

Persistent Punishment: User Views of Short Prison Sentences

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Abstract

Semi-structured interviews were conducted of 22 prisoners to gather information about the characteristic features of short prison sentences. Themes raised in comments included: the frequency and quality of sentences, addiction, family, and penal legitimacy. Most of the participants had extensive experience of prison, and the effects of this played out across sentences and years, accumulating and amplifying impacts. And, despite expressions of guilt and remorse, most participants saw their sentence as unjust, and mainly a reaction to offending history. We conclude by suggesting the need for research to shift focus from evaluating individual penal interventions towards more holistic and narrative accounts that cut across sentences.

keywords: prison, short-term imprisonment, punishment, user voice, penal legitimacy, Scotland, qualitative methods

Introduction

This article reports on research into the experiences of people serving short sentences in prison. It is part of a larger qualitative study of experiences of punishment in the community and in prison (Armstrong and Weaver, 2010; Weaver and Armstrong, 2011). The location of the research was Scotland, where the use of prison for people who will not stay very long is a characteristic feature of sentencing practice – nearly three-quarters of people sent to prison in Scotland in 2008/09 (the year before sentence reform legislation was passed) were sentenced to serve six months or less (Scottish Government, 2010a). Although courts make frequent use of short prison sentences, this does not appear to be driven by evidence of their effectiveness. In Scotland, only about one-quarter of people released from a custodial sentence of six months or less manages to avoid re-conviction within two years of being released (Scottish Government, 2010b).

Courts since the nineteenth century have complained that short periods of detention offer too brief a time to work with and change an ‘offender’ and are more likely to provide schooling in crime than in law abiding behaviour (Killias et al., 2010). These concerns resonate in the current reform programme in Scotland which has targeted short prison sentences, for example by creating a presumption against the use of prison sentences of three months or less (Criminal Justice and Licencing (Scotland) Act 2010). In England and Wales, there is also concern about the limited success and negative effects of short sentences (Trebilcock, 2011; Stewart, 2008). The alternative to using short prison sentences, in both jurisdictions, are expanded use of community-based sentencing options such as probation and community service.

One group not much has been heard from are the people who have personal experience of these sentences. The initial aim of our research, which was directly motivated by contemporary policy reform in Scotland, was to understand why someone might choose one punishment over another and what about short prison sentences can explain high rates of offending among those completing them. We attempted to get at these questions through a detailed exploration of the experience and perspectives of those familiar with both short prison sentences and community-based punishments. As we began carrying out the research, the detail and breadth of perspectives we came across took us beyond policy level consideration of particular sanctions. We saw an opportunity, therefore, to pursue an aim of expanding knowledge about the experience and impact of punishment in people’s lives.

The article first presents some background on the ‘user voice’ in criminal justice policy processes and also its potential to inform normative consideration of punishment. We then describe the sample and methodology used in this study before presenting and discussing the findings from the prison sub-sample. Like similar research presenting interview data that is analysed qualitatively, we

organise the discussion into several themes separated into sub-sections, in this case: the quantities and qualities of punishment experienced by the 'typical' short sentence prisoner, drug addiction, family relationships, perceptions of penal legitimacy. We struggle against the confines of this presentational format, however, with its risk of compartmentalising aspects of human experience which in reality cannot be neatly disentangled nor summarised. All of the themes we identify were in reality overlapping and mutually influencing.

The User Voice, Sentence Preferences and Penal Legitimacy

Policy and academic interest in the views of criminal justice users comes from within and outside of the field. Within criminal justice, prisoner rights groups and affiliated voluntary sector organisations have expanded their efforts from working on behalf of prisoners to advocating and providing mechanisms for bringing prisoner views directly into penal debates (e.g. UNLOCK; Aldridge Foundation, 2008; www.uservice.org). Outside of criminal justice, a user voice movement has been underway for much longer, originating in the idea that a minimum set of rights should be articulated for users of public services and chief among these 'rights' is choice (e.g. Simmons, 2011; Policy Commission on Public Services, 2004; PASC, 2005). Responsive services are built around a user's needs, and one of the best ways of learning about needs is directly from the user herself.

A user voice movement encompassing those convicted of criminal wrongdoing has been slower to develop. In the UK, in a 2001 speech on the reform of public services, the Prime Minister said 'the key to reform is redesigning the services around the user—the patient, the pupil, the passenger, the victim of crime' (PASC, 2005: 2). This set the tone that victims of crime, rather than its perpetrators, were to be prioritised in the development of services. However, a rhetoric which prioritises victims comes up against a reality of a criminal justice system whose workload consists of managing accused and convicted persons. While it is politically difficult to promote a view of the offender as a valued customer, there is consensus that helping victims (by helping to avoid future victimisation) depends partly on services for offenders that are effective. And improving the effectiveness of services requires some understanding of how they are experienced by and likely to impact penal 'service users'.

Within offender treatment and management, inclusion of a user voice has been folded into a discourse of personalisation, itself originating in developments outside of criminal justice (Weaver, 2011). Personalising services for the user has offered one form of resistance against coercively applied 'one size fits all' interventions, allowing a person some choice and control over services – in its minimal form – to full involvement as a 'co-producer' of services and transformation – in its deepest form (Id.). While Weaver articulates the potential of taking account of the 'offender's' voice to realise an authentic and sustained desistance from offending, as well as inform penal reform, she remains wary of

the vulnerability of the concept to the organisational and political imperatives of criminal justice agencies (Id.).

In any case, these concerns have not yet been tested as the voice of offenders remains relatively marginal to policy debates. Research on the ‘user group’ that is the focus of this article – people serving short periods of imprisonment – has suggested that most would prefer a short prison sentence over an equivalent community-based alternative. Though there has been some qualitative exploration of offender perceptions, this work mainly has involved preference rankings, which has offered little scope to probe what about the prison experience, aside from the fact of its time limit, might affect someone’s disposition towards it (May and Wood, 2010; Petersilia and Deschenes, 1994; Wood and Grasmick, 1999; Searle et al., 2003). Sykes’ (1958) account of the ‘pains of imprisonment’ has provided a framework for capturing the essential privations of penal experience, which has been used to elicit a sense of the pains of prison (Mathiesen, 1990; Crewe, 2011), probation (Durnescu, 2010) and electronic monitoring (Payne and Gainey, 1998). We still lack accounts specifically of the short prison experience, though, which possibly reflects a tendency to collapse this experience into accounts of imprisonment generally, or treat them as being less ‘painful’ than longer prison sentences.

