Open Research Online

Legitimacy on Licence: Why and How it Matters

Journal Item

oro.open.ac.uk

Legitimacy on Licence: Why and How it Matters

KEIR IRWIN-ROGERS

Lecturer in Criminology, Open University

Abstract: People leaving prison typically face numerous barriers to successful reintegration – a situation reflected by high reoffending rates in many countries throughout the world. To support people to overcome these barriers, criminal justice systems often provide some form of post-custodial supervision. Based on a multisite ethnographic study, this article provides an insight into post-custodial supervision in England and Wales. It introduces a novel theoretical framework for understanding the dynamics of supervisory relationships, which at its core distinguishes between legitimacy based on processes and legitimacy based on outcomes. While both sources of legitimacy are desirable, the former is particularly important because the latter is largely dependent upon it. In short, constructive relationships between licencees and supervisors fail to develop when processes are neglected, which, in turn, prevents probation and hostel workers from fulfilling their supervisory roles effectively.

The period during which people leave prison and return to the community is very often a difficult time of transition. People released from prison typically face numerous obstacles to successful reintegration, including a lack of access to suitable housing, financial insecurity, challenges around rebuilding familial and personal relationships, a problematic history of drug and alcohol dependency, and a 'colossal stigma' (Padfield and Maruna 2006, p.337; Petersilia 2003; Travis and Crayton 2009; Travis and Petersilia 2001). Reoffending rates partly reflect this grim reality in England and Wales, as elsewhere. The latest data show a 34% proven reoffending rate for people serving determinate sentences of twelve months or more within a one-year follow-up period, and a significantly higher reconviction rate of 60% for those serving sentences of less than twelve months (Ministry of Justice 2016b). To support people to reintegrate into the community and reduce rates of reoffending, all people leaving prison in England and Wales are subject to at least twelve months post-custodial supervision; for some, depending on the length of the prison term, this supervision period can be considerably longer (Padfield 2016).

As indicated by previous research, the success of sanctions implemented in the community often turns on the quality of relationships between offenders and their supervisors who are responsible for implementing these sanctions (Burnett and McNeill 2005; Mair and Mills 2009; McIvor 1992; Raynor, Ugwudike and Vanstone 2014; Shapland *et al*. 2012; Weaver and Barry 2014; Wood *et al*. 2015). In short, this seems to be because positive supervisory relationships elicit compliance with licence conditions and enable supervisors to provide help with practical issues such as accommodation, employment, education, training, and drug and alcohol treatment, as well as advice and support around relationships with family and friends. In addition, the success of prosocial modelling techniques used by supervisors in England and Wales is largely dependent on positive relationships between offenders and their supervisors (McCulloch 2010; Trotter 2009). While much of the research that highlights the centrality of supervisory relationships focuses on community sanctions as opposed to post-custodial supervision (which is technically a component of a sentence of immediate imprisonment), in reality, the content and implementation of the licence period closely parallels that of a community sanction.

Given the central role of supervisory relationships to successful resettlement, it is important to understand how constructive relationships are established and maintained, as well as the reasons why some supervisory relationships break down. To this end, this article has a twofold purpose: first, to provide an insight into the dynamics of supervisory relationships by presenting the findings of an empirical study into post-custodial supervision in England and Wales; and second, to introduce a theoretical framework for better understanding these supervisory relationships. The theoretical framework is based on the concept of legitimacy and was developed using an adaptive theory approach to data collection and analysis – an approach that constitutes a middle way between pure forms of inductive and deductive reasoning (Layder 1998). The framework distinguishes between two main sources of supervisor legitimacy: legitimacy based on the procedures used by supervisors, and legitimacy based on the outcomes for which supervisors are responsible, as perceived by those on licence. I argue that licencees' perceptions of procedure-based legitimacy are fundamentally important, since they form the basis for constructive supervisory relationships. In turn, these relationships are integral to the pursuit of positive outcomes, whether these relate to employment, education, personal relationships, general well-being, or desistance from offending.

Post-custodial Supervision in England and Wales

The origins of post-custodial supervision in England and Wales can be traced back to the 19th Century, when people leaving prison were offered help on a voluntary basis from a small number of Discharged Prisoners' Aid Societies (Maguire *et al* 2000). It was not until the 1990s, however, that parliament made post-custodial supervision mandatory for large numbers of released prisoners under the provisions of the Criminal Justice Act 1991 (Maguire, Peroud and Raynor 1996). The number of people subject
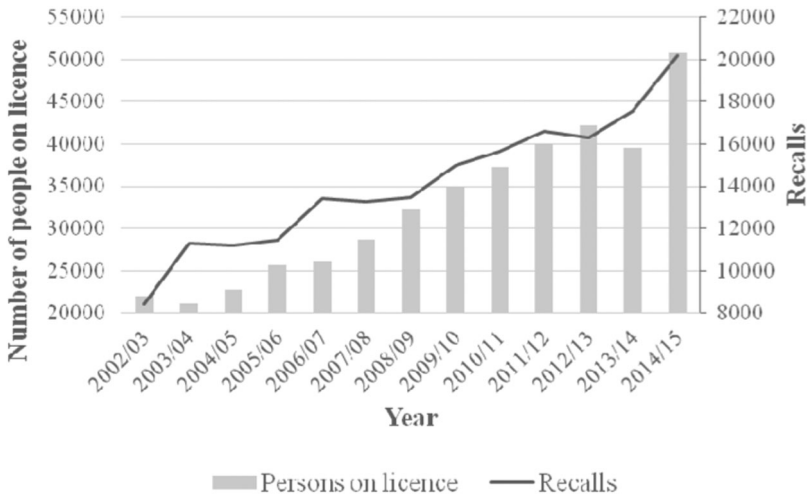
FIGURE 1
Number of People on Licence and Number of People Recalled to Prison, England and Wales,
2002–2015
(Source: Ministry of Justice 2016a.)

to post-custodial supervision in England and Wales rose dramatically following the enactment of the Criminal Justice Act 2003, which increased the amount of time people were required to spend subject to a period of supervision, turning release from custody into an automatic process at the halfway point of all determinate sentences of twelve months or more (see *Figure* 1). Today, the National Probation Service and Community Rehabilitation Companies face significant challenges due to the requirement of working with large numbers of involuntary clients.

