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# **The impact of supervision on the pains of community penalties in England and Wales: An exploratory study**

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## **Abstract**

This article explores the pains experienced by nine offenders subjected to (supervised) community and suspended sentence orders in an English Probation Trust between July 2013 and January 2014, arguing their importance for both deontological and consequentialist penal objectives. It identifies six major groups of pains and explores the extent to which their incidence and experienced intensity were affected by the supervisory relationship, which intensified or reduced some pains but left others materially unaffected. Despite the limitations of this exploratory study, implications can still be drawn for penal policy, both in England and Wales and across Europe.

## **Keywords**

Community penalties, community sanctions and measures, pains of punishment, penal policy, probation, supervision.

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## **Introduction: Pain, punishment and supervision**

Although Sykes' (1958) classic discussion of the 'pains of imprisonment' has always been highly regarded amongst criminologists, it is only comparatively recently that the 'pains of punishment' discourse has shifted attention to other penal interventions, including community penalties (e.g. Payne and Gainey, 1998; Gainey and Payne, 2000; Durnescu, 2011). Despite this long delay, the emergence of 'pain analysis' in the non-custodial penal imagination is most welcome. Understanding penal interventions in terms of the pains that they engender in offenders' lives provides useful data for evaluating the effectiveness (however construed) of the penal State. They also provide an opportunity for socio-legal evaluation of penal policy and practice, enabling offenders' (and practitioners') experiences, attitudes, and perspectives to directly inform penal discourses.

Despite this intellectual heritage and the utility of the concept, it is surprisingly difficult to define 'pain', beyond the anodyne observation that it is an essentially subjective and unpleasant experience, and that it extends beyond the physical (to the emotional and psychological, for instance: Christie, 1981: 9-11). Sykes (1958: 64) defines the pains of imprisonment as the 'deprivations or frustrations [characterising] prison life', noting that the concept is sufficiently broad to incorporate both intentionally inflicted forms of suffering and unintended consequences for the offender.<sup>1</sup> The concept of 'pain' reflects a wide range of hardships that are (directly or indirectly) connected with the imposition of criminal punishment, and is broad enough to identify these negative consequences both inside and out of prison walls.

The amorphous nature of the concept of pain is not (necessarily) problematic, however. Indeed, it is a key feature the *inductive* approach taken by 'pains of punishment' theorists. Pain-based constructions of punishment advance from the experienced reality of penal subjects, drawing their theoretical understanding from observed data rather than using the former to comprehend the latter (say, in terms of 'liberty deprivation', which is often used to characterise the severity of sentences: *e.g.* Schiff, 1997). Whilst they may deploy considerably diverse methodologies, in other words, 'pains of punishment' approaches are united in their attempt to explore the social reality of penal interventions in terms of the negative consequences that their subjects subjectively experience.

The question then becomes, for what purposes is such an account of subjectively experienced unpleasantness useful? One might answer that question at the level of either penal policy or criminal justice practice.

At the policy level, pain is relevant to both *consequentialist* (which deploy punishment as a necessary means to particular ends) and *deontological* (which view punishment as being inherently valuable) justifications of punishment. On the one hand, consequentialists should be concerned with the *minimisation* of pain. Since pain is not the intended result of consequentialist interventions, it is only justifiable if and to the extent that it achieves a greater consequential benefit (typically crime reduction through rehabilitation, deterrence, and/or incapacitation, but also the reparation and restoration of victims and affected communities). Accordingly, consequentialist theorists should ensure that they cause no more pain than is strictly necessary to achieve their aims; a parsimonious approach that

underlies most recent pains of punishment studies (Durnescu, 2011: 539-541; *cf.* Gainey and Payne, 2000).

On the other hand, deontologists (who usually emphasise retribution or moral expressivism: *e.g.* Von Hirsch, 1986; compare Duff, 2001) also benefit from understanding the pains of punishment, as a means of more effectively meting punishment out. The interest in pain on this account should be twofold: in the first instance, one should seek to calibrate the pains of punishment so that punishment is deployed as effectively (*i.e.* proportionately) as possible (Ashworth, 2010: 104-155);<sup>2</sup> and in the second, one should seek to exclude or minimise any unintended pains that arise out of penal processes (Walker, 1991). In other words, an appreciation of the pains of punishment enriches penal policy discourses, across the political-philosophical spectrum.

In addition to the relevance of the pains of punishment to policy discourses, it is also important to consider their relevance to, and relationship with, individual *practice* by probation officers, who were responsible for the supervision of Anglo-Welsh community penalties (at least during the period this paper is concerned with). The practice dimension is important, for two reasons. Firstly, the impact of the relationship an offender has with her supervisor inevitably affects the pains of punishment she feels. Under the Anglo-Welsh approach to implementing community sanctions, the probation officer is a central decision-making 'offender manager', as well as performing at least some direct face-to-face supervision (Canton, 2011: 71-84, 94-99). She is therefore simultaneously a key manager of the offender's overall experience, and one of the most significant faces of the penal

system in a day-to-day, relational sense (Phillips, 2014). As a result, Anglo-Welsh probation practice has at least the capacity to profoundly influence experienced reality of community penalties – the level at which the pains of punishment are felt.

