Penal and Welfare Conditionality: Discipline or degradation?

Fergus McNeill

Abstract

This paper aims to complement analyses of welfare conditionality by examining what can be learned from studies of conditional punishment in the criminal justice system. Drawing on a range of recent studies, I explore lived experiences of the conditionality attendant on penal forms of supervision; penal forms that have expanded rapidly in recent decades (McNeill, 2019). I argue that, to paraphrase Cohen (1985), such supervision is as much about the *dispersal of degradation* as it is about the *dispersal of discipline*. Indeed, in contemporary western societies, both in punishment and in welfare systems, I suggest that conditionality functions less to discipline poor and marginalised people and more to disqualify them from the entitlements of ordinary citizenship. In so doing, conditionality, constructs them as denizens, thus serving to limit the liabilities for the state that arise from social inequalities. Extending Fletcher and Wright's (2018) metaphor, the abusive slaps now meted out in concert by both hands of the penal state are as much about degrading and denying the entitlements of 'needy' denizens as they are about influencing their conduct. But crucially, even within the increasingly restrictive context created by these developments, penal practitioners can and do provide care and assistance.

Keywords

Welfare conditionality, mass supervision, probation, parole, penal-welfarism

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Introduction

In both welfare and penal regimes, and at their intersections, conditionality is not a new phenomenon. As Watts and Fitzpatrick (2018) point out, the UK Parliament's 1834 Poor Law (and in certain respects even its antecedents) sought to influence behaviour as much as to meet needs, to encourage self-reliance as well as to relieve poverty. Welfare assistance has very often been contingent on meeting certain criteria and on compliance with certain requirements, commonly related to work (as in the workhouse, of course). As Watts and Fitzpatrick (2018: 3) remind us, 'the principle of work-related conditionality was [also] integral to the thinking of… Beveridge, Temple and Tawney', and hence to the design of the modern welfare state of the United Kingdom.

Similarly, 19th and 20th century forms of conditional or suspended punishment – like probation, parole and community service – have historical antecedents in the medieval practice of 'recognisances'; where, as an alternative to facing immediate punishment, an offender could be conditionally released under payment of a bond and/or under the supervision of a trustworthy person (Simon, 1993). The gradual development of UK probation legislation and institutions from 1887 onwards formalised, extended and professionalised these practices within local probation services (Garland, 1985). Under these orders, the supervised person was and is typically required to 'be of good behaviour', to conform to their directions of their supervising officer, and to abide by whichever other conditions a judge or parole board might impose. Such conditions might relate, for example, to treatment or rehabilitative activities of various sorts, to residence at or exclusion from particular places, to abiding by a curfew, or to avoiding certain practices (like drinking alcohol) or associates. Building on slightly different precursors (see Faraldo Cabana, 2018), community service orders, under which people were required to complete a certain number of hours of unpaid work for the benefit of the community, were introduced in the later decades of the last century (Robinson, McNeill and Maruna, 2013).

While the rationale for developing each of these conditional sanctions and measures has often been linked to a desire to help their recipients, to keep them out of trouble, and to avoid placing them in the criminogenic environment of the prison, imprisonment nonetheless looms in the background as the price of failure to abide by the relevant conditions. Indeed, Vaughan (2000) has argued that the development of punishment itself in modernity – with the prison as its defining institutional form – was and remains intrinsically linked to the development of

'conditional citizenship' and, more generally, to the emergence of civil, political and social rights between the 18th and 20th centuries. He argues that:

> 'The relationship between punishment and citizenship is then conditional in two senses: the first is that one's claim to citizenship is granted only if one abides by an accepted standard of behaviour and punishment may be imposed if one does not live up to this standard; second, while undergoing this punishment, one is no longer a full citizen, yet neither is one completely rejected. Instead one occupies the purgatory of being a 'conditional citizen'' (Vaughan, 2000: 26).

However, Vaughan (2000) noted (almost 20 years ago) that 'the inclusionary aspect of punishment is waning as the conditions of citizenship are becoming ever more stringent' (p23), and he concludes that '[p]unishment is now being used not upon those who are thought to be conditional citizens with a view to reintegration but against those who are thought to be non-citizens to disable or exclude them' (p36). Those who study welfare conditionality have also noted similar changes in the stringency of conditions to which people are now made subject, and in the severity of the disabling and exclusionary sanctions imposed in the event of non-compliance (e.g., Watts and Fitzpatrick, 2018).

Scholars have also made important connections *between* the two regimes of welfare and penal conditionality. For example, Garland (2001) argued that since the 1970s, social and penal welfarism had come to be displaced by a 'culture of control' associated, amongst other things, with the decline of the rehabilitative ideal in criminal justice and with the re-emergence of more punitive sanctions. Garland explains these phenomena as resulting from a combination of structural, cultural and political changes in late-modern societies that produced what he calls contradictory (or in his term 'schizoid') responses to crime problems; whereas approaches to crime prevention combine rational, managerial and utilitarian elements, criminal justice policy becomes more expressive, emotive and symbolic.