At the time of writing, people released from prison in England and Wales are subject to a number of terms and conditions that are outlined in a document called a post-custodial licence. Each person's licence contains eight standard conditions, which include attending regular supervision sessions with a supervising officer, notifying a supervising officer of any changes to accommodation arrangements or employment, and being 'well behaved' (National Offender Management Service 2014). In addition, if a supervisor does not think that these standard conditions are sufficient to achieve the aims of post-custodial supervision – to secure successful reintegration, to protect the public, and to reduce reoffending – then they are able to recommend additional individualised conditions which are signed and formally authorised by the governor of the prison from which the licencee has been released (HM Prison Service 2012). Additional conditions may include prohibited activity requirements (for example, not to own or possess a mobile phone with a photographic function); prohibited contact requirements (for example, not to seek to approach or communicate with a particular person); programme requirements (for example, to comply with any programmes that aim to address alcohol, drugs, gambling,

solvent abuse, or anger problems); or exclusion requirements (for example, not to enter specific geographic areas) (Ministry of Justice 2011).

If a supervising officer perceives an offender to have breached their licence conditions, they may decide to initiate a process that involves recalling that person to prison. In the majority of cases, this is an executive process whereby the Secretary of State is responsible for revoking the licence and recalling the licencee to custody.[1] After the enactment of the Criminal Justice Act 2003 made it easier to recall licencees for breach of their licence conditions, the ratio of licence recalls to persons on licence significantly increased (Padfield 2010). While the number of recalls has increased at a similar rate to persons on licence over the last decade, the absolute numbers of both have been steadily rising. In 2002, for example, 8,406 licencees in England and Wales were recalled to prison; by 2015, this number had increased to 20,202 (Ministry of Justice 2016a). Given the sheer scale of people now being recalled to prison for breaching the terms and conditions of their licence, therefore, the challenges around compliance and enforcement in post-custodial supervision have never been greater. Indeed, recall currently acts as a major contributory factor to historically unprecedented prison population rates (Ministry of Justice 2016a).

Theoretical Framework: Legitimacy

This article introduces a theoretical framework based on the concept of legitimacy, which can be used to better understand and explain the dynamics of supervisory relationships. The prevalence of the concept in numerous academic disciplines is based largely on the link between the extent to which the subjects of a particular power relationship perceive power holders to be legitimate, and the effectiveness and longevity of these power relations (Weber 1918a [1968], 1918b [1968]). For this reason alone, the concept is one that has attracted the attention of researchers studying a wide range of subjects, from power wielded by a nation state over its citizens, to that exercised by a parent over their child (Beetham 2013; Kuhn and Laird 2011).

During the last 20 years, there has been a considerable expansion in the amount of criminal justice research utilising the concept of legitimacy (Crawford and Hucklesby 2012; Tankebe and Liebling 2013). Most of this research has been conducted in the area of policing, beginning with a seminal study by Tyler (1990). Since then, numerous empirical studies have uncovered significant links between public perceptions of police legitimacy and public willingness to comply with the law and co-operate with the police (Tyler and Huo 2002; Tankebe 2013). This relationship has prompted researchers to identify the key factors that shape people's perceptions of police legitimacy. Some of the main factors identified include: distributive justice, which concerns the perceived fairness of the distribution of benefits or burdens that power holders allocate to their subjects (Brockner and Wiesenfeld 1996; Siegrist, Connor and Keller 2011); trust or trustworthiness (Mazerolle *et al*. 2013; Sunshine and Tyler 2003); and effectiveness, which concerns the extent to which people perceive a power holder to be achieving their intended goals (Kochel, Parks and Mastrofski

2011; Tankebe 2009). The central finding from the vast majority of studies is that legitimacy is shaped primarily by perceptions of procedural justice (Ferdik, Wolfe and Blasco 2014; Hough *et al*. 2010; Murphy 2015; Reisig, Tankebe and Mesko 2014; Tyler and Fagan 2008). This concept (also referred to as 'procedural fairness', see Sunshine and Tyler (2003)) typically refers to the extent to which power holders treat their subjects with dignity and respect, as well as the quality of power holders' decision making.

Drawing on this body of policing research, researchers have also utilised the concept of legitimacy in studies on imprisonment, primarily to explore staff-prisoner relationships (Bottoms 2002; Crewe 2011; Liebling with Arnold 2004; Liebling 2011; Sparks and Bottoms 2008). The concept remained largely absent from research on community sanctions until Bottoms's theoretical paper highlighted the importance of legitimacy for understanding offender compliance with supervision (Bottoms 2001). A later paper co-authored by Bottoms and Tankebe (2012) made the important point that legitimacy has a dialogic nature, consisting of both claims to legitimacy by power holders and responses to these claims by power subjects. They argue that in the sphere of criminal justice, front-line professionals must pay most attention to their perceived legitimacy since these people have the most frequent and direct encounters with those who might contest their legitimacy on a day-to-day basis. In recent years, further studies in the field of community sanctions have drawn on, and developed, the concept of legitimacy (Digard 2010; Hucklesby 2013; Nellis 2012; Robinson and Ugwudike 2012). Most pertinent in the context of the current article, McNeill and Robinson (2012) indicate that supervisory relationships are likely to constitute the key site or resource for enhancing offenders' perceptions of the legitimacy of community sanctions. They warn, however, of the difficulties of enabling legitimacy to flow into a community sanction, particularly given how easily legitimacy can ebb away; the term 'liquid legitimacy' is used to reflect its fragile and fluid nature. Crucially, however, the current article marks the first attempt to empirically explore the value of the concept of legitimacy in terms of understanding the dynamics of supervisory relationships.

Methodology

To explore how supervisory relationships can be understood through a lens of legitimacy, fieldwork was conducted inside three Approved Premises in England for a period of six months. Approved Premises – also referred to from this point onwards as hostels – occupy a strange position between prisons and the community; a position that some people on licence described as being halfway between the two. Unlike prisons, there are no bars on the doors and there are no guards to maintain order. The term for a resident's private space is a 'room', not a 'cell'. During daytime hours, residents are usually free to enter and leave the hostel as they please. Yet, unlike other licencees living in the community, hostel residents are subject to a number of conditions that place further restrictions on their liberty. In the past, hostels have been a place of residence for

young offenders, people on bail, and people on probation. Presently, however, they are predominantly reserved for people on licence, and more specifically, those people whom the National Probation Service considers to pose a high risk of serious harm to the public. According to the Ministry of Justice's *Approved Premises Manual*, the primary purpose of hostels is to provide people on licence with 'an enhanced level of supervision to reduce the risk of harm to the public' (Ministry of Justice 2014).