We suggest that developing an accurate picture of the short prison sentence is important not only for assisting practical reform efforts but also in testing the sustainability of normative theories of sentencing and punishment (Tonry, 2006). In Duff’s (2003) theory of communicative punishment, the efficacy of a sanction rests on its ability to communicate condemnation (to the wrongdoer in a retributivist account) or the unpleasantness of punishment (to deter the wrongdoer and all others in a consequentialist account). A user perspective can tell us what, how and how well particular instantiations of punishment are communicating. This goes right to the heart of questions about sentencing, such as the definition of proportionality by length of sentence, and the appropriate sentencing of ‘habitual offenders’, who make up a large proportion of those receiving short sentences (Davis, 1992; Roberts, 2008).

Methodology and Sample Characteristics

Method

We interviewed a total of 35 people under sentence of punishment, 13 serving a community sentence and 22 in prison. This article focuses on the responses of the prison sub-sample; interviews for this group were conducted over two weeks in February-March 2010 and lasted between 30 minutes to over an hour. All prisoners resident in the prison during February 2010 who were serving a sentence of six months or less were invited to participate. A number of prisoners who expressed interest in participating were released or transferred before an interview could take place, evidencing one of the challenges of capturing the views of this group compared with long-term prisoners. Digital recordings of

interviews were transcribed and reviewed manually to identify key themes for analysis.

The following main interests guided design of a semi-structured interview instrument for use with both the prison and community sub-samples (available online at: www.sccjr.ac.uk)¹:

- What are the *characteristic features* of, separately, the experience of prison and community-based punishment such as probation or community service? E.g.: What aspects of the experience are felt to be useful or not useful? What emotions do the respective experiences engender: anger, boredom, hope, fear, comradeship?
- How do offenders *compare the experience* of prison and an analogous community-based sentence? What makes one or the other feel like the 'harder' punishment? What makes one or the other more or less useful for providing an environment in which desistance is a possibility?

The researchers aimed to get through the entire instrument in order for comparing the perspectives of the two sub-groups. However, in carrying out interviews, we tended to let the participant dictate the direction and length of their answers, and did not push participants to 'stick to the script' to get through all of the questions we had prepared. We remained open about what should be considered relevant for conveying the short punishment experience. As a consequence of this, a number of themes arose across interviews that were never directly asked about in our questions.

Sample Characteristics

Unless otherwise noted, data refers to the prison sub-sample. (Please see the Annex for interviewee profiles and identifier codes.)

Age, gender, offence and sentence length. The prison sub-sample comprised 16 men (ranging in age from 19 to 49 years old) and six women (ranging in age from 22 to 55 years old). Participants voluntarily disclosed the offence for which they were under sentence in their own words, sometimes quoting the legal label and other times a colloquial one like 'KT' (known thief) or 'domestic' (which might have been charged as assault or breach of the peace). The following offences accounted for the convictions of all but one of the group, and is typical of the overall population of prisoners on sentences of six months or less in Scotland (Scottish Government, 2011): breach of the peace, shoplifting/theft, drugs, assault (none was on a stranger), or breach of an order (e.g. curfew order, probation, ASBO) arising out of one of these offences. Lengths of sentences ranged from 60 to 190 days.

Prior experience of prison. Prior experience of prison was extensive. For the prison group, there was only one first timer among the men (a 19 year old in for 120 days for possessing a knife), and only one of the women had never been to

prison before her current period of imprisonment (but had experienced a period on remand). For those who had been to prison before, the vast majority had been to prison many times before (discussed below). Nearly all prior prison experience was very short term in nature (between seven days and 12 months), and only a few people reported having done a long-term sentence (four years or more).

Prior experience of community-based punishment. Almost all of the prison group had had some past experience of community-based sanctions, but this past experience tended to amount to only one or two prior sentences of community service and/or probation, early in their penal careers.

Drugs and alcohol. Seventeen of the 22 people in the prison sample independently volunteered information about a drug and/or alcohol problem. Moreover, many of those who did not disclose an addiction issue mentioned use of alcohol or drugs in the context of their offences. This issue arose as a key theme and is discussed in detail below.

Offending history. Unsurprisingly, given the extent of alcohol and drug dependency as an issue, most of the prison sample reported significant offending histories which were either directly connected by the interviewee or self-evidently related to an addiction problem. Dozens of and even over a hundred prior convictions were reported, most typically shoplifting and petty theft or breach of the peace.

Preference for prison or community-based sanctions. A minority of the people we interviewed in prison, six of 22, expressed an unconditional preference for a prison sentence over a community-based alternative (cf Trebilcock, 2011 whose recent study found, similar to most preference research, that most would choose prison). Everyone in this group gave similar reasons for their preference, as a sentence that would be completed quickly and that once it was done, it was done. The majority of the group, however, stated a preference for a sentence other than prison (e.g. probation, community service or a fine). It was not uncommon for participants who stated a preference for a community sanction to state a preference of *one* kind of community sentence over prison but preferring prison to *other* kinds of community sentences, which often related to good or bad experiences of probation or community service. This theme is explored at length elsewhere (Weaver and Armstrong, 2011).

Findings

A number of themes emerged while coding interview transcripts, too many for presentation here, on keeping busy, addiction, family relationships, the relational nature of time, accountability, transition from care to criminal justice systems, employment issues, reform ideas and more (see Armstrong and Weaver, 2010; Weaver and Armstrong, 2011). Indeed, there is a finding in the fact itself of so many emergent issues: the research made clear to us that short prison sentences *are* an experience, and not an easily forgotten blip of time in the lives of those

serving them. This suggests more attention ought to be directed at the kinds of punishments often given less priority in research and policy due to an implicit sense that they are less meaningful (or harmful or helpful) than longer term punishments. In this article we focus on the main themes reported on the overall experience of short prison sentences and its translation into a sense of punishment.