Perhaps more familiar to scholars of social policy, Loic Wacquant's (2009) *Punishing the Poor* took issue with a specific aspect of Garland's thesis; Wacquant argued that the punitive turn in penal policy in the USA was a reaction not to rising insecurity about crime but rather to the *social* insecurity created by a broader reconstruction of the state. He characterized this reconstruction crucially as *combining* restrictive 'workfare' (that is, the recasting of welfare) and expansive

'prisonfare' (that is, the expansion of punishment) under a philosophy of moral behaviourism. Individual responsibility, he argued, had become a 'cultural trope' that conspired both to blame poor people and 'people of color' for their structurally determined fates and to hold them to account for their own recovery. Against such reductive, responsibilising discourses, he argued that the fate of the 'precariat' was underwritten by economic and market deregulation but also that it produced:

> 'a garish theater of civic morality on whose stage political elites can orchestrate the public vituperation of deviant figures—the teenage "welfare mother," the ghetto "street thug," and the roaming "sex predator"—and close the legitimacy deficit they suffer when they discard the established government mission of social and economic protection' (Wacquant, 2009: front matter).

Wacquant argued (like Garland (1985) himself in *Punishment and Welfare*) that developments in welfare and criminal justice therefore must be combined into a single analytic framework that makes sense of both the instrumental and communicative aspects of penal and social policies. In this light, the prison is revealed not simply as a mechanism of delivering criminal justice but rather as a 'core political institution'. For Wacquant, the emergence of 'the penal state' implies not a waning of the power of the state in a globalized world but rather the reverse: the bulking up of a more muscular and threatening state inimical to the ideals of democratic citizenship – although he does not use or address theories of citizenship directly.

The power of the penal state, then, is deployed unevenly and in ways that reflect and reinforce structural inequalities. For example, Haney (2004) has insisted on the importance of studying the 'gender regimes' of welfare and penal systems. Her examination of the parallels between the two systems identifies common trends in the devolution of responsibility from federal to state and local levels and in the extent of the commodification and managerialisation of services in both contexts. She also notes the deployment of 'equality with a vengeance', 'in which the ideal citizen-worker has shed his masculine identity' (Haney, 2004: 342). In other words, work-related conditionality in both systems now applies to women as much as men. Haney (2004) also identifies the importance, potency and gendered effects of discourses focused on *personal* responsibility, dependency and individualism: 'If responsibility discourse indicts women's choices as evidence of their personal and psychological flaws, dependency discourse does something similar for their social relationships' (p345). Henceforth, women welfare recipients are to rely

neither on men, nor on illicit substances, nor on the system; rather they are to be responsible for reforming and re-shaping themselves as independent but docile subjects. Gender is being governed here in new ways – through individualisation. I discuss parallel and necessarily inter-related questions about the racialised nature of penal and welfare conditionality in more detail below.

Whereas Wacquant and Haney focus on the USA, Fletcher and Wright (2018) have used Wacquant's (2009) conceptualisation of the 'centaur state' – with a neo-liberal head on an authoritarian body – to make sense of welfare reform in the UK. In particular, they evidence the criminalisation of poverty through the advancement of 'workfare'-style programmes that combine surveillance, sanction and deterrence. However, they note that, at least in the UK, while some of these developments are less novel than Wacquant's (2009) analysis suggests, they also extend to 'core' workers (including white working class men with earned welfare entitlements) and not just to those in and of the 'precariat'. As the title of their paper suggests, the hitherto supportive left hand of the state (representing, in Wacquant's terms, its social and welfarist functions) now seems more ready to 'slap down' than to 'help up'. 'Equality with a vengeance' (to use Haney's phrase) may entail the 'harsh justice' of levelling down rather than levelling up (Whitman, 2005) in the treatment of those discredited by their putative failure to be responsible, independent individuals.

This paper aims to complement such analyses of welfare conditionality by exploring what can be learned from studies of conditional forms of punishment in the criminal justice system. For the purposes of this paper, I define a regime as 'conditional' where it makes the ordinary rights and entitlements of citizens contingent upon their compliance with specific conditions, and where this compliance is supervised and judged by state-appointed authorities with the power to sanction non-compliance. In the context of welfare conditionality, sanctions usually take the form of withholding benefits (thus depriving citizens of material resources, in effect limiting their social and economic rights). In the context of penal conditionality, sanctions usually take the form of imposing harms or costs (for example, further deprivations of autonomy, privacy and liberty, in effect limiting their civil and political rights). Both forms of deprivation – of social and civil rights – create or exacerbate vulnerability to human suffering. The specific forms of vulnerability and types of suffering produced under different welfare and penal regimes are best understood by exploring conditionality as a lived experience. Hence, in the discussion below, I draw on a range of recent studies, some using creative methods, that have focused on lived

experiences of conditionality attendant on penal forms of supervision; penal forms that have expanded rapidly in recent decades (McNeill, 2019).

To preview my conclusion, I argue that, to paraphrase Cohen (1985), such supervision is as much about the *dispersal of degradation* as it is about the *dispersal of discipline*. Indeed, in contemporary western societies, both in punishment and in welfare systems, I suggest that conditionality functions less to discipline poor and marginalised people and more to disqualify them from the entitlements of ordinary citizenship, serving to limit the liabilities for the state that arise from social inequalities. Extending Fletcher and Wright's (2018) metaphor, the abusive slaps now meted out in concert by both hands of the penal state are as much about degrading and denying the entitlements of those constructed as 'needy' denizens – about pushing them away and holding them at arm's length -- as they are about influencing citizens' conduct. But crucially, even within the increasingly restrictive context created by these developments, penal practitioners can and do still sometimes provide the care and assistance of a helping hand.