Secondly, and conversely, the pains of punishment are relevant to practitioners' individual approaches to their practice. 'Probation habitus' in England and Wales is characterised by steadfastly pro-social, rehabilitative approaches and values (Robinson et al, 2014). Practitioners should therefore be keenly aware of the potential for their practice to exacerbate, or indeed to create pain and suffering, even if only in the short term, in order to consider whether different approaches and practices could better achieve their objectives (e.g. Deering 2010). In other words, the pains of probation are relevant to the determination of best practices by both penal policy-makers and individual practitioners.

With these benefits in mind, this article reports on a study of the pains of supervised community penalties in England and Wales – that is, community orders and suspended sentence orders involving a supervision requirement.<sup>3</sup> It attempts to answer two research questions. Firstly, what impact do (supervised) community penalties have upon the lives of offenders subjected to them; and secondly, how is that impact affected by the relationship between the offender and their supervisor? It briefly explores the methodology that the study adopted, before describing the findings in terms of six groups of pains. It concludes with a discussion of some implications of these findings for Anglo-Welsh (and broader) penal policy and practice.

## **Methodology**

This exploratory study was conducted within the operational area of a single Probation Trust across two probation centres, between July 2013 and January 2014.<sup>4</sup> In total, nine offenders and 11 supervising offender managers (whom I refer to herein as 'staff') participated in the study.<sup>5</sup> A list of participants is given in Table 1. Potential staff participants were asked to recommend offenders from amongst their supervisees who would fit the study's eligibility criteria, which produced a purposive sample (Silverman, 2010: 141-143) aiming to maximise the diversity of participating offenders in terms of: offences committed; orders and requirements imposed (subject to the restriction that all offenders had to be serving supervision requirements, to facilitate the identification of relevant staff as gatekeepers); and offender demographics (in terms of age, gender and ethnicity).

Once an offender was recommended I reviewed basic information from their case-file (keeping no record of personal data) to independently confirm their suitability for the study and compare them against the aforementioned eligibility criteria. They were then personally approached, and asked to attend a consent meeting, which informed them about the study and the implications of their involvement in it. If they agreed to participate, I then re-examined their case-file, in order to prepare for interviews and familiarise myself with their case.

Where an offender consented to participate, both they and their recommending supervisor were (separately) engaged in an hour-long, semi-structured 'primary' interview. Offender interviews focussed upon the impact that the participant's order had upon their life, and the effect that their relationship with

their supervisor had upon that impact. Staff were asked to comment upon this relationship from their perspective, as well as more general questions about their supervisory values, experiences and practices, and how the participating offender(s) they recommended compared to the rest of their client base.

Anonymous interview transcripts were compiled from personal field notes, and (with the interviewee's permission) from audio recording.<sup>6</sup> Once all primary interviews had been completed in the participating probation centre, preliminary analysis was undertaken to identify themes (common to at least two participants: Guest et al, 2012) relating to the pains of punishment.

90-minute group interviews were then held. A total of four group interviews were conducted, each involving either all participating staff or all participating offenders at the relevant centre. These group sessions presented the participants with an overview of the results of preliminary analysis, asking them to comment critically upon the themes I had identified. This provided an opportunity for member validation, reducing the risk (and extent) of researcher bias influencing the themes that emerged (Silverman, 2006: 292-293). These sessions also allowed for additional data collection, in terms of wholly new experiences that had occurred in the intervening period, and of new perspectives on the pains initially reported.

It is important to recognise the limitations of the conclusions that may be drawn from the data that this methodology generated. In addition to the obvious problem for drawing general conclusions from such a *small sample*, this study was limited in terms of *offender-participant attrition* between the primary and group interviews (only a third of the offender-participants in each centre who attended



the former attended the latter), and in terms of *demographic variation*. Across the nine offenders, only two participants were female, and only one self-identified as having a non-white ethnicity. Likewise only one staff-participant was non-white, and eight of the eleven were female, although this is closer to available data about the genders of Anglo-Welsh probation staff (Annison, 2013). These issues all reduce the extent to which general conclusions may be drawn from the data generated about the nature of Anglo-Welsh community sanctions, and especially the ability of these data to speak for the experiences of marginalised demographic groups.

A further limitation ought to be noted, in the form of the possibility of *sampling bias* introduced by having staff-participants recommend offenders rather than randomly sampling. Despite my use of purposive sampling and my retention of the final decision as to whether offenders were appropriate, the possibility remains that the study includes the clients that participating staff most wanted me to see (probably the most well-rehabilitated and compliant of their supervisees), rather than the most representative sample of supervised offenders.

If this is the case, however, it is notable in itself that the participating offenders still reported a complex web of pains associated with their orders. Indeed, whilst all of these limitations must be borne in mind when considering what the data generated tell us about (Anglo-Welsh) community sanctions, they at the very least provide an exploratory overview that will hopefully inform further research, for which they raise many possibilities. I therefore turn to the pains that these data identified as part of the lived experience of Anglo-Welsh community penalties.

