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Cultural Determinants and Penal Practices: an analysis of the introduction of community service orders

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The 1972 Criminal Justice Act made provision for the introduction of community service orders in England and Wales. It was one of the key recommendations of the Wootton Advisory Council on the Penal System in 1970, a committee petitioned by the then Home Secretary, Mr Roy Jenkins, to consider what variations and annexations could be made to the existing range of non-custodial penalties. Its appointment may be regarded as the first all-embracing investigation of the adequacy of the existing powers of the courts to sentence offenders without recourse to the use of custody. The order itself requires an adult offender, who has consented, to perform between 40 and 240 hours of supervised unpaid work in the community. Before making an order the court has to satisfy itself that the offender is capable of such service, is reasonably likely to cooperate, and has sufficient leisure time to complete the order within 12 months without interfering with his/her work, religion or education. Broadly speaking it was envisaged that the

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1 The 1982 Criminal Justice Act reduced the age of offenders who could be so sentenced to 16 but they could only perform 120 hours of work. The 1991 Criminal Justice Act increased the total number of hours for 16 year olds to 240.
sanction would embody the maxim ‘of work with the community as opposed to work for the community’. It was hoped that by associating with members of the public it would prove to be a salutary experience for offenders sentenced to perform the order and encourage them to foster a sense of social responsibility. It was anticipated that work relationships with volunteers, supervisors, and those in need of assistance could be cultivated in an *esprit de corps*: the work tasks which were to include gardening, decorating, painting, caring for the elderly and disabled, hospital work, and clearance work would enable the offender to make reparation to the community and enhance his or her self-esteem. Similar sanctions have been introduced in


3 The benefits to be derived from being sentenced to serve a community service order were highlighted in a speech given by Mr John Fraser in the House of Commons in 1972: “I think that the attractions of community service orders are that community service should enable the offender to win approval for his service. The problem with offenders often is that they have been unable to win approval from the community around them. The new concept will be useful because it will enable them to make reparation in an atmosphere of cooperation with the community and not in confrontation with authority. The problem with many offenders, once again, is that they are alienated from authority; and if an attempt is made to bring about a reconciliation, this means an attempt being made by the offender as well as by authority.” House of Commons Parliamentary Debates 1972, Vol 838, cols 1964-1965.

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New Zealand, Australia, America, Canada, Scotland and Ireland.

The originality of the penal disposal, however, has provoked a considerable amount of debate over the past three decades. Many would argue, given that work has been employed as a means of expiation throughout the ages, that there is little new about the sanction. The European Committee on Crime Problems, for example, suggested in 1976 that the concept of community service was not new: 'it can be

Community Service was provided for in Western Australia in 1977, in Queensland and New South Wales in 1980 and in Victoria and South Australia in 1982. See Jones, VJ, 'Community Service Orders in Western Australia' in Bevan, C. ed. op. cit. n 4.

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Community Service had been recommended by organisations such as the American Bar Association and received widespread acclaim in popular and academic literature. In 1976 the Law Enforcement Assistance Administration made funding available for the establishment of community service programmes for adult offenders. In 1977 the Office of Juvenile Justice and Delinquency provided resources to enable the development of community service programmes for juveniles in 85 counties and states. By the mid 1980s in America, it was believed that community service was on the verge of becoming a 'permanent institution' largely as a result of reports of the English and Welsh experience. By the 1990s, 'community service orders were statutorily authorised options in many, if not most, American jurisdictions'. See Feeley M, Between Two Extremes: an examination of the efficiency and effectiveness of community service orders and their implications for the US sentencing guidelines. Southern California Law Review 1992, Vol 66, pp 155-207. See also Corry McDonald D, Punishment without Walls: community service sentences in New York City, 1986, p 9; Harland AT, Court-Ordered Community Service in Criminal Law: the continuing tyranny of benevolence? Buffalo Law Review 1980, Vol XXIX, p 426.

In the mid 1970s some individual judges began to use community service as a condition of probation. It was sporadic, though, many judges being sceptical about the legality of such a practice. By 1977, however, their suspicions had been allayed when the Court of Appeal upheld the legality of community service as a condition of probation. R v Shaw (1977) 26 CRNS 358.

Provision was made for the disposal in Scotland under the Community Service by Offenders (Scotland) Act 1978.

traced a long way back into penal history, in various jurisdictions.\textsuperscript{11} Young took this notion a stage further in respect of community service orders in England and Wales. Albeit that he made no substantive attempt to examine work-based penal dispositions from the past, he suggested that 'work formed an important element of the regimes of prisons and houses of correction as far back as the sixteenth century, and, in the penal sense, had found earlier expression in other practices such as slavery'.\textsuperscript{12} In 1980, Pease argued that because the 'wages of sin' were often work, one was entitled to ask what was new about community service.\textsuperscript{13} Slavery, transportation, impressment, penal servitude and houses of correction could all, he suggested, be put forward as community service's 'less reputable forebears' and the contemporary sanction was, accordingly, only 'in detail a novel disposal'.\textsuperscript{14} His approach found approval in Van Kalmthout and Tak's book, and had a 'remarkable similarity of purpose'.\textsuperscript{15} Thus, withstanding that community service was inimitable in that it was measured in hours worked and required the consent of the offender, its uniqueness was somewhat immured given that the practice of utilising the labour of offenders had a long history.

In 1984, Vass further extended this framework for understanding community service orders. By adopting a processual approach, he believed that we could begin 'to appreciate the significance of the order and the probable reasons that led to its creation'.\textsuperscript{16} After completing this processual approach involving a snapshot of sanctions such as houses of correction, transportation, impressment, workhouses, hulks, and penal

\textsuperscript{11} European Committee on Crime Problems. Alternative Penal Measures to Imprisonment, 1976, p 34.
\textsuperscript{12} Young W, Community Service Orders: the development and use of a new penal measure, 1979, p 23.
\textsuperscript{13} Pease K, 'A brief history of community service' in Pease K and McWilliams W eds, Community Service by Order, 1980, p 1.
\textsuperscript{14} Ibid p1-5.
\textsuperscript{15} Van Kalmthout A and Tak P, Sanction Systems in the Member states of the Council of Europe: deprivation of liberty, community service and other alternatives, 1988, Part I, p 12.
servitude Vass believed he was in a position to reveal that an affinity and continuity existed between penal work sanctions of the past and sanctions such as community service which are advocated in contemporary society: modern punishments are at variance with those in earlier periods only 'in shape but not in character'. Similarly, Hoggarth dedicated a chapter in her book on community service orders to antecedents and cited, inter alia, the German tribes of AD 98 and the Inca dynasty in the period between the thirteenth century and 1582, both of which used labour as a form of punishment, together with houses of correction, workhouses, the Amsterdam Rasp-huis and impressment. Finally, in a recent analysis of community service orders in Ireland, Professor Taylor noted:

The idea that criminals who prey on the community should pay something back to the community is age-old... The origins to this response to crime go back to the very beginnings of criminal justice systems. In ancient Roman law, convicted but free criminals could be rendered slaves and bought, the purchase price going to the victim. Echoes can be heard in the Middle Ages' practice of forcibly conscripting criminals and vagabonds, a sort of military community service. Indeed transportation to Australia offered a kind of public service to open up that colony.