The fieldwork and data analysis were guided by adaptive theory, which constitutes a middle way between the full-scale adoption of a theory-building approach based on inductive reasoning, and a theory-testing approach based on deductive reasoning (Layder 1998). One of the fundamental principles of adaptive theory is that researchers cannot approach data collection or analysis from an atheoretical perspective. In other words, all approaches are theory-laden to some degree – an argument that runs counter to that of pure grounded-theorists, who call for an empiricist approach to data collection and analysis (see Glaser 1998; Strauss 1987). Layder (1998, p.57) viewed a 'clean slate' approach as being somewhat naïve and essentially wasteful, arguing instead that a more fruitful way of analysing data is to 'target the theoretical pertinence of data as soon as possible'. Such targeting involves an explicit acknowledgement of the theoretical baggage brought to fieldwork by every researcher, which stems either from prior reading or from any other exposure to extant theoretical ideas. In relation to the current research, this meant using some existing theoretical frameworks and conceptual schemes referred to in the research above as starting points, which guided data collection and initial data analysis. However, whenever the data did not support them, these frameworks and schemes were refined or discarded.

The fieldwork involved over 100 hours of observation and 31 interviews; 21 with hostel residents and ten with members of hostel staff. All interviews were fully transcribed and uploaded into the software programme, NVivo (see Bazeley and Jackson 2013), for analysis. To operationalise the concept of legitimacy, I took a seminal definition from Tyler (2006) as my starting point: 'Legitimacy is the belief that authorities, institutions, and social arrangements are appropriate, proper and just' (p.376). First-order concepts based on the 'common-sense thinking' of the research participants were used to guide the first stage of data coding (Schutz 1962, p.59). These first-order concepts were then grouped into second-order constructs that were further abstracted from the empirical data. Initial concepts and theoretical ideas were not regarded as final and unalterable, but were instead 'modified, abandoned, confirmed or retained as required by the unfolding of new data' (Layder 1998, p.58). Consequently, concepts and theoretical frameworks were continuously reworked as part of an iterative movement between data and theory. Ultimately, two fundamental sources of supervisor legitimacy were identified: legitimacy based on the procedures used by supervisors, and legitimacy based on the outcomes for which supervisors were responsible, as perceived by licencees. To illustrate the process of theory development described above, and to provide an insight into post-custodial supervision in England and Wales,

this article will present three case studies to explore the relationships between licencees and their supervisors – which includes both probation workers and hostel staff – as viewed through a lens of legitimacy.

Exploring Supervisory Relationships through a Lens of Legitimacy

Case Study One: Tim

One way that supervisors can garner a high degree of procedure-based legitimacy is by treating those on licence with dignity and respect. The importance of dignified treatment is well illustrated by a case in which Tim, a licencee in his early twenties, was recalled to prison for possessing a mobile phone, an item prohibited under the conditions of his licence. Of all the things that I observed during the fieldwork, Tim's recall was one of the most memorable. Tim had been convicted of a sexual offence against an underage female. As a result, a condition had been inserted onto his licence that prohibited him from possessing an electronic device that could access the Internet; this was intended to reduce the risk of him contacting the victim of his offence or any other underage female.

Around 1 pm during a period of observation, a member of staff informed me that a phone had been found underneath Tim's bed. Members of staff had searched his room after he had left the hostel following a tip-off from another resident. When hostel staff discovered the device, they contacted Tim's probation officer who decided to initiate the recall process. When he returned to the hostel later that evening, a member of staff told Tim what had happened and informed him that police officers would be coming to arrest him in the morning to escort him back to custody. Tim became distressed, protested that he had not used the phone for any untoward activities, and asked a member of staff to check through his phone's message history. Hostel staff advised Tim that the matter was out of their hands and that he would need to pack his belongings immediately.

Tim was told that he would not be allowed to sleep in his own room that night. Instead, he had to move into an empty room on the ground floor of the hostel. As he was being escorted back to his room, he asked me if I would go with him and I agreed. When we entered his room, a member of staff handed me a pair of white gloves and, along with Tim, we began packing his belongings into black bin-liners. I knew from my experience of accompanying hostel workers during previous room searches that they usually wore gloves to protect themselves from hazardous objects, such as used drug needles. Tim, however, was not a drug addict and the image of myself and the member of staff wearing white gloves and shovelling his clothes and personal possessions into black bin-liners was unpleasant. The process lasted almost 30 minutes and for the most part was conducted in silence. At one point, Tim broke the silence to let the member of staff know how he was feeling:

I know I'm going to get put back in prison, but all this seems very harsh.

Member of staff: That's something you should have thought about before you broke your licence conditions.

I know. I just think, all this, it's very harsh. I just don't think it's necessary. (Tim, licencee)

Close to tears, Tim questioned why he needed to pack up all of his belongings and move into an empty room on the ground floor. He asked whether he would be able to move his television, games console, or music system into the empty room to pass the time, as he did not anticipate that he would be able to sleep much that night. The member of staff told Tim that moving into an empty room was for his own protection and later informed me that they needed to prevent the possibility of Tim attempting to hang himself with wires from electrical devices. When we had finished bagging up his possessions, the three of us walked down to the empty room on the ground floor of the hostel. The member of staff remembered something that he needed to do, leaving Tim and I together. For a few minutes, we chatted about what had happened and what was going to happen; Tim was clearly angry and resented how the situation was being handled. Although I was unable to record our conversation verbatim at the time, I wrote down what Tim had said to me shortly afterwards:

When I come out of prison next time I'm having nothing to do with any of them. They pretend to be on your side, but they're not; they can't wait to catch you out. This morning everyone was my friend. I know I wasn't supposed to have a phone, but everyone has phones. Older people don't get it … I have to live my life. (Tim, licencee)

The member of staff returned to the room. I felt drained and made an excuse to leave the hostel and return home. Reflecting on this incident, it was clear that Tim questioned the fairness of his recall. He did not, however, blame hostel staff for the recall decision itself, for which he held his probation officer responsible. Nevertheless, the *manner* in which hostel staff had responded had severely undermined their legitimacy in Tim's eyes. It was clear from his comments that he felt that there was a lack of respect and dignity both in the process of packing his belongings into black plastic bags and the requirement that he move into an isolated and empty room overnight. These feelings were intensified by the stark juxtaposition of perceiving hostel workers as valuable sources of help and support that very morning, to viewing them as people who cared little for his well-being by the afternoon. His recall to prison would, of course, only be temporary.[2] It seemed unfortunate that the positive relationships he had established with members of hostel staff and his probation officer – which were proving to be a significant factor in helping him to adjust to life in the community – were unlikely to be re-established on his re-release from prison. Tim had declared that next time, he would have 'nothing to do with any of them'.

