinean society as a starting point and considers whether some form of community-based probation can be developed which will reflect Papua New Guinean group and community forms of social control. What can be done to provide alternatives to harsher penalties and more repressive control being enforced by the state?

Here, then, are two contrasting but not conflicting views on the causes of crime and delinquency and the realities of community probation.

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1. *Constitution*, fifth of the National Goals and Directive Principles.

*Part A : Crime and Delinquency - The Goals of a Society Must Be Made Real.*

Discrepancies between the success-goals defined in a society and the reality of access to opportunities for achieving these goals create great pressures for the emergence of delinquency and criminal activity. A compelling case can be made for the effects of frustration generated by great differences between culturally-induced aspirations and socially structured possibilities for achievement. Papua New Guinea, with very high rates of urban migration, unemployment, 'school push-outs', and widening inequalities between those with wage employment and those without has all the necessary conditions for rapid development of such a situation. There is a well established ethic of 'education for employment', a rapid growth of materialism and consumerism and a fast-growing gap between the demands for employment and its attendant privileges and the ability of the economy to satisfy these demands in this form.

Not only are opportunities shrinking, but access to those which do exist is unequally distributed. We can surely expect, if present trends go unchecked, that the 'legitimate' means to 'success' will be increasingly dominated by those groups which have already gained a significant degree of power - economic, political and social.

The pressures towards criminal activity are thus particularly strong for those groups which suffer the greatest objective discrepancies between what are seen as the 'success-goals' of the society and the actual possibilities for achieving these goals by legitimate means.

Juvenile gangs and organised criminal activities provide illegal means to success-goals which are unattainable by legitimate means.

A number of implications flow from such an analysis. Obviously, efforts must be made to expand the structure of legitimate opportunity. Any attempt to increase the scale of legitimate income-producing activity must be made with the conscious purpose of extending these opportunities to those presently denied them, and not to the further exacerbation of differential access and inequality. The generation of self-employment and labour-intensive economic activity in urban areas has a role here: really significant attempts to generate economically and socially viable rural communities are even more important.

The insidious and destructive relationship between formal education and employment must be broken. Otherwise, the education system by its very success will generate further discrepancies. Some attempts have been made to change content, purpose and selection in the education system but for the most part the mill grinds on, producing a few 'successes' and many so-called 'failures'.

We must be concerned with the social regulation of aspirations. The task is not to persuade those groups who presently 'fail' to lower their aspirations while others continue to exploit whatever means to success the system has to offer. Rather we must be concerned with affecting the dominant aspirations which pervade the whole society and the access to opportunities of all groups in the society.

Individualism is a major component of the ideology which dominates the so-called 'modern sector'. It perverts the education system, the distribution of income and scarce social resources and is perhaps the single most serious obstacle to real development for the whole people.

Efforts to alter dominant values may succeed in expanding, and distributing more fairly, the legitimate means to success. They could also alter the conception of 'success' itself. Thus, stress on 'social' not just 'economic' goals, on 'community' not just 'individual' benefits, and on equality not inequality, would reduce the pressure which comes from the inability to achieve 'success' in a system structured such that success is possible only for a few.

Pressures for criminal activity can, therefore, be reduced. The required shift in dominant values and attitudes, however, is massive. These dominant values and attitudes reflect the interests of the dominant social groups and are as such susceptible only to significant shifts in political power.

Only if this fundamental point is realised, and acted upon, will there be any real change in the inevitable conflict between those who control for the benefit of a few and those who are controlled for the ultimate benefit of others.

Any attempt to control crime must be seen in this context. The goals of the society can be stated, as they have been in Papua New Guinea, but they must be made real. Legitimate means for success in terms of these goals can be expanded and extended to those presently denied them.

The problem of dealing with crime, particularly juvenile crime, is not to dissuade individuals, by therapeutic or other means, to give up their delinquent ways of behaving, they must be given alternatives which are equally satisfying. The task then, is *not* 'to help people to adjust to unfortunate social realities' but to provide legitimate ideologies and means by which they can effectively express their discontent.

