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Experiencing Penal Supervision: A Literature Review

DAVID HAYES*

Abstract

Penal supervision – by probation officers or by other State agents – has only comparatively recently begun to be considered by academics as an experience in its own right, despite the relatively lengthy history of its use. This article provides an overview of that scholarship. It considers the motivations that have led to the study of the experience of penal supervision, and some of the groups whose experiences are noteworthy. It then reviews a range of ‘pains’ and ‘gains’ of penal supervision, and argues that, whilst these experiences are contingent on a range of external factors, they raise substantial implications for policy and practice.

Keywords

Desistance; experience; pains of probation; punishment; supervision; user voice.

Introduction

Despite the long history of non-custodial supervision being used to dispose of individuals convicted of criminal offences (see generally Mair and Burke, 2012), the study of what it is like to *experience* penal supervision as a social phenomenon is relatively new, and the subject of comparatively few studies (Durnescu et al, 2013). This article provides an overview of this field, highlighting areas of particular relevance to practitioners, students, and policy-makers, and identifying avenues for further research. It considers three questions: *why* are experiences of penal supervision worth studying; *whose* experiences are relevant; and *what* does the literature tell us about the experience of supervision (especially by supervised penal subjects)? Exploring these questions enables a discussion of the implications of this literature for policy and practice, as well as areas for further research.

Firstly, however, we should define our subject, ‘penal supervision’. Since this is still a relatively young field, and one which overlaps substantially in its methods and outlook with studies of the experience of other penalties, this review adopts a broad definition – encompassing not just probationary supervision as a requirement of a community order, suspended sentence order, or early release from prison, but also the supervisory aspects of other non-custodial sanctions and measures, such as electronic monitoring and unpaid work requirements. I call this supervision ‘penal’ to prevent confusion both with ‘supervision requirements’ (*i.e.* probation supervision), and with

* Lecturer in Law, The University of Sheffield, Bartolomé House, Winter Street, Sheffield, South Yorkshire, UK, S3 7ND. Email: <d.j.hayes@sheffield.ac.uk>.

supervision in contexts other than criminal justice (e.g. in child welfare cases). In short, this review considers studies covering multiple forms of non-custodial supervision in a criminal justice context, keeping in mind that different orders, requirements, and sentences will necessarily entail different experiences. While the focus of this article will remain mostly on England and Wales, studies involving other jurisdictions will be highlighted where they provide additional insights, bearing in mind the challenges of making effective comparisons across jurisdictional borders (see generally Nelken, 2010; McNeill and Beyens, 2013).

1. Why study experience?

Why use limited academic resources to study the experience of a criminal justice intervention? Very briefly, there are two major reasons, *humanitarian* and *penological*. *Humanitarian* concerns with the experience of penal supervision motivate some of the earliest studies in this field, dating back to penal reformers such as Cesare Beccaria (1764) and John Howard (1784). Early humanitarian concerns were driven by the observer's objective impressions of what prison (and other visibly punitive forms of punishment, like capital and corporal punishment) *seemed* to be like: the disgust and pity that the abject conditions of penal subjects caused to these authors' liberal, upper- and middle-class sensibilities during the early Enlightenment. However, over time, the penal subject was allowed a voice of their own. Changing conceptions of research enabled greater focus on the subjective, and this allowed a range of new research methods and analytical frameworks to come to the foreground. The most important of these frameworks, for present purposes, is Gresham Sykes's (1958: 64) foundational study of the 'pains of imprisonment': the major 'deprivations and frustrations of prison life'. This approach to cataloguing specific forms of penal deprivation has since been adapted to a range of different forms of penal supervision (e.g. Payne and Gainey, 1998; Durnescu, 2011; Hayes, 2015; compare Nugent and Schinkel, 2016, on the 'pains of desistance' more generally). Sykes's pains of imprisonment were revolutionary because they provided a vocabulary that was *subjective* to individual experiences and based on an *inductive* derivation of theory from data, not the other way around (Hayes, 2016). The penal subject could speak for themselves, and tell us where, when, and how much it hurt, enabling us to minimise that suffering where possible (Sykes, 1958: 78-83; Durnescu, 2011: 539-543).