Case Study Two: Mark

Mark's case is another which illustrates the importance of procedure-based legitimacy, and in particular, legitimacy based on the provision of accurate and up-to-date information. When I arrived at the hostel to begin a period of observation, the manager asked me whether I would be willing to

accompany a resident to an appointment at a local hospital. I had already spoken to Mark on numerous occasions and was more than happy to go with him. On our walk back from the hospital, we chatted at length about his hopes and plans for the future. Mark paused to read a text message from his friend, David, who until recently had lived with Mark in the hostel. David had been moved to another hostel which was deemed more suitable in terms of its support for his mental health needs. Because of Mark's own mental health needs, he was also due to move to this hostel as soon as a bed-space became available. Mark became visibly upset as he read the message, so I asked him what was wrong. In his text, David had explained that their probation workers had met together and decided to prohibit Mark and David from associating with one another. Mark agreed to be interviewed when we got back to the hostel:

I just found out that me and David can't mix.

Interviewer: Was David told why?

No. He got told this morning through his probation officer that his probation officer and my probation officer have decided, for whatever reason, that we can't mix . . . but the thing is, I need someone to walk round Town A (the town where the second hostel was located) with me because I can't read or write. And I really need someone to go with me because I can't remember what is said . . . now, all of a sudden, he's not allowed to show me a new area, where things are.

Interviewer: Has anyone spoken to you about it?

No. I've just found out from David. I wouldn't know if he hadn't mentioned it . . . [my probation officer] should have told me before. She knows we would ring each other up, so she should have told me straight away. (Mark, licencee)

I tried to ask Mark about some of the other things on the interview schedule, but the issue with David was weighing heavily on his mind and the conversation kept returning to this subject:

Interviewer: So have you ever broken any of the conditions of the licence you're on?

No, not yet. Thing is, at the end of the day, if I go to [the second hostel], and [the hostel staff] are not willing to walk around Town A with me, I'll refuse to go to the police station because I don't know where to go. But if I refuse to go to the police then I'll get recalled. I just feel like saying, 'Fuck it, I'm not going!' I'm better off here because I know this area. I'm used to the staff . . . me going there I'd have to start all over again . . . I find it hard to cope with new things. If they don't want to keep me here, and I don't want to go to [the second hostel], then I'd probably end up back in prison. (Mark, licencee)

Even after the interview, Mark continued to tell me how anxious he was about moving to a new environment without anyone to support him. Indeed, Mark's high level of anxiety was the reason I had accompanied him to his hospital visit earlier that day. He was concerned about losing the person who he expected would help him adapt to life in a new town and a new hostel. He was equally upset, however, about the manner in which this

decision had been communicated to him – that he had found out about the restriction from his friend, rather than from his probation worker.

The importance of seemingly minor decisions or oversights – such as the one described above – can have significant ramifications for the engagement of licencees with their supervising officers and, indeed, the ultimate success or failure of post-custodial supervision. Although I was unable to ascertain the precise details, two weeks after the incident described above a hostel worker informed me that Mark had, indeed, been moved on to the second hostel, but shortly thereafter had been recalled to custody.

Case Study Three: Paul

Paul's case illustrates the importance of both procedure-based and outcome-based legitimacy. As was highlighted in Mark's case, one of the things that licencees cared most about during their time on licence was receiving accurate and up-to-date information. A commonly-reported issue concerned the insertion of a hostel residency requirement onto a person's licence – something which many licencees did not find out about until close to their time of release. Paul was so incensed that his probation worker had provided him with inaccurate and untimely information that before our interview could begin he insisted on getting this issue off his chest:

Well, before you start, I will say, when you're in jail, you're getting closer to your time to be released, and you're told your licence conditions by your probation, which all change when you get out. It's different – you're looking forward … I was told I'd go straight home. Then I got told that part of my licence conditions was to live in an Approved Premises … when I've got a perfectly good house to go home to. So, if you can do anything, it's err, work on, stick to the things you get told. (Paul, licencee)

Doubtless, Paul was unhappy about the content of his residency requirement: being required to live in Approved Premises on his release from prison. The way in which his probation worker had imposed this licence condition, however, had greatly intensified his frustration. In particular, Paul resented that Craig (his probation officer) had told him one thing – that he could return home on his release from prison – only for him to do something else – insert a hostel residency requirement onto his licence close to his time of release.

Licencees also cared about the outcomes that their supervisors were responsible for, whether these related to help and support or to monitoring and control. In terms of help and support, Paul reported that Craig was a hindrance in relation to finding suitable accommodation and employment:

I can get a job now, but he wants me to do things his way; get a job his way. He is taking things off other people. I would rather be doing things at my pace than at his pace, so why take other people's work if they can do it faster?! … He is not helping – he's a hindrance; he's a big hindrance. I could do things better myself. I could get myself a private flat, but he wants me to bid [on social housing], so I'm bidding. (Paul, licencee)

Paul believed that Craig's primary aim was to exert control over his life. For example, his search for a job was being stalled by Craig's insistence

that he first enrol on a Construction Skills Certificate Scheme. Although Paul acknowledged the benefits of this scheme, he felt that this was not his only route to employment.