Imagining supervision as disciplinary and/or as diversionary

Carlen's (2008) notion of 'imaginary penalities' draws attention to the fictions that sustain and legitimate penal institutions, policies and practices. Her primary example is the hollowing out of the rehabilitative ethos of prisons in recent decades. Under the assault of social and economic pressures associated with late modernity, she argues that the focus has shifted from a serious effort at *social* reintegration to pre-occupations with risk management and (sometimes) an associated demand for *personal* transformation. Carlen (2008) argues that prison staff collude in a charade. They know that social reintegration has become well-nigh impossible but sustain a rehabilitative fiction or 'imaginary' in and through their professional or occupational discourses and practices. Carlen (2008) warns that we must resist the power of such penal imaginaries to restrain and disable critique; and, crucially, to inhibit the imagining of something better. Here, I want to draw attention to two inter-related imaginaries which pertain to supervisory forms of punishment: discipline and diversion.

As I noted in the introduction, the development of both welfare and penal conditionality has often been justified through a disciplinary logic – even before the emergence of neoliberalism. Jonathan Simon's (1993) seminal analysis of the development of California's parole system, for

example, charts the evolution of this logic in response to social and penal change, but concludes that, although parole discourses, techniques and practices have evolved in each successive iteration, the core function of parole has always been to provide *Poor Discipline*. Closer to home, the emergence of a Police-led probation scheme in Glasgow in 1905 reflected the concern of city leaders that exposing very high numbers of fine-defaulters to the 'demoralising' effects of imprisonment risked the civic health (City of Glasgow, 1955). Better to separate those amenable to reform from the 'incorrigible', and to place the former under strict supervision in the community. Here, as in many similar instances elsewhere, the twinned intentions of supervision's pioneers were to divert people from the criminogenic effects of imprisonment and yet to ensure that they remained subject to disciplinary processes and practices. It was hoped that their exposure to and compliance with these processes and practices might secure their conditional inclusion as reformed citizens (Vaughan, 2000).

Just as in California so in Scotland, the discourses, techniques and practices have changed significantly over the last century or more, and this has been reflected in changes in probation's institutional locus and forms. Between the 1930s and the 1960s, probation supervision in Glasgow moved from being a task of plain-clothed police officers to professionalised probation officers in a distinct service. That service and its responsibilities were subsumed within local authority social work as a result of the Social Work (Scotland) Act 1968. Today, the supervision of people on community sentences and released prisoners remains a duty of the local authority's social workers. But like the population processed through courts and prisons, the population under supervision continues to be drawn principally from the most disadvantaged communities in the city (and in the country more generally); and that population continues to be characterised by the sorts of personal and social problems that result from being on the receiving end of the city's egregious inequalities: they are disproportionately characterised, for example, by histories in the care system, of school exclusion and poor educational outcomes, by poor physical and mental health, by high levels of chronic substance use problems, by insecure housing and unemployment (McNeill, 2019) – and by high mortality rates[i].

Several decades ago, Andrew Scull (1977, 1983), Thomas Mathieson (1983) Stanley Cohen (1983, 1985), and others warned that the populations subject to carceral discipline were growing and spreading beyond the prison and into the community. Cohen's (1985) highly influential and prescient book *Visions of Social Control* argued that a policy rhetoric of diversion and decarceration was cloaking the emergence of more expansive and penetrating forms of 'deviance control'. He

argued that these new forms were serving to widen the penal net at the same time as thinning its mesh, dredging more people into (rather than fishing more people out of) the penal system.

Robinson (2016) has recently reminded us that these sorts of analyses had crystallized by the late 1980s to such an extent that Lowman, Menzies and Palys (1987) produced an edited collection on *Transcarceration*. Rather than accepting the logic of probation, parole and other measures as *alternatives* to imprisonment, the concept of transcarceration stressed the connections and conjunctions between different sorts of penal institutions and measures, suggesting a symbiotic rather than a substitutionary relationship between imprisonment and its supposed community-based 'alternatives'.

Criminologists and sociologists of punishment have been justifiably pre-occupied in the decades since the work of Cohen and others with analyzing the causes and consequences of 'mass incarceration'. Yet the population under supervision in the community now far exceeds that in custody. For example, in the USA at yearend 2015 there were more than 6.7 million people under 'correctional control' with more than 4.6 million of them on probation or parole. In 1980, these numbers stood at 1.8 million and 1.3 million respectively[ii]. Over the same period, but in the very different context of Scotland, the prison population rose from about 5,000 to 8,000 while the population under supervision climbed from less than 3,000 to about 22,000. Crime rates cannot account for the huge growth in penal populations in either country. Indeed, in Scotland, there were 10 times as many community sentences *per crime* in 2015 as there had been in 1980 (McNeill, 2019).