1. *A high quantity experience*

One theme predominated while analysing interview data on the topic, notable in a qualitative project, of the *quantity* of punishment that the group was experiencing. We asked how many sentences of imprisonment a person had already had, and what the lengths of these sentences were. Nineteen of the 22 had been in prison at least twice before their current prison sentence. Strikingly, 15 of the 22 prisoners responded to this question by: listing ten or more prior sentences in prison, answering in terms of frequency, or both.

‘[Interviewer: How many times have you been in prison?] Maybe two or three times a year I think. I done three sentences, three six-month sentences and a four-week remand, last year.’ⁱⁱ (PS16)

‘I’ve been in and out of prison since I was 16 so...[Interviewer: All different lengths of sentence?] Yeah, four months, six months, three months, seven months, eight months, all that’ (PS08)

It quickly became clear that our intent of capturing a contemporaneous sense of punishment by interviewing people while they were under sentence would be complicated by such extensive prior experience of prison. In fact, as people spoke of the impact of punishment on their lives or of how they spent their time under sentence, separating prior prison experiences as historical, completed and discrete periods of punishment, distinct from their current sentence, made no sense. Participants themselves rarely distinguished between *this* sentence and all their other ones. They spoke of educational credits accumulated over multiple spells in prison. They gave examples of the conditions of prison from all the prisons they had been in, comparing the privileges, jobs or staff-prisoner relationships across sentences, how things were good in the past or had changed for the better. One participant said, ‘Always been a cook, in every prison in Scotland I’ve been a cook, know?’(PS14). The hoped for picture of a ‘short prison sentence’ experience never emerged.

Moreover, separating out experiences of punishment from one’s life on the ‘outside’ eventually came to feel like the imposition of an artificial boundary. Being in and out of prison was for many participants akin to the experience of being in and out of the office, or school, a regular life activity that had to be balanced with, and which intruded on, time devoted to other needs and interests. Participants adapted strategies for managing other parts of their lives around a regular schedule of prison stays. They had better or worse options for arranging

child care, taking time off work, continuing with studies and avoiding loss of housing. Managing one's life where imprisonment was but one more obligation to be worked around, albeit a particularly intrusive one, was a common element in the narratives of many participants.

'I'll do my probation and community sentences, because I've still got my house to keep out there. [Interviewer: Is your housing at risk?] No, I'll only do a month and the council will pay for it if you're sentenced up to three months, if you're on remand they pay it up for 52 weeks basically a year, so, but I can change it into my dad's name and my dad can keep it.'
(PS01)

These adaptive strategies sometimes did not work. One mother was concerned about an adoption process initiated over one of her children while she was in prison and unable to attend hearings. A number of people had lost housing or contact with children when a spouse moved away. 'I lost my college place and I lost ma hoose [partly because] I done a month in remand but they didn't backdate it'(PS19). (Reportedly, some judges exercised extra leniency or harshness by deciding whether a period of remand would be counted as part of the sentence thus keeping them under or putting them over the limit on days away from home before social housing contract conditions were breached.)

These short sentences, so readily and frequently used, had come to occupy a significant part of people's lives over a decade or more. But unlike other regular activities that make up significant parts of our lives like work, school and family, short prison stays had a severely limited potential to develop a person's capabilities or support networks and in fact often did just the opposite, interfering with or suspending these.

2. *A low quality experience*

Most of the prisoners in this research had only ever been in prison for a few months at a time (only three mentioned having experience of long term sentences), and the repetitive routine and minimally stimulating environment of prison came to be familiar. Prisoners described symptoms of institutionalisation more commonly associated with those incarcerated for long periods. Many reported being locked in cells for over 20 hours per day, being let out briefly for meals and recreation. Outdoor recreation consisted of a small tarmac square which, according to staff, was used by prisoners to pace slowly in a circle. Offender programmes reportedly were designed around a 12-week model, excluding those from sentences of six months or less from participating.ⁱⁱⁱ Some had jobs, typically serving or preparing meals.

Some felt safer in the prison than out of it, less stressed about running into bad friends and situations, and valuing the simplicity of a routinised life in the cells. Short sentences were described as both hard and easy, sometimes in the same interview. It is hard when there is nothing much to do but think about a liberation

date. It is easy because being locked up makes no particular emotional or physical demands on a person. 'aye this sentence [is] not too bad....I prefer to dae a longer one [*Interviewer: Why?*] because shorter ones tend to take a bit longer cause you're no thinking about nought but getting out' (PS05). There is no requirement to open up to counsellors, to participate in classes or jobs, to be awake. 'I'd rather just do the time and get oot and that's me clean and I don't need to go and see anybody [like on probation], so I would rather go do the prison sentence' (PS20). One can see how such an experience might be simultaneously easy and hard.

'It's crap. Come in and get on with it but it's [a] boring ten days like you'd rather be outside. Just making the best of a bad situation.... Go to rec and eh go to PE. The same at _____ [prison] and here and _____ [prison]. Go in an do the same thing, all the time.' (PS03)

'(*Interviewer: what do you do while in prison?*) Basically you jist have to wait about you know? (*Interviewer: just hang out in your cell?*) Aye, ye sit in the cell but you got to like, rec and ye get exercise but a lot of people, boys ma age won't go to them, moistly young boys y'know.' (PS12)

The ability to do nothing for one's entire sentence meant that what little structure there was for short sentenced prisoners was sometimes welcomed as the only break in monotony. 'I think it's the routine, I think that's pretty good because it helps the time go a bit quicker as well. (*Interviewer: you mean having a routine?*) 'Mmmhmm. Getting up, goin for your dinner, goin back up, bein locked up for an hour...(*Interviewer: yeah*) goin to exercise, stuff like that' (PS05).

