SELF-GOVERNANCE OR PROFESSIONALIZED PATERNALISM?

The Police, Contractual Injunctions and the Differential Management of Deviant Populations

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Contractual injunctions have emerged as key instruments of social control. They provide agencies such as the police with unique powers to manage deviant persons by forcing the recipients, via the threat of criminal sanction on breach of the injunction, to engage in self-control of their behaviour. This article develops understandings of how contractual injunctions are actually used in practice by the police. Analyses of the different ways contractual injunctions are directed at certain social groups are developed in relation to police occupational cultures that place limits and possibilities on their application. It concludes by locating the broader social effects of contractual injunctions with issues of urban marginality and growing powers to criminalize social predicaments.

Keywords: contractual injunctions, responsibilization, self-governance, criminalization, police occupational culture

Introduction

The use of contracts as methods of dealing with criminal and anti-social behaviour has disturbed many traditional conceptions of punishment. Rather than dealing with acts that infringe the criminal law through due process, trial and related juridical dictates, contracts resort to the civil law as a method of inducing compliance in deviant persons. These regulatory forms have focused on inducing compliance without necessarily applying the law as a formal social control mandate, commonly using the law as a surround vehicle to instil self-control in the recipient. In the United Kingdom, the Anti-Social Behaviour Order (ASBO), Anti-Social Behaviour Contract (ABC) and a host of similar regulatory mechanisms have provided both criminal and non-criminal justice agencies with a gamut of powers to tackle low-level incivilities.

Recent work has begun to address the growth in contracts as methods of dealing with deviant behaviour in nations including the United Kingdom (Crawford 2003; Burney 2005; Squires and Stephen 2005; von Hirsh and Simester 2006) and the United States (Flanagan 2003; Beckett and Herbert 2008).

Since the 1980s, the governance of social life through the model of contract has expanded rapidly both as a rhetorical gesture and as a substantive tool for regulating deviant behaviour across many areas of social policy (Vincent-Jones 2000; Sol and Westerveld 2005; Zumbansen 2007). Within criminology, the nature of contractual injunctions has been closely tied with debates about responsibilization (O’Malley 1992; Garland 1996; Crawford 2003; Mackenzie 2008) that claim that the bygone idea of the state dictating the conditions of social control has given way to an increasing emphasis upon ideas of self-regulation and self-help. According to Rose (1999), responsibilization utilizes the language of freedom within the political frame of neo-liberalism as a mechanism through which to persuade and align individuals, as opposed to directing them in quasi-paternalistic ways. Emphasis on ideas of self-regulation implies that individuals are controllers of their own lifestyles and fates, able to make reasoned choices and take steps to change their behaviour. Contractual
ASBOs are civil orders granted by the courts to pose contractual restrictions upon the adjudged ‘anti-social’ elements of an individual’s behaviour. The courts frequently draw a list of the behaviours in need of restriction based on the evidence and may impose a time period for the duration of the ASBO, depending upon the perceived risks to public safety. A breach of an ASBO can warrant a custodial sentence. ABCs are voluntary contracts signed between individual and agency/s, which, like the ASBO, draw up a list of prohibitions and incentives to comply with the contract. Whilst the contracts are voluntary, refusal to sign can often be treated as the individual being purposefully resistant to help, which can sometimes lead to alternative forms of social control being used.

I acknowledge the role played by housing officers in the social control of tenants, but focus specifically on the role of the police during this article.

By young adults, this commonly consisted of male populations aged between 18 and 30 (see also Appendix).
application of the self-regulatory logics, adjoining these with appropriation of victim and community protection discourses that are used to add legitimacy and limit resistance from welfare-orientated agencies.

The article will begin by addressing the reasons behind the growth of contractual injunctions as mechanisms for inducing social control, considering their expansion in accordance with traditional judicial forms of punishment, as well their effects in codifying behaviours separate but analogous to crime and anti-social behaviour. Then follows an analysis of fieldwork data drawing on 204 qualitative case studies gathered from ethnographic fieldwork looking at the decision-making processes amongst police and other social control agencies using contractual injunctions, including interviews with actors from these forums. The article concludes by situating the use of contractual injunctions within debates about the resource-stretched and dwindling existence of community service provision, arguing that the proliferation of contractual injunctions can be used to both enforce mandatory service response and serve as futile tools to instil compliance in ‘hard to change’ persons.