Recent European work on 'mass supervision' (for example, McNeill and Beyens, 2013; McNeill, 2019) and US work on 'mass probation' (Phelps, 2013, 2017) has confirmed – broadly in line with Cohen's (1985) thesis -- that while supervisory sanctions have been promoted enthusiastically by reformers for their supposedly diversionary effects, the actual outcome has been a significant expansion and intensification of penal control (Aebi, Delgrande and Marguet, 2015). In Scotland, an enduring policy commitment to reducing imprisonment has been discursively interwoven with rehabilitative, reparative and managerial logics at different times in the history of supervision. But, like so many others, the often-lauded Scottish case in fact turns out to be a salutary tale of 'successful failure'. The belief that supervision could and would do good to and for its subjects (and for society) has justified its enormous expansion, and thus the

growth of our penal system, precisely because supervision was not understood to be *penal* (McNeill, 2019).

This failure to grasp supervision's penal character has complex roots. If probation emerged in Anglophone countries as something to be done *instead* of punishment (McNeill, 2013) or, primarily in countries with Roman law traditions, as a form of *suspended* punishment, or as something the follows on *after* punishment to mitigate its adverse consequences by promoting reintegration (Herzog-Evans, 2015; Morgenstern, 2015), then it is easy to see why it might not have been seen itself as penal. At least in the era of welfarism, supervision was often construed as a service rather than a sanction; one that was concerned with attending to the interests and needs of 'offenders' (even if this was also intended to influence their behaviour). But the development of more punitive public mood has conspired to produce a shrinking conceptual space for supervision as an *alternative* to punishment and demanded its re-legitimation precisely as a *form of punishment* that also offers the 'law-abiding public' protection from certain risks, and, crucially, does so at less cost than imprisonment (see Robinson, et al., 2013).

To return to Carlen's (2008) concept of imaginary penalities, some of the contemporary studies cited above have clearly exposed the fiction of supervision as diversion. Whether and how to see or un-see supervision as discipline are, however, more complex questions. As I have argued, advocates of supervision have always appealed to its putative disciplinary potential – its capacity to retrain its subjects. Recently, they have toughened up this kind of disciplinary logic, recasting the insecure public as the intended beneficiary rather than the vulnerable or under-socialised offender. Public protection has become the goal, rather than social inclusion (Garland, 2001; Robinson, 2008; Robinson and McNeill, 2004). At the same time, the penal character of supervision has begun to be un-masked (McNeill, 2019). Mass supervision is beginning to be seen for what it is -- a vast expansion of penal control built in part on the dubious claims (1) that it diverts people from penal control, and (2) that it retrains and constrains its subjects in order to protect the public. In what remains of this paper, I want to focus further on this second claim. Through exploring how it is experienced rather than how it is legitimated, I aim to reveal how penal conditionality serves to degrade more than to discipline.

Experiencing penal conditionality[iii]

To provide some context for this discussion of experiencing penal conditionality, I want first to return to the theme of conditional citizenship (Vaughan, 2000) introduced at the beginning of this paper. In a recent article, Miller and Stuart (2018) explore how the expansion of the US penal system has produced a new form of 'carceral citizenship'. They argue that, through racialized processes of criminalisation, conviction 'translates' people (particularly poor people of colour) into carceral citizens; a status that brings particular restrictions, duties and benefits – and which affects not just their interactions with the state, but all aspects of their lives. Such citizens are subject to laws that do not apply to other citizens and they face sometimes profound constraints on their geographic and social mobility; laws and constraints that, in other contexts and for other populations, would be considered highly discriminatory. For example, disqualification from access to public services, public housing, public spaces and certain forms of employment or other social participation creates vulnerabilities in and dependencies for carceral citizens; and these vulnerabilities and dependencies constitute burdens for and risks to families and friends (usually, in practice, for older women relatives; see Western, 2018):

> 'From New York City to Los Angeles, federal housing mandates are interpreted in such a way that a mother who allows her son to sleep on her couch can be evicted if he has a felony: She takes the risk to house him, but the stakes involved in caring for him change how they relate to one another… An argument with a partner or a misunderstanding with a social worker could warrant a trip back to prison, a night on the street or restricted access to food, work, healthcare or their family… This combination of precarity and derision creates a power imbalance, altering even the most intimate exchanges between the formerly incarcerated and the most important people in their lives' (Miller and Stuart, 2017: 539-540).

However, as well as being translated into vulnerable and burdensome subjects, carceral citizens are also freighted with an expectation the pay an 'ambiguously defined "debt to society"' (p533). Although their peculiar status does allow access to specific goods and services directed at penalised populations, through these services they are expected to settle their social debts and reform themselves. Only if and when that is deemed to have been accomplished may they secure the symbolic benefits of being seen to have 'made good' – and even then those benefits may not generate materially rewarding effects. Miller's (2014) own ethnographic work, for example, shows how severely marginalised formerly incarcerated people are expected and required to be civically conscientious and engaged in ways that other citizens are not; they must *perform* their

own transformation in and through services in which others already considered 'reformed' hold them individually responsible for that project of change.