Concern with penal suffering (and indeed, with broader penal experiences) is not always purely altruistic, however. Just as frequently there is some sort of *penological* concern behind attempts to understand what punishments are like: that is, one based on the aims of the criminal justice system. Experience may well be relevant to rehabilitative and other attempts to reduce the (re)offending rate through

punishment, for instance – whether because rehabilitation can be undermined by some negative or overly painful experiences (Durnescu, 2011: 539-543) but also because the right kinds of pain (such as ‘reintegrative’ shaming) can motivate desistance from criminality (Braithwaite, 1989). Likewise, *retributive* theories of punishment that stress the need for proportionate punishment as a way of censuring wrongdoing, may well have reasons to be concerned with subjective experience – particularly if that subjective experience affects how much punishment we view a sentence as imposing (Ryberg, 2010). Not every retributivist accepts that subjective suffering is what counts when calculating the severity of a punishment, but enough of us do that we take an interest in subjective experience as at least one relevant factor (for an overview of this debate, see van Ginneken and Hayes, 2017: 63-65). In the case of penal supervision in England and Wales, this retributivist interest is also a result of the historical development of penal policy, and in particular, the re-casting of probation work as an alternative punishment to imprisonment, rather than an alternative to punishment (Mair and Burke, 2012: 127-152). Emphasising the punitive role of probation-based penalties raises the question of what makes these interventions punitive, and whether they are punishing enough. The pains of punishment provide a means of rejecting the claim that penal supervision constitutes ‘a soft option’, and gaining a more rounded understanding of its penal value (Hayes, 2015, 2016, 2018).

So there are many reasons to study the experience of a penal phenomenon – as citizens of States with criminal justice systems that aim at certain ends, and as human beings who might want to avoid unnecessary suffering for altruistic reasons. Our reasons for studying the experience of a penalty are worth considering, because they imply details about our methods, analytical frameworks, and so, our findings. They also influence the populations whose experiences we consider worth studying – that is, the answer to the question of whose experiences we are interested in, and what we want to learn from them.

2. Whose experiences matter?

The most obvious (and the most commonly discussed) group whose experiences of penal supervision are worth studying are those of *penal subjects* themselves. However, that is not to say that *only* these experiences matter, on any of the rationales listed in the last section. Sexton (2015: 115) is right to observe that ‘[p]unishment is not just something that is done – it is something that is done *to* people and experienced *by* people’. However, it is equally true that punishment is done *by* people, *for* people, and (especially in the case of community-based penalties) *around* people. Thus, there are a range of accounts focussing on experiences of penal supervision other than the subject’s. Specifically, we should briefly consider the experiences of *third parties*,

victims of crime, and *penal supervisors* in passing, before discussing penal subjects' experiences in the next section.

A 'third party' could be anyone other than the penal subject and the agents of the punishing State. However, typically the term is used to describe friends, employers, family members (especially dependents) and other close acquaintances of the penal subject. These third parties are often key stakeholders – they may be victims (in intimate partner violence or workplace fraud cases, for example) – but more generally they may well be potential beneficiaries to the extent that punishment is intended to make penal subjects better able to live positively with others (Ward and Fortune, 2013). Moreover, to the extent that they suffer negative consequences as a result of 'punishment drift' from the penal subject onto them, the State is effectively punishing the innocent – a major breach of liberal-democratic values (Lippke, 2017).

Despite their significance, however, third parties have been studied remarkably little in a penal-supervisory context (see Durnescu et al, 2013: 32-36), especially when compared to the rich literature on the third-part effects of imprisonment (e.g. Burke, 2016 and the special issue that he introduces). One cannot assume that these side-effects of imprisonment are avoided completely by penal supervision. Even though the level of *interruption* of social interactions involved in penal supervision is generally milder than imprisonment (although we must remember that not all prisons are oubliettes, totally cut off from the outside world: see De Vos and Gilbert, 2017), there is no reason to think that all the consequences of punishment (such as the stigma of a criminal record) can be avoided in this way. Additionally, we might expect penal supervision to exhibit unique impacts upon third parties, since it penetrates the subject's daily life far more than imprisonment, and so has a greater capacity to impact upon the subject's acquaintances (Fitzgibbon et al, 2017; Hayes, 2018; compare Crewe et al's, 2014 concept of 'breadth'). Further research on the impact of this interaction on third parties to punishment is needed.