In this article, I adopt a theoretical choice. This choice is founded upon the belief that the history of community service orders is something more than the simple marshalling together of work-based penal dispositions of the past into a sequential order. Instead, it is premised on the understanding that the specific sanction of community service is grounded upon a particular set of penal, social, cultural, political, and economic practices. Thus, whilst community service may have a long past in that sanctions have embodied work since ancient times, it has a

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'short history' in that it was driven by a particular and specific complex of penal strategies, agencies, representations, and techniques which render anachronistic any unqualified collations between it and past penal work practices. As Fuchs suggested:

Meines Erachtens ist es jedoch...falsch, diese historischen Beispiele bis zur heutigen community service order zuruckfolgen zu wollen. Man kann sogar sagen, daß es falsch ist, eine neue Sanktion so vorzustellen, weil eine gro/3e Gefahr besteht, daß die Strafe in einem vollig falschen Licht erscheint.

This article, then, is an argument for the construction of a more historical approach to the introduction of community service orders. But rather than providing a critique in a broad historical form focusing upon a penological framework, it will be argued instead that the approach adopted by commentators such as Vass, Young, Van Kalmthout and Tak, who compartmentalised the historical process into a neat linear package by employing the 'principle of exclusion' to gather information which supposedly supported their cause whilst neglecting all other information which did not, is highly tenuous when it is considered that penal policy initiatives are also determined by external cultural forces that often only exist within a specific context. In particular, this article will examine the cultural determinant of leisure and how it impacted on

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21 Fuchs C, Der Community Service Order als Alternative zur Freiheitsstrafe 1985, p137.

22 Such an analysis would necessarily have to highlight the 'incidence of interruptions' in the penal system over a number of centuries and contend with issues such as the emergence of the prison as the central disposal in the penal complex, the decline in the moral consciousness concept of offending, the rise of a centrally controlled state apparatus, the emergence of more factual and inductive strategies towards offending, the employment of more 'non-equivalent' penal disposals, and the 'sanitisation of penal language', to name but a few. For such an attempt to demonstrate the ways in which academics have misrepresented the penal links between the past and present in respect of community service in order to accentuate the continuities and affinities which they believe exist, see S Kilcommins, Impressment and its genealogical claims in respect of community service orders in England and Wales, 1999, 34, The Irish Jurist, 223-255.
the introduction of community service orders. The functioning of community service is clearly dependent on this cultural phenomenon in that it compels an offender who has consented to the order to spend a fixed period of leisure time calculated in hours undertaking constructive work in the community.

Essentially, therefore, the exposition that follows will endeavour to investigate, from the 'culturescape' of leisure, other commentators' claims as to whether or not a continuity and affinity exists over time between penal work-based dispositions. Culturescapes, of course, are by their very nature variable and incomplete and cannot be employed to convey some total reality as to conduct. As Whutnow noted, culture, rather than comprising 'observable artifacts', remains 'a matter of beliefs and outlooks, of moods and motivations, that are in the best of cases difficult to pin down'. Though, however, it would be difficult to capture the essence of the number of ways in which cultural forms are woven into penal forms and vice versa, it does not preclude a finding that the idioms, identities, discourses, fashions, and styles which attach to particular epochs direct our behaviour and organise our experience in the penal realm. As Garland noted:


24 This may be one of the reasons why cultural determinants are often accorded epiphenomenal status in penal discourse.

25 See, for example, Sutherland and Cressey who recognise the cultural consistency theory of societal reactions to lawbreaking; they highlight its importance through examining, in their contexts, conceptions of physical suffering, price systems (so beloved of classical economists and also employed by classical criminologists), uniformity of punishment, and individualisation of treatment. Sutherland EH, and Cressey DR, Criminology 1970 (8th edn), pp 335-338. See also Foucault who in tracing the paradigmatic shift from a corporal to a carceral concrete system of punishment recognised that penal phenomena 'could not be accounted for by the juridical structure of society alone'. Foucault M, Discipline and Punish: the birth of the prison 1991, p 24. Torture, amputation, exposure, execution and dismemberment were, according to Foucault, the characteristics of the old, theatrical, public spectacle order of punishment. The body of the condemned under such a system functioned as a locus for the ritual display of vengeance and terror, a terror and vengeance which confirmed to the public the omnipotent and unrestricted power of the sovereign. Such a penal system made the body 'of the condemned man the place where the vengeance of the sovereign was applied, the anchoring point for a manifestation of power, an opportunity of affirming the dissymmetry of forces'. Ibid p 55. But this form of punishment could not simply be understood in terms of its 'internal organisation'; rather it had to be seen as part of a
The intensity of punishments, the means which are used to inflict pain, and the forms of suffering which are allowed in penal institutions are determined not just by considerations of expediency but also by reference to current mores and sensibilities. Our sense of what constitutes a conscionable, tolerable, or civilised form of punishment is very much determined by those cultural patterns, as is our sense of what is intolerable or, as we say, inhumane. Thus culture determines the contours and outer limits of penalty as well as shaping the detailed distinctions, hierarchies, and categories which operate within the penal field.\textsuperscript{26}

Penal policy initiatives, then, are to some extent founded upon accepted societal attitudes and sensibilities. These attitudes unconsciously set parameters to a penal policymaker's ambit. But they have not remained rigid: rather they demonstrate a protean nature and expand and constrict with the changing cultural and social climate. To establish my claim vis-à-vis the historical nature of other accounts of the introduction of community service orders, I wish to trace in three periodisations, pre-industrial, transition to industrial, and industrial society the broadly discontinuous nature of the concept of leisure and how it could only be employed as a means of punishment in the historically specific mid to late twentieth century. In this way, it is hoped that we

can open up new avenues of enquiry not touched upon by other commentators in respect of the introduction of the disposal.

The culturescape of leisure

This section attempts to describe prevailing attitudes to leisure by placing them in the context of prevailing attitudes to labour. By presenting leisure in terms of its interrelationship with labour, it is possible, in the author's view, to demonstrate most palpably how work centrality in industrialised society with its emphasis on clock time sentience, labour differentiation, and spatial and disciplinary rationalisation shaped significantly not only our conception of leisure but also the activities which comprise, in part, our culture of leisure. Of course in prioritising labour's significance on the development of leisure, I have overstated the importance of the conjunction at the expense of a whole series of other powerful variables such as non-employed,\textsuperscript{27} gender\textsuperscript{28} and individual experiences, all of which undoubtedly impinge upon opportunities and indeed perceptions of leisure. However, the work-leisure conjunction adopted here is the most convenient means of demonstrating the context-dependent and mutable nature of leisure: in different economic, social and political contexts in Britain, the conception of leisure has had different significations, constructions, domains, and temporal and spatial features. In this regard, the reader should bear in mind that my purpose is to illustrate how leisure as a concept is not static; how it has undergone a considerable metamorphosis in the transition from pre-modern to modern society; and, ultimately, how our conception of leisure has had an impact on the introduction of community service orders. Accordingly, the perspective posited here is not to be embraced as a balanced or inclusive history of leisure \emph{per se}. Rather, the purpose of this section is less grandiose in design; its intention is merely to demonstrate, as already delineated, that our conceptions of leisure have in part shaped the sanction of community

\textsuperscript{27} See Martin B and Mason S, 'Current Trends in Leisure: the changing face of leisure provision' \textit{Leisure Studies} 81-86.

service and that these conceptions do not fit neatly with any progressive or continuous analyses.

Moreover, in order to demonstrate the transformations which have occurred, it has been necessary to divide history into various crude stages that sacrifice precision for breadth and that act more as rudimentary demarcations than rigid and distinct transitional points in time. There is a tendency when compartmentalising history under various labels to simplify the notions of transition from one period to another. Whilst labels assist in identifying pertinent and powerful transformations, they can conceal the process of change which is often more multifarious and complex. Changes did not occur systematically or simultaneously and there were marked variations in the patterns of work and leisure to be found in different regions. Yet the purpose of this section is not so much concerned with the intricacy, reflexivity and contested nature of change as it is with substantiating the macro thesis that change did in fact occur. Apropos of this macro thesis, three periodisations have been adopted as conceptual devices which will assist in highlighting the interruptions, discontinuities and mutations which have manifested themselves in the history of leisure. Let us begin, then, with the first of these periodisations.