Carceral citizenship then, is not merely second-class citizenship, nor is it quite synonymous with the 'custodial citizenship' that Lerman and Weaver (2014) articulate – in which subjects of criminal justice are 'taught their place in US democracy' [or indeed beyond it](Miller and Stuart, 2017: 533). Rather, it is a more pervasive and diffuse concept and experience which exposes 'how crime control shapes the social landscape, the role that third parties play in contemporary modes of governance, and how proliferation of these practices reconfigure the US state' (Miller and Stuart, 2017: 534.). Indeed, we might consider carceral citizens in fact to be 'denizens' (Hammar, 1990), dispossessed from certain rights, including protection from crime, social welfare, political participation and the representation of interests (see Lea 2013).

Other studies of various sorts, and from a variety of jurisdictions, confirm the burdens and exclusions that conviction – and more specifically, conditional forms of punishment – create. Some survey respondents, for example, when asked to compare it with imprisonment, see US probation as 'the more dreaded penalty' (Petersilia and Deschenes 1994: 306; see also Payne & Gainey 1998; May and Wood 2010). More recently, Durnescu (2011) interviewed 43 Romanian probationers finding that as well as deprivations of time and the other practical and financial costs of compliance, and limitations on their autonomy and privacy, probationers also reported the pain of the 'forced return to the offence' and the pain of a life lived 'under a constant threat' (that is, of enforcement action). Hayes' (2015) careful study of the pains of probation supervision in England, based on in-depth interviews with a small number of supervisees and supervisors, reveals six sets of related pains: pains of rehabilitation, of liberty deprivation, of welfare issues and of external agency interventions, as well as process pains and pains associated with stigma.

Fitzgibbon and Healy's (2017) review of research on how supervision is experienced in England and Wales paints a mixed picture. While King's (2013) respondents reported that supervision increased their sense of agency, their motivation to change and their problem-solving skills, encouraging them to focus on their futures, they were demoralised by the frequency with which they were referred to external agencies for practical help. Probationers in Shapland, Bottoms and Muir's (2012) study did not see their supervisors as likely sources of help. Few of them were taking part in offending behaviour programmes and most thought their probation appointments

were too brief and unfocused. In broad terms, inspection reports in England, at least since the recent privatisation of much probation and parole work, paint a depressing picture of declining standards in the privatised Community Rehabilitation Companies (see Burke, Collett and McNeill, 2018); with more reliance on phone contact or automated check-ins and lower levels of human contact. It seems as if 'Transforming Rehabilitation' (as the UK Government's reform programme was called) has, in its implementation, in fact tended to reduce rehabilitation to 'mere' supervision and, in some cases, to not much of that. In other words, there is little evidence of disciplinary processes whether cast as inclusionary or constraining.

That said, perhaps the most interesting and insightful accounts of penal conditionality are to be found in several recent ethnographies of imprisonment, rehabilitation, reentry and supervision (like Miller's [2014] account of reentry experiences, discussed above). Forms and experiences of conditionality necessarily differ in the contexts of imprisonment and community-based supervision, reflecting different purposes, constraints and qualities of the attendant penal regimes. However, at least where the timing of release is discretionary and dependent on being seen to be 'rehabilitated', prisoners share with probationers a similar vulnerability to professional judgments about progress and compliance: Just as the prisoner must satisfy one regime to secure release, so the probationer must satisfy another to avoid sanction.

Within the context of imprisonment and release in England and Wales, Crewe (2011) has explored contemporary imprisonment's 'depth, weight and tightness'. Depth refers to degree of physical security to which the prisoner is subject and to the distance from release and from the outside world that this implies, represents and constitutes. Weight refers to the psychological burdens of imprisonment; to how heavily it bears down upon its subjects. Crewe explains 'tightness' in the following way:

> 'The term 'tightness' captures the feelings of tension and anxiety generated by uncertainty (Freeman and Seymour, 2010), and the sense of not knowing which way to move, for fear of getting things wrong. It conveys the way that power operates both closely and anonymously, working like an invisible harness on the self. It is all-encompassing and invasive, in that it promotes the self-regulation of all aspects of conduct, addressing both the psyche and the body' (Crewe, 2011: 522).

In Crewe's analysis, tightness relates to the pains of indeterminacy, of psychological assessment and of the focus on self-government that has become an integral part of rehabilitative activities in prisons. For example, Lacombe's (2008) ethnographic study of an English prison-based sex offender programme depicted how contemporary rehabilitation required people convicted of sex offences to remodel their perceptions *and* presentations of self in line with the requirements of the programme to which they were subject. Digard's (2010, 2014) English study of the experiences of post-release supervision for people convicted of sexual offences suggests that these performances must continue long after release; the failure to sustain the performance risks recall to custody or the imposition of further conditions on licenses. Whether to secure or to sustain a certain kind of 'freedom', a particular sort of performance is required.

These kinds of processes and dynamics – making progress towards liberation conditional upon a satisfying performance of rehabilitation or transformation -- are not unique to people convicted of serious or sexual offences. Cox's (2011, 2013, 2017) ethnographic study of young people (between the ages and 15 and 24, and mainly from minority ethnic communities) involved with the juvenile and adult justice systems of New York State paints a somewhat similar picture. In a paper aptly entitled 'Doing the programme or doing me?', she concludes that the young people's desire for positive development (or 'wholeness') leads to their domination by institutional and systemic processes that insist on self-discipline and control while providing few opportunities to exercise these qualities.