Victims of crime, whether considered as a special subgroup of third parties or as a separate class, enjoy a range of specific interests in Anglo-Welsh criminal justice processes (see Ministry of Justice, 2015). However, this involvement is still largely indirect, limited to rights to express preferences and to be kept informed. They have few, if any, opportunities to engage directly in penal supervision, for instance through restorative justice practices, especially compared to other jurisdictions (Vanfraechem et al (eds), 2015). That said, their opinions are rhetorically influential upon penal policy formulation, and the formulation of public opinion more generally (Maruna and King, 2008; Victim Support and Make Justice Work, 2012). However, one ought not to assume that victims are uniform in their expectations or wishes. Just like penal

subjects, every victim is unique. More research is needed to identify precise contours within victims' perspectives on penal supervision.

Finally, it is important to note the experience of supervision from the *supervisor's* perspective. The probation studies literature provides many accounts of these experiences, especially in terms of how changes in the professional contexts of supervisors affect their practice (e.g. Mawby and Worrall, 2011; Mair, 2016; Deering and Feilzer, 2017; and compare Hucklesby, 2011 regarding electronic monitoring officers). However, two further points should be noted. Firstly, it is important to consider how supervisors' values, expectations, and attitudes influence penal subjects' experiences. Accounts of penal supervision that focus solely on penal subjects will capture the symptoms of these interactions but will miss detail about those symptoms' causes. Academics must therefore be prepared to engage directly with probation officers and other penal supervisors in future research, as participants rather than merely (or in addition to) as facilitating gatekeepers to research on penal subjects. Secondly, it is worth noting that supervision is hard and emotionally draining work, especially in the context of criminal offences (e.g. McCulloch and Kelly, 2007; Fowler et al, 2017). Recognising the hardships, tensions, and challenges of *doing* penal supervision (and not just of *receiving* it) is vital if we are to properly understand the State's duty of care to its agents. Engaging with the supervisor's side of 'the relationship' (Phillips, 2013) enables a fuller recognition of the human limits of State action in terms of caseload, working conditions, and other expectations imposed on criminal justice workers (Phillips et al, 2016; Fowler et al, 2017).

In sum, there are good reasons to study other experiences of penal supervision than those of penal subjects, and much more research is needed here. For now, however, the bulk of the experiential study of penal supervision is focussed on those subject to it. The rest of this article therefore turns to those experiences.

3. The 'Pains' and 'Gains' of Penal Supervision for Penal Subjects

The literature tends to focus in on a variety of positive and negative effects of penal supervision for those subject to it: its 'pains' and 'gains' (Vanhaelemeesch, 2015). These experiences are necessarily *individual*. Different subjects will experience the same stimulus differently, depending upon their previous experiences, background, social context, and expectations about the penalty. To an extent we can identify distinct experiential trends in how penal subjects experience supervision, along the lines of specific forms of social marginalisation, such as sex/gender (e.g. Hedderman et al, 2011; Malloch and McIvor, 2011) and race/ethnicity (e.g. Calverley et al, 2006). However, since experiences are necessarily subjective and individual, each individual's experience will differ to at least some extent, such that even two studies of the same

population of penal subjects in the same jurisdiction, under the same penalty, will differ. One cannot simply assume that all English female probationers, say, will experience their probation in the same way (compare Hayes, 2018: 246-250, making this point in a sentencing context). Moreover, different forms of supervision can be expected to produce different effects (Durnescu et al, 2013: 26-30), and experiences in different jurisdictions will be coloured by institutional, systemic, and perspectival differences caused by the different political, socioeconomic, and cultural arrangements in that jurisdiction (Durnescu et al, 2018). Thus, each study's data will be at least partly distinct, and limited to its circumstances (especially given that much of the research so far has been small-scale and exploratory in nature). For this reason, this article focuses upon key trends in the experience of penal supervision in terms of their positive *gains* and negative *pains*, as perceived by their subjects, instead of attempting a blow-by-blow account of each study.

3(a) Gains of Penal Supervision

Penal subjects routinely report a range of positive outcomes arising out of their community-based supervision. This is perhaps unsurprising, given the historical and contemporary emphasis placed on rehabilitation in many forms of penal supervision (see generally Canton and Dominey, 2017). In this section I frame these findings around four major themes: help with *desistance from crime* (*i.e.* where the gain perceived by the penal subject is the reduced likelihood of their reoffending); secondly, additional *enforced order* in one's life; thirdly, *improvement of living standards* and *skill-sets* (judged from the subject's point of view); and finally, what we might call the '*at least it's not prison*' effect.