**Table 1. Participants, Listed by Type and Characteristics<sup>7</sup>**

<b>Offenders</b>					
<b>Pseudonym</b>	<b>Age Group</b>	<b>Gender</b>	<b>Ethnicity</b>	<b>Order Given</b>	<b>Requirements Received</b>
Andrew	65+	Male	White (British)	CO	Supervision, Programme; Disqualification Order.
Vince	45-49	Male	White (British)	SSO	Supervision, Programme.
Jonny	45-49	Male	White (British)	CO	Supervision; Restraining Order.
Ashley	35-39	Female	White (British)	CO	Supervision.
Mike	25-29	Male	White (Other)	CO	Supervision, Programme, Specified Activity; Restraining Order.
Alice	50-54	Female	White (British)	SSO	Supervision; Driving Disqualification; Fine.
Ron	30-34	Male	White (British)	SSO	Supervision, Unpaid Work; Fine.
Isaac	25-29	Male	Black (British)	CO	Supervision.
Chris	45-49	Male	White (British)	SSO	Supervision.
<b>Staff</b>					
<b>Pseudonym</b>		<b>Age Group</b>	<b>Gender</b>	<b>Ethnicity</b>	
Amanda		45-49	Female	White (British)	
Norman		40-44	Male	White (British)	
Sarah		35-39	Female	White (British)	
Niamh		30-34	Female	White (British)	
Samantha		30-34	Female	White (British)	
Lucy		25-29	Female	White (British)	
Susan		35-39	Female	White (British)	
Joe		45-49	Male	White (British)	
Selma		50-54	Female	Black (Afro-Caribbean)	
Arnold		35-39	Male	White (British)	
Rachel		55-59	Female	White (British)	

## Findings

Given the qualitative, subjective, and experience-focussed nature of this study, it is perhaps unsurprising that the pains it identified varied significantly between participants, both in terms of their incidence and the severity of their impact. However, it was possible to identify six major groups of pains, which I have summarised in Table 2, below. Each of these six groups can be subdivided into three categories in terms of the impact that the supervisory interactions had upon the pains experienced in each case. Some were intensified (*i.e.* pains were created, or made more severe as a result of interactions with the supervisor), others reduced (*i.e.* the pains were ameliorated, or even nullified, by interactions with the supervision officer), and still others remained largely unaffected.

The first two groups, which I have described as the 'pains of rehabilitation' and the 'pains of liberty deprivation', respectively, are *intensified* by the supervisory relationship – that is, the pains are made more likely to occur, and are more likely to be more severe when they do occur, as a direct result of supervisory practices. Conversely, the second paired groups of pains are *ameliorated* by supervision, and include what I have called 'penal welfare issues' and pains associated with the intervention of external agencies. Finally, there were also groups of pains that were not significantly affected by supervisory practices and interactions. These were pains associated with wider criminal justice processes, and with stigma.

Table 2 lists each of these groups, along with the specific pains that fit into each category. Note that some pains can be found in more than one category, as different contexts imputed different meanings to them. Pains associated with the

offender's wellbeing, for instance, could be both intensified and ameliorated by supervision, since 'wellbeing' covers a range of concepts and contexts.

**Table 2. Pains of (supervised) community penalties**

<b>Group of Pains</b>	<b>Specific Pains Experienced</b>	<b>Impact of Supervisory Relationship</b>
Pains of Rehabilitation	Wellbeing; Pains of Lifestyle Change; Shame.	Intensified
Pains of Liberty Deprivation	Loss of Time; Loss of Money; Loss of Freedom.	
Penal Welfare Issues	Accommodation; Employment/Job-seeking; Wellbeing; Finances; Family Relationships.	Ameliorated
Pains of External Agency Interventions	Hostility of Interventions; Intensification of Interventions.	
Process Pains	Police Oversight; Perceived Procedural Unfairness; Confrontation at Trial.	Unaffected
Stigma	Friends and Family; Strangers; Employment/Job-seeking.	

I will presently discuss each of these groups of pains in more detail, outlining the specific pains in each category, their relationship to supervisory interactions, and some of the factors that influenced both their incidence and their relative intensity in individual cases. Firstly, however, I must discuss the constitutive role that offender attitudes played in determining how those pains were experienced.

### *Offender Attitudes*

Offenders tended to vary considerably in the extent to which they viewed their (community) penalty as a punishment. A number of factors influenced this, including the nature of the order that had been imposed and the socio-economic circumstances of the offender (and therefore the amount of time her order took away from employment or job-seeking, and from social relationships). However, one major factor in this regard was the extent to which the offender was engaging with efforts towards her rehabilitation. Although staff varied in their willingness to accept punishment and the enforcement of court-imposed orders as a core part of their practice, they uniformly considered themselves to be primarily concerned with facilitating rehabilitation, by addressing criminogenic risk factors and encouraging the offender to develop desistance-friendly attitudes (Canton, 2011: 71-128). However, offenders varied in their willingness to engage on those terms. In fact, participating offenders could be divided into three attitudinal subsets (at least, at the time of their interviews): the *fully-engaged*, *partially-engaged*, and *engagement-resistant*.