Paul described how he had initially expected his supervision to be a useful source of help and support. During an early supervision session, he had made efforts to be open and honest. Paul had explained that he was finding the transition from life in prison to life in the community difficult, but appreciated the help he was getting from members of staff in the hostel. He recounted the details of a recent evening when he had been drinking with an old friend. By the end of the evening, both Paul and his friend were somewhat intoxicated and Paul was concerned that his friend had developed a problem with alcohol. Not long after the supervision meeting, Paul was told by hostel staff that Craig had inserted a condition onto his licence prohibiting him from drinking alcohol. The condition was to be enforced by regular breathalyser tests in the hostel. In addition, Paul's home visits that allowed him to see his severely-ill partner were withdrawn, allegedly because Paul had visited his home outside of the agreed times (something that both Paul and members of hostel staff disputed).

Paul began to think that his probation worker was motivated by a desire to make his life as difficult as possible. The combination of procedure-based and outcome-based legitimacy deficits led to the complete breakdown of their supervisory relationship:

Like I said – it's puppets on a string. [Probation] are the puppet-masters, we're the puppets. I imagine . . . [my probation worker] saying, 'Ah, I've got this lad by the balls – making him jump through hoops and stuff' . . . when I go tomorrow, 'Hello to [probation worker], how are you?' shake his hand, 'Nice day you're having?' I'll smile and nod, and answer his questions. I shit on myself the first couple of weeks, I really shit on myself.

Interviewer: In what way?

Just telling the truth, answering his questions. (Paul, licencee)

Although Paul and I seemed to get on well with each other, he paused at one point during our interview to seek reassurance:

I mean, I've told you some things – you're not gonna hurt me for them, are you? (Paul, licencee)

It was clear that Paul's experiences with his probation worker had bred a pervasive cynicism towards power holders more generally. Indeed, I can vividly recall Paul catching me in the corridor during one of my last hostel visits to say: 'Have you figured out that all probation are shit yet? Make sure you get that in your report.'

The Relationship between Procedure-based and Outcome-based Legitimacy

Based on the case studies above, as well as many more which were generated by the six-month fieldwork period inside three Approved
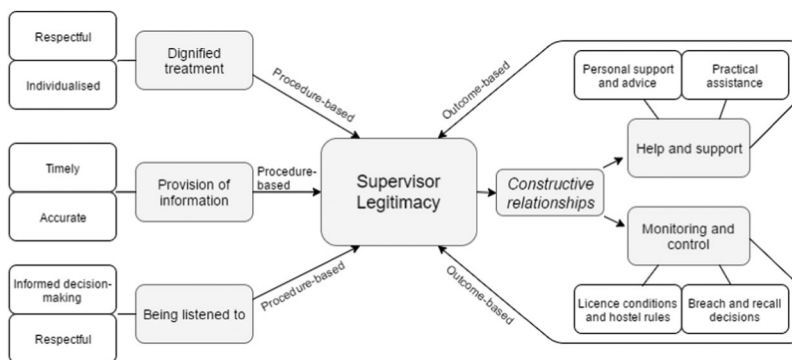
FIGURE 2
Model of Legitimacy Illustrating the Dynamics of Supervisory Relationships

Premises, the theoretical framework in *Figure* 2 was developed to improve our understanding of the dynamics of supervisory relationships.

Licencees' perceptions of the legitimacy of supervisors were based both on the procedures adopted by supervisors and the outcomes for which supervisors were responsible, as perceived by licencees. These procedures can be divided into three main components: dignified treatment; the provision of accurate and timely information; and being listened to. Outcomes can be divided into those that relate to help and support and those that relate to monitoring and control. It is important to highlight that procedure-based and outcome-based legitimacy are not two distinct types of legitimacy, but instead are two distinct *sources* of legitimacy. Crucially, levels of procedure-based and outcome-based legitimacy tend to 'move together'. For example, if a licencee perceives a supervisor to have a high degree of outcome-based legitimacy, then it is likely that they will also perceive this supervisor to have a high degree of procedure-based legitimacy.

Jack's case, another hostel resident, provides a good example of procedure-based and outcome-based legitimacy moving together. Jack had had some negative experiences with members of prison staff prior to his release and assumed that hostel staff would be no different:

I thought they were all a bunch of fucking bastards, but they weren't. Every morning, 'Hello Jack, how you doing?' and, 'You alright, Jack?' They really seemed to care, and I thought, 'Yeah, these are actually good people', you know?

Interviewer: Just from saying 'good morning' and asking how you were?

Yeah, it makes you feel like someone cares about you, looking out for you and that … eventually I learnt … they're not there for that [to get Jack recalled] … that meant that if my head is not right or whatever, I can get one of the staff now and say, 'I'm feeling a bit low, any chance you can spare me ten minutes together?' (Jack, licencee)

As Jack came to perceive hostel workers as increasingly legitimate and trustworthy holders of power, his interactions with these people became

more friendly and frequent. This, in turn, provided hostel workers with valuable opportunities to offer help and advice to Jack, whether in the form of emotional support or assistance regarding accommodation and job applications. Essentially, legitimacy based on procedures provided solid foundations for building further legitimacy based on outcomes. This process – procedure-based legitimacy facilitating the development of constructive supervisory relationships, which, in turn, facilitated further legitimacy based on outcomes – was well captured by Brian, a member of hostel staff:

I think the best way of reducing risk and increasing the chances of public protection is spending time with residents and treating them respectfully in the first place. If you put in the groundwork and communicate properly with people, you're going to be able to have a much better relationship. And by having that, you can talk about their issues in much more depth and be able to help with lots of different things. (Brian, hostel worker)

While there seemed to be a clear link between high degrees of procedure-based and outcome-based legitimacy, the link between low degrees of procedure-based legitimacy and low degrees of outcome-based legitimacy was even stronger. Take Paul's case (discussed above), for example. As Paul approached his release date from prison he expected to be returning to his family home, because this is what his probation worker had informed him would happen. On his release, however, his probation worker instead told him he would be required to reside in a hostel. In other words, Paul had been provided with inaccurate information by his probation worker – one of the three main components of procedure-based legitimacy. Subsequently, the relationship between Paul and his probation worker deteriorated to the point at which Paul felt that he was being made to 'jump through hoops' by someone who enjoyed having him 'by the balls'. As a result, Paul decided to feign engagement in the supervision process by 'smiling' and 'nodding' – a good example of formal, rather than substantive, compliance with supervision (see Robinson and McNeill 2008). This effectively precluded the possibility of his probation worker garnering any meaningful degree of legitimacy based on outcomes, since it denied him the opportunity to hear about Paul's problems or concerns and respond with appropriate help and support.