A penal subject may earnestly wish to cease offending, for a variety of reasons – although not all will – and so *assistance in desisting from crime*, firstly, was a common perceived gain of penal supervision. Avoiding reoffending may be a matter of attitudinal change, but it might also be a question of acquiring *stability* in terms of one's socioeconomic relationships and situation (*e.g.* regular employment, stable family life and commitments, and a secure home: see generally Ward and Maruna, 2007), of avoiding other causes of offending (such as substance abuse, poor anger management, and antisocial relationships: Farrall and Calverley, 2006). Penal subjects may genuinely wish to change, and thus view efforts towards their desistance as a subjective gain for themselves, even if interventions are also framed around further instrumental gain for society by reducing reoffending and protecting the public (Mair and Mills, 2009: 31-33; Barry, 2013: 54-55). A positive supervisory relationship with one's probation officer acted as a major predictor of a more positive attitude towards achieving desistance from crime on the subject's part in both Barry's (2013) study of

young Scottish convicts and Hayes's (2015: 91) exploratory analysis of the pains of probation in England and Wales. Most supervisees have also tended to view supervision as having a positive impact on their rehabilitation, and were better able to identify ways of avoiding offending in future (Rex, 1999: 369). Finally, a supportive relationship with one's penal supervisor tended to mitigate some of the 'pains of desistance' highlighted by Nugent and Schinkel (2016), especially where penal subjects failed to achieve desired changes to their living conditions, and where they felt isolated, stigmatised, and hopeless (although family members and other non-penal forms of support could also provide this help: *ibid*: 572-579; Rex, 1999: 380). So penal supervision mitigated some of the pains involved in the process of desisting from crime, as well as providing encouragement and support to keep at it – where the relationship was positive, the subject was motivated, and external social conditions were not overwhelmingly opposed to desistance.

Secondly, *enforced order* is a cited benefit of penal supervision, in the context of probation, electronic monitoring, and unpaid community work (Mair and Nee, 1991; Mair and Mortimer, 1996; Barry, 2013: 54; Vanhaelemeesch, 2015; De Vos and Gilbert, 2017: 142; Fitzgibbon et al, 2017). Particularly where the subject's life is chaotic and unstructured before a criminal justice intervention, the imposition of order by mandatory attendance at probation meetings, for example, could force a regimentation that enabled better control over one's life as a whole. Whilst we shall see that penal subjects do not necessarily always view this as an unalloyed good, their accounts tended to be nuanced enough to recognise that it did provide some benefit, even as it intruded. Likewise, in the English pilot studies on electronically monitored curfews, the enforced downtime of electronically monitored curfews tended to have either a positive or a negative effect upon family and other cohabitee relations. Where it was positive, the enforced presence of the subject alongside cohabiting family members encouraged closer bonds and helped to solidify relationships that tended to provide reasons for desistance (Mair and Nee, 1990: 52-60). Of course, this presupposes positive family and other relationships at the site of the monitoring, and was balanced by as many reports of negative outcomes, across both pilot studies (*ibid*; Mair and Mortimer, 1996: 19-24). So these gains are potentially profound but limited to certain penal subjects, circumstances, and institutional factors within the criminal justice system in question.

Thirdly, supervision was experienced positively where it enabled the subject to improve a range of problem-solving and other pro-social skills: to help them deal with negative emotions constructively, for example; or to confront the challenges of life with a criminal record (Rex, 1999: 372-378; Mair and Mills, 2009: 41-45). Engaging

with these challenges tended to be demanding, but with the supervisor's help, penal subjects consistently reported an improvement in their position (Mair and Mills, 2009; see also McCulloch, 2005). The development of skills and attitudes was particularly important in the context of community-based penal subjects, who were facing the consequences of societal, communal, and economic responses to their conviction even as they were punished (Barry, 2013; Hayes, 2015: 94-96; Nugent and Schinkel, 2016). The ability to respond to these challenges in a more effective way (whether by avoiding responding criminally or in such a way as to achieve a positive outcome for the subject in future) was especially valuable in this context, given the need to keep one's everyday obligations under control whilst serving a community-based sentence.