*Fully-engaged offenders* tended to perceive their conviction and punishment as genuinely deserved. They accepted their guilt, and made conscious efforts to change their future behaviour. By contrast, *partially-engaged offenders* would seek to minimise their guilt by using contextual factors to deny full responsibility. They would accept their wrongdoing, and would engage with the requirements that their orders imposed upon them, but would only contribute a bare minimum and had no aspirations towards meaningfully change.

Finally, *engagement-resistant offenders* tended to minimise their guilt to the level of negligibility, and accordingly, their ability to change themselves. This did not necessarily preclude their attendance of required sessions, or their recognition that they were (formally) guilty at law. Rather it was they felt that they could not change to avoid crime in the future, and so resisted compliance in a more normative sense (Bottoms, 2001).

### *Pains Intensified by Supervision*

*Pains of Rehabilitation.* What is particularly interesting about this diversity of offender attitudes is that the offenders who suffered the most pains were those who were *most* engaged with rehabilitative obligations. Although engagement-resistors experienced more pains than the partially-engaged, all else being equal, the fully-engaged reported the greatest number overall.

A number of factors other than engagement with rehabilitation influenced this correlation. For instance, the partially engaged offenders (who suffered the fewest pains) tended to be those with the least onerous orders in practice. By contrast, three of the four fully-engaged offenders were recovering alcoholics, for whom lifestyle change was extremely difficult. Although it would be wrong to argue a direct causal link between the effectiveness of rehabilitation and the number and severity of pains experienced, in other words, there emerged a number of discrete pains that were directly caused by rehabilitative processes. After all, rehabilitation is essentially *change* – of behaviour, lifestyle, and thought processes – and as

Amanda (a staff-participant) remarked, 'change is painful, generally' (compare McNeill, 2011: 16-17).

Pains of rehabilitation are pains directly attending the offender's efforts to alter her own lifestyle. Three main pains can be associated with this category: those associated with *wellbeing*; with *lifestyle change*; and with *shame*.

'Wellbeing' encompasses offenders' physical and mental health. Pains associated with wellbeing were therefore either new threats to their health, or aggravations of pre-existing issues. Only one case involved physical health, and was rather exceptional. Motivated by shame and a desire to be reunited with his family, Mike chose, against his supervisor's and alcohol charity case-worker's advice, to go 'cold turkey' – that is, to completely abstain from alcohol, despite being severely dependent on it. Nevertheless, the level of agency afforded to him by his supervisor's desistance-focussed approach made it easier for him to take this extreme decision. Accordingly, it is reasonable to treat his experience as a temporary, but severe, pain of rehabilitation, and as intensified by supervision.

More commonly, pains of wellbeing were related to mental health. Both Jonny and Chris, for instance, struggled with pre-existing depression during their sentences. In Jonny's case, this was exacerbated by lack of access to his family following his restraining order. Chris's wellbeing, by contrast, was affected by the 'forced return to the offence' (Durnescu, 2011: 537) that his supervision appointments represented, which threatened to force him back into the 'rut' of his depression. In both cases, supervision contributed, directly or indirectly, to the circumstances that exacerbated their depression. This was particularly true where,

as with Jonny, the offender was more fully-engaged with their rehabilitation, and therefore more likely to experience shame concerning his offending.

Lifestyle changes, associated with addressing offenders' criminogenic needs, often brought their own pains. These ranged from the severe, such as alcohol-dependents' abstention or moderation of their habits, to the more prosaic. Jonny, for instance, lost access to his beloved pet dogs as a result of his (mandatory) separation from his family.

The severity of these pains was often difficult to quantify. For instance, Vince reported being forced to confront his poor response to provocation, something that involved a fundamental reassessment of who he was and wanted to be. Whilst it is difficult to quantify how severely this pain affected his life, it exemplified that many lifestyle changes exacerbated the severity of (or were exacerbated in turn by) other experienced pains, especially *shame*.

Offenders consistently ranked shame as one of the most severe pains overall. Whilst all participating offenders felt at least some shame about their offences, conviction, and punishment, those who experienced the greatest levels of shame were exposed to greater levels of pain surrounding their personal perceptions of self-worth.

Shame could be a powerful spur to rehabilitation. Ron, for instance, saw it as a way of telling him to 'get [his] arse into gear!' However, extreme feelings of shame could also impede the rehabilitative process. Andrew was an engagement-resistor, having committed a sexual assault against an underage relative. He described this offence as being an unstoppable impulse, and utterly repudiated his



supervisor Amanda's contention that it was due to some repressed desire. Amanda believed that the shame he felt over the offence prevented him from accepting his responsibility for his crime, and therefore precluded meaningful rehabilitation (compare Braithwaite, 1989). As a result, his supervision sessions tended to be quite difficult, as she sought to confront him with what she saw as the truth. However, she noted, any pain that this caused was, in a sense, desirable, from a primarily rehabilitative perspective:

In terms of the victim's perspective and the victim's family, I think... [long pause]... [the pains Andrew feels are] justified. And also, the flipside of that is that [he] needs time to come to terms with what he's done.