**Contractual Injunctions and Self-Governance**

Several authors charting the growth of contractual modes of social control (Matthews 1988; Nelken 1988; Crawford 2003) have recognized how the ethos of self-governance has emerged as a social practice used to activate subjects to become self-governing actors—to recognize the root of their wrongful behaviour and enact self-control in line with varying prohibitions and incentives. Despite claims that contractual injunctions are largely about prohibiting the activities and routines of the recipient—which can often contribute to increasing their chances of being criminalized—the legitimacy for their usage has been inspired by neo-liberal values of self-governance that place the recipient as controller of their behaviour and activities. To paraphrase Crawford (2003), contracts are a metaphor for ‘regulated self-regulation’ (p. 488), activating social control as a mode of self-governance in the shadow of potential legal sanctions. Contractual injunctions recognize the active ‘choice’ of the recipient as a rational being able to change their behaviour, persuading and aligning them to comply with agencies of social control. As Crawford posits:

Given the language of choice, autonomy, and voluntariness, in which contracting is couched, the failure of a given party to adhere to their self-imposed and agreed part of the bargain, means that they have failed themselves—by breaking their own promise—as well as their obligations to others. (Crawford 2003: 503)

Based upon liberal rationalities of rational-choice and utilitarian calculation, contractual injunctions are premised on modification of behaviour through forms of individual deterrence as quasi forms of prevention. Rather than jumping directly to the use of juridical sanctions, contractual injunctions are seen as ‘preventive’ by aiding the recipient to comply and thus avoid judicial consequences through breach. The recipient is adjudged to have a choice to change, supported by the opportunity to understand the consequences of their behaviour and practise self-control. Contractual injunctions have subsequently been considered less punitive forms of response towards anti-social behaviour and low-level offending, granting the recipients the opportunities and abilities to take control of their lifestyle and behaviour in ways which appear conducive to normal forms of civility. As the following governmental definitions of contractual injunctions illustrate:
The main aim is to lead perpetrators towards recognition both of the impact of their behaviour, and of the need to take responsibility for their actions. For this reason it is important that the individual should be involved in drawing up the contract. (Home Office 2007: 2)

Whilst an ASBO is indeed likely to prohibit specific anti-social actions, it can prohibit any action judged as necessary to prevent further ASB. It can thus include, for instance, prohibitions against entering particular areas, congregating with particular people, or even wearing particular items of clothing. (House of Commons Select Committee 2005: 63)

Although the liberal rationalities of contractual injunctions have certainly been dominant in terms of the overall framing of their social control operatives, it is argued that conventional forms of tutelage are also employed in correcting people or, in the words of Elizabeth Burney, ‘making people change’ (Burney 2005). This has emanated from the wider politics of anti-social behaviour (e.g. Home Office 2003; Respect Task Force 2006) associated with conventional forms of class control and moderation of ‘bad culture’ resonating from historical framings of the respectable/non-respectable working classes (Garrett 2006; Gillies 2008).

The uses of contractual injunctions as methods of social control have grown considerably during the past decade. Home Office data on the uses of ASBOs show a significant rise from 104 orders in 1999 to a peak of 4,122 in 2005 (Home Office 2007). Data on the uses of ABCs show a similar increase from 4,946 in 2003/04 to 7,500 in 2005/06 (Respect Task Force 2007). Parenting contracts stipulating conditions for parents of anti-social children to follow have also increased from 652 orders in 2003/04 to 2,268 in 2005/06. These increases can be explained largely by the state’s successive publicity campaigns from 2003 onwards, which have influenced local authorities, including police and housing associations, to make greater use of contractual injunctions as important regulatory tools against low-level crime and disorder (see Burney 2005; Crawford 2009). Research on the use of ASBOs in England and Wales has shown that 55 per cent of orders are breached (NAO 2006), with approximately 46 per cent of all breaches resulting in a custodial sentence (Campbell 2002). This has raised serious questions regarding their capacities for ‘net widening and mesh thinning’ (Cohen 1985), supplementing (and not replacing) existing forms of punishment such as imprisonment, fines and community penalties, as well as further compounding social divisions and inequality by concentrating on familiar folk devils such as disadvantaged young people, the mentally ill and substance addicts. It is no coincidence that the proliferation of contractual injunctions has developed in tandem with changes in the composition of urban poverty, criminalization of marginal populations and gentrification of urban spaces. As a number of studies have illustrated, removal of ‘undesirable’ persons from spaces of consumption has been a common tactic used by the police and a range of private security agencies through curfew-based and related spatial ordinances (Shearing and Stenning 1985; Coleman and Sim 2000; Harcourt 2001; Bannister et al. 2006; Herbert 2008; Beckett and Herbert 2010).

The difficulty for the police in dealing with socially marginal groups such as the homeless and those with substance misuse and mental health problems is that often their behaviour consists merely of minor public order infractions and therefore beneath the level of criminal sanction and possible custodial penalty. Contractual injunctions are commonly used to counteract this difficulty by removing socially
marginal populations from the streets, particularly through tools such as ASBOs, which link together the framework of a civil contract with criminal ramifications on breach. As research on the use of ASBOs has highlighted, orders have been used disproportionately against homeless persons, socially disadvantaged young people and those with mental health and substance misuse problems (Fitzpatrick and Jones 2005; Hunter and Nixon 2008). Home Office research has also found that 60 per cent of ASBO recipients had known mental health, learning difficulties and substance addictions (Campbell 2002). As such, the application of contractual injunctions suggests more about the difficulty in understanding the needs of these ‘urban outcasts’ (Wacquant 2007) by choosing to bypass their often complex social problems through mentalities of rational-choice behaviour.