Similar themes are also apparent in Werth's (2016) exploration of the experiences of parolees in California, although he focuses on how the parolees resist and subvert their domination and subjugation, arguing that many parolees were committed to 'straightening [themselves] out', but on their own terms – rejecting externally imposed demands to remake themselves on the system's terms and in its image. Werth construes this as resistance to the 'logic' of parole; a logic that assumes its subjects lack the capacity to manage themselves and their lives ethically. Their resistance is an assertion of autonomy in determining how to live well or how to go 'straight'. Yet, as Werth notes, even this resistance remains vulnerable and subordinate to penal power (via revocation).

In my own recent work with several colleagues, we have used more creative methods to explore how people themselves saw and chose to represent supervision as a lived experience. In hindsight, I have come to understand these projects as part of a 'counter-visual criminology'

concerned with the 'the deployment of a politics of visibility for change and transformation' (Brown and Carrabine, 2017: 6). In other words, it seeks to help us 'un-see' or 'see through' familiar misrepresentations of crime and punishment, so that it becomes possible to see these issues differently, to ask new questions, to offer new critiques and, equally importantly, to construct new ways of seeing. More specifically – and more intentionally -- in the *Supervisible, Picturing Probation* and *Seen and Heard* projects (discussed immediately below), we developed an 'emic' approach, focusing on how people experiencing supervision themselves saw it and, cruciually, *chose to represent it*. Our counter-visual intention was to bring these visual representations directly into academic, professional and public conversations. Rather than offering an 'etic' (or outsider) interpretations of other people's experiences of supervision, we wanted to exploit the polysemic character of pictures and songs as engaging and vivid means of inviting meaning-making with and from the perspectives of both their 'authors' and their 'readers' or 'listeners'. This approach also reflected our intention to treat participants as 'knowledgeable informants' and partners in the process, not as mere producers of objects that we claimed the authority to interpret (see Pauwels, 2017).

Firstly, in the *'Supervisible'* study, we used visual methods to explore about 30 people's thoughts and feelings about being supervised in England, Germany and Scotland (see Fitzgibbon, Graebsch and McNeill [2017] for a detailed account of the study's methods and findings). By discussing and analysing these photographic representations, we surfaced five key aspects of supervision conveyed in images of constraint, waste, time lost or suspended, judgement and growth. One of the benefits of using the pictures was that they often allowed for these themes to be represented and combined in subtle, complex and polysemic ways, defying any simple presentation of supervision as *either* 'bad' or 'good' or as *either* 'helpful' or 'hurtful'. Discussing the findings from *Supervisible* as a whole, Fitzgibbon, et al. (2017) note that aspects of supervision that might seem obviously positive (like growth) or negative (like constraint, waste or judgment) are in fact ambiguous. This suggests the possibility that supervision can be experienced as being productive *at the same time as* being painful (see McNeill, 2009). But it is important to acknowledge that even when supervision is productive, it still hurts:

> 'To paraphrase the common misreporting of supervisory sentences in the British press; people do not 'walk free from court' when such sanctions are imposed. They walk away under judgment, under constraint, under threat and into a situation where their time is no longer their own. They enter a liminal (in-between) position as 'half-citizens'; their

> liberty has their liberty has been preserved, but their freedoms and status are significantly compromised' (Fitzgibbon, et al. 2017: 317).

In other words, penal conditionality is painful. It creates and mobilises vulnerabilities to penal power and burdens of subordination to and compliance with it. In both a formal and a felt sense, it is degrading, even when the background threat of imprisonment is avoided.

We took our engagement with creative research methods one step further in developing a project called *'Mass Supervision: Seen and Heard*'[iv]. As the name suggests, *Seen and Heard* combined the visual representations from *Supervisible* with an attempt to make supervision audible. Working with Vox Liminis, a Scottish arts organisation, who ran a two-day workshop in Glasgow, we aimed to enable participants to write songs inspired by some of the *Supervisible* pictures and others from a sister project *Picturing Probation,* in which practitioners had provided visual representations of their work (Worrall, Carr and Robinson, 2017). I have discussed the workshop's process and participants in more detail elsewhere, focusing firstly on my experience of working with 'Teejay' to write a song called *Blankface* (McNeill, 2019b), and later comparing this song with a second co-written with 'John', called *Helping Hand* (McNeill, 2019, ch5). Both Teejay and John have served the custodial parts of their sentences and are now completing them under supervision in the community. However, Teejay is a 'life licensee', meaning that he will remain on licence until he dies; whereas John is completing a long but determinate sentence in the community.

Blankface communicates (both in its words and its music[v]) the alienating and degrading impact of Teejay's perceived misrecognition by his supervisors:

The clock spins, zero hour begins
This is the end, the end again
Here sits Blankface and she spins my tale
I've stopped listening now I know that I'll fail.

Tick by tick and line by line
You weave yours and I'll weave mine
A web of shadows, a silk-spun tomb
A windowless room

By contrast, in *Helping Hand,* John communicates both his gratitude for supportive supervision and, yet, his ambivalence about it:

Hold my hand and let me go
The things I know I can't unknow
Let me go, please hold my hand
It's time to fly: I know I can.