The facilitation of meaningful collective social action is crucial. Again, this demands fundamental changes in the organisation and distribution of resources, services and power.

The question of collective social action is closely linked with the organisation of communities. Deprived communities are not disorganised simply because they are deprived. Many communities, objectively deprived, have stable social organisations which give unity, direction and cohesion to community life. Disorganised communities, without developed social organisation, and often marked by high rates of mobility, transiency, insecurity of occupation, and low levels of access to vital resources and services, cannot provide access to success-goals. These communities have virtually no means of controlling the criminal intentions of their members.

Thus, prevention demands a strengthening of community solidarity. The target of preventive programmes must be the community rather than the individual or the 'criminal group'. People, particularly young people, will be far more responsive to a community which shows the power to organise itself and has the authority to manage affairs within itself. Communities which manage their own problems and mobilise their own resources can effectively control their own members. Communities which are not organised and rely on external forces will not control their members.

The suggested approach entails an attempt at social control. In the past, such attempts have been punitive, reactionary, and designed to serve the interests of the powerful. Unless communities can legitimately and effectively use their own organisation for real participation, the approach suggested by the authors will be no different from past forms of social control.

The proposals for 'community probation' represent one attempt to allow communities which are organised to release the power of that organisation. It demands a great deal in terms of the generation of community organisation and the recognition of existing organisations.

Without a genuine shift in the position of these communities in the power structure and in the struggle for scarce resources, however, such a scheme will be little more than a means by which the dominant interests retain their control by persuading those denied legitimate opportunities to 'control themselves'. It will indeed be 'helping people to adjust to unfortunate social realities'.

*Part B : A Papua New Guinean Probation Service?*

'Probation', as C.R. Bevan noted in February 1976, 'is not a new concept in Papua New Guinea'. Since 1973, there have been reports, proposals, and formal and informal meetings in which probation was discussed as one of the alternative strategies for the punishment and rehabilitation of offenders.<sup>2</sup>

Despite these, and subsequent attempts to relate the concept of a probation service to the current needs of Papua New Guinea, it is still the case that little attention has been given to ways by which family, clan, or community methods of social control can form the basis for such a service. The notion that members of a group may have to perform some task or behave in a certain way to obtain acceptance after

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2. C.R. Bevan, 'The Prospect of Probation and Parole', in *Crime in Papua New Guinea*, (David Biles, ed.) (1976), p.175-187. See also J.A. Griffin et.al. 'Crime Prevention in Papua New Guinea - a Plea for National Planning', in *Crime in Papua New Guinea, op.cit.* p.91-102; Karolus Walagat, 'Report on Juvenile Probation Proposal 1974', Mimeographed; Maev O'Collins, 'Social Welfare and the Law: Protecting or Controlling the Community?' in *Lo Bilong Ol Man-meri* (Zorn and Bayne, ed.) (University of Papua New Guinea, papers presented at the Seventh Waigani Seminar on *Law and Development*, 1973), p.126-136.

they have offended against the group's norms is present in most societies throughout Papua New Guinea. Even where traditional mechanisms of social control were weakened by colonial administrative authority, group control was often re-invested in church officials or community associations. In towns, ethnic clubs, village-linked community progress associations, or even trade unions or sporting groups can and often do exert control over their members.

The Constitutional Planning Committee considered the re-affirming of the value of Papua New Guinean Ways to be of such importance that it became one of the National Goals embodied in the *Constitution*. This Fifth Goal calls for 'a fundamental re-orientation of our attitudes and the institutions of government .... towards Papua New Guinean forms of participation, consultation, and consensus and .... traditional villages and communities to remain as viable units of Papua New Guinean society'. Can, or perhaps one might ask *should* this goal be emphasised in the development of probation and parole services throughout the country?

#### Probation : The Papua New Guinean Way

Probation has been defined as a 'method of dealing with offenders, applied on a selective basis, involving conditional suspension of punishment .... supervision and treatment.'<sup>3</sup>

Probation as the middle ground between prison and a good behaviour bond may be seen to be appropriate when some external authority and direct social control is desired. While the offence is serious enough for a prison sentence to be applicable, there are reasons to suggest that the individual would benefit by remaining in the community.