The prison experience for this persistently punished group involved maintaining emotional disconnection while locked in a cell and minimally involved in social life. Someone going to prison two to three times per year on three and six month sentences, as the majority claimed to be doing, will be spending one to three quarters of each year under such conditions. At the same time, most people reported participating in some kind of education or training courses during their sentences, with some having made substantial progress towards college and university degrees. Adding up the qualifications and credits, distilling them into lines on a CV, would show, to the credit of the prison, prisoners making impressive progress on positive life goals. But restored to their context of fitting into a series of short prison sentences, such activities let these prisoners out of their cells one or two hours per week, providing minimal punctuation to an experience dominated by blank time.

3. *Punishment of addiction*

Among the 22 prisoners interviewed, 17 disclosed offences commonly related to abuse of drugs or alcohol: seven cases of theft or shoplifting, all self-reported as drug related; eight breaches of the peace, seven of which were self-reported as while under the influence or fuelled by intoxication; and two direct drugs offences

(‘drugs’, ‘passing drugs to a prisoner’). Of the remaining five prisoners, two mentioned alcohol or underlying addiction as involved in the offence (the two ‘domestics’), and in the remaining cases no mention was made one way or another about drugs or alcohol.

Clearly, an underlying issue of drug and alcohol misuse runs across the group of prisoners we interviewed, echoing many studies showing high rates of drug dependency among prison populations (Houchin, 2005). And the fact that this information was independently volunteered – our interview instrument contained no questions about drugs or alcohol – underlines the deep connection between substance dependency and punishment. When asked to reflect on the experience of punishment, why they received a sentence and its positive and negative impacts, again and again prisoners returned to the issue of their addiction: as a cause of offending, as worsened or improved by a stay in prison, as a factor in whether they felt their sentence had a purpose or would have any effect.

A prison sentence affected in different ways a person’s relationship to drugs and alcohol, and the particular state of a drug or alcohol problem affected views about the purpose and effect of prison. Many people talked about a short sentence as a kind of detox, a place to get through a particularly intense period of addiction, when ‘yer rattlin aff the drugs’ (PS16) or as a way to get away from drugs: ‘Sometimes when I am outside, man, I think I need the jail to get off drugs’ (PS20). ‘Rather come in here. Just to get away frae people out there, man stay aff the drugs’ (PS02). But it was not a long-term solution:

‘Aye I’m clean aff the drugs but it’s the fact that when I git outside and stayin aff the drugs, know? Its, nae chance....I could git oot ae this jail an walk doon the street [and] I’ll bump intae somebody and I’m not even fae this toon ...and I know for a fact that they’ll go an score a bit ... fir me, a bit ae heroin.’ (PS16)

Even where prison was seen as having value as detox, some who used it this way also saw it as an interference. For example, relationships with community drug workers were interrupted as prison prevented attendance at outside meetings. The drug services available in prison mainly involved educational or general advice meetings with workers from a voluntary sector organisation. Most were dismissive of the few courses on offer (‘Well, it’s stuff you all know and it’s coming frae people who don’t know, if you know what I’m talking about. So it’s no good; it’s a farce’ PS10).

The most commonly cited function of a prison sentence for those with a serious substance dependency was simply to provide a placement that kept one away, willingly or not, from the streets. This was helpful to those needing a temporary detox, and also provided the mental space for some reflection on addiction. While nearly all participants with substance issues were clear that their

sentence was the result of their current and historical offending, they also felt a prison sentence was in effect punishing them for their addiction.

‘They should take into consideration what people are doing a crime for and how, how they are doing their crime and how long have they been doing it? If they’ve been doing the same crime for over and over and over ... they obviously have got a problem, know what I mean? ...They are not doing it because they want to do it, they are doing it because they’ve got to do it, [because] there’s something the matter with them.’ (PS16)

We note that two people expressed a positive view of their prison sentence, feeling it marked the final turning point in addressing addiction issues. Both were dealing with long-term dependence on heroin, one person had minimal experience of prison sentences while the other had long-term experience being in and out of prison. Both had come off of methadone during their sentence which coincided with a time in their lives when they felt ready to tackle their drug dependence once and for all.

‘I was addicted to heroin, been on methadone for fifteen years and today’s the first time I’ve come off it. [Interviewer: *So this stay in prison you got off drugs entirely?*] Yeah, because basically I knew that I had a good chance of coming off in here because I don’t get drugs in prison. I usually only use em outside. After thirteen years it’s been a long time coming, you know....’ (PS11)

4. *Family and imprisonment*

As in the case of drugs and alcohol, we heard much about family relationships despite not asking any questions directly on this topic. A question about the pains of imprisonment (*What are the negative things about a short term prison sentence?*) most commonly triggered comments about the hardship of being separated from family members. The topic of family came up, however, at unexpected times and in unexpected ways during interviews, adding nuance and even contradiction to a picture of imprisonment and kinship.

The hardship of separation was the dominant theme raised by participants on the topic of family. Nineteen of 22 participants independently volunteered information about family members. Ten talked about not being with their children, and a few more on top of this talked about missing other family (for example, the younger prisoners who were missing parents or grandparents).

While missing someone can arise in any situation where we are physically distant from those we are connected to, imprisonment added a dynamic of anxiety or anger as well, at least for some. This was especially the case where imprisonment risked, in the views of those interviewed, a permanent separation. Already described was an adoption hearing potentially taking place during the short time a mother was imprisoned. In this instance, the woman had been hoping

to arrange for a sister-in-law to look after the child, but legal and practical arrangements for this were not sorted by the time of the prison sentence. Another participant noted that an ex-girlfriend had moved out of the area during a prior prison sentence attempting to cut off all contact between him and his children. He had retained a lawyer to assist him, but his legal struggle for family contact was hindered by the current prison sentence.