The final gain highlighted by studies of various forms of penal supervision is the general sense that penal supervision is beneficial *merely because it is not imprisonment*. This 'at least it's not prison' effect is often one of the first-noted gains highlighted by penal subjects – both in studies of probation (Durnescu et al, 2013: 26-27; Hayes, 2015: 93-95; Fitzgibbon et al, 2017: 310-311) and electronic monitoring (Mair and Nee, 1990: 56; Mair and Mortimer, 1996: 24; De Vos and Gilbert, 2017: 142). Whilst objectively this is not so much a gain, a net benefit, as the avoidance of a (perceived) greater pain, the avoidance of custody is subjectively perceived as a general benefit of non-custodial sentences in general, providing a sense of relief that made the deprivations of supervision generally easier to bear. However, this trend was far from universal: in particular, penal subjects with previous experience of custody tended to fear imprisonment less, and as a result, these groups tend to view community-based penalties of less of an automatic gain, in and of itself (Van Ginneken and Hayes, 2017; and compare Wood and Grasmick's, 1999 methodology based on 'punishment equivalency').

Altogether, the gains of penal supervision are real, and substantial, but heavily contingent upon a range of contextual factors. Principal amongst these are a good supervisory relationship, in the case of probation-style rehabilitative interventions, and trust in the legitimacy of the sentence overall (Rex, 1999: 378-380). Offender and staff attitudes help to shape the potential of penal supervision to do good, but they are also dependent upon social context, economic conditions, and the response of the wider community (and wider society at large) to the penal subject's conviction.

3(b) Pains of Penal Supervision

That penal supervision is sometimes experienced as gainful does not mean it is always perceived as being uniformly good. Various studies have explored the unpleasant side of supervisory penalties, with a particular focus on applying the pains of imprisonment to this non-custodial context (e.g. Payne and Gainey, 1998, 2004; Gainey and Payne,

2000; Durnescu, 2011; Hayes, 2015; Vanhaelemeesch, 2015). It should be kept in mind that the word 'pain' does not only mean physical agony in this context. Indeed, the pains of punishment are best defined widely, 'as a personal experience of physical, psychological or emotional suffering by a penal subject, arising from their punishment by agents of a criminal justice system' (Hayes, 2018: 239).

Pain, in this sense, is an intrinsic feature of criminal justice because it involves the imposition of obligations one would not necessarily otherwise agree to undertake – a deprivation of liberty in and of itself. This is important, given their historically rehabilitative and social work-oriented outlook of probation-run penal supervision in England and Wales, which survives despite the shift towards using penal supervision as a punishment (Deering, 2010; Mair and Burke, 2012). If we start from the perspective that pain is inevitable inside the criminal justice system (and indeed, in many non-penal social processes) then it becomes possible to have a more nuanced discussion about what 'counts' as punishment in the first place. Using a pains of punishment approach enables us to recognise the hardships that probation causes, even when successful and life-changing. It also opens up discussion about whether less painful means of achieving those ends might not be available outside the criminal justice system (Hayes, 2015: 98-100; see also Christie, 1982: 100-101).

Opportunities for pain are necessarily connected, amongst other things, to the sort of penalty imposed upon the subject (Durnescu et al, 2013: 27-30). Generally, the studies of pains of penal supervision can be divided between those that deal exclusively or primarily with *probation supervision* – that is, with mandatory one-to-one social work-style meetings with a probation officer, which may be supplemented by group-work, psychiatric interventions, educational classes, and other such rehabilitation-oriented activities (Durnescu, 2011; Hayes, 2015; and compare Nugent and Schinkel, 2016; and Durnescu et al, 2018, both of which offer similar insights but relating to wider subject-matter) – and those that focus exclusively or primarily upon *electronically monitored curfews* as a more directly liberty-depriving form of non-custodial punishment (Payne and Gainey, 1998; Gainey and Payne, 2000; Vanhaelemeesch, 2015).