**Pre-industrial society**

In pre-industrial society, work was essentially regulated by agrarian rhythms and the cycle of the farming year. Seasonal variations magnified or diminished the workload accordingly. Work formed an indispensable component of community and family life and was typically carried out in or around the vicinity of the household. Social mobility was limited and most people were born, lived and died in the same locality. The unit of labour time in pre-industrial society was the day.\(^{29}\)

The sequence of tasks which governed this day were dictated by the natural rhythms of the seasons and the specificity of time was of less concern. The calendar for the year was demarcated by a procession of

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\(^{29}\) Le Goff J, *Time, Work and culture in the Middle Ages*, 1984, p 44.
agrarian undertakings, harvesting period, lambing period, ploughing period, sowing period, shearing period, and so on. The system of time which arises in such contexts has been described as 'task-oriented time'.30 Distinctions between work and leisure were minimal. Social pleasure and leisure were interwoven and carried out in tandem with work throughout the day.31 Indeed some days, Saint Monday being an example, were customarily designated as non-work days, particularly in urbanised areas. Many trades appear to have practised this custom: shoemakers, tailors, colliers, printing workers, weavers and potters to name but a few.32 Workers therefore would graft only to the extent required to provide adequately for the household. Once this had been achieved, it was more desirable to partake in leisurely activities than to exert oneself for additional gain. This attitude to labour is often referred to as being consistent with the 'backward sloping supply curve': labourers toil during the week to earn an intended sum of money but once this has been attained no further work is undertaken until the following week. So, whilst workers might preserve Monday as a day of rest, by Thursday and Friday they would be labouring intensively to reach their requisite quotas.33 It is difficult to discern when such attitudes no longer held sway.34 But certainly by the early 1800s, due


31 This is supported by Jonathan Barry, who, after studying popular culture in seventeenth century Bristol, stated: '[W]ork was...all-encompassing, stretching in theory from dawn to dusk, rather than according to the clock, and punctuated only by Sundays and public holidays. In practice, leisure was probably available in the interstices of the working day, since few were yet involved in capitalised industries where time literally meant money.' Barry J, ‘Popular culture in Seventeenth Century Bristol’ in Reay B, ed, Popular Culture in Seventeenth Century England 1985, p 79.

32 See Thompson above, n 30, p 73.

33 Although such an approach to labour is one of the key features of a pre-industrialised economy, care should be taken to appreciate that variations and exceptions did exist. It is, for example, probable that many individuals wanted to better themselves and build up a reserve for times of scarcity.

34 Adam Smith suggested that the transformation had already taken place by 1776: '[S]ome workmen, indeed, when they can earn in four days what will maintain them through the week, will be idle the other three. This, however, is by no means the case with the greater part. Workmen, on the contrary, when they are liberally paid by the piece, are very apt to over-work themselves, and to ruin their health and constitution in a few years.' Smith A, The Wealth of Nations 1930 Part I (repr), pp 83-84.
mainly to the discipline of the factory and the increased emphasis on time management, a more ordered and regimented outlook began to take hold.

**Transition to industrial society**

The dawning of industrial capitalism in the eighteenth and nineteenth centuries effectuated great change. Albeit by no means a unitary process, it was brought about, *inter alia*, by an enclosure movement together with the decline of the common field system of cultivation and the amalgamation of small farms into large which affected seven million acres between 1760 and 1815 and resulted in 1,800 parliamentary acts;\(^\text{35}\) by the philosophy of political economy espoused by thinkers such as Adam Smith, particularly his 'invisible hand' thesis, which could 'salve the conscience of landowners, tycoons, rakish sprigs of aristocracy, money grabbing Dissenters, pious distillers, Quaker plantation owners, sanctimonious bankers, owners of gambling dens, brothel keepers and all who pandered to human frailty for profit'\(^\text{36}\) and by a common law disposed to economic growth and development, by the substantial wealth accumulated particularly as a result of colonial expansion and the excellent inventory of cheap natural resources available. It was also supported and maintained by technical innovations such as Hargreaves' jenny, Crompton's mules, Arkwright's waterframe, Cort's puddling and rolling processes, and Watt's steam engine; by the entrepreneurial enthusiasm and endeavour\(^\text{37}\) of individuals such as Josiah Wedgwood at Etruria, Mathew Boulton at Soho, Abraham Darby and his successors at Coalbrookdale, Richard Arkwright in his spinning factories, and Jedediah Strutt in his cotton factories and by improvements in transportation particularly the network of canals constructed in 1759 and the advancement of the railways in the 1820s.

\(^{35}\) Toynbee A, *Lectures on the Industrial Revolution* 1908, p. 68. Exodus from the land into urban areas was a somewhat more protracted process than is sometimes portrayed in the literature.


\(^{37}\) It was often an over imposing enthusiasm and endeavour that resulted in the cruel exploitation of their labourers.
Work was now to be concentrated in specialised institutions, known as factories and mills, where it became increasingly regulated by temporal constraints. Labourers, alienated from their households and customary habits, found themselves restrained by a new set of precepts which demanded more of their attention and endeavour as working hours became longer and more organised. Time-related as opposed to task-related toil became the order of the day. Workers were no longer at liberty to absent themselves from the task in hand as and when they desired. The machine regimented and governed their working lives and mechanical bells signalled when interludes from work were to be taken and for what duration. Such labour rhythms were wholly incompatible with the outlook and perceptions of the majority of the labouring classes. Workers were now convened by the factory bell; their routines were dictated by the factory for ten to twelve hours, six days a week; their work was closely supervised and monitored by overseers; there was, in effect, a complete loss of liberty to a machine or engine which performed without fatigue or the need for intermissions. Failure to adhere to the regulations set by a particular factory could result in a penalty. Bad time-keeping, for instance, was punished by fines totally disproportionate to the value of the time lost, or else those guilty of being a few minutes late were locked outside the gates and forced to forfeit a whole shift's pay.

38 Briggs A, The Age of Improvement, 1783-1867, 1979, 8-74.

39 The difficulty, however, in making generalisations about the number of hours worked is that it fails to appreciate numerous regional variations and the nature of work at issue. Moreover, whilst work was restricted to a ten hour day in most of the large industries, even in these a propensity towards longer hours manifested itself in the form of a widespread reduction in the number of hours set aside for meals. Bienefeld MA, Working Hours in British Industry: an economic history, 1979, p 49.

Recreational pastimes were viewed in a hostile manner by employers, legislators and clergymen. Their desire for a competent and disciplined labour force militated against the expansion of working class activities. By regaling themselves with entertainments and games, workers' attention was diverted away from the more pressing need of orderly production. The suppression of popular culture was supported by a series of Acts. For instance, an Act of 1835 declared that any person who managed a premises for the purpose of fighting or baiting of bears, cock-fighting, baiting or fighting of badgers or other animals, could be imprisoned for any period not exceeding two months. A similar Act prohibited the playing of football or any other game, the pitching of tents, stalls or booths by hawkers or gypsies, or the baiting of bulls on public highways. In effect, the rural, agrarian genre of leisure, so exemplified in pre-industrial society, was no longer appropriate in an urban industrial milieu: rowdy mass football games, the unregulated control of beer houses, animal blood sports, and wild saturnalia at fairs all threatened the maintenance of factory discipline and thus necessitated more ordering and control. Space which heretofore was regarded as a common right of the public was now being dominated and manipulated by the upper and middle classes. Land prices in the new urban environment were exorbitant as much of the space available was required for housing and buildings. This shortage of open spaces did as much as anything else to deprive plebeian society of its recreations.