Talk about family centred on but encompassed more connections than parents and children, displaying a web of relationships, roles and emotions, all of which imprisonment affected. 'I lost my brother last year when I was in the prison (*Interviewer: That's hard.*) Aye, and he died of septicaemia (*Interviewer: Oh dear, how old?*) blood poisoning, 42 he was...[I]t was hard to put a coffin underground; y'know they wouldn't take the handcuffs off me' (PS14). The same interviewee continues: 'I felt really emotional at the time and I lost my mate, my best mate, he died of a heart attack at 36. He was a taxi driver in _____. He's left two wee boys, know? I look after the weans now and again but I've got two daughters myself _____ and _____, two wee daughters' (PS14). For this person, the deaths of a brother and friend close in time created: new stress (exacerbating a drink problem at a time when he was engaged in rehab), an opportunity for being shamed publicly (attending a funeral in handcuffs), and new child care responsibilities (looking after a deceased friend's children).

Bereavements, illness and other family troubles are a part of all lives, but seemed to be especially numerous and intense for the participants of the research. One prisoner had become homeless when a partner, in whose name a lease was agreed, died; her next of (and only) kin was an adult son in a secure mental facility. Another prisoner noted: 'My Mum's very ill at the minute and my Dad's had a stroke there at Christmas time' (PS08). On top of this, she was the main carer of a severely disabled son who 'is deaf and blind, chronic lung disease ... He was born far too early [at] 26 weeks ... He's a wee fighter so ... That's my 4 year old, my wee boy, he's doing well, he just had his operation' (PS08). Another participant also talked about a very prematurely born child, who he visited daily but only by breaching a driving ban, which eventually led to a prison sentence (PS19). The pervading theme of addiction was another factor in multiple instances of family tragedy, as with a young prisoner who recently experienced the death of a sister and shortly after woke up next to a girlfriend who had died in the night through an overdose (PS20).

A handful of interviewees mentioned other family members caught up in the criminal justice system and variously involved in crime. One participant described committing a serious assault in the company of siblings. Others mentioned a shared addiction among siblings, parents and partners some of whom were succeeding better or failing worse against it.

'My dad's a drug dealer and he took drugs til he was 47 I think and my Dad's on methadone noo. And my dad got a drug worker and he ended up

on methadone. ... When I was out in January and my Dad was, look man, I'll try and get you up to see my drug worker and all that. But I ended up committin' mair crime and all that and goin' to jail again for this so it just went out the window, man.' (PS20)

There were many instances when family were cited as a source of support and strength. They helped one to get through the prison sentence and provided the motivation to deal with other problems, mainly addiction. 'I deserve it myself to get my act together, eh, my wee boy most of all. It's about time he gets his mum back' (PS18) said one who was trying to get off methadone in prison. Sometimes family helped out in small but important ways ('the [prison] governor signs [the request form] that eh goes to your parents and they bring you stuff in at your visits' (PS01)). Sometimes the state of one's family created a new impetus to change. A two year spell of being clean following a decade of being heavily involved in heroin was attributed to the health of parents: 'My Mum and Dad are very ill at the minute, and they have been, so that was the main reason that I did get my act together and come off drugs and that, yeah, ... to look after my family' (PS08). Family might also create a sense of shame about one's wrongdoing: 'my brother's a nurse, my sister's a teacher so I was just like eh, the black sheep of the family' (PS14).

Family is a concept, like community, which quickly becomes idealised and its wholly good qualities assumed rather than demonstrated. There were many situations in the lives of the participants which showed family to be a powerful influence, but in a destructive way due to a person's victimising of or victimisation by family. This was self-evidently the case of the two participants imprisoned on 'domestics', one a woman and one a man. The man reported the Sheriff had given him jail in the case because in 'an argument' with his wife, 'I'd used my son as a bargaining chip, that's what he was saying, because I used my son as a bargaining chip' (PS09). He saw his underlying heroin addiction, culminating in the ultimate low of being imprisoned, as the cause for the end of his family life: 'Unfortunately it's too late, I've lost my wife, I've lost my wean, I'm getting divorced' (PS07). In the other domestic case, the woman described both herself and her partner guilty of (verbal and physical) altercations which could be described as domestic abuse (PS07). In the many examples she listed, it seemed only a matter of chance that the police showed up on the day she was in the role of abuser rather than abused ('...one time he stopped in his van and dragged me in the van by the hood of my jacket...' (PS07)).

There also was what appeared to be a serious case of hidden victimisation in which the criminal justice system played a compounding role. A physically small young woman, imprisoned for a breach of the peace and assault (on an acquaintance while out drinking with friends) described being semi-homeless due to an abusive father. After reportedly being beaten up by him and turned out of the house, she stayed with a friend and borrowed a football shirt for her court

appearance on her own assault charge. She believed this lay behind the choice of a custodial sentence:

‘As I said I’ve got a really volatile relationship with my parents and me and my Dad had had a pretty heated, em, altercation the night before and I had a black eye. And I think he [the judge] looked at me and I had bruises on my face, a fresh black eye, I was up for assault ... and I think seeing me with a football top on and fresh marks on my face, I think he presumed I’d been in another altercation and had been arrested [rather than turned myself in].’ (PS04)

The group of prisoners we spoke with were deeply embedded in a range of family relationships. Being in prison at key moments in a family’s life intensified reactions, made it more difficult than otherwise to bear the stress of such events, and tangibly obstructed efforts to manage or resolve crisis situations. Family members were described as an undying source of support to get through difficult times, as a cause of shame or anxiety, as facilitators of criminal activity, as the ultimate motivator to get one’s act together. For all those who raised the issue of family, in whatever way, family were undeniably a significant influence and powerful force in one’s life. And imprisonment, while sometimes providing an opportunity to reflect on the importance of family, often carried tangibly negative consequences for family life.

5. Penal Legitimacy

Asking participants to reflect on the purpose and experience of imprisonment and community-based sanctions, commonly led to conversations about what punishment meant to them, and their sense of a particular sanction as good or bad, effective or ineffective, fair or unfair. Responses to our question about the purpose of imprisonment could be fit into three categories: prison as incapacitation in that it removes a person from circulation; prison as punishment, in that it was meant to be an unpleasant experience; and prison as rehabilitation, understood as getting help to deal with problems underlying offending. None of the prisoners, however, claimed that the latter two purposes were achieved during their sentences. The only two people in the group who said their sentence was having a positive impact on them, in a rehabilitative sense, did not attribute this to prison itself but to having reached a point of readiness where they chose to do things differently in their lives. One of them said about the purpose of prison: ‘I was gonna say rehabilitation there but it cannae take six months to rehabilitate a prisoner’ and added that coming off of drugs was ‘down to my own motivation’ (PS11).