John looks forward to a time free from supervision. As a life licensee, Teejay knows that, for him, that time can never come. He is permanently trapped in the web of supervision; perpetually vulnerable, burdened and discredited.

In a recent paper (McNeill, 2019b), I suggested that institutional forms and processes of mass supervision that generate the forms of misrecognition that Teejay experiences might be conceptualised better as a 'Malopticon' than as a (Foucauldian) Panopticon. I argue that in the metaphorical Malopticon:

> 'penal subjects suffer not hyper- or super-visibility; rather, they suffer the pain of *not* being seen; at least not as they would recognise themselves… The Blankfaced officers of the Malopticon stare *at* the supervisee, but they do not see *him or her* at all; their gaze fails to individualise him or to discern him. But not only is the subject of the Malopticon seen badly; he is she is seen *as* bad... Worse still, the Malopticon projects this dubious assessment – socially and temporally: 'Tick says he'll do it, again and again'. Merely by virtue of its insistence on supervising them, the Malopticon represents and projects its subjects as untrustworthy. So, while in its rhetoric it sometimes calls for their reintegration and re-entry, it simultaneously undermines confidence in their redeemability by perennially misrecognising and discrediting them. When they resist, the Malopticon uses this as 'evidence' to confirm the veracity of its constructions, tightening its grip on its subjects and projecting its reified misrepresentations more intently' (McNeill, 2019b: 225-226).

The Maloptical supervision that Teejay's experiences offends and frustrates him more because of its permanent and indelible construction of him as a subject in need of supervision than because of its penetration into his 'soul' or psyche. He feels himself misconstrued as untrustworthy; as unworthy of dominion. John can accept and tolerate his conditional status (for now) because he sees it as part of a proportionate and time-limited punishment; and because he values and desires his supervisor's help. By contrast, Teejay rails against his permanent diminution, from which there is to be no release.

The comparison of these two experiences points to the importance of the legitimacy of supervision in the eyes of its subjects; a legitimacy that is related to the extent to which they can or cannot recognise themselves in the ways that the system sees them. The temporal terms of conditionality are also important to its legitimacy. Whereas John can see himself *being* who he is and *becoming* who he aspires to be *through* a period of conditional status, Teejay refuses to see himself as supervision constructs him. Yet there is literally no life *beyond* supervision for Teejay; he is a liminal subject denied any prospect of passage. The only way for him to preserve his self-respect is to dispute the legitimacy of how this limbo constructs and contains him – and to resist it.

Teejay's acute sense of grievance about this situation and the wider dangers associated with mass supervision's capacity for misrecognition point me towards Nancy Fraser's wide-ranging work. Fraser (2007) explores the relationships between *recognition* of status, *redistribution* of economic resources and *representation* in political terms. *Mis*recognition for Fraser is a problem for *social* justice because '…people can also be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing; in that case, they suffer from status inequality or misrecognition' (Fraser, 2007: 20). Lister (2007) suggests the need to recognize *both* the social consequences of misrecognition *and* its psychological effects, illustrating this with reference to empirical studies of the experiences of people in poverty and of people seeking asylum.

In turn, this points us beyond the social and psychological and towards the *political* dimensions of misrecognition and of the Malopticon's work. As I have argued elsewhere,

> 'In 'advanced societies', the degradation of certain social groups (asylum seekers, migrants, 'felons', ghetto-dwellers) serves a common purpose; these degraded groups can

> be put beyond the pale and behind the veil; the deprivation or diminution of their citizenship serves to minimize the neo-liberal state's liabilities (see Barker, 2017)' (McNeill, 2019: 226-227).

To return to the discussions of conditional and carceral citizenship above, the notion of the Malopticon represents the state apparatus that serves to misrecognize citizens; in so doing, it deploys conditionality to refashion them as denizens. In so doing, the Malopticon silences their claims for political representation and restrains or denies their appeals for redistribution.

Conclusion: Discipline or degradation?

> *'Joe sat on the bench in the waiting room. Looking down, he noticed that the bench was screwed to the floor. Not even the furniture here was free. Perspex screens and locked doors separated him and the others waiting from those for whom they waited; the veils between the untrustworthy and those to whom they were entrusted. Joe absent-mindedly read the graffiti carved into the bench; testimonies of resistance that made the place feel even more desperate.*
>
> *[…] He fidgeted and returned his eyes to the floor, downcast by the weight of the room's assault, avoiding contact, avoiding hassle, staying as unknown as possible in this shame pit. Better to be out of place here than to belong. This was no place to make connections.*
>
> *Joe wondered what she would be like – Pauline -- the unknown woman who now held the keys to his freedom. Her word had become his law: This was an 'order' after all. He was to be the rule-keeper, she the ruler – cruel, capricious or kind. She might hold the leash lightly or she might drag him to heel. Instinctively, he lifted his hand to his neck, but no one can loosen an invisible collar. At least it was not a noose. Joe swallowed uncomfortably, noticing the dryness of his mouth and the churning in his gut. He was not condemned to hang. He was condemned to be left hanging.*
>
> *Joe wondered what Pauline would be like.'* (McNeill, 2019: 1-2)

The extract above comes from the opening of a recent book. Though the book is an academic monograph, each chapter begins with an episode of a short story, *The Invisible Collar*, which is a work of sociological fiction, intended to function as an engaging and affective way of communicating the research findings about supervision that the book discusses. The story's style and form was inspired in part by Ken Loach's film 'I, Daniel Blake', even if its content reflected research findings about penal conditionality. These thoughts of Joe's, awaiting his first probation

appointment, highlight the anxiety, dread and vulnerability that such conditionality entails; but I suspect that these dynamics – and perhaps many of the themes of this paper – will be equally familiar to scholars of welfare conditionality.