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42 5 and 6 Gul IV: c 59.
43 1835: 5 and 6 Gul. IV c 50.
Moreover, popular culture was also coming under attack from the middle classes on the ground that it was not in the interests of the labouring classes to engage in such activities.\textsuperscript{45} Moral reforming bodies believed that free time should not be spent in wild saturnalia and the pursuit of primitive pastimes but on the advancement of each individual and society as a whole.\textsuperscript{46} This is commonly referred to as ‘rational recreation’. Books, music, and museums were advocated as excellent methods of spending leisure time. The Museums Act of 1845\textsuperscript{47} and the Libraries Act of 1850,\textsuperscript{48} whilst not making an immediate impact, paved the way for future generations. Similarly, the YMCA was founded in 1844 and focused on promoting friendships and developing social skills;\textsuperscript{49} Sunday School recreation programmes were introduced by the Church of England to promote day trips and educational visits;\textsuperscript{50} the ‘muscular christianity’ movement encouraged regulated games of football and rugby, as we shall see, on the grounds that they promoted health, teamwork, and discipline;\textsuperscript{51} and, Working Men’s Clubs were originally recommended on the basis, \textit{inter alia}, that working class pastimes should be promoted in environments that were alcohol free.\textsuperscript{52}

The period also witnessed a contraction in the number of holidays taken by workers. The Bank of England, for example, closed on 47

\textsuperscript{45} See also Haywood et al who noted: ‘The other concern of both the aristocracy and the new industrial interests was social order. The American and French Revolutions provided evidence of the potential for insurrection. The establishment was, therefore, understandably nervous about gatherings of large, rowdy crowds among the lower orders for fairs, wakes, public hangings and other popular pastimes, seeing them as potential seedbeds for expressions of dissatisfaction with the existing order.’ Haywood L et al, \textit{Understanding Leisure}, 1995 (2\textsuperscript{nd} edn), p 169.

\textsuperscript{46} For example, the London City Mission, the Ragged Schools Union, model Dwelling Companies and the Christian Socialists were all active in ‘civilising the poor of the Metropolis’ in the mid-nineteenth century. See Judd, above n 41 p 13.

\textsuperscript{47} 8 and 9 Victoria: c 43.

\textsuperscript{48} 13 and 14 Vict: c 65.


\textsuperscript{51} Football clubs initiated as a result of this impetus included Everton, Aston Villa and Barnsley.

\textsuperscript{52} See Haywood, above n 45 p 170.
days in 1761; by 1825 this had been reduced to 40 days; in 1830 to 18 
Good Friday, Christmas Day, and the first of May and November.
Similarly, the six to fourteen days drunken celebration of Whitsun was gradually reduced to the ordered one-day bank holiday of the 1900s. 
Drunken revelry and prolonged absenteeism from work were no longer appropriate. Employers were reluctant to acknowledge any requests for holidays as they merely punctuated the work routine and, accordingly, affected profit margins. Hence a downward trend in the number of holidays taken by people occurred. Monday to Saturday was devoted to toil with Sunday acting as a lacuna between intensive stints of work.

As such, the late 1700s and early 1800s may be characterised as an era in which work came to be concentrated at a central location with increased emphasis on effective use of time. Regulation and order displaced the traditional impulses of the work force. Differentiation and specialisation of labour replaced the more holistic form usually found in pre-industrial society. The process of urbanisation and industrialisation brought about a marked disjunction between work and the free time of the people. But although clearer demarcations existed, the pursuit of

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54 A number of reasons for this rapid decline have been proposed: first, the magical allotment of Old Whitsun was undermined by more scientific methods of farming; secondly, the landed class, increasingly aware of the impact of the 'reformation of manners' refused to support such violent holidays and encouraged rational recreation instead; and, finally, the Evangelical and Methodist movements created a new consciousness among the laity concerning their spiritual and moral improvement. See Howkins A, ‘The Taming of Whitsun: the changing face of a nineteenth century rural holiday’ in Yeo E and Yeo S, eds, Popular Culture and Class Conflict, 1590-1914, 1981, pp 204-205.

55 See Thompson who noted: 'It is clear that between 1780 and 1830 important changes took place. The “average” English working man became more disciplined, more subject to the productive tempo of the clock, more reserved and methodical, less violent and spontaneous.’ He went on to note: ‘While many contemporary writers, from Cobbett to Engels, lamented the passing of old English customs, it is foolish to see the matter only in idyllic terms. These customs were not all harmless or quaint. The unmarried mother, punished in a Bridewell and perhaps repudiated by the parish in which she was entitled to relief, had little reason to admire “merrie England”. The passing of Gin Lane, Tyburn Fair, orgiastic drunkeness, animal sexuality, and mortal combat for prize money in iron-studded clogs, calls for no lament.’ Thompson EP, The Making of the English Working Class, 1988, pp 450-451.
recreational activities by the masses was still very much disapproved of. Toil and graft were ennobled as being essential for the prosperity of the nation. Leisure was still very much constrained by the environment and by the attitudes of the middle and upper classes that regarded ill-disciplined and boisterous popular culture as a threat to the work ethic which they sought to inculcate. However, rational recreation, a middle class creation, was acceptable as it was something which implied both order and control. Thus although work and recreation were no longer fused, leisure was, nonetheless, not yet regarded as a social right of the work force.

Industrial society

Following the industrial revolution, welfarist considerations dictated that much amelioration was required as regards the nature of work. Prior to 1908, most workers persisted in toiling until their physical or mental capabilities dictated otherwise. When work was no longer feasible due to infirmity, they became dependent on their families, benevolent charity or poor relief. The concept of a pension was unheard of in most instances. The late nineteenth century and early twentieth century, however, witnessed growing 'disillusionment with the methods and pauperisation of the Poor Law, vested interests of friendly societies, insurance companies and trade unions'.56 In 1908 the Old Age Pension Act was enacted. The aged, consequently, were no longer reliant on support but now earned it as a practical right. Furthermore it permitted them to display a certain amount of independence and plan their retirements. In the same spirit the Education Acts of 1870, 1876, 1880, 1893, and 1899, which introduced compulsory education, did much to restrict the employment of children in factories and mills. Employers also observed that long hours of graft in the workplace were a source of danger both to the workers and to the public. Continuous toil brought about fatigue and inattention frequently culminating in accidents. Such observations spread with the advance of Taylorism in the twentieth century. Significant advancement was also made in upgrading the physical environment of workers. An Employers Liability Act, for

example, was enacted in 1880. This was regarded by trade unionists not only as a symbolic gesture but also as a 'move towards obtaining equal rights with the rest of British society'.\(^{57}\) The Act, however, contained a number of specific limitations on the right of employees to claim and employers could still absolve themselves from liability by relying upon two legal defences - the principles that either negligence on the part of the plaintiff, or his or her consent to undertake a risk, prevented any claim or compensation.\(^{58}\) It was only in the late 1800s that judicial opinion began to shift more towards restricting defences founded upon the employee's implied consent. In *Yarmouth v France*\(^ {59}\) Lord Esher, rejecting the defendant employer's claim that the employee assented to the risk, stated that 'to say that a master owes no duty of care to a servant who knows that there is a defect in machinery, and, having pointed it out to one in authority, goes on using it [is] ...cruel and unusual, and in my view utterly abominable'. Thus began the 'judicial emasculation' of the defence by employers that the fact that an employee continued to work while knowing of a danger was proof of his or her consent to the danger.\(^ {60}\)

One further example of this shift to a more welfarist orientation is evident in the reduction in the number of hours worked. From 1850 to 1970 changes in the duration of the working week may be compartmentalised into four main phases: the early 1870s; 1919-1920; 1946-1949; 1960-1966. The years from 1871 to 1874 effectuated widespread reorganisation of the working week as trade unions grew


\(^{59}\) (1887): 19 QBD 647 at 653. See also *Thrussel v Handyside and Co.* [1888] 20 QBD 359.