Many participants saw imprisonment as taking them away from activities which were useful, to themselves or others – dealing with a drug problem, raising children, studying on a course – and placed in a setting where they were stopped from doing anything productive. ‘I think it’s just basically a way to put you somewhere til you get oot. It disnae learn ye anything’ (PS22). This contrasted

with experiences of other kinds of sentences such as community service where, for example, one person restored a public garden in a poor neighbourhood and praised this 'cause you knew you were doing it for people who couldnae do it for themselves so you knew you were making a difference instead of being fucking stuck in a stupid wee 12 by 8 and doing nothing for naebody.' (PS10) It was not just that imprisonment entailed the pains of isolation and separation, but that its pains also included denying and blocking one's sense of usefulness and helpfulness.

There were, perhaps unsurprisingly, many expressions of hostility and apathy towards imprisonment. *(Interviewer: can you tell me what impact prison has had on you?)* Made me worse...It's just because when I get out I dinnae like police, I dinnae like any form of authority, like I'm anti-authority now' (PS22). For some, a sense of the pointlessness of imprisonment hardened into feelings of anger and hopelessness that people carried with them in prison and out of it. 'If you're so sure these fucking paltry sentences are doing me any good, look at my previous convictions. If I had gotten just one big one at the start, I probably wouldn't be here' (PS10). And,

(Interviewer: So at the end of this sentence, you may go back on probation...?) I may, I've got to the attitude where I just don't give a shit. Pardon my French but I don't, I just get on with it, I do it. [If I hadn't been sent to prison] I could have got my flat sorted out. I could've got on with my life sorted out. Now I'm goin out here with basically nothing, you know? I'm better off in here. I'm better off in here, honestly! That's the way I look at it. (PS06)

There were also numerous expressions of shame and guilt over wrongdoing. 'I'm nae entitled to walk oot to shops and jist help myself. I realise that I've got to be punished for daein it' (PS22). Sometimes bravado was deployed: 'Not proud of it, but needs must. Occupational hazard [of heroin addiction]' (PS10). While a number of people shared the sentiment of one respondent who said, 'All you do is think, constantly think, who you've hurt, what you've done. All you've got time to dae is think' (PS09), he was the only one to state that this would be the catalyst for changing his ways and making good once released. For others, a period of reflection allowed anger to well up about the perceived injustice of their punishment.

'I feel that six months that's a wee bit kinda hard for a shopliftin. I feel it's hard...Well, there's a girl in just now, em, now I think about it, and it drives me really mad. I got six months for shopliftin and there's a girl in for stealin an old woman's bag and she got six months.' (PS18)

In other words, people felt guilt about their wrongdoing but imprisonment appeared only rarely to be connecting to this, and in fact seemed the opposite seemed to be happening – the thinking time created by imprisonment made them

angry about their punishment rather than remorseful for their crimes. Why was this happening? Two strands emerged from interview transcripts in answer to this question: (a) a short stay in prison was perceived to be both too hard and too easy; and related to this, (b) receiving a prison sentence was perceived to be the result of a judgment of one's past or character rather than a current offence or circumstances. We consider these themes in turn.

(a) Too hard and too easy

As identified above, the most common negative consequences of imprisonment were disruption to relationships, interruption of drug treatment, loss of housing, and loss of employment and education placements. Isolating any given sentence – for most this was a matter of being away from home for several weeks, such unintended pains might be seen as an unfortunate but minimal, necessary and time-limited evil of a perfectly legitimate punishment. However, the fact that such sentences were for most of the group a recurrent feature of their lives meant a series of minor pains accreted into a powerfully damaging force over the course of many years.

Meanwhile, it appeared that the perceived purposes of imprisonment were not being realised either. The brevity of the stay in prison meant that any single sentence did not in itself inflict much pain nor, as has been mentioned, provide the kind of time necessary to embark on lasting change outside of prison.

'[Interviewer: Can you get access to library and gym?] Aye, if I wanted aye but I'm not bothered I just want to get it over and done with. Get this weekend over and done with and that's me.' (PS02)

'[Interviewer: How's your experience of prison been?] Sucks. But at the end of the day it's nothin. It's nothin now. It's not punishment anyway, It's a joke. Plus the fact if you're doin less than six months you get nothing. By the time you get in on your sentence you're getting out.' (PS10)

'Sittin, see like you've got mair time tae think about things, know, like wastin yer life away on drugs an drink an that, that's how I don't want to go straight back onto the street because obviously 45 days isnae enough time tae deal wi problems y'know? (Interviewer: yeah) By the time you are startin to feel better, you're getting back out onto the street.' (PS12)

'People say this is like a holiday camp. Ha ha (Interviewer: would you say that?) Yes, I would say it's a holiday camp, yeah....It's not punishment in here.' (PS14)

It is notable that those who display here a dismissive attitude about the value or pain of imprisonment were among those who also expressed deep anger and despair over the cycle of such sentences, as quoted elsewhere in this discussion.

Short prison sentences thus appeared to be both too easy and too hard, that is, inflicting both too little and too much pain through the long-term repetition of a short-term experience, a paradoxical state of affairs akin to the situation of the film *Groundhog Day*. But unlike the movie, where the protagonist reacts slightly differently to the same brief moment until he reaches an epiphany that changes his life, these prisoners were re-living identical moments of mind numbing monotony that offered little opportunity to move on with one's life.

(b) Fairness in sentencing

Despite perceptions of sentences as too short to make a difference, many still felt their prison sentence was disproportionately severe. A long history of offending or a negative judgment of a person's character were considered to have a determining influence on sentencing decisions, and this was felt by many to be unfair.