Within the field sites on which this article is based, drug and alcohol clinics, mental health services and supportive accommodation were either unavailable or massively over-subscribed, with waiting lists as long as 18 months. Although hostels and drop-in centres were available, these often had strict conditions for clients to not use drugs or alcohol on entrance, as well as only serving as short-term solutions to accommodation. The tenuous use of contractual injunctions as a method of dealing with the ‘outcasts’ of the urban populace were undoubtedly spurned by the difficulties in adequately supporting many persons with genuine social and psychological needs. In some cases, police officers would openly admit to charging an individual in order to get them into drug support services or mental health support through referral to probation and youth justice services (see also Evans and Puech 2001; Phoenix 2006).

It is argued during this article that there are two essential ways in which contractual injunctions are implemented, differing in relation to two main groups—young people and marginalized adult groups with drug/alcohol and mental health issues. For the latter groups, the liberal rationales of contractual injunctions tended to be more strongly emphasized in justifying their use amongst decision makers, notably police officers. This focuses on the capacities for moderating behaviour, acknowledging the complexity of behavioural predicaments and slim chances of overall reform. For young people, the police and other agencies adopt responses akin to paternalistic practices, modifying behaviour through the belief that the persons can change. This embodies an ideological commitment to conventional tutelary ideologies associated with correcting perceived cultural deficiencies caused by parenting and disorderly community environments.

Data

The data forming the arguments of this article were collected during ethnographic fieldwork that took place between April 2006 and September 2008. The fieldwork consisted of observing decision-making interactions (case-conference panels) between different agency professionals based in two outer-London locations. These multi-agency forums generally consisted of operational professionals with ‘hands-on’ rather than administrative relationships with their clients. Two hundred and four total case studies were observed during the decision-making panels, mainly consisting of individuals involved in low-level offending and anti-social behaviour. The cases were tracked and analysed over several months, thus allowing updates and new information to be included. Further observations were also carried out with individual agencies, including the shadowing of professionals such as police officers and social workers.
An additional 25 interviews were also carried out with a broad cross-section of professionals from across agencies, ten of which included police officers. Over the course of the fieldwork, the author was engaged in overt observation of a range of settings. Following Van Maanen’s (1978) typology of researcher roles, this consisted mainly of the position of ‘fan’ involving passively listening and recording information. Initially, this started with permission from the managers of the police anti-social behaviour units to attend case-conference meetings under the condition that places and client details were made anonymous. The fieldwork was carried out on a full-time basis, which usually meant informal discussions with professionals weekly or fortnightly. It should be mentioned that in both locations, the author was involved in carrying out other research projects carried out for the police and other agencies that were initially separate to the fieldwork informing this article. The contact with a range of professionals undoubtedly influenced the acceptance of my research, substantially increased trust relations and supported access to a range of materials that would perhaps have been otherwise obstructed.

The original decision to select two areas (Shore Acres and Hobart) was to increase the generalizability of the findings by selecting two contrasting areas in order to assess the similarities and differences in the use of contractual injunctions. Both areas were of similar demographic profiles—primarily white, British, but with several deprived neighbourhoods. The areas differed in terms of service provision and infrastructure, with Hobart having a well established number of policing and social work teams operating in terms of outreach provision, compared to Shore Acres, which was developing these services during the period of the fieldwork. These initiatives mainly directed attention towards young people ‘at risk’ of criminality or adults perceived as ‘vulnerable’ by way of drug, alcohol and mental health problems. Although the programmes had no precise structures or guiding principles, their origins can be traced to the influences of ‘community policing’ and the development of ‘multi-agency’ working from the mid 1990s (Crawford 1997; Gilling 1997; Hughes and Edwards 2002). In both locales, this appeared to reflect similar working responses to other areas in England and Wales, which, at the time of writing, were undergoing reform of working practices under the framework of Neighbourhood Policing (Home Office 2004; 2010). This included closer links between agencies and local policing teams regarding the use of contractual injunctions, as well as forming wider links with the community in terms of responding to local concerns.

Multi-agency case conference meetings included a range of professionals from agencies such as the police, housing landlords, mental health services, social services, youth agencies and substance-misuse teams who would meet monthly to exchange information about the referred individuals and attempt to devise interventions that could forestall or divert them from the criminal justice system. Although no formal legal powers were invested in the multi-agency panels, decisions could be used to secure enforcement action in the form of juridical or welfare-based sanctions through the mandate of an individual agency, meaning that a single agency would take action on behalf of the case-conference panel. As forthcoming data will illustrate, the police were by far the common purveyor of taking formal action compared to any other agency, complementing similar findings from elsewhere that have argued that multi-agency forums tend to be dominated by the police (Foster 2002; Skinns 2008).