\(^{60}\) Bartrip PWJ and Burman SB, *op cit n 57*, pp 183-184. It was not, however, until the 1891 decision in *Smith v Baker and Sons* [1891] AC 325 at 363, that the doctrine of implied consent was decisively rejected.
stronger and a nine-hour day became the norm for the majority of workers. From 1919-1920 onwards a 48-hour week became standard. There was little alteration for the remainder of the 1920s and 1930s, but between 1945 and 1950 normal weekly hours of work diminished from 47.1 to 44.6 and in 1968 employees toiled for 40.5 hours a week. One must note, however, that although work hours may have diminished throughout the era, there was a tendency towards a correlative increase in overtime. Nonetheless it is still fair to assume that the majority of society in the 1950s and 1960s had much more potential and scope for the enjoyment of leisure than their predecessors. Paralleling the movement for reduced hours was the campaign for paid holidays. Prior to 1919, extended paid leave for wage earners was uncommon. Even the three days’ holidays allotted to such workers—Christmas Day, Easter and Whit Monday—were normally not remunerated. Salaried employees, on the other hand, have customarily enjoyed the benefit of holidays with pay since the 1870s. It was with the Holidays Act of 1871, however, that the growing national urge for compensated days off began to advance. Although somewhat restricted, its extension in 1875 to cover docks, custom houses, inland revenue offices and bonding warehouses made it much more probable that such legislative interference would be accepted and observed by the majority of employers and employees alike. Paid holidays spread slowly after the First World War but gathered momentum in the 1930s, as the number of collective and individual agreements increased. Yet they were still not required by statute save in one instance. The Shops (Hours of Closing) Act of 1928 declared that when shops in a holiday or a sea fishing town remained open after the hours fixed for compulsory closing, any shop assistants employed for additional hours had to be compensated by holidays with full pay after the season had ended. In April 1938, however, the Amulree Committee recommended, inter alia, that an annual holiday with pay should be established, to consist of as many

61 For instance the weekly hours of work for cabinet makers in 1871 was 59.5 hours but by 1880 this had been reduced to 54. Similarly the normal weekly hours of work for fitters and turners diminished from 57.5 hours in 1871 to 54 by 1880. Dept of Employment, British Labour Statistics: historical abstract, 1886-1968, (1971) p 28-36.

days as were in the working week, and these were, as far as practicable, to be taken consecutively. The government welcomed the recommendations and announced its desire to implement them. In the same year, the Holidays with Pay Act empowered all statutory wage regulation authorities to give directions providing holidays with pay for the workers for whom they prescribed minimum wages or fixed their statutory remuneration, in addition to any other holidays or half holidays to which such workers might be entitled under any other enactment. After the Second World War, holidays became one of the favourite spare time activities of the British. The five to ten working days’ holiday extended to fifteen or twenty days in the affluence and boom years of the fifties and sixties. Moreover, holidays were no longer centred around religious celebrations or communal fairs. Holidays perform a whole plethora of functions in the contemporary world: they relieve fatigued individuals from the rigours of both market and non-market work, they enable the pursuit of sporting activities, social fraternising, relaxation and education. In addition they are not so spatially restricted and often involve travel overseas.

It is generally accepted that the period around 1850 marked a turning point in the history of leisure. To begin with, policy makers became more responsive to society's essential requirement for recreation to counterpoise intensive employment in the workplace. Improved technology in the form of railways and motor transport also made a dramatic impact on the leisure habits of people. Moreover, the influence of the clergy with regard to popular recreation and the conduct of the masses waned considerably. Individuals were normally now at liberty to choose pastimes of their preference without moral reprimand from the Church. Leisure thus expanded to fill the vacuum left by the reduction in the weekly hours and annual days of work. The majority of the population now resided in towns and cities and brought home better earnings than ever before. As a consequence, leisure became even more differentiated from work as a concept but more rigidly associated with it as a recompense for hard graft. One had to exert oneself in the labour market in order to enjoy fully the increasingly commercialised nature of leisure. Indeed, the sustained economic growth between 1945

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63 See Dept of Labour, above n 53 p 60.
and the early 1970s sometimes referred to as the ‘30 glorious years’ enabled the continued expansion of people’s commercial leisure opportunities (ie holidays away from home, television viewing, driving). Moreover, the change to a more disciplined work routine was paralleled by a similar change in the domain of leisure, as it became increasingly shaped by the dictates and needs of industrialisation. Recreational pursuits underwent a metamorphosis to accommodate the peculiarity of mechanised society. As Haywood et al noted:

Football, for example, developed from a formless scrimmage for the ball in which all players pursued undifferentiated roles, into a formulated attack and defence. Play was thus divided; formations developed; and efficiency in the achievement of goals became of heightened importance. Other leisure forms exhibited similar tendencies, for example the old multi-purpose fairs which combined commerce and entertainment gradually gave way to specialisation as commerce was separated into more specific occupations and the funfair (exploiting the new mechanical wonders) became an entity in its own right.

To sum up, then, leisure in its new disciplined form became legitimate as it was no longer perceived as a danger to the economic, political and religious hegemony of the period. As work became less of

65 See Haywood, above n 45 p 24. See also Walvin, above n 44 p 10, who suggested that it was ‘no accident that the recreations spawned by industrial society were to be disciplined, controlled and orderly, regimented by rules and timing, characterised by a greater degree of orderliness among the spectators and encouraged by men of substance and local position. It was, for example, symptomatic that the brand of football which emerged in its new disciplined form from the public schools in the 1860s was as disciplined as its pre-industrial forebear had been lawless, and was played and encouraged in the first instance, by men of superior social station.’
66 Godbey succinctly puts forward a number of factors which influenced the nature of leisure as it was understood in the late 1960s in industrial Britain. They are: the increased production of material goods through the application of technology; the use of labour-saving devices for household duties; the declining role of the Church; transformations in attitudes to pleasure; increased educational levels; the reduced levels of fatigue associated with many forms of work; the increase in discretionary income. Godbey G, Recreation, Park and Leisure Services, 1978, p 10-12.
an encumbrance and better remunerated, a host of leisure industries sprung up to cater for the needs of consumers. The notion of leisure as a defined right and social necessity was acknowledged and accepted in most industrial countries by 1970. Article 24 of the Declaration of Human Rights, for example, stated that ‘everyone has a right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay’. Similarly the American Declaration of the Rights and Duties of Man states that ‘every person has the right to leisure time, to wholesome recreation, and to opportunity for advantageous use of his free time to his spiritual, cultural and physical benefit’. In 1964, in the House of Commons, Mr Denis Howell stated:

I put the provision for leisure alongside health, education and welfare as one of the aspects of life for which it is the government's job to provide (Hansard HC, 1964: 697, 85).67

Precise time schedules and express divisions between labour and leisure are fundamental features of modern life. Intervals of time are no longer dictated by natural phenomena such as the sun, moon, stars, and seasons but in hours, minutes, and seconds. This propensity towards exactitude has become more pronounced as the industrial mode of work has evolved. Individuals must now have the ability to co-ordinate their work routines around the constraints of a clock-dominated environment. Rationalisation of time is increasingly required to combat the hurried and demanding nature of life. Clocking on and off, complying with measured interludes or breaks, working to formulated deadlines, and the duration of journeys to and from the workplace are all symptomatic of labour for the majority of workers in twentieth century industrial society.