In other words shame, whilst being a powerful pain of rehabilitation, could also contribute to attempts to resist rehabilitation, which led to further suffering. For instance, Alice, the other engagement-resisting offender, faced numerous physical and mental health issues, and was subject to the interventions of a bewildering array of external agencies. She felt incapable of confronting the causes of her offending without external aid, and so was faced with additional difficulties when a desistance-focussed model of rehabilitation, emphasising a level of personal agency she did not feel she had, was imposed upon her.

Of course, none of this is to say that any of the pains described herein somehow invalidate rehabilitation as a penal rationale. Rather, the point is that rehabilitation is not a pain-free process, and that the specific form of rehabilitation

imposed on (and expected of) the offender will bring with it its own attendant pains, which tend to be intensified by the supervisory processes.

*Pains of Liberty Deprivation.* The other group of pains intensified by supervision consists of those associated with the deprivation of liberty. Interestingly, whilst offenders tended to emphasise pains of rehabilitation when discussing the punitive elements of supervised community penalties, staff focussed almost exclusively upon liberty deprivation when describing probation as a (potential) punishment.

Their approach was relatively homogenous. Staff were generally willing to accept that part of their role was to punish wrongdoing (only one, Arnold, rejected this function altogether). However, they tended to treat punishment as incidental to their role as *enforcers* of the offender's sentence. Punishment was the threat of the initiation of breach proceedings for non-compliance with the penalty imposed by the court, and played no part in the (exclusively rehabilitative) day-to-day administration of supervision. Even if staff recognised the pains of rehabilitation, they denied that supervision itself had any punitive dimensions.

Breach proceedings could result in the imposition of more (or more intense) requirements to punish the breach, or with the substitution of imprisonment. Staff were therefore keen to avoid breaching offenders wherever possible. In Joe's words: 'I don't necessarily tend to use breach as... a threat, if you like, because that's not building a professional relationship'. Samantha echoed this, dismissing breach as antithetical to the Probation Service's traditional 'social worker ethic'.

Indeed, offenders were generally unconvinced by this breach-focused argument. Mike, for instance, highlighted the flexibility of staff about the need to keep appointments, even in the case of suspended sentence orders (where imprisonment is automatic upon breach, subject to the disposing judge's discretion not to impose custody). Indeed, Alice confessed that she needed reminding at least once that her supervision appointments were mandatory!

However, this point requires two reservations. Firstly, as discussed above, the participating offenders' dismissal of the pains of liberty deprivation may be a result of the fact that the offenders most likely to agree to participate in the study were those most actively engaged with their orders, and therefore the least likely to actually face breach proceedings (as Arnold, a staff-participant, rightly recognised). The participating offenders were therefore probably less likely than average to view them as a meaningful threat.<sup>8</sup>

Secondly, offenders did experience pains associated with the threat of breach, recognising a number of pains associated with *liberty deprivation*. Although these pains tended to be relatively minor in terms of their severity, their impact was more significant for offenders whose orders contained more (or more onerous) requirements such as unpaid work.

The pains of liberty deprivation can be subdivided into those associated with the *loss of time*; with the *loss of money*, in the form of travel costs (which were only refunded in extraordinary circumstances) and the imposition of fines; and with the *loss of freedom* – specifically, the freedom to choose one's own course of action, something present in any mandatory order, but which was exacerbated by

certain circumstances. Vince, for instance, experienced a greater impact on his spare time as a result of his demanding work schedule, whereas Ron emphasised the impact that unpaid work had upon his routine, to the extent that he was almost glad to become unemployed so that he could complete his required work hours!

Indeed, even less than fully engaged offenders accepted that they had to attend sessions. Ashley, for instance, was partially engaged, and generally downplayed the negative consequences of her order. However, she expressly stated that her supervision *was* a punishment, on the basis that 'I gotta come down here every week, and do what they tell me to'. In short, even if liberty deprivation was not a particularly painful feature of supervised community penalties in England and Wales, it was clearly omnipresent.

### *Pains Reduced by Supervision*

*Penal Welfare Issues.* Of course, the pains experienced whilst serving a community penalty do not all necessarily originate from the State. Indeed, it is a truism of contemporary criminology that offenders often lead marginalised existences before, during, and usually after they serve their sentences (e.g. Hudson, 1993). It is therefore unsurprising that offenders showed a number of specific (painful) vulnerabilities associated with: *accommodation*; *employment* (including job-seeking); *wellbeing*, particularly associated with ongoing (physical and mental) health issues; *finances*; and *family relationships*.

I have called this class of pains 'penal welfare issues', because they demonstrate the nexus between the criminal justice and social welfare systems

(*Ibid.*), especially in the non-custodial context. More so than in the custodial context, community penalties involve a number of social and other contexts that influence the pains experienced by an offender, such that more socially precarious offenders are more likely to experience more intense pains.

An extreme example of the effects of social precariousness is given by Alice, a convicted drink-driver who suffered from alcohol addiction and depression. She was unemployed and, due to a refusal of benefits payments after being found fit to work, had gone without income for a period of nearly three months by the time of her interview. Her (teenaged) children lived with other relatives because she could not afford to support them, although she remained primarily responsible for the care of her mother. Accordingly, even with the rather undemanding order she received, she found herself in an extremely painful situation, to the point where she felt she would have been better off in prison:

[I]t's not a good state of affairs, that's for sure. If I'd have gone to prison I would've had regular meals, clothes washed, could've gone on a course, you know... not that I wanted to go there but I would've had a better standard of living in there, than I've had at the moment!