'The judge looks at your previous convictions and sees your previous offending and can see how bad it can be, you know how bad it is. And so what they go by is your previous convictions. Nine times out of ten if you've been in jail the past say year, the chances of you going back to jail is 90% say, maybe 80%, but you're never thrown a lifeline.' (PS11)

'[Once you get a jail sentence] that's you, they've just labelled you "Ah he's not going to change," so why they gonnae spend money on people who are not going to change, how the fuck do they know we're not going to change? Scottish stuff isn't it?' (PS10)

This was the dominant position among the majority of the group who had been in and out of prison over many years. Those who did not question their sentence or accepted it as fair were also those with the least experience of prison: these cases involved an assault (PS17), a 'domestic' (PS09) and a weapons charge (PS19); these were also offences involving actual or potential violence. That is, the feeling that one's punishment was unfair arose mainly among those who had extensive experience of short prison sentences, mainly for theft-related offending and almost all of this connected to drug and alcohol use (e.g., 'the judge wanted to punish us for my behaviour, my previous' (PS14)).

A history of offending and prison sentences was also felt to outweigh all other sentencing factors, including the progress a person had made since a prior prison sentence.

'I would take into account the fact that I'd been off drugs for nearly two years, that em, I'd not been arrested or in trouble for that length of time, eh, when I was a habitual offender before, I mean I was always in trouble, every six months I'd be up for something else but, there was a big gap there, so they didn't even take into consideration that I was trying to better my life for the sake of my kids and my family, they didn't even look at

that It's like your past is always in front of you, no matter what you do to better your life, the past will always catch up with you.' (PS08)

It was felt that judges interpreted criminal and criminal justice histories in exclusively negative terms. A current period of relative stability which might be seen to mark at least some progress over a history of frequent offending, more often, according to participants, was treated as proof of the person having reverted to type and being punished accordingly. '[The sheriff thinks,] "You're a shoplifter, right, phew, you can just go to jail," know what I mean?' (PS02). A number of people echoed this respondent, who thought their records might be used not just to condemn but to support a sentencing decision that would facilitate their staying out of the system for longer:

'[If I were the Sheriff] I'd look at ma previous and stuff and see that I've done stuff like community service, and I managed tae stay oot for a while, know what I mean? (*Interviewer: yeah*) Ye can see that it kinda helped. For a while anyway.' (PS05)

Conclusion

The research found that some well known features of imprisoned populations – family disruption, addiction – were a problem for those on short prison sentences too. More than this, we learned how the experience and impacts of short sentences appeared to develop and amplify across sentences and years. Unlike a long term sentence, the short prison sentence was not an experience that could be isolated, separated from other life experiences and analysed independently for its outcomes. Short prison sentences were an intermittent but regular part of the lives of the majority we spoke with, and the constant coming and going between prison and community carried its own implications and effects. Imprisonment among the participants in this research was experienced and viewed as negatively as addiction itself, hurting relationships and life chances. Occasionally it offered a respite from problems on the outside but generally made those problems worse.

This suggests the need for adjusting the focus and methods of sentencing and punishment research by attending to the interactions of serial punishments (cf, Killias et al., 2010). Punishment was an ongoing part of people's lives, rather than an experience that came before or after some other way of life. This seemed to be a distinctive quality of short sentences, giving some empirical validation to the jargon that has involved in Scotland of doing 'life by instalments'. Knowing more about how people live with punishment, and how punishment lives with them would no doubt enrich policy reform efforts.

Furthermore the findings of this research encourage us to re-think how we conceptualise punishment and its relationship to the subject. One of the most powerful effects of punishment was to the perception of legitimacy itself: participants' conviction that imprisonment failed to achieve any penal purpose

beyond incapacitation, while creating a number of unintended negative consequences, undermined the punishment's ability to connect to a person's sense of wrongdoing. User experiences of punishment offer an important opportunity to explore how penal legitimacy works, and under what conditions it is achieved or damaged (see Armstrong and Weaver, in preparation). Debates about the legitimacy of enhanced sentences for persistent offenders (e.g. Roberts, 2008; von Hirsch, 1990) might benefit by incorporating knowledge about the effects of persistent punishment, and considering the punished as a key audience for normative theory.

While we may be focused here on the experience of prison, a user voice approach allows for a larger narrative to emerge in which punishment is part of a person's story but not all of it. In this context, the 'success' or 'failure' of a penal intervention requires more measures than re-conviction rates, and would ideally take account of any iatrogenic effects of the intervention itself. We found that imprisonment in many cases amounted to an interference in a person's life, undermining the kind of naturally occurring social supports that we are learning have a powerful role to play in desistance (Pettrus-Davis et al., 2011). A user voice is always at risk of being fit narrowly into the needs of policy or other processes, but we hope we have also shown its potential to raise new questions and challenges as well.

References

- Armstrong, S and Weaver B (2010) *User Views of Punishment: The comparative experience of short prison sentences and community-based punishments*. Research Report No. 04/2010. Scottish Centre for Crime and Justice Research. Available online at: www.sccjr.ac.uk
- Armstrong, S and Weaver, B (in preparation) *User Views of the Rights and Wrongs of Punishment*. article manuscript in preparation.
- Crewe, B (2009) *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford: Oxford University Press, Clarendon.
- Criminal Justice Forum (2003) *Short Term Prison Sentences: Report to the Criminal Justice Forum*. Edinburgh: Scottish Executive. Available at: <http://www.scotland.gov.uk/Publications/2003/02/16442/18499>
- Crouch, BM (1993). Is incarceration really worse? Analysis of offenders' preferences for prison over probation. *Justice Quarterly*. Vol. 10: 67-88.
- Davis, M (1992) *To Make the Punishment Fit the Crime: Essays in the Theory of Criminal Justice*. Boulder, CO: Westview Press.
- Duff, A (2003) *Punishment, Communication and Community*. Oxford: OUP.
- Houchin, R (2005) *Social Exclusion and Imprisonment in Scotland*. Glasgow: Glasgow Caledonian University.
- Killias, M, Gilliéron, G, Villard, F. and Poglia, C (2010) How damaging is imprisonment in the long-term? A controlled experiment comparing long-term effects of community service and short custodial sentences on re-offending and social integration. *Journal of Experimental Criminology*. Volume 6:115–130.