67 House of Commons Parliamentary Debates 1964, Vol 697, col 85. In 1959, Labour and the Conservatives produced two consensus documents, Leisure for Living, and The Challenge of Leisure respectively, which advocated greater state involvement in leisure policy. This was, in part, a response to a growing affluent culture, particularly youth culture and the establishment of a Sports Advisory Council. The Wilson government of 1964-1970 was also very active in the leisure domain. As Henry noted: ‘Harold Wilson had declared the theme of his government to be that of modernisation in his “white heat of technology” speech, and leisure was the most “modern” of public service areas in which to promote opportunities.’ See Henry, above n 50 p 18.
Labour and leisure now exist as entirely distinct compartments of people's lives. But as this separation grows ever wider, their symbiotic relationship grows ever stronger. To revel in and appreciate many of the recreational pastimes and newfangled technology of the modern world (it may be referred to as the 'increased monetarisation and commodification of leisure in consumer society')\(^{69}\) necessitates a greater disposable income. This is acquired by most of humankind through longer toil. Thus as industrial society has advanced and consumer demand has intensified in the seventies, eighties and nineties, the progressive reduction of work time has been eclipsed. Optimistic notions of a four or five-hour work day have not materialised.\(^{69}\)

The peculiarities of transition from pre-industrialised to industrial society is invariably more complex than has been captured in the trajectory delineated here. Yet this crude historical trip through time still enables us to make some generalised statements about the nature of work and leisure. Work in the past was dictated by the seasons, climatic conditions, the hours of daylight and darkness, and was more often than not undertaken in or around the household. It was not so identified with earning a living or with temporal restraints as it is today. Agrarian labour rhythms, the rhythms which prevailed for the majority of society, focused on the tasks in hand and leisure punctuated such rhythms in a disorderly manner. The advent of industrialisation, however, brought about powerful transformations. Work was increasingly located in confined spaces with more emphasis on time and discipline. The cash nexus between employers and employees became more pronounced as the task-related nature of work was displaced by a more efficient time-oriented labour process. People's lives were, thus, increasingly dominated by clocktime sentience and a growing divide manifested itself between free time and work time.

The twentieth century, and in particular the period following the Second World War, has witnessed a widespread reduction in work

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\(^{68}\) See Roberts K, above n 64 p 171-172.

\(^{69}\) In the House of Commons, in 1964, Mr Driberg stated: 'But I believe that in a relatively short time perhaps by the end of the century, when many of us, except the youngest among us, will not be sitting here it may well be that the majority of people will only have to work 10 or 15 hours a week.' House of Commons Parliamentary Debates, 1964, Vol 697, cols 65-66.
schedules from one averaging 60 hours a week in the early 1900s to one averaging 40 hours a week by 1970. Furthermore these years may also be characterised as a period when the rationalisation of people's time intensified further and the distinct boundaries between work time and free time grew ever stronger. These factors facilitated the establishment of the leisure industry as one of the largest employers of the twentieth century. Easier access to gymnasiums, heated swimming pools, outdoor adventure centres, indoor saunas, steam rooms, package holidays, theme parks, televisions and early retirement, together with an increase in disposable income and consumer spending, all added to its appeal. As one commentator noted:

Leisure in its modern sense as a sphere of positive non-work activity enjoyed by the mass of the working people is thus a modern phenomenon and a product of modern industry. Crucial to its development is not only the reduction in hours of work but also the development of needs and capacities for leisure activities. It is these which give modern leisure its distinctive character, and make it not simply a time of passivity and idleness, but a sphere of activity and creativity.70 (author’s italics)

This is supported by Mr Quintin Hogg, the Secretary of State for Education and Science in the mid 1960s:

We are in the presence of a very greatly intensified use of leisure and this goes across the whole spectrum of recreational activity, from dancing to Bach to physical sports. The people of this country, far from suffering from 'spectatoritis', are year by year spending their leisure hours with far greater intensity and far greater intelligence, though, of course, at a good deal more expense, in a whole variety of new and more exciting ways.71

It is only within this modern framework that leisure became

established as an enshrined right and internalised social norm. It was brought about, as we have seen, through the increasing emphasis on clock time sentience, through the way in which free time was won from working time, through the processes of urbanisation and industrialisation, through the reduction in working life, through increases in holidays (particularly holidays with pay), through the recognition of leisure as a right, and through the establishment of a leisure industry. Of course it would be over schematic to propose that this shift can be incorporated into a meta-theory; undoubtedly a wide range of forces (at an individual and local level) deviate from the general review delineated in this chapter. Nonetheless it is hoped that what has been described is sufficient to sketch a broad framework which enables us to appreciate that leisure has established itself, particularly since the Second World War, as a distinct and separate component within the structure of society.

Leisure and its impact on the introduction of community service

Given such transformations in the culturescape of leisure, it is, accordingly, difficult to envisage how a work-based sanction of the early 1970s which embodies the deprivation of leisure time as one of its defining characteristics and which is calculated so precisely in work hours can take its roots from other work-based sanctions prior to the industrial revolution. It is respectfully submitted that it was only with the creation of a particular leisure environment, as existed after 1945 when leisure was established as an actual right of each individual, that the authorities could justify depriving offenders of it as a means of punishing them for their wrongdoings. Thus, the supposition proposed by commentators such as Van Kalmthout and Tak and others that a continuity and affinity exists between community service and various other penal sanctions is tenuous in that it fails to appreciate that the particular cultural determinant of leisure which has unconsciously exerted an influence on the shaping of community service has changed over time. As Garland has noted:
Penal practices are shaped by the symbolic grammar of cultural forms as well as by the more instrumental dynamics of social action, so that, in analysing punishment, we should look for cultural expression as well as for logics of material interest or social control.\textsuperscript{72}

The crucial point to be derived from this approach is that penal policy initiatives, in addition to being driven by their penal context, are also determined by external cultural forces which often only exist within a specific context. Moreover, and more particularly, notwithstanding that leisure has always existed in some form or other, it was only in the period after the Second World War that it could have acted as a determining force on the introduction of community service. In this sense, community service is not only ‘in detail’ a novel disposal. As Roberts notes:

Leisure as it is experienced today is really a product of industrial society. It is not just that the productive power of industrialism has given to the population time and money to cultivate leisure interests on an unprecedented scale, but that it has also created a new cultural awareness of leisure that was previously impossible...\textit{The population has been made consciously aware of leisure as a distinct element in its rhythm of life, and particular pursuits can now be valued purely for their worth as leisure activities. Leisure values, in this way, are incorporated into society's culture, and people are able to think about and experience leisure in a way that was formerly impossible.}\textsuperscript{73} (author's italics)

Herein lies the crucial point. It was only when the population had been made consciously aware of leisure as a ‘distinct element in its rhythm of life’ that the authorities could begin to deprive an individual of it as a means of social control. At a general level, then, this article has

\textsuperscript{72} See Garland, above n 26 p 199.