Direct studies of the pains of probation are few and far between. Ioan Durnescu's (2011) Romanian study of probationary supervision during suspended prison sentences was path-breaking in applying Sykes' (1958) framework to a traditionally rehabilitative intervention. Despite the benign and humane intentions of probation work, in Romania as in England and Wales, Durnescu (2011: 534-538) identified six groups of pain, inspired by but increasingly deviating from Sykes': (a) deprivation of autonomy (including the pain of rearranging one's life and intrusion into one's private

and family life); (b) deprivation of time; (c) financial costs (mainly travel costs involved in making appointments); (d) stigmatisation effects; (e) the shame and trauma of repeatedly being confronted with, and otherwise forced to return to the offence; and (f) the ever-present threat of imprisonment accompanying breach of the order. Hayes's (2015) English study produced similar findings, identifying six clusters of pains – two of which were intensified by probation officers' supervision, two of which were reduced, and two of which were materially unaffected. Respectively, these were: (a) the 'pains of rehabilitation' (including shame about one's offending behaviour and mandatory lifestyle changes); (b) deprivations of liberty (in the sense of freedom, time, and money); (c) penal welfare issues (associated with the loss of stability, family relationships, friendships, employment and employability, and other criminogenic factors as a result of one's conviction or punishment); (d) pains inflicted by external agencies, such as the welfare State or by charities; (e) 'process pains' associated with perceived procedural unfairness, the pain of being a 'usual suspect' known to police, and the challenges inherent in the prosecution and conviction processes themselves (see also Feeley, 1979); and (f) stigmatisation effects, from family members, friends, and strangers (particularly potential employers).

Slightly more data exists about electronic monitored curfews, especially in the context of a series of mixed-methods studies by Bryan Payne and Randy Gainey on monitored penal subjects in a single US jurisdiction (Payne and Gainey, 1998, 2004; Gainey and Payne, 2000). Their first study (Payne and Gainey, 1998) explicitly transplanted Sykes's (1958) five pains of imprisonment to electronically monitored house arrest: (a) deprivation of *liberty* (*i.e.* of free movement and choice); (b) deprivation of *access to goods and services*; (c) deprivation of *autonomy* (*i.e.* of freedom to determine one's own schedule); (d) deprivation of *heterosexual relationships*; and (e) deprivation of *security* from the depredations of fellow-prisoners and of wardens. The study ultimately rejected these custodial deprivations as only partially suitable for describing the effects of electronic monitoring, however, and in their later study (Gainey and Payne, 2000; Payne and Gainey, 2004), they instead divided the pains of electronic monitoring into six categories (Gainey and Payne, 2000: 88-92): (a) privacy effects; (b) shaming (stigmatisation effects) surrounding the visibility of the electronic monitor (or 'tag') and over having to explain one's punishment to acquaintances when being invited out of the house; (c) the disruptiveness of staff visits to check and maintain tags and other equipment; (d) social restrictions (largely cognate with what Sykes (1958) described as deprivations of *liberty* and *autonomy*); (e) work problems; and (f) issues around drug and alcohol use (where electronic monitoring was imposed alongside mandatory blood or urine testing orders).

Vanhaelemeesch (2015) substantially replicates these findings in a more recent Dutch context, with an emphasis on the impact on privacy and the increased pressure on the time-management and self-discipline of the subject. Whilst deprivations of liberty and freedom were noted by her participants, they favourably compared confinement in the home setting with incarceration in the austere environment of a prison. Although not using the language or analytical framework of the pains of probation, similar deprivations were noted in the two pilot studies for electronically monitored curfews in England and Wales (Mair and Nee, 1990: 54-60; Mair and Mortimer, 1996: 19-25). In particular, problems with mechanical problems in the use of 'tags' led to repeated intrusive, embarrassing and disruptive home visits by electronic monitoring officers and even by police. Whilst technological improvements have fixed the hardware and software involved in tagging to some extent, no system is perfect, and it is likely that there will continue to be disruption effects in the future (Hucklesby, 2011). However, especially with the emergence of new forms of tagging technology and the rapid pace of change to institutional and organisational arrangements for electronic monitoring worldwide (see, e.g., Nellis, 2010), more research in this area is needed to speak with certainty about the modern pains of electronic monitoring.