There were, however, some instances in which licencees' perceptions of procedure-based legitimacy and outcome-based legitimacy did not mirror one another. An interesting example of this comes from the relationship between a licencee, Rob, and Joanne, his hostel keyworker. Rob spent much of our interview bemoaning the lack of progress that had been made regarding his move-on accommodation plans. The reason for this, he thought, was that Joanne had not bothered to fill in the relevant council application forms. While Joanne struggled to garner legitimacy based on outcomes, she, nevertheless, benefited from a high degree of procedure-based legitimacy because Rob felt she cared for him and treated him with respect. He, therefore, seemed to value Joanne's guidance and felt compelled to heed her advice not to hang around with certain residents whom she regarded as troublesome:

Like, she told me not to hang about with certain people, you know what I mean? Them who do drugs – so I don't ... they go out every day nicking stuff – I do without. (Rob, licencee)

Likewise, another licencee, Bradley, was disappointed by the lack of support he had received from his probation worker, Paula, in relation to finding employment. Paula nevertheless enjoyed a high degree of legitimacy that meant she was able to influence Bradley's attitudes and behaviour, because of the procedures that she adopted:

Interviewer: Are you working at the moment?

Not since I've come out [of prison]. I thought that would be something Paula would help me out with, but she hasn't done much to be honest.

Interviewer: And what do you think about Paula?

Can't complain mate. She's always been good with me, you know, speaks to me like I'm a decent person; not like some of the staff in here. She's wise; if she says something, I listen to her – we rub along well together. (Bradley, licencee)

A good level of procedure-based legitimacy, therefore, can act as a useful layer of insulation against instances in which outcomes are perceived to be unfair or ineffective. This is particularly important given that, in practice, supervisors typically have much less control over outcomes than they do over procedures. For example, while the supervisors involved in the current study could not guarantee finding employment or accommodation for their clients, they did have a high degree of control over the way in which they interacted with people on licence, as well as the extent to which they provided licencees with accurate and timely information.

While the theoretical framework presented in this article distinguishes between procedures and outcomes, in practice, this distinction was not always clear cut. Being listened to, for example, had an instrumental importance to a number of people on licence who believed that if supervisors listened to their views, they would be more likely to receive favourable outcomes. This resonates with the control model of procedural justice, which posits that people judge the fairness of procedures by the extent to which they provide some influence or control over the likelihood of receiving a fair outcome (Thibaut and Walker 1975). Gary, a hostel resident, provided a good illustration of this link between procedures and outcomes:

Although I completely understand and get that the authorities make the final judgment ... that, I would say, would be the main thing: for everybody to sit around a table, and discuss openly, and get the inmate involved ... You've had your voice heard, she's had her report, and he has had his. But that don't happen ... that's when the rifts start, because [licencees] will think, 'Well, what you got that on me for? But yet you haven't put it on him, and he has not got it'. (Gary, licencee)

As conceptualised in the theoretical framework presented in this article, outcome-based legitimacy concerns the actual outcomes that are achieved during post-custodial supervision. Licencees' perceptions of procedure-based legitimacy, however, are not always entirely isolated from

considerations around outcomes. Supervisors' motivations and intentions concerning outcomes also matter, as reflected through the adoption of procedures that can shape these outcomes, such as ensuring that licencees' perspectives are listened to and considered when making decisions. While supervisors have control over their motivations and intentions, they do not possess a similar level of control concerning outcomes – a factor that further reinforces the pivotal nature of procedure-based legitimacy in post-custodial supervision.

Finally, what of the instances in which supervisors were perceived by licencees as having a high degree of outcome-based legitimacy and a low degree of procedure-based legitimacy? The fieldwork data did not provide any examples of this occurring in practice. It might be tempting to attribute this to the relatively small sample of licencees involved in the current study. However, low levels of procedure-based legitimacy and high levels of outcome-based legitimacy are an implausible combination. This is because low levels of procedure-based legitimacy are generally associated with negative and infrequent contact between supervisors and licencees, which, in turn, makes the achievement of positive outcomes unlikely. In other words, the relationship between procedure-based legitimacy and outcome-based legitimacy appears to be largely unidirectional. Put simply, by facilitating or restricting the development of constructive supervisory relationships, legitimacy based on procedures can have significant knock-on effects in terms of facilitating or restricting further legitimacy based on outcomes. This is because constructive relationships enable probation and hostel workers to act as important sources of help and support for people on licence, which conversely cannot be the case when constructive supervisory relationships are lacking.

Conclusion

This article has provided an insight into post-custodial supervision in England and Wales, based on empirical data generated by fieldwork inside three Approved Premises. It introduces a theoretical framework based on the concept of legitimacy, designed to promote a better understanding of the dynamics of supervisory relationships. The framework distinguishes between legitimacy based on procedures and legitimacy based on outcomes, assigning pivotal importance to the former. It is important to highlight, however, that outcomes are not ultimately less important than procedures – far from it. Outcomes such as securing suitable accommodation and employment, increasing licencees' self-esteem, and improving licencees' relationships with family members and friends, are all desirable goals and represent some of the core criteria for gauging the success of post-custodial supervision. The point, however, is that supervisors are most likely to make a positive contribution to the achievement of these outcomes when they focus on establishing and maintaining a good level of procedure-based legitimacy. This is because procedure-based legitimacy facilitates constructive relationships, which, in turn, give supervisors ample opportunities to work toward desirable outcomes, whereas poor quality relationships do not.