- Mathiesen, T. (1990) *Prison on Trial, A Critical Assessment*, Sage.
- May DC and Wood, PB (2010) *Ranking Correctional Punishments: Views From Offenders, Practitioners and the Public*. Carolina Academic Press.
- Payne, BK and Gainey, RR (1998), A qualitative assessment of the pains experienced on electronic monitoring. *International Journal of Offender Therapy and Comparative Criminology*. Vol. 42(2): 149-163.
- Petersilia, J and Deschenes, EP (1994) What Punishes—Inmates Rank the Severity of Prison vs. Intermediate Sanctions. *Federal Probation*. Vol. 58(1): 3-8.
- Petrus-Davis, C, Howard, MO, Roberts-Lewis, A, and Scheyett, AM (2011) Naturally Occurring Social Support in Interventions for Former Prisoners with Substance Use Disorders: Conceptual Framework and Program Model. *Journal of Criminal Justice*. Vol. 39: 479–488.
- Public Affairs Select Committee (PASC) (2005) *Choice, Voice and Public Services – Volume I*. Fourth Report of Session 2004–05. Available at: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmpublicadm/49/49i.pdf>
- Roberts, JV (2008) Punishing Persistence: Explaining the Enduring Appeal of the Recidivist Sentencing Premium. *British Journal of Criminology*. Vol. 48: 468–481.
- Scottish Government (2010a) *Criminal Proceedings in Scottish Courts – 2008/09*. Statistical Bulletin – Crime and Justice Series. Available at:
- Scottish Government (2010b), *Reconviction Rates in Scotland: 2006-07 and 2007-08 Offender Cohorts*. Statistical Bulletin – Crime and Justice Series. Available at: <http://www.scotland.gov.uk/Publications/2010/08/27112240/0>
- Scottish Government (2011) *Prison Statistics Scotland 2010-11*. Statistical bulletin - Crime and Justice Series. Available at: <http://www.scotland.gov.uk/Publications/2011/08/19154230/24>
- Searle, W, Knaggs, T and Simonsen K (2003), *Talking about sentences and crime: The views of people on periodic detention*. Ministry of Justice. Wellington: New Zealand.
- Stewart, D (2008) *The problems and needs of newly sentenced prisoners: results from a national survey*. London: Ministry of Justice.
- Tonry, M (2006) Purposes and Functions of Sentencing. *Crime and Justice: A Review of Research*, vol. 34(1).
- Trebilcock, J. (2011) *No Winners: The reality of short term prison sentences*. London: The Howard League for Penal Reform.
- von Hirsch (1990) Proportionality in the Philosophy of Punishment: From ‘Why Punish?’ to ‘How Much?’. *Criminal Law Forum*. Volume 1, Number 2, 259-290.
- Weaver, B (2011) Co-Producing Community Justice: The Transformative Potential of Personalisation for Penal Sanctions. *British Journal of Social Work*. Vol. 41, 1038–1057.
- Weaver, B and Armstrong, S (2011) *The dynamics of community-based punishment: insider views from the outside*. Research Report No.03/2011. Scottish Centre for Crime and Justice Research. Available at: www.sccjr.ac.uk

Wood, PB, and Grasmick, HG (1999) Toward the development of punishment equivalencies: Male and female inmates rate the severity of alternative sanctions compared to prison. *Justice Quarterly*. Vol. 16: 19-50.

Annex: Profile of Prison Group

Including (self-reported) age, gender, sentence, offence and prior experience of prison

PS01 – 23 year old man, 60 days, breach of an order (curfew), more than ten prior prison sentences

PS02 – 25 year old man, 60 days shoplifting, in prison two to three times per year

PS03 – 26 year old man, 60 days, passing drugs into prison, two prior prison sentences (one long term)

PS04 – 23 year old woman, 140 days, assault and breach of the peace, one prior remand

PS05 – 30 year old man, 120 days, assault, more than ten prior prison sentences

PS06 – 49 year old man, 180 days, breach of the peace, seven or eight prior prison sentences

PS07 – 39 year old woman, 190 days, ‘domestic’, one prior experience of prison (remand)

PS08 – 29 year old woman, 180 days, assault and breach of the peace, 17 prior prison sentences

PS09 – 37 year old man, 60 days, breach of the peace (‘domestic’), one prior prison sentence

PS10 – 35 year old man, 180 days, breaking and entering, 38 prior prison sentences

PS11 – 35 year old man, 180 days, shoplifting, eight prior prison sentences

PS12 – 29 year old man, 90 days, breach of the peace, 20 prior prison sentences

PS13 – 19 year old man, 120 days, weapons possession, no prior prison sentences

PS14 – 35 year old man, 180 days, breach of the peace, 20 prior prison sentences

PS15 – 31 year old man, 180 days, ‘drugs’, 15 prior prison sentences

PS16 – 36 year old man, 60 days, theft, in prison two to three times per year

PS17 – 22 year old woman, 180 days, breach of the peace and assault, two remands in prison

PS18 – 24 year old woman, 180 days, breach of an order, four or five prior prison sentences

PS19 – 24 year old man, 180 days, breach of an order, one prior prison sentence

PS20 – 29 year old man, 180 days, theft, in prison multiple times each year

PS21 – 48 year old man, 90 days, breach of the peace, in prison 4-5 times per year

PS22 – 55 year old woman, 120 days, breach of an order, in and out of prison for the past five years

ⁱ Preparation of questions did not involve consultation of former or current penal service users.

ⁱⁱ In Scotland, a person sentenced to two years or less normally is released automatically at the halfway point of their sentence. So a six month sentence equates to a time in prison of 90 days.

ⁱⁱⁱ As noted, a six month sentence means an actual time in prison of 12 weeks. Participants noted that time used up by prisoner induction and risk assessment made it impossible to do programmes on a six month sentence.