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4 The police were involved in every case involving the use of contractual injunctions, as well as the agency referring the most individuals to the case conference meetings (77 per cent in Hobart and 59 per cent in Shore Acres).
Paternal Instincts and Occupational Cultures

The process of persuading the individual to engage in self-control of their behaviour is often one that involves a clear paternalistic edge. Although it has been argued that contractual injunctions are largely symbolic rather than about tangible forms of inducing behavioural change (Crawford 2009), I argue that the police use contractual injunctions in different ways towards ‘changeable’ groups such as young people compared to ‘non-engaging’ or ‘irredeemable’ groups such as the homeless, drug addicts, alcoholics and the mentally ill. Whereas young people are more commonly ‘acted over’ paternalistically in order to ‘change’ their behaviour for the good, the problems of homeless and related groups are often simplified and glossed over to over-emphasize the rational-choice logics of contractual injunctions in order to secure a transparent justification to punish.

Police occupational culture and the logics of contractual injunctions can sometimes seem at odds with one another. Whereas contractual injunctions place the onus on the recipient to change through norms of self-governance, the police more commonly operate within a culture of ‘changing’ persons through dictation of the rules of engagement, including their legitimate use of force. Police work during recent years has been affected by a range of factors, including managerialist changes (McLaughlin 2005), the proliferation of multi-agency partnerships (Hughes et al. 2001; Hughes and Edwards 2002) and the growth of investigative technologies associated with ‘risk management’ (Ericson and Haggerty 1997). There have undeniably been major changes to the organization of the police both at management and street levels, as well as posing resistances and reformulations of the traditional cultures of policing (see Loftus 2008; 2010). Specific to the topics on which this article is based, the impact of state initiatives associated with the Respect Agenda (Respect Task Force 2006), as well as implemented guidelines from the Association of Chief Police Officers (ACPO 2008), has created a shift towards the police adopting a set of youth engagement-style policies such as setting up mentoring schemes and diversionary programmes. Whilst there were certainly positives to these types of roles, the implementation during the field sites was clouded by criminalization and tutelary social controls against many young people.

There often exists a fine line between informal advice provided by a police officer and the tacit consensus achieved through such relationships well before the law and other repressive instruments are brought into play. Ignorance of such advice not only taints the informal nature of the relationship between client and officer, but challenges a wider component of police occupational culture, namely their service moralities. As Herbert (1997: 142–3) writes, ‘morality helps officers derive an internal sense of justification and coherence, how it helps them understand and value the various actions they undertake’ (author’s emphasis). Indeed, as Maynard-Moody and Musheno (2003: 94) add, enforcers of law ‘are producers of values and character that embody mainstream notions of moral worth and productive membership in society’.

Whereas some police officers manage their relationships more effectively in terms of making their intentions overt to the young person and maintaining professional distance in ‘befriending’-type situations, there exist a number of tensions with these exercises of informal support.

Police officers (mainly male officers) often view young people as requiring informal forms of discipline and direction in cases in which there is no immediate father figure in the household. Other officers would take it upon themselves to chaperone young

5Tables providing quantitative data as a supplement to the qualitative details can be found in the Appendix section of this article.
people around, providing them lifts to venues, taking them to the local youth club and conducting home visits to speak to the parent/s about the young person’s behaviour. These practices are both facilitated and encouraged by the occupational mandate of the police as seldom concerned with the individual changing their ways per se, but rather with the ways individuals listen and respond to the advice given to them by officers. As a host of studies have illustrated (Fielding 1994; Herbert 1997; Reiner 2000), the police cultivate strong moral beliefs about both the desirability of individuals embodied with upholding principles of ‘justice’ and moral righteousness. This corresponds closely to a sense of mission as a by-product of police work whereby the vocational features of policing as ‘more than a job’ also activate dedication towards ‘working on’ young people as a form of ‘project’. There may be psychotherapeutic benefits for officers to do this—both enhancing what they see as their mission to ‘change people’, as well as perhaps also fulfilling what they perceived as an important credential in their own upbringing. These types of narrative were expressed in half of all interviews carried out with male officers, often articulated through personal anecdotes:

My parents always taught me the importance of respect. I see part of my job as enforcing this in the kids I deal with as many of them just don’t seem to have any these days. (Interview with Dave, Police Officer)