There are, of course, important conceptual and practical differences between penal and welfare conditionality, as I noted in the introduction. Penal conditionality's subjects have been convicted of an offence and are being sanctioned for it; this is what justifies the infringement of their rights; for example, to privacy or to liberty or to be paid for their labour. For them, privacy or liberty or pay for work has already been taken away, but abidance with conditions is necessary to avoid a *further* sanction that most would see as being more severe; that is, imprisonment. By contrast, conditionality is imposed on welfare claimants not to avoid state-imposed *harms* but rather to secure access to state-sponsored *benefits*. Yet in both cases, the subjects of conditionality are made exceptionally vulnerable to judgements about their compliance – and that vulnerability in and of itself is experienced as painful and degrading. Perhaps paradoxically, although the *outcomes* of a breach of conditions may be more severe for penal subjects (if indeed loss of liberty is more severe than loss of the means of subsistence), *processes* of enforcement, problematic as they are, may entail *less* vulnerability than those which faces welfare claimants. To the extent that penal sanctions are recognised as involving state-imposed harms rather than distributing state-provided assistance, criminal justice offers more due process rights and protections than apply in relation to welfare sanctions (see Adler, 2016).

Does the common vulnerability to state power that conditionality entails suggest, as Adler (2016) has argued, that although they are not judicially imposed, the function of benefit sanctions is disciplinary rather than regulatory? That question perhaps revolves around whether welfare conditionality is really intended to 'correct' or 'normalise' or 'train' its subjects (in the Foucauldian sense) into compliance with the welfare regime. Recent evidence suggests that -- if securing change by effecting individual transformation of the claimant *is* the intended goal of conditionality – then it must be considered an abject failure (Dwyer, 2018). Yet, welfare conditionality endures despite the absence of evidence that it supports motivation, or behaviour change, or entry into or progression within the labour market. Indeed, we know that behaviour change is complex and non-linear, and that appropriate and meaningful support rather than the looming threat generated by conditionality is what supports it best; indeed, that threat tends to generate and require 'game-playing' more than positive change (Batty and Fletcher, 2018).

In the criminal justice context, the research findings are similar. Despite being faced with numerous structural obstacles, even people who have been caught up in criminal justice processes for years tend to find a way move away from it eventually. However, they rarely do so because of threats generated by conditional forms of punishment; rather, they are best supported away from crime and punishment and towards social integration in and through social relations characterised by solidarity and subsidiarity (Weaver, 2015; Weaver and McNeill, 2016).

It may be that a moral or political case can be made for conditionality in penal and welfare contexts – but it cannot be built on evidence that conditionality provides an effective mode of discipline that produces positive changes in people and their behaviour or their social situations. Like other forms of negative sanction, the vulnerabilities that conditionality creates serve to exacerbate rather than to ameliorate structural inequalities. In so doing, they cause real suffering – even when conditions are abided by and no further punitive sanction is invoked. Precisely because it hurts, the use of conditionality needs, at the very least, to be carefully restricted and restrained. In principle, degradation and disqualification are harms that we should always seek to minimise since they damage people's capacities as well as their participation in and contribution to society.

Ultimately, it may be that, in both contexts, conditionality 'works' in a different way, serving a much less worthy purpose. Indeed, we might best think of conditionality's disciplinary logic as an imaginary in Carlen's sense (2008); a fiction that exists to obscure its disqualifying, degrading realities. Conditionality *does* work. It works to symbolically degrade and disqualify, producing symbolic, political and material effects for the 'penal state' which uses both hands to push away those that it has made vulnerable, and whose vulnerabilities it has itself magnified through conditionality.

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Footnotes

[i] Hannah Graham, personal communication, March 2019.
[ii] See: https://www.bjs.gov/content/pub/pdf/cpus15.pdf, accessed 28th October 2018.
[iii] Parts of this section of the paper draw on chapter 5 of McNeill (2019), re-working and extending its analysis of experiencing supervision. The material is used here with the publisher's permission.
[iv] Pictures from the exhibition are available here: http://www.offendersupervision.eu/supervisible (accessed 19th February, 2018) and the resultant EP can be found here: https://voxliminis.bandcamp.com/album/seen-and-heard-ep (accessed 19th February, 2018). Although *Seen and Heard* was initially seen as a 'knowledge exchange' (or dissemination) project rather than as (more) research, it produced significant further evidence and learning about the penal character of supervision. Since we secured fully informed consent to record both the processes and the outcomes of the songwriting workshop, and to put the songs into the public domain (with anonymity protected, where requested), I include discussion of this supplementary project here.
[v] The song 'Blankface' can be listened to here: https://www.voxliminis.co.uk/media/blankface/ , accessed 10th Juy 2019.