Issues such as these could arise in two broad contexts: firstly, they could precede and be distinct from the pains caused by the offender's conviction, and the implementation of her order; and secondly, they could either be exacerbated or created wholesale by the order of which supervision formed a part (and therefore existed as pains of punishment in their own right). For instance, Ashley and Mike

were both separated from their children during their punishment. However, whereas Mike was removed from the family home after alcohol-fuelled domestic violence, Ashley's children had been taken into care by social services well before her offence.

Regardless of the effect of other parts of the order imposed on the offender, however, these pains were reduced by the supervisory relationship. Given that staff understood rehabilitation in terms of both addressing criminogenic needs and supporting the offender in developing sufficient agency to desist from crime, supervision tended to focus almost exclusively on assisting the offender to combat and reduce the penal welfare issues they faced. Although the supervisory relationship was rarely sufficient to enable offenders to escape these pains altogether, supervision was specifically credited by several offenders as giving them *hope*, and the belief that they could overcome the problems they faced. This in turn made the pains attending their punishment significantly easier to bear.

*External Agencies.* The other category of pains that were reduced by supervisory interactions are associated with the intervention of agencies external to the penal system in offenders' lives. Examples included: charities involved in providing housing, or support with specific issues such as poverty or alcohol addiction; State-supported agencies such as Citizen's Advice Bureaux, which guide and support individuals in a variety of contexts where they must deal directly with State agencies; and organs of the State such as the welfare system and police.

Once again, given the relative socioeconomic precariousness of many offenders, it is perhaps unsurprising that many external agencies had become engaged in participating offenders' lives. These interventions were painful, in the sense of involving *loss of time* or *loss of freedom*, as well as potentially engendering *shame*. However, conviction and (community) punishment also tended to lead to two specific pains: increasing *intrusiveness* of these agencies; and increasing *hostility* of their interactions with offenders.

Where external agencies perceived criminality as an indicator of increased need for support and/or control, conviction encouraged a greater level of *intrusion* into offenders' lives. Alice's experiences provide the clearest example of this phenomenon. She received support from several alcohol-, housing- and poverty-support charities, as well as the Citizen's Advice Bureau, and who was locked in a bitter dispute with the Department of Work and Pensions over her fitness to work, which had been assessed by a separate private firm. Whilst many of these agencies had been involved in her life prior to her offence, Alice noted that they had become much more interventionist since her conviction:

Yeah, it's stepped up since the court trial[...] and there's been a lot of coming and going, and it has kept me busy, and I've felt sometimes that I've not had time to do things for myself so much...

The impact of this increased intervention meant an increase of the pains of liberty deprivation (loss of time, money, and freedom), as well as a reduced sense of personal autonomy and privacy.

Whilst increasing intrusiveness was not a universal feature of every agency's response to conviction, several demonstrated an increased *hostility* towards offender-participants. One example was the housing charity which provided Jonny with accommodation following his eviction from the family home by a previous non-molestation order against his partner. When he committed a further offence, he was evicted and forced to move into much lower-quality accommodation, in much less pleasant company. However, Jonny (who was fully-engaged) bore no ill will over the charity's decision, which was based more on risk aversion than on belligerence.

By contrast, Ashley's relationship with social services over the fostering of her children was acrimonious before her conviction, and had only worsened thereafter. She perceived increasing hostility in what she saw as the already arbitrary and prejudiced decision-making of the social workers with whom she dealt. Without commenting on the veracity of Ashley's perceptions of increasing standoffishness from the external agencies already involved in her life, those perceptions caused tensions in her relationship with her partner, as well as leaving her angry and distraught. However, she noted that her Probation Service supervisors were different:

[T]hey're more helping me than anything, do you know what I mean? And they are. Probation is. But that social service, it seems as if... they're just picking on people.



Indeed, offenders who experienced either increased intrusion by or hostility from external agencies uniformly noted that probation supervision significantly ameliorated those effects. The supervisor became a liaison for the offender with a complex network of external forces, which, even before privatisation, imposed a considerable influence upon the experience of punishment in the community. By structuring these external agencies' interactions with the offender around the context of their sentence, and requiring them to be in frequent contact with the supervisor, staff demonstrated a significant capacity to reduce the pains associated with the myriad socio-penal organisations engaged in offenders' lives.

#### *Pains Unaffected by Supervision*

*Process Pains.* I have labelled the first of the remaining two groups 'process pains'. It is uncontroversial that, in criminal justice procedures, from investigation to arrest to trial and ultimately punishment, 'the process is the punishment' (Feeley, 1992): these processes are intrinsically unpleasant. The experience of the offenders in this study was no different. Specifically, offenders experienced pains in the context of: increased *police oversight*; perceived *procedural unfairness*, and the experience of the *trial* as a moral condemnation.