\textsuperscript{73} Roberts K, \textit{Youth and Leisure}, 1970, p 89-90.
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attempted to move away from the preoccupation of writing prefatory histories of contemporary criminal justice and criminological phenomena. At a more particular level, an attempt has been made to move away from the notion that the history of work-based penal dispositions is, to some extent, *the causa fiendi* of community service orders. Such a Whiggish methodology, in my view, is fallacious in that it abstains from proper diachronic analysis by utilising the 'principle of exclusion' to jettison all that which is not commensurate with its linear schema of interpretation; depicts community service as an 'unfolding logic' which was always scheduled to appear as a sanction, and; proceeds with a method of analysis which views all penal labour sanctions as being governed by the same principles and assumptions albeit that penal authorities in earlier times had a much lesser degree of success in forming penal labour sanctions given that these sanctions must be viewed as the *less reputable forebears* of community service. Again, I would reiterate the belief that community service may have a *long past* but a *short history* in that it was driven by a particular and specific complex of penal strategies, agencies, representations and techniques which render anachronistic any unqualified analogies between it and past penal work practices; this belief is borne out, in the author's view, through an examination which was responsive to context and which utilised discontinuity as a tool of analysis of the cultural determinant of leisure.  

Of course it is also important to recognise that experiences and conceptions of leisure have continued to mutate since the early 1970s when community service orders were first introduced. In particular, the last 25 years have witnessed a growing shift away from manufacturing industry to service production, increased levels of unemployment, changing perceptions of the role of the State in respect of the provision of leisure services which increasingly exhibit 'a market based discourse rather than one of social welfare', the 'destandardisation of working

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74 For a penal examination which offers further support, and which is similarly sensitive to context and the 'incidence of interruptions' in penal history, see Kilcommins S, above n 22 p 223-255.

75 See Haywood, above n 45 p 257.
time', the growth of 'night-time economies', the extension of weekly hours of work, the increased 'feminisation' of paid employment, the growth of 'home centred society,' and more individualised leisure demands. The implications that these alterations to leisure conceptions will have for a sanction that seeks to punish by depriving offenders of their leisure time, if we can assume that the punitive aspect of the sanction is taken seriously remains to be chartered, particularly in respect of the ideology of the sanction, the decision to sentence, the tasks to be undertaken, by whom and when. A number of points can, however, be made at a general level.

To begin with, the ideology underpinning community service orders must be understood against a backdrop of growing enthusiasm for the employment of volunteers and community participation in the 1960s. This voluntary boom was brought about as a result of deficiencies in the State system of social welfare, the emergence of new social needs, mounting disquiet about the habits and activities of young people, and the desire of people to combat the increasingly

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77 See Martin, above n 27 p 81-86.
78 But even allowing for the arrival of 'New Man', the 'Kinder, Kuche, Kirche'mentality remains dominant. Lewis J, *Women in Britain since 1945: women, family, work and the State in the Post-War Years*, 1994 p 69.
82 In the age of consumerism, adult Britain was increasingly alarmed at youth subcultures. It is against this background that volunteering began to be perceived in a new role: as a safe, constructive outlet for the otherwise unpredictable and destructive energies of a disaffected young people. Sheard, J, ‘Volunteering and Society, 1960 to 1990’ in Hedley R, Davis Smith J, eds *Volunteering and Society: principles and practice*, 1992, p 12-13.
detached and faceless features associated with advanced industrial society. There was also an upsurge in interest in 'participation' as a political and social issue in the 1960s. Participatory measures were seen as beneficial in a number of ways: to begin with, they could provide those involved with a sense of dignity and self-respect; secondly, they could enhance an individual's capacity by helping him or her to 'cope intelligently with a new range of issues'; thirdly, they could assist individuals in discovering their own real interests; and, fourthly, they provided an expressive function in that they enabled ordinary people to voice their opinions in respect of policy issues.

Community service (non-penal), in particular, was advocated as being valuable in that it would promote a sense of social responsibility and it would act as a useful source of manpower. Enthusiasm for the ideal can be discerned from the establishment of Community Service Volunteers in 1962 and Task Force by Anthony Steen in 1964, and the views of the Newsom Report, the School's Council Working Paper on Community Service in the Curriculum, the Aves Committee, and the Youth Service Development Council. Indeed Lady Wootton and her colleagues, in calling for the introduction of community service orders as a penal disposal, recognised that the idea of voluntary service had come into

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83 As the Aves Committee noted in 1969: '[T]he process of becoming an advanced industrial society has had effects which contribute to the interest in voluntary work. The degree of control over parts of our lives and the loss of some of the personal element, particularly at work, has produced a desire to counteract these effects by undertaking activities which give scope for spontaneity, initiative and contact with other people'. Aves G, *The Voluntary Worker in the Social Services*, 1969, p. 22.


85 For example, Mr Christopher Chataway, the Joint Under Secretary of State for Education and Science noted in 1964: 'Young people are taking on a bigger share of responsibility for programmes and there appears to be what I regard as a remarkable growth of interest in schemes whereby young people give assistance to the elderly and others in need in the community.' *Hansard HC*, 1964, Vol 697, col 47.


88 This report suggested that community service in 'local hospitals, decorating a community centre, making and repairing toys for nursery and infant schools and individual service in schemes for helping elderly or invalid persons' was of double value to school children in that they performed useful tasks in the community and derived benefit from the undertaking of more adult responsibilities'. Ministry of Education, *Half our Future*, (1963) p 68.
'fresh prominence' in the 1960s. Whilst not grounded in any criminological or penological analysis, community service for offenders was viewed expediently for a number of reasons: it would heighten their awareness of people less fortunate than themselves; it would enable them to 'pay back' society for their wrongdoings; it would enable them to appreciate their own potentialities; it would enable them to jettison the belief that they were a source of contumely to all by providing them with an opportunity to engage in constructive projects for the benefit of others; and, it would permit them to benefit from their association with non-offender volunteers and those they were helping, by promoting social integration.

In recent years, however, the ideology of collective participation and voluntarism have come under combined and sustained attack. As Kumar noted:

The idea of the information society has grown in a period that has seen a widespread decline in the vitality of public life. Membership of voluntary organisations has plummeted; participation in politics, local and national, has shrunk. There is the evidence of a heartfelt cynicism and alienation from public life in all western societies.

This increased privatisation and individualisation of life leading 'towards the evacuation and diminishing of the public sphere of contemporary western societies' points in the opposite direction to the ideology of community service orders which focus on participation, association, the completion of constructive tasks in the community, and the development of social responsibility. Moreover, the predicted

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90 See the Wootton Committee who noted: 'What attracts us...is the opportunity which it would give for constructive activity in the form of personal service to the community, and the possibility of a changed outlook on the part of the offender. We hope that offenders required to perform community service would come to see it in this light, and not as wholly negative and punitive'. Ibid p 13.

91 See Kumar K, above n 79 p 155-156.

92 Ibid p 160.
15 hours work week has not materialised, as many believed it would in the 1960s; instead the 'long-hours' culture and 'work-rich, time poor' ethos is very prevalent in contemporary society, particularly for the middle classes. In these circumstances, it may be more difficult to argue that deprivation of leisure time for offenders, many of whom have not been so affected by the long hours culture, is sufficiently punitive. This may be particularly so given the 'culture of severity' which exists in many western democracies. In the UK, high crime rates, negative research findings, increased focus on the proximal rather than distal causes of crime, pervasive media and cultural representations, the politicisation of law and order, and an authoritarian populist culture have resulted in the development of an increasingly punitive penal system which is now more focused, as Major termed it, 'on understanding less and condemning more', or as Tony Blair termed it, 'on being tough on crime and tough on the causes of crime'.

In a recent study carried out in Ireland on community service orders, it was shown that by far the largest category of those carrying out orders were unemployed; indeed in some court areas such as Limerick, Kerry and Wexford, the unemployed comprised 80%, 80% and 73% of all participants respectively. Walsh D and Sexton P, An Empirical Study of Community Service Orders in Ireland, 2000, p 28. See also McIvor G, Sentenced to Serve: the operation and impact of community service by offenders, 1992, p 35-55.