To a greater or lesser extent, all of these studies of the pains of penal supervision were exploratory in nature and involved small data sets. One would hope that future studies will correct this – a point to which I return below. Nonetheless, these studies do suggest that the pains of supervision, much like its gains, are heavily dependent upon systemic and structural factors, as well as socio-economic, -cultural, and – political contexts beyond the criminal justice system. Moreover, the attitudes of staff and probationers alike were highly significant in determining the prevalence and perceived relative severity of the pains of probation – and even the extent to which pains were perceived as *part* of the sentence at all (Van Ginneken and Hayes, 2017). They also indicate the challenge of distinguishing the pains of (community-based) probation from the pains of everyday life, with which they intersect and interact (see Hayes, 2018). Finally, these studies both suggest that the contribution of liberty deprivation to overall suffering caused to probationers is slight, at worst (Durnescu, 2011: 539-540; Hayes, 2015: 98-100). Just as in the context of prisons (Sykes, 1958: 78-79), penal supervision must be understood in a more nuanced and multivariate way if we are to construct an accurate picture of what makes it unpleasant in practice.

Not all studies on the experience of supervision use the framework of the pains of probation to explore the negative experiences of penal subjects. In particular, the recent work of Fergus McNeill and collaborators (Fitzgibbon et al, 2017; McNeill, 2018;

McNeill et al, 2018) uses more open-textured and almost poetic approach to exploring penal subjects' lived experiences. Whereas most pain-based analyses explore fairly concrete physical, social, and psychological impacts of supervision, McNeill's recent projects have emphasised emotional reactions and perspectives through a range of innovative methods including asking penal subjects to take photographs representing their supervision (Fitzgibbon et al, 2017) and the use of song-writing to explore complex and hyper-individual experiences of penal processes (McNeill, 2018). These studies show an ambiguity between the pains and gains of supervision, to which we shall return shortly.

They also emphasise the importance of representation, emotion, and interpersonal relationships in the construction of penal supervision as an experience. In this, McNeill (2018: 19-21) reiterates Sexton's (2015) work on 'penal subjectivities'. In her study of prisoners in Ohio, Sexton (2015: 120-131) identifies two key factors in how severely an objective deprivation will be subjectively experienced: firstly, the *level of abstraction* – the extent to which the deprivation feels targeted against the individual subject, and in particular, against their political and civic identity, rather than being an accident of circumstances; and secondly, the *salience* of the punishment – how well the experienced deprivations mapped onto the subject's expectations. Sexton's analysis reduces these two factors to 'high'/'low' binaries for the ease of comparison, but McNeill (2018) emphasises similar factors at a deeply nuanced level, trading comparability for richness of data. The result is a key focus on *misrecognition*. Playing on Foucault's (1977) classic description of the 'Panopticon' (*the place that sees everything*) as a system in which good behaviour is ingrained in the subject through the constant threat of surveillance, McNeill (2018: 19-20) proposes a 'Malopticon' – literally, *the place that sees badly*. This is a complex and versatile metaphor, covering scenarios in which: the penal subject is *stigmatised* (seen as being bad); the subject is misunderstood as a person and/or in their efforts to move forward, whether or not as part of an effort to desist from crime (seen badly *within* the system); and/or the subject feels misrepresented by the State (seen badly *through* the system). Thus, even the most benevolent interventions can feel agonising in practice, if the subject perceives them as targeting someone they no longer identify themselves as. Bureaucratic and risk-managing processes, agentic, restorative and offence-focussed approaches to rehabilitation, and the growing fracturing and fragmentation of the supervisory experience in terms of its location and actors all play a role in making the subject feel insignificant and important more as something to be fixed than as a complex human being (ibid: 19-21). McNeill (2018: 21) argues that 'Maloptical' deployments of offender supervision are by no means inevitable, but are driven by

policy, institutional structure, and the proliferation and fragmentation of goals and agendas at the level of supervisory practice.

Overall, the themes emerging from this part of the literature suggest a deep penetration of penal discipline into everyday life, and a blurring of the boundaries between penal and non-penal processes as a result: Cohen's (1985) 'dispersal of discipline' in practice. Even where penal supervision does good, it also causes pain – sometimes because it must, but often because of the precise arrangement of different policies, institutions, social forces, and attitudes on the part of the penal subject and supervisor. This pain tends to be misrecognised when we insist on describing punishment in terms of liberty deprivation (Hayes, 2016), because liberty deprivation is such a relatively unimportant pain in the experience of these penalties. Experiential accounts encourage a far broader and more nuanced picture of penal supervision as a painful place to be, even though (and sometimes especially because) it tends to provide certain benefits as well.