This aspect of mission involves officers transferring their skills about changing whom they consider to be ‘redeemable’ or ‘save-able’ persons—strategies that can often transgress their own service roles to help support individuals ‘beyond the call of duty’ (Maynard-Moody and Musheno 2003, especially p. 92). Going ‘beyond the call of duty’ to help a particular young person may render positive results for both parties if the relationship and intervention turn out to be productive and consensual ones. At the same time, such relationships that exist ‘beyond the call of duty’ have the potentials to infringe the police officers’ own working credo regarding the clients’ take-up of the advice and adoption of the terms of the relationship. The ramifications of such an event are described in the case below in which the police acted in the ‘best interests’ of a client by placing an ASBO on them in order to regulate their associations with known assailants, as well as place prohibitions on entering certain geographic spaces. Although these types of responses were generally uncommon with the use of ASBOs (16 per cent of total cases), there were specific issues of tutelary control evident in response to young people:

Tracy—an 18 year old girl living in Shore Acres—had been given an ASBO following regular disturbances in the town centre in which she and a group of men would regularly shout abuse at passers-by and drink in and around the bus depot. Tracy had been a regular at the local courts for petty offences such as shoplifting and drunken behaviour, but had persisted with such behaviours for several months following her reprimands by the court (usually a referral with the youth justice service or a community penalty). Arguably the trigger to Tracy’s ASBO was this very fact that the police had so far been unable to adequately deal with her behaviour, which from the police’s point of view of now required some kind of formal power to challenge her behaviour and ‘make her change’. Kate, the police officer making the initial ASBO referral, presented Tracy as ‘spiralling out of control very quickly’ suggesting the need to intervene quickly because of her involvement with several ‘undesirable’ males in the town centre whom Tracy would frequently drink alcohol
Kate concluded to the case-conference group that ‘the ASBO would be in her own best interests, in order to keep her away from the group of men whom she was hanging around drinking with’. There seemed to be complete agreement from most of the other agency representatives around the table, including both drug support workers and social workers. (Field notes—case-conference discussion)

In the above case, none of the other men received any formal intervention, suggesting that the decision reflected some degree of chivalry and paternalism by the police. A week after the above case involving Tracy, she breached the order that rather than leading to the police pursuing an instant court date led to them adopting a defensive stance in protecting their own decision to pursue an ASBO as an alleged deterrent for Tracy to discontinue her anti-social behaviour:

Kate, the police case-builder gave her verdict on Tracy’s breach as ‘just testing the water on her ASBO’, adding that they would continue to monitor her but not necessarily haul her into court again on the next breach. She added, ‘It [ASBO] is to protect people who use the town and protect Tracy who is out drinking with many undesirables’, admitting that she was concerned about the welfare of Tracy, particularly her contacts with several of the core town alcoholics. Several weeks after, Tracy’s behaviour was reported to be declining, however not due to the ASBO, but rather recent news of being pregnant and the fact that she had secured some housing. (Field notes—case-conference discussion)

Justifications for ‘taking action’ as shown in the above account can often be driven by the amount of time and effort invested in trying to divert the individual away from the criminal justice system, creating a sense of vindictiveness amongst police officers who can view the non-engagement of the individual as ‘throwing back in their faces’ all the hard work invested in them. Client ‘failures’ create challenges for agencies such as the police to make sense of and to justify responses in terms of their service functions. A frequent adaptive response involved re-configuring the terms of contracts beyond the unwritten help and services invested via agencies of social control, towards a simple invocation of the basic terms of the contract as a mechanism for self-control that the recipient must obey or face possible criminal charges. Amongst groups with known substance misuse problems, without stable accommodation, and sometimes with mental health problems, the aims of using contractual injunctions were far more pessimistic. Instead of the paternalistic zeal that was often enacted upon young people believed to be ‘changeable’ or more easily diverted from criminality, the above groups were recognized as difficult, if not impossible, to change, with their street behaviour such as drinking and rough sleeping instead conceived as ‘problems’ to be moderated rather than modified.

*From Behavioural Modification to Behavioural Moderation*

Although paternalistic practices structure many of the uses of contractual injunctions amongst young people, different guiding values were evident with vulnerable adult groups, namely those with ‘complex’ lifestyles such as homeless populations, drug addicts and street drinkers. Rather than change such persons, who are often viewed as difficult to change or moreover ‘irredeemable’ in certain cases, contractual injunctions are used to moderate behaviour in ways that remove the individuals and their actions to spaces outside the view of the everyday public. The idea of moderating behaviour,
rather than necessarily ceasing or changing, challenges the police to redefine notions of success pertaining to their everyday functions as purveyors of the social order. In the wake of wider shifts in penality from rehabilitation to managing and containing risk (Feeley and Simon 1992; Lynch 1998), police emphasis on moderating rather than removing deviant persons reflects a similar acknowledgement of its limitations and realistic social control capacities. Contractual injunctions are theoretically designed to prevent persons engaging in deviant behaviour by placing conditions on their behaviour designed to be enforced by the recipient as much as the police. Although prevention has a long history as a key principle of police work, which can exist in conflict with ideological commitments to ‘crime fighting’, these two dimensions are complementary rather than contradictory features of police work, especially when understood through the application of contractual injunctions. During every interview carried out with police officers, the goals of prevention were intrinsically linked to police powers to banish and remove troublesome individuals related to ‘crime-fighting’ ideologies:

I will read the paper a lot and I will see that people will often say what is the point of ASBOs? Because there is a 60–70% failure rate and it is a tool which has been given by the government to use and it does not work. Rip it up, give it something else. Works brilliantly. When you look at getting an ASBO, that person has committed an awful lot of anti-social behaviour and criminal offences to earn that so to speak. They will probably come to our attention on a four to five time per week basis. Then eventually they get themselves an ASBO. With the teeth that the legislation has, that person knows if they breach that ASBO then they are probably looking at quite a severe punishment, often custodial. It prevents. So when you do get slips it maybe one in three months, one is six months, but I would sooner say to my public well we have got that and its reducing. (Interview with Neil, police officer)

Whereas banishment and removal are often by-products of these forms of criminalization, the role of the police can often be structured by its resource limits as much as its potential powers of exclusion and banishment. This is often packaged through a sense of benevolence such as ‘giving the recipient the opportunity to change’ rather than resorting to the criminal law as a tool of first resort. However, during interviews and observation of police meetings regarding the policing of persons on contractual injunctions, the role of the police was considered to be one of moderation—structuring the individual’s use of space and lifestyle in ways that were seen as facilitating their own recognition of their deviant behaviour:

That’s where you get your prohibitions from. Not ‘they’re drunk, let’s stop um drinking’. Actually that’s probably not going to help, but if you stop them drinking in areas where it is perceived as a problem and they go and drink somewhere else where they are not a problem then why stop them drinking in the whole of Hobart? And it helps them, it gives them a bit of control. But it is not unattainable for them to live with that prohibition ...non associations are great cos with a lot of these people they can’t see that actually their relationship with this other person is actually detrimental and why they are getting into trouble, or they are not strong enough to break away from it. It probably isn’t fair, but when the evidence is there then it is very easy to ask the court what you want. They [recipients] are all told that. (Interview with Kate, police sergeant)
The police as moderators of behaviour features as a common response towards ‘problematic’ groups such as street homeless, substance addicts and those with mental health problems. The ideological sense this creates for police officers is often driven by structural limitations regarding the availability of a range of social services to deal with the problems pertaining to the social groups described above. Such limits consist not merely of police resources per se, but also the lack of secure, long-term social services that may have previously housed and supported many individuals receiving contractual injunctions such as ASBOs. Although this was an issue that was more commonly raised amongst social workers and voluntary staff running hostel facilities, it was also a view expressed by 10 per cent of the sample of police officers interviewed and discussed in 62 per cent of cases, consisting mainly of professionals who worked in the same community for a long period of time:

Lyn (police officer): From a police point of view sometimes the only way we can get someone to take notice if someone is an issue is to push them through the court process because that will then link in with a certain amount of support services.

DM: So it pays to criminalise them in a way [laughs].

Lyn: I know, I know. It’s terrible really. (Interview with Lyn, police officer)

The police, conscious of the realities of over-stretched or unavailable support services, often use contractual injunctions as a futile method that attempts to ‘empower’ individuals to become controllers of their own behaviour as a feature of their own reform as much as a potential form of sanction on breach. In many situations, those with complex lifestyles, such as the street homeless and drug users, unsurprisingly ‘failed’ to moderate their behaviour. As such, contractual injunctions were simply invoked as more transparent legal mechanisms for proving lack of compliance, enabling methods of banishment to conveniently bypass the complexities of socially marginal groups by removing them from the area or imprisoning them for breach of their injunction (Beckett and Herbert 2010).

Self-Governance as a Blaming Device

Modifying or moderating behaviour through the use of contractual injunctions can also have a wider effect in blaming the recipient in ways that employ simplistic rational-choice assessments of behaviour. Contractual injunctions are theoretically designed to be preventive in providing the recipient with the opportunities to change. The transparency of the process behind the use of contractual injunctions allows breach to be conceived as simply the recipient ‘choosing’ not to comply. As Maynard-Moody and Musheno (2003) have argued, in responding to clients deemed ‘unworthy’, street-level bureaucrats become rigid rule followers in seeking to make their judgments to punish a client watertight and transparent in order to avoid the possibilities for resistance and challenge from other agencies (Emerson 1969; Feeley 1979; Lipsky 1980; Hawkins 1992, amongst others). Where the limits of the agencies’ capacities to control behaviour are under question and the behaviour of the individual is seen as worsening, ideologies of self-governance become stronger and are more commonly utilized as strategies that displace blame from agencies and place responsibility on the recipient. Changing persons through the values of paternalism starts to give way to persons changing
meaning that ideas of self-governance become primary shapers in the articulation of blame and culpability. In 22 per cent of cases, the needs of individuals were strategically sidelined and often set up to fail:

You try everything you can, but at the end of the line is the enforcement route. I think there have been a few over the years, not many, but a few where you work your way through the various bits of engagement work, then you get to a point where the only thing that is left is the enforcement and they get locked up. You can’t do anymore really. You have tried to offer them this, you have tried to offer them that, and they don’t want to play, so there is not a lot else apart from sending the boys round. Then they end up with a three month sentence, or a year sentence and you just think, ‘ah well’.... (Interview with Vicky, police sergeant)

We don’t have hundreds of ASBOs, we are back down to small numbers so we can regulate them properly. People don’t get away with breaching their ASBOs .... It’s an easy arrest as well .... My experience is that most of them breach because of who they are [background etc]. (Informal interview with Kate, police antisocial behaviour coordinator)

At the same time as the bifurcated tensions between these two positions—changing persons or persons-changing—police officers become conscious of finding external sources of legitimacy and justification for their decisions to take enforcement action against persons construed as not changing their behaviour in accordance with their contractual injunction. During case-conference meetings and often documented in the local news media thereafter, the police commonly drew upon a set of narratives that invoked notions of ‘community impact’ and ‘public protection’ in taking enforcement action against individuals. This was often combined with a sense of inevitability regarding the person not changing, giving the police ‘no choice’ but to serve an ASBO:

Liz (housing officer): Tony is just completely chaotic. He was evicted last week and is not engaging with me. He has been sleeping rough in the town and been shouting abuse at people.

Kate (police sergeant): Would the ASBO route work?

Liz: He would just breach it to be honest.

Kate: Maybe just a case that he goes inside then [prison].

Trisha (police officer): I’m not sure what we can do with him.

Kate: We need to protect the public. I think the ASBO would be the best path. [Nods of agreement from professionals around the table] (Extract from case-conference discussion)

During multi-agency discussion panels as well as in a variety of other police meetings, the alleged victims, except in cases of distinct persons, were rarely mentioned. This approach actively tapped into state discourses emanating from the Anti-Social Behaviour unit of the Home Office, which has continually advocated action being
taken to ‘protect the public’, validating and contributing to the existential belief in a passive, innocent, law-abiding public threatened by the behaviour of certain ‘lawless’ individuals (e.g. Home Office 2003; Respect Task Force 2006; Cabinet Office 2008). This is not to deny the legitimate need for action in certain scenarios, but to suggest that the police did, for the most part, construct and directly steer the discussions towards pre-set agendas. This complements research by Herbert (2005) that showed during his analysis of police–community relations that the police, far from adequately basing their own priorities from the needs and requests of the community, actively construct priorities based upon their continued professional judgment as to what constitutes ‘real’ police work. In so doing, the police both invoke the community as a source of legitimacy to their own public facing image, whilst carefully managing their own working credo to complement the existence of their directedness as an organization charged with a range of social control functions. The use of phrases such as ‘community harm’ or ‘public protection’, far from being values that the police genuinely strive towards in validating decisions, come to act as crucial symbolic components in adding justification and quashing potential forms of dissent from other agency professionals. When applying ASBOs in particular, this process of acting over the community serves not only as an example of paternalism at work by appearing to operate in what appear to be their ‘best interests’, but also to facilitate and furthermore accelerate individualized forms of blame and castigation toward socially marginal populations.

Conclusion

The aims of this article have been two-fold. First, it has explained how ideas of self-governance translate on the ground and connect with the occupational cultures of the police. This has included the practical value system of paternalism, which, it is argued, continues to preserve occupational identity of the police and structure responses through the use of contractual injunctions towards young people. The second part of the paper has detailed the precise ways in which the use of contractual orders shifts in response towards two main groups—young people who are more readily dealt with by police as people to be changed via behavioural modification and adult socially marginal populations such as homeless populations, substance addicts and those with mental health issues whose difficulty in being changed by the police leads instead to policies of behaviour moderation being adopted. It has been argued that not only are contractual injunctions implemented in different ways by the police, but the goals of such injunctions are manipulated to connect with pre-existing judgments of the ‘changeability’ of the recipient. This connects the use of contractual injunctions to judgments regarding the moral ‘worthiness’ of some individuals (largely young people) through to the complexities of managing those deemed ‘irredeemable’ (the homeless, drug addicts, street drinkers). This has two main features regarding the role of the police. (1) It establishes the police as actively striving to help many young persons through paternalistic value systems of behavioural modification, sometimes using contractual injunctions as mechanisms to operate in the ‘best interests’ of the young person by keeping them away from certain persons or out of certain areas. (2) The police model used to deal with complex socially marginal adult groups regularly adopts pessimistic policies of behaviour moderation, believing that such groups are often ‘unchangeable’ or ‘irredeemable’. The latter, although the police do not necessarily target them as ‘proper’ criminals, are viewed as major challenges to the police to deal with due to the complexity of their life situations and limited
compliance to many social control responses. As such, the role of the police in moderating behaviour—removing them from public view, disrupting their routines and placing the onus on the recipient to enact self-governance—reflects much about their limits in managing such persons, with contractual injunctions serving as futile responses to instil compliance in socially marginal groups. Contractual injunctions such as ASBOs are both ineffective in securing compliance and problematic in threatening to simply criminalize persons with unaddressed social and psychological problems. Contractual orders for young people, despite often benign (in the case of ABCs) and manifest in benevolent police response (for ASBOs), serve to confuse the respective functions of the police and threaten to violate the rights of young people through their heavy emphasis on paternalism and tutelary control. Whether this apparent benevolence fused with paternal dogma can be considered a supportive means of intervention remains a belief clouded in historical suspicion and scepticism (Platt 1969; Donzelot 1979; Cohen 1985).