A pre-sentence report from a government or voluntary agency may provide information about the social and economic circumstances of the offender, which helps the judge or magistrate decide if probation is appropriate. For example, is the defendant living with family or clan members or is he in frequent contact with them? Does he work as a subsistence or cash farmer or for wages? Does he belong to an ethnic or voluntary association or to a church to which he could turn for help, or from whom some control or sanction might be expected? If placed on probation, in what circumstances might he commit another offence - for example, does he have associates who share drinking sprees as a prelude to breaking into warehouses? What are his general life circumstances and can areas of pressure be lessened by bringing him into closer contact with groups or associations who can give him support, encouragement or control when these are needed?

Information is also required about groups, associations, or individuals who can assist offenders by providing probationary supervision as an alternative to a prison sentence. These groups and individuals would make it possible to establish a real probation service that was not remote and office-based but a community-based network of human resources.

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3. Hugo F. Reading, *A Dictionary of the Social Sciences*, (1977), p.161.

Although community attitudes often reflect the desire to punish, rather than to reform, this may suggest lack of understanding of those who have committed offences rather than an absolute rejection of individual problems. Among the advantages of a probation and parole service for Papua New Guinea would be the possibility of coordinating government and non-government services and manpower. This would include broadly based public relations and community education on the reasons and hoped-for results in providing probation or parole services for offenders. While trained and experienced social welfare personnel are needed to supervise and coordinate such programmes, the emphasis would be on community, voluntary, and non-expert help throughout Papua New Guinea.<sup>4</sup>

The role of official probation officers needs to be carefully considered. Are they to be community resource experts who know what might be available in the particular situation from which the offender comes? Are they to be social relationship experts who can work with different groups and individuals to build up this network of services? Or, is their focus to be individual office-based counselling with an ever-increasing case load as they try to meet unreal expectations, perhaps with the assistance of a small group of voluntary probation officers also working on a one to one basis with offenders? Can these two approaches be integrated so that the major focus is community involvement but with some assistance provided for those who have become isolated from the community and have no groups to which they can belong? On the other hand, would it be more practicable to begin probation services with an emphasis on community participation and select for probation only those who can be linked with groups in the community?

If probation services are to be mainly within the community rather than within an office, training of all those involved - whether representatives of voluntary community groups, government probation officers or locally-based officials - must reflect this orientation. The government probation officer becomes a liaison between police, courts and community leaders: an informal educator who provides encouragement to those on probation but who must also provide overall supervision for voluntary workers.

Success in such a probation service may be measured in different ways. In 1973 the advantages of a probation service seemed to be that:

Community participation in probation and parole is an effective way of increasing general involvement in the prevention and control of crime and understanding of the causes of crime and delinquency. The ability of the community to "look after its own" is strengthened and more individual help to offenders is provided.<sup>5</sup>

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4. O'Collins, *op.cit.* p.135. Although many of the points raised in the present article were first discussed at the 1973 Waigani Seminar, the basis for planning a probation service often seems to focus on office organisation rather than on community involvement.

5. O'Collins, *ibid.*, p.135. It has been suggested that communities should be required to post communal good behaviour bonds as this would encourage greater efforts at communal control of troublesome members.

The aim of the probation officer may be seen to be that of helping the community to better 'look after its own' and also to assist the individual offender. But success does not always mean preventing the offender from committing another offence.

Success may also be measured by the effect of the penal system; keeping people out of prison, saving money or spending it better, or by the degree of public acceptance of a sanction which is based less on repression and more on constructive principles such as learning, reparation or reconciliation.<sup>6</sup>

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6. See Martin Wright, 'Strategies for Innovation', and John Harding, 'The Development of Community Services: Its Application and Relevance to the Criminal Justice System' (a discussion of community service orders in England and Wales), both in *Alternative Strategies for Coping with Crime* (Norman Tutt, ed.) (1978).