4. No Pain without Gain: Reconciling the Pains and Gains of Penal Supervision

This brief review suggests a complex and multi-factorial relationship between the experience of penal supervision in terms of both its pains and its gains. However, we must resist the easy assumption that probation is either straightforwardly good or bad. Even positive long-term outcomes can be difficult in the short-term (Nugent and Schinkel, 2016), and sometimes it is exactly the painfulness of an experience that motivates us to change for the better (Christie, 1982: 10-11). The point is not that probation officers can either cause pain *or* do good, but rather that, in striving to do good, probation officers routinely cause a substantial amount of pain, too – *whether or not they succeed in doing good*. We must avoid the old binaries: that one does not punish just because one is rehabilitating; that one does not harm because one helps. Indeed, more recent studies of penal experiences in the community emphasise the *ambiguity* of probation practice. Sometimes constraint provides helpful structure for a chaotic life that has spun out of control. Sometimes, conversely, rehabilitative care feels like infantilisation (Fitzgibbon et al, 2017: 317-318).

We should approach the existing literature on the pains and gains involved in experiencing penal supervision with caution, and avoid over-generalising what these studies currently tell us. Firstly, virtually every study mentioned in this paper relies upon relatively small samples (with the exception of Gainey and Payne, 2000), and beyond that, relatively homogenous methodologies emphasising interviews as the primary means of data generation (although compare Fitzgibbon et al, 2017; McNeill, 2018). This does not make those studies worthless, but it does impose limitations on what questions they can answer. They tend to emphasise subjective voices from

particular perspectives that cannot tell us very much about other subjects' experiences (e.g. Rex, 1999: 380; McNeill, 2018: 8), or about the experiences of other stakeholders (recall Durnescu et al, 2013). Moreover, their findings are not typically generalizable in the statistical sense – which is likely to make these studies relatively uninteresting to policy-makers, without quantitative follow-up studies. Hopefully future research will provide larger-scale and more methodologically diverse data-sets – and indeed, positive movements in that direction are already happening (see Durnescu et al, 2018).

Likewise, the studies we currently have tend to be exploratory and generic, focussing on the experience of the penal subject as if that subject was a relatively homogenous social being. As a result, there is relatively little data on how demographic and socio-economic, -political, and -cultural factors (such as age, ethnicity, gender, religion, and socioeconomic class) affect the experience of both the pains and the gains of punishment, whether in or outside of a supervisory context (although compare Calverley et al, 2006; Hedderman et al, 2011; and Malloch and McIvor, 2011). We therefore lack a comprehensive picture of the impact of penal subjects' socio-political, -economic, and -cultural identity, circumstances, and situation upon the experience of penal supervision by its subjects. This is a serious limitation to our understanding of such a social intervention, which penetrates so deeply into its subjects' everyday lives. Again, further research needs to fill this gap before we can call our understanding of the experience of penal supervision anything like comprehensive.

But what these studies do tell us, for all their methodological limitations and jurisdictional peculiarities, is that penal supervision is contextually contingent, not only upon the social, cultural, political and legal-jurisdictional confines in which it operates, but also upon its historical use as an alternative to imprisonment. Too often is penal supervision underestimated because it seems *less* painful and *less* intrusive than imprisonment. Often it is, but: (a) it still involves the infliction of pain, and that requires justification in and of itself; and (b) *sometimes it is not*. This does not mean that penal supervision can never be ethically defensible – only that we must be very sure of what it does to its subjects when we use it. Partly, this means is taking penal supervision seriously as a punishment – as something that does not need 'toughening up' to work as a punishment for offences of intermediate severity (Hayes, 2015), and as something that we might use too much of in any event (Fitzgibbon et al, 2017; McNeill, 2018). The study of the experience of penal experience also complicates the distinction between the penal and the non-penal; since punishment occurs alongside one's day-to-day life, one is immediately exposed to society's response to that punishment, which in turn drives the intermingling of punishment into that society. This challenges foundational assumptions about the State's claimed monopoly on the right to punish,

but it also reminds us that criminal justice is, in the end, only one tool in the public policy toolbox. The decision to use it is ultimately a political one, and not an unalterable social fact.

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