Several offenders felt that they were subjected to increased police oversight, complaining that their criminal records led to a greater level of incidence and intrusiveness of police contact. Both Jonny and Mike complained of becoming 'the usual suspects', even when they themselves were victims of crime: Mike was arrested after alerting the police to an attempted arson against his family home,

and was unceremoniously released when it became clear he was not responsible. Jonny saw this as being a demonstration of police power, designed to 'keep you down in your place' – in other words, an affirmation of Mike's marginalised position as a tainted citizen.

A number of offenders also perceived unfairness in the processes leading up to, and following, their conviction. For instance Ashley, who was charged with assaulting a police officer, alleged that an exonerating CCTV recording had vanished before trial. Chris complained that his ex-partner was fabricating domestic abuse and rape charges against him, and that the police handling of them had been incompetent and biased.

In both cases, Ashley and Chris felt victimised directly by procedural unfairness. However, it also had an impact upon their perception of other pains, as they were less willing to perceive their supervision as (legitimate) punishment, which made any indignities involved in their cases a lot easier to dismiss as the result of injustice, and made it easier to adopt partially-engaged attitudes that avoided the substantial pains of rehabilitation.

Finally, a common process pain was experienced by offenders at the trial itself. Several offenders noted the profound shame and anxiety that followed from their conviction, and in particular, from the judge confirming their crimes to them as such, and as deserving of punishment. The experience of the trial as a harrowing experience in its own right cut across the spectrum of offenders' attitudes, from fully-engaged offenders like Ron and Mike to Alice, an engagement-resistor.

However, not all offenders experienced the trial in these terms. For instance, Isaac, a repeat offender convicted of relatively minor shop theft, had become largely apathetic towards the processes of trial and punishment as a result of familiarity with it (an attitude that may have been exacerbated by his severe learning difficulties). However, this is not to say that familiarity with criminal justice straightforwardly breeds contempt, since both Jonny and Mike were recidivists, but found their trials significantly painful.

Where process pains were experienced, they either preceded the intervention of the supervision officer, or were largely beyond the power of staff to change, at least in the long term. For instance, Mike felt that the best way to get out from under police oversight was to demonstrate his new pro-social attitudes, something that probation supervision could not, by itself, directly assist.

*Stigma.* The final category of pains relates to *stigma*, the external spur to subjectively-experienced shame. It marks the offender as a moral deviant to be excluded, or at least handled with care in future social relations as a 'spoiled identity' (Goffman 1968).

Every participating offender identified some form of stigma as a result of their conviction, although they varied in terms of the extent to which it affected their lives. This was largely a function of the extent to which they could ignore and dismiss the stigma they experienced, which in turn varied in relation to the *source* of the stigma. Offender-participants distinguished three such contexts: stigma from *strangers*; from *friends and family*; and in relation to *employment*.

Stigma from strangers was easiest to dismiss, as a sign of 'small-minded' thinking (in Mike's words). Where offenders felt stigmatised by strangers (for instance, by being physically avoided or given strange looks as they entered and left their probation centre), offenders were able to minimise any impact upon their perceptions of self-worth by dismissing the views of strangers as irrelevant.

By contrast, stigma from friends and family (and indeed other acquaintances, such as workmates) was harder to ignore, coming as it did from individuals whose opinions offenders had more reasons to esteem. It must be said that this form of stigma was rarer, although when it was felt, it plainly had a significant impact upon the offender's life. Ron, for example, was convicted of domestic violence after becoming severely intoxicated. Unlike most participating alcoholics, he had decided not to moderate his drinking, rather than abstaining completely. However, he noted that when he socialised with his friends in the presence of alcohol, they became much more defensive of him, making sure he did not respond to any provocation and keeping a close eye upon his activities. Although Ron accepted their behaviour as an attempt to help him avoid trouble, the apparently irrevocable change that his offence had caused in his relationship with his friends caused him profound sadness. Even if he was completely able to put his offending lifestyle behind him, they would still view him as posing a risk of violent behaviour, something that was clearly difficult for him to deal with.

Finally, stigma from strangers could become significant in the context of *employment*, and in particular, job-seeking. A number of offenders were either unemployed before, or became unemployed during their community penalties, and

were therefore forced to deal with the opinions of others about their criminal record in this context. Offenders had a range of attitudinal responses to this problem, ranging from absolute honesty about their record (Ron), to keeping quiet about their conviction unless they were explicitly asked about it (Vince), through to aspiring towards starting their own business (Mike – who had previously owned a small firm). However, dealing with this issue harmed their self-esteem and self-confidence, in addition to the more substantive (and well-documented) economic and social difficulties that attend the process of finding work after criminal conviction (*e.g.* Graffam et al, 2008).

In all cases, probation supervision contributed negligibly to the alleviation of pains caused by stigma, which generally fell outside the remit of the rehabilitative focus of supervision. The only exception to this general tendency was stigma associated with job-seeking, insofar as the material effects of unemployment were reduced by the support that staff provided in attempting to ameliorate penal welfare issues connected to employment and welfare benefits.