The fieldwork data indicate that the majority of probation and hostel workers are successful in establishing constructive supervisory relationships based on good levels of procedure-based legitimacy. Nevertheless, there were numerous examples in the fieldwork where licencees had not been given accurate and timely information, had not been listened to, and had not been treated with dignity and respect. This is concerning given the difficulty of achieving positive outcomes during post-custodial supervision when a supervisor's procedure-based legitimacy is lacking. The implications for policy and practice are clear: a narrow focus on outcomes is likely to be counterproductive. Instead, a focus should be placed on developing and implementing policies and practices that will enhance the procedure-based legitimacy of supervisors. While it is beyond the purview of this article to consider the likely impact of the recent and sweeping changes to post-custodial supervision in England and Wales,[3] given these changes and the ever-increasing number of people who are leaving prison subject to periods of supervision, it is imperative that researchers continue to scrutinise policy and practice in this area in the coming years; the theoretical framework developed in this article is intended to inform and support the work of those wishing to do so.[4]

Notes

1 Under recent provisions enacted under the Offender Rehabilitation Act 2014, recall is decided by a magistrates' court if the alleged breach occurs during the extended supervision period.
2 At the time of writing the majority of recalls in England and Wales were either fixed-term recalls, whereby licencees were returned to prison for 28 days before being released to serve the remainder of their sentence on licence, or standard recalls, whereby cases were sent to the Parole Board automatically after 28 days and release was: (i) immediate; (ii) set within one year; or (iii) denied and a further review of the case was scheduled within one year.
3 For a detailed discussion of the Transforming Rehabilitation agenda, see Burke and Collett (2016); Evans (2016).
4 *Acknowledgement*: The research on which this article is based was funded by the Economic and Social Research Council (grant number ES/I901507/1).

References

Bazeley, P. and Jackson, K. (Eds.) (2013) *Qualitative Data Analysis with NVivo*, 2nd edn, London: Sage.

Beetham, D. (2013) *The Legitimation of Power*, 2nd edn, London: Palgrave Macmillan.

Bottoms, A.E. (2001) 'Compliance and community penalties', in: A.E. Bottoms, L. Gelsthorpe and S. Rex (Eds.), *Community Penalties: Change and Challenges*, Cullompton: Willan.

Bottoms, A.E. (2002) 'Morality, crime, compliance and public policy', in: A.E. Bottoms and M. Tonry (Eds.), *Ideology, Crime and Criminal Justice*, Cullompton: Willan.

Bottoms, A.E. and Tankebe, J. (2012) 'Beyond procedural justice: a dialogic approach to legitimacy in criminal justice', *Journal of Criminal Law and Criminology*, *102*(1), 119–70.

Brockner, J. and Wiesenfeld, B.M. (1996) 'An integrative framework for explaining reactions to decisions: interactive effects of outcomes and procedures', *Psychological Bulletin*, *120*(2), 189–208.

Burke, L. and Collett, S. (2016) 'Transforming Rehabilitation: organizational bifurcation and the end of probation as we know it?', *Probation Journal*, *63*, 120–35.

Burnett, R. and McNeill, F. (2005) 'The place of the officer-offender relationship in assisting offenders to desist from crime', *Probation Journal*, *52*(3), 221–42.

Crawford, A. and Hucklesby, A. (2012) 'Introduction', in: A. Crawford and A. Hucklesby (Eds.), *Legitimacy and Compliance in Criminal Justice*, Abingdon: Routledge.

Crewe, B. (2011) 'Soft power in prison: implications for staff-prisoner relationships, liberty and legitimacy', *European Journal of Criminology*, *8*(6), 455–68.

Digard, L. (2010) 'When legitimacy is denied: offender perceptions of the prison recall system', *Probation Journal*, *57*, 43–61.

Evans, E. (2016) 'The expected impacts of Transforming Rehabilitation on working relationships with offenders', *Probation Journal*, *63*, 153–61.

Ferdik, F.V., Wolfe, S.E. and Blasco, N. (2014) 'Informal social controls, procedural justice and perceived police legitimacy: do social bonds influence evaluations of police legitimacy?', *American Journal of Criminal Justice*, *39*(3), 471–92.

Glaser, G. (1998) *Doing Grounded Theory: Issues and Discussions*, Mill Valley, CA.: Sociology Press.

HM Prison Service (2012) *Parole, Release and Recall* (Prison Service Order, No. 6000), London: HMSO.

Hough, M., Jackson, J., Bradford, B., Myhill, A. and Quinton, P. (2010) 'Procedural justice, trust and institutional legitimacy', *Policing*, *4*(3), 203–10.

Hucklesby, A. (2013) 'Compliance with electronically monitored curfew orders: some empirical findings', in: A. Crawford and A. Hucklesby (Eds.), *Legitimacy and Compliance in Criminal Justice*, Abingdon: Routledge.

Kochel, T.R., Parks, R. and Mastrofski, S.D. (2013) 'Examining police effectiveness as a precursor to legitimacy and cooperation with police', *Justice Quarterly*, *30*(5), 895–925.

Kuhn, E. and Laird, R.D. (2011) 'Individual differences in early adolescents' beliefs in the legitimacy of parental authority', *Developmental Psychology*, *47*(5), 1353–65.

Layder, D. (1998) *Sociological Practice: Linking Theory and Social Research*, London: Sage.

Liebling, A. with Arnold, H. (2004) *Prisons and their Moral Performance*, Oxford: Oxford University Press.

Liebling, A. (2011) 'Distinctions and distinctiveness in the work of prison officers: legitimacy and authority revisited', *European Journal of Criminology*, *8*(6), 484–500.

Maguire, M., Peroud, B. and Raynor, P. (1996) *Automatic Conditional Release: The First Two Years* (Home Office Research Study 156), London: HMSO.

Maguire, M., Raynor, P., Vanstone, M. and Kynch, J. (2000) 'Voluntary after-care and the probation service: a case of diminishing responsibility', *Howard Journal*, *39*, 234–48.

Mair, G. and Mills, H. (2009) *The Community Order and Suspended Sentence Order Three Years On: The Views and Experiences of Probation Officers and Offenders*, London: Centre for Crime and Justice Studies.

Mazerolle, L., Bennett, S., Davis, J., Sargeant, E. and Manning, M. (2013) 'Procedural justice and police legitimacy: a systematic review of research evidence', *Journal of Experimental Criminology*, *9*(3), 245–74.

McCulloch, T. (2010) 'Realising potential: community service, pro-social modelling and desistance', *European Journal of Probation*, *2*(2), 3–22.

McIvor, G. (1992) *Sentenced to Serve: The Operations and Impact of Community Service by Offenders*, Aldershot: Ashgate.

McNeill, F. and Robinson, G. (2012) 'Liquid legitimacy and community sanctions', in: A. Crawford and A. Hucklesby (Eds.), *Legitimacy and Compliance in Criminal Justice*, Cullompton: Willan.

Ministry of Justice (2011) *Licence Conditions, PI 07/2011*, London: HMSO.