As a final remark on the wider social effects that contractual injunctions have on the shifting landscape of social control, it has been argued that the proliferation of contractual injunctions as methods of dealing with ‘vulnerable’ populations has accorded with two key features. The first is the ways in which contractual injunctions abstract the recipient from the deeper social and psychological circumstances of their behaviour, to simplify complexity of their situations through the assertion of self-control and moderation. The increasing tendency to de-socialize behaviour from issues of political economy may be both realistic and desirable for the highly stretched police officer to adopt. However, for the role of the state as ultimately the architects and designers of contractual injunctions, this reflects a suitable ignorance of complex social issues compounding many socially marginal persons, prioritizing the reified construction of the ‘public in need of protection’ as a glossing mechanism for the relative impotence of the police to truly understand and respond to ‘difficult’ clients.

The second aspect aligned with the previous point is the dwindling and resource-stretched reality of many social services. Many police officers admitted to the lack of social service provision as one of the main reasons behind the perceived need to enact some form of control on socially marginal persons. The lack of long-term social services in the field sites, such as drug outreach clinics, mental health facilities and psychiatric care, mirrored the proliferation in contractual injunctions. Contractual injunctions serve to criminalize many social problems such as poverty, homelessness, mental health and substance misuse, applying contractual injunctions as a futile way of enforcing compliance. Complementing research on similar contractual injunctions in the United States (Beckett and Herbert 2008), as well as broader literature on the punishment of socially marginal populations (Wacquant 2009), this article has suggested that contractual injunctions should be viewed as tools suggesting more about the limitations of social control agencies to deal with the everyday effects of social marginality and inequality rather than as tangible crime control mechanisms that reflect desired and reasoned attempts to modify or moderate behaviour.

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References

Appendix

**TABLE 1** Background data on combined distribution of cases from case conferences (n = 204)

| Typology                                  | Main age | Gender distribution | Typical intervention/outcome                                                                 | Average months on case conference |
---|---|---|---|---|---|
| Disadvantaged young people                | 10–18    | Female 22% Male 78% | Referrals to support agencies (60% of cases) ABC\(^1\) (40% of cases) ASBOs\(^2\) (4% of cases) | 4                                |
| Marginalized adults—alcoholism, drug use  | 18–30    | Female 15% Male 85% | Referrals to hostels and mental health services (approx. 20% of cases), up to ASBO/prison (5% of cases) | 3–4                             |

\(^1\)Acceptable Behaviour Contracts (ABCs).  
\(^2\)Anti-Social Behaviour Orders (ASBOs).

**TABLE 2** Interviewee responses

| Narrative response | Typicality of response (% of all cases, n = 204) | Type of case subjects to whom response applied |
---|---|---|
<p>| Paternalistic/tutelage—control in their ‘best interests’ | 16% | Young people 86% Adults 14% |
| Individualized blame/responsibility (ignored/not followed advice from agencies, individual as cause of problems) | 22% | Adults 74% Young people 26% |
| Blame parent/s for young person’s behaviour (e.g. poor parenting skills, lack of supervision, neglect, abuse) | 41% | Young people 100% |
| Partial culpability—reference to social or psychological circumstances (e.g. drugs, mental health issues) | 62% | Young people 76% Adults 24% |</p>
<table>
<thead>
<tr>
<th></th>
<th>Percent</th>
<th>Adults</th>
<th>Young people</th>
</tr>
</thead>
<tbody>
<tr>
<td>financial hardship,</td>
<td>4%</td>
<td>95%</td>
<td>5%</td>
</tr>
<tr>
<td>unemployment)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Last resorts punishment (individual given opportunities to change but not taken them)</td>
<td>6%</td>
<td>94%</td>
<td>6%</td>
</tr>
<tr>
<td>Banishment (i.e. attempt to remove from area)</td>
<td>7%</td>
<td>97%</td>
<td>3%</td>
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<tr>
<td>Control as ‘protecting the public’</td>
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*Note that types of response often include more than one category.*