### **Conclusions: “Community punishment” after all?**

Given the exploratory nature of this research, general conclusions about the precise incidence and severity of the pains of (Anglo-Welsh) community sanctions remain impossible. In particular, the data generated do not consistently distinguish between the pains specific to particular requirements. Since not every order imposes the same requirements (which are as diverse as unpaid work, electronic monitoring, and drug rehabilitation), it is obvious that different orders will impose

different pains – even before taking account of offenders’ diverse subjective experiences. Further research is needed to identify the scale (and boundaries) of the pains of community sanctions, in England and Wales and certainly beyond. Indeed, it would be useful to compare these results with approaches in other jurisdictions across Europe, where factors such as privatisation, populist punitiveness, and managerial and actuarial approaches to punishment have affected different penal systems very differently in comparison to England and Wales (Robinson et al, 2013).

That said, this study suggests that community penalties can involve a number of different pains, which can have a profound effect upon the lives of offenders whilst they serve their sentence – and thereafter. This suggests that community penalties are capable of being effective punishments in their own right, assuming that we accept the orthodox position that punishment is something *unpleasant* (Feinberg, 1970), although the case would have to be made for treating some of the pains identified above as part of (criminal) punishment, given their origins outside of State-sanctioned practice.

This is particularly noteworthy in England and Wales, where courts are now required to impose at least one requirement (and/or a fine) for the explicit purpose of punishment (Criminal Justice Act 2003, s. 177(2A)). This stipulation implies that supervision and other rehabilitation-facing requirements are incapable of serving as effective punishments, something that denies the full range of pains identified by this study, and which is therefore likely to mean a disproportionate increase in the overall severity of community penalties in practice.

Note, however, that these findings suggest that the punitive capacity of community penalties does not crowd out their potential to rehabilitate. Indeed, some of the most severe pains identified by participants were those directly associated with rehabilitative processes attending upon (and intensified by) the supervisory relationship, especially the infliction of shame. By contrast, offenders consistently considered liberty deprivation, the typical index of sentence severity, amongst the least significant of pains experienced. Those committed to punishment on deontological grounds ought to have better respect for community penalties as *punishments* for offences of intermediate seriousness.

The impact of supervisory relationships on the experience of these pains is particularly significant in this respect. Staff participants consistently emphasised their rehabilitative role as supervisors over that of the enforcer, still less the punisher. However, whilst they have certainly played a vital humanitarian role in ameliorating some of the pains of community penalties, there are other pains that their influence leaves largely untouched, and still others that are actively encouraged by the process of rehabilitation. Indeed, proponents of rehabilitation (and other consequentialist theories) ought to recognise that all penal interventions inflict multiple pains, and that we ought to be concerned with the proliferation of 'mass supervision' for reasons other than its apparent failure to prevent 'mass incarceration' across Europe (McNeill and Beyens, 2013).

Again, this is not to say that efforts at promoting rehabilitation are any less desirable (much less effective). Rather it is to note that, whether at the level of policy or of individual practise, we must recognise supervised community penalties

as systems of 'pain delivery', however benevolent the intention (Christie 1981: 18-19). Whether one is concerned with calibrating the pains of (community-based) punishment or with minimising them, and whether at the level of policy or practice, we should recall Christie's (1981: 11) admonition that we should 'look for alternatives to punishment, not only alternative punishments'.

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### **Notes**

1. Although under-researched, one could also identify pains of punishment for third parties such as the offender's family, or victims: *cf.* Durnescu et al (2013: 31-36).
2. This is true only if pain is a meaningful component of deontological punishment. Even though this assumption has been contested (*e.g.* Haque, 2013: 77-79), proponents of alternative approaches are still committed to the *minimisation* of



pain. In other words, these alternatives are not fatal to my claim that a pains of punishment approach has value for deontologists.

3. Despite the legal and procedural differences between these two orders, I treat both as 'community penalties' for present purposes. Both fit the essential characteristics of community penalties: that is, they involve the imposition of (some form of) punishment in a non-custodial (*i.e.* 'community': Brownlee, 1998: 56) context, under direct oversight (Mair, 2007). They were also managed in essentially the same way by participating staff. Both orders can carry a number of optional *requirements*, which mandate the offender to undertake content that would be the subject of community sanctions and measures in other jurisdictions, such as *unpaid work* in the community, *supervision* by a probation officer, and completion of cognitive-behavioural *programmes* aimed at their rehabilitation (for an overview, see Cavadino et al, 2013: 116-119). The major difference between them is that, for a suspended sentence order, imprisonment is usually automatic if the order is breached, whereas a community order allows for judicial discretion

4. In other words, it took place immediately before the restructuring of the Anglo-Welsh Probation Service to allow for the (partially) privatised provision of 'probation services' (Ministry of Justice, 2013: 9).

5. The staff sample is larger than the offenders', because some staff recommended more than one offender, and some offenders withdrew from the study after their supervisor had been interviewed.

6. All names used in this article are pseudonyms.

7. All demographic information (age, gender and ethnicity) were self-reported by the participant. Orders are listed as either CO (for community orders), or SSO (for suspended sentence orders). Recall note 1 on the distinction. The 'requirements' column also includes additional orders such as fines, disqualification orders (preventing the recipient from working with children), and restraining orders (preventing the recipient from approaching or contacting named persons).

8. Two offenders did face breach proceedings, towards the end of data generation: one partially engaged, the other fully engaged.

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