Community service was advanced as punitive in design by the Wootton Committee in that it deprived an offender of his or her leisure time and was a 'welcome alternative in cases where at present a court imposes a fine for want of a better sanction or again in situations where it is desired to stiffen probation by the imposition on the offender of an additional obligation'. See Home Office, above n. 89 p 14.

In the US, for example, evidence of this culture includes: the employment of boot camps, the reintroduction of chain gangs, three strikes laws, reliance on principles such as 'truth in sentencing', the employment of alternatives to custody not as a means of reintegrating offenders but as a means of supervising low risk offenders, the extension of the powers of capital punishment, and the revision of fixed sentences upwards. See Pratt who argues that all of the phenomena are part of a 'decivilising of punishment': 'tolerance and sympathy for criminals that became evident during the later stages of welfare society has evaporated: zero tolerance is becoming the catchphrase of crime policy in the 1990s'. Pratt J, 'Towards the Decivilising of Punishment', 1988, vol 7, no 4, Journal of Social and Legal Studies 505-506.

These tougher measures include, inter alia, a trend of increasing penalties in respect of drug offences, curtailment on the right to silence and more punitive sentences for young offenders including the introduction of a secure training order for 12-14 year olds as a result of the Criminal Justice and Public Order Act 1994, the introduction of mandatory and minimum sentences as a result of the Crime (Sentences ) Act 1997, and dramatic increases in the number of long-term prisoners.
Given, then, the 'long hours' culture and the declining emphasis on collective participation and voluntarism, it is not inconceivable in our current culture of severity that there will be increased support for proposals aimed at making community service more punitive in design: this could be achieved through the employment of more arduous work tasks or the embodiment of a shaming component, or a combination of both. Community service could, for example, be made a more shaming exercise through focusing on the offences committed or

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97 See, for example the 1995 National Standards for the supervision of Offenders in the Community which required the probation service to provide a range of placements, including at least 'one option providing hard manual work and consideration should be given to choosing placements which enhance public confidence in community service'. The Standards also emphasised the need 'to ensure that the location and nature of any community service activity could not give the impression of providing a reward for offending'. Home Office, National Standards for the Supervision of Offenders in the Community, 1995, p 35.

98 When introducing the disposal, Baroness Wootton was keen to eliminate any misunderstanding about the work. Whilst recounting an interview she had with the BBC she noted the following: 'The interviewer, unfortunately, was not very happy at home in this kind of topic and the opening question was: "You are not proposing, are you, to put convicts to work on the roads?". This immediately called upon an image of men with broad arrows on their clothing working in chain gangs on the highways. The interview, which was very short, was a disaster because I had to spend the whole time explaining that this was not what we were proposing, but that we were hoping that the work provided would not be punitive or humiliating in its own nature...I think it is possibly one of the most important aspects of the whole proposal that people are doing it because they think it worthwhile'. House of Lords Parliamentary Debates 1972, Vol 322, col 620. See also the comments of Mr John Fraser who noted: 'There is a danger that if this form of treatment is regarded as a punishment, it will have a kind of chain-gang image which will stigmatise not only the offender but also community work and then volunteer workers who would otherwise cooperate in this kind of venture. It is something to be seen as a method of cooperation...One wants to avoid the idea that it will stigmatise the work itself or the persons participating whether they be former offenders or volunteers from the community." Hansard HL 1972, Vol 838, col 1966.

99 The Wootton Committee did however suggest that: '[It was not their intention] to make the punishment fit the crime; should this occur we would expect it to be as much a matter of accident as of design. We are particularly anxious to avoid decisions which smack of gimmickery and so undermine public confidence. The scheme that we have in mind, therefore, is intended not to compel the offender to undergo some form of penance directly related to his offence, which could only have limited application, but to require him to perform service of value to the community, or to those in need.' Home Office op cit n 89, pp 14-15.
through the wearing of uniforms.\textsuperscript{100} Indeed one Magistrate in England recently noted that the tasks allocated for community service should involve more: 'lifting, shovelling and dirty mucking about that makes them break into a sweat. They also need to be in uniform to increase the shame.'\textsuperscript{101} Moreover, in respect of the decision to sentence, it may be argued that the proportionate lack of women sentenced to community service may be accounted for, in part, by the still dominant 'malestream' interpretation of leisure and the criminal justice system's inability to reckon with women's leisure experiences and opportunities;\textsuperscript{102} in addition, a significant imbalance continues to exist in respect of actual work placements where women appear to have fewer choices on a sanction still viewed, for the most part, as a 'young man's punishment'.\textsuperscript{103} Finally, given the increased trend of destandardisation of predictable work cycles as a result of the growth of 24-hour work economies, the probation service may need to become more flexible and innovative in respect of the allocation and timetabling of placements.

\textbf{Conclusion}

In this article, I have sought to write a more historical account of the introduction of community service orders by employing the cultural phenomenon of leisure to demonstrate the dangers inherent in the continuist, presentist analysis adopted by other commentators vis-à-vis the introduction of the disposal. It was argued that it was only in leisure's modern sense when it was viewed as a right of the people and was a separate and distinct component of daily routine that an offender could be deprived of it as a suitable means of punishment. It is, accordingly, respectfully submitted that it was only with the creation of a

\begin{itemize}
  \item \textsuperscript{100} Pratt, for example, notes the provision of stigmatic clothing for offenders sentenced to community service in the U.S. so that they will be recognisable by local communities. See Pratt, above n 95, p 505.
  \item \textsuperscript{101} Hedderman C et al, \textit{Increasing confidence in Community Sentences: the results of two demonstration projects}, 1999, p 27.
  \item \textsuperscript{102} McIvor G, 'Jobs for the Boys: gender differences in referral to community service', 1998, 37 no 3 \textit{The Howard Journal of Criminal Justice} 280-290.
  \item \textsuperscript{103} Ibid. See also Worrall A, \textit{Punishment in the Community: the future of criminal justice}, 1997, pp 95-97.
\end{itemize}
particular leisure environment, as existed after 1945, that the introduction of community service which embodies the deprivation of leisure as one of its defining characteristics became attainable or conceivable. It was only in this specific epoch, when leisure was established as an actual right of each individual, that the authorities could justify depriving offenders of it as a means of punishing them for their wrongdoings.

Of course, the employment of this cultural conception of leisure cannot be utilised to convey some total reality or to cultivate some absolute mechanistic conception in respect of the introduction or development of community service orders; it cannot, for example, account for non-rational phenomena, unintended consequences, ulterior motives, the internal dynamism of the penal system or the protean and pragmatic nature of penal practice. It can, however, enable us to impose, in part, a historically specific meaning on the experience of introducing the disposal. Penal laws, as Garland notes, are always "framed in languages, discourses, and sign systems which embody specific cultural meanings, distinctions and sentiments, and which must be interpreted and understood if the social meaning and motivations of punishment are to become intelligible". As such, this article has attempted to trace the historical conditions of emergence of community service though only from the cultural perspective of leisure, in order to highlight the dangers of distorting the complexities of the past so as to make them conform with perceptions of the present. Tracing continuities and affinities over time between various penal work sanctions is ahistorical in that it distorts the contemporary significance and character of community service whilst also obscuring the contextual significance and usage of past penal work practices.

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104 See Garland, above n 26 p 198.
By being more aware of the relativist nature of historical interpretation,\textsuperscript{105} it may better enable us to understand the ideas and motivational formulations that lay behind the introduction of the sanction. In addition to avoiding the problems posed by historiographic anachronisms, such an approach will also provide a better context for examining current practices and trends vis-à-vis the operation of the disposal.

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