Ministry of Justice (2012) *Licences and Licence Condition, PSI 40/2012*, London: HMSO.

Ministry of Justice (2014) *Approved Premises Manual: Second Revision*, London: HMSO.

Ministry of Justice (2016a) *Offender Management Statistics Quarterly Bulletin, England and Wales: July to September 2015*. Available at: *http://www.gov.uk* (accessed 9 October 2016).

Ministry of Justice (2016b) *Proven Re-offending Statistics Quarterly Bulletin, 2013, England and Wales*. Available at: *http://www.gov.uk* (accessed 9 October 2016).

Murphy, K. (2015) 'Does procedural justice matter to youth? Comparing adults' and youths' willingness to collaborate with police', *Policing and Society*, 25(1), 53–76.

National Offender Management Service (2014) *Post-sentence Supervision Requirements*. Available at: *http://www.gov.uk* (accessed 9 October 2016).

Nellis, M. (2012) 'Implant technology and the electronic monitoring of offenders: old and new questions about compliance, control and legitimacy', in: A. Crawford and A. Hucklesby (Eds.), *Legitimacy and Compliance in Criminal Justice*, Cullompton: Willan.

Nurse, J., Woodcock, P. and Ormsby, J. (2003) 'Influence of environmental factors on mental health within prisons: focus group study', *British Medical Journal*, 327, 480–3.

Padfield, N. (2010) 'England and Wales', in: N. Padfield, D. van Zyl Smit and F. Dünkel (Eds.), *Release from Prison: European Policy and Practice*, Cullompton: Willan.

Padfield, N. (2016) 'The magnitude of the offender rehabilitation and "through the gate" resettlement revolution', *Criminal Law Review*, 2, 99–115.

Padfield, N. and Maruna, S. (2006) 'The revolving door at the prison gate: exploring the dramatic increase in recalls to prison', *Criminology and Criminal Justice*, 6(3), 329–52.

Petersilia, J. (2003) *When Prisoners Come Home: Parole and Prisoner Reentry*, Oxford: Oxford University Press.

Raynor, P., Ugwudike, P. and Vanstone, M. (2014) 'The impact of skills in probation work: a reconviction study', *Criminology and Criminal Justice*, 14(2), 235–49.

Reisig, M.D., Tankebe, J. and Mesko, G. (2014) 'Compliance with the law in Slovenia: the role of procedural justice and police legitimacy', *European Journal of Criminal Policy and Research*, 20(2), 259–76.

Robinson, G. and McNeill, F. (2008) 'Exploring the dynamics of compliance with community penalties', *Theoretical Criminology*, 12(4), 431–49.

Robinson, G. and Ugwudike, P. (2012) 'Investing in "toughness": probation, enforcement and legitimacy', *Howard Journal*, 51, 300–16.

Schutz, A. (1962) *The Problem of Social Reality: Collected Papers I*, The Hague, The Netherlands: Martinus Nijhoff.

Shapland, J., Bottoms, A., Farrall, S., McNeill, F., Priede, C. and Robinson, G. (2012) *The Quality of Probation Supervision: A Literature Review* (Occasional Paper 3), Sheffield: University of Sheffield Centre for Criminological Research.

Siegrist, M., Connor, M. and Keller, C. (2011) 'Trust, confidence, procedural fairness, moral conviction, and the acceptance of GM field experiments', *Risk Analysis*, 32(8), 1394–1403.

Sparks, R. and Bottoms, A.E. (2008) 'Legitimacy and prison revisited: some notes on the problem of order ten years after', in: J.M. Byrne, D. Hummer and F.S. Taxman (Eds.), *The Culture of Prison Violence*, Boston, MA.: Pearson.

Strauss, A. (1987) *Qualitative Analysis for Social Scientists*, Cambridge: Cambridge University Press.

Sunshine, J. and Tyler, T.R. (2003) 'The role of procedural justice and legitimacy in shaping public support to policing', *Law & Society Review*, 37(3), 513–47.

Tankebe, J. (2009) 'Public cooperation with the police in Ghana: does procedural fairness matter?', *Criminology*, 47(4), 1265–93.

Tankebe, J. (2013) 'Viewing things differently: the dimensions of public perceptions of police legitimacy', *Criminology*, 51(1), 103–35.

Tankebe, J. and Liebling, A. (Eds.) (2013) *Legitimacy and Criminal Justice: An International Exploration*, Oxford: Oxford University Press.

Thibaut, J. and Walker, L. (1975) *Procedural Justice*, Hillsdale, NJ.: Erlbaum.

Travis, J. and Crayton, A. (2009) 'Offender reentry', in: J.M. Miller (Ed.), *21st Century Criminology: A Reference Handbook*, Thousand Oaks, CA.: Sage.

Travis, J. and Petersilia, J. (2001) 'Reentry reconsidered: a new look at an old question', *Crime & Delinquency*, *47*(3), 291–313.

Trotter, C. (2009) 'Pro-social modelling', *European Journal of Probation*, *1*(2), 142–52.

Tyler, T.R. (1990) *Why People Obey the Law*, Princeton, NJ.: Princeton University Press.

Tyler, T.R. (2006) 'Psychological perspectives on legitimacy and legitimation', *Annual Review of Psychology*, *57*, 375–400.

Tyler, T.R. and Fagan, J. (2008) 'Legitimacy and cooperation: why do people help the police fight crime in their communities?', *Ohio State Journal of Criminal Law*, *6*, 231–75.

Tyler, T.R. and Huo, Y.J. (2002) *Trust in the Law*, New York, NY.: Russell Sage Foundation.

Weaver, B. and Barry, M. (2014) 'Managing high risk offenders in the community: compliance, cooperation and consent in a climate of concern', *European Journal of Probation*, *6*(3), 278–95.

Weber, M. (1918a [1968]) *Economy and Society*, Vol. I: G. Roth and C. Wittich (Eds.), Berkeley, CA.: University of California Press.

Weber, M. (1918b [1968]) *Economy and Society*, Vol II: G. Roth and C. Wittich (Eds.), Berkeley, CA.: University of California Press.

Wood, M., Cattell, J., Hales, G., Lord, C., Kenny, T. and Capes, T. (2015) *Reoffending by Offenders on Community Orders: Results from the Offender Management Community Cohort Study*, London: HMSO.