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Document Version

Peer reviewed version

Citation for published version (Harvard):

Condry, R, Kotova, A & Minson, S 2016, Social injustice and collateral damage: The families and children of prisoners. in Y Jewkes, J Bennett & B Crewe (eds), *Handbook on Prisons*. 2 edn, Routledge, pp. 622-640.

[Link to publication on Research at Birmingham portal](#)

Publisher Rights Statement:

This is an Accepted Manuscript of a book chapter published by Routledge in Handbook on Prisons (2nd Edition) on 22/2/2016, available online: <http://www.routledge.com/9780415745666>

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Social Injustice and Collateral Damage: The Families and Children of Prisoners

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Abstract

In this chapter, we explore the wide-ranging experiences of the families of prisoners and argue that their circumstances need to be seen as more than just the by-product of criminal justice processes and that the inequities they experience should be addressed in their own right, if a society is to claim to be just. In thinking about the meaning of ‘justice’ within criminal justice it is important to consider the very real consequences of imprisonment which stretch beyond the prisoner and to consider the ways in which the state’s power to punish is wielded disproportionality against those who are already likely to be experiencing a range of social disadvantages.

Introduction

By virtue of their relationship to a prisoner, prisoners’ families are denied a number of rights and entitlements. As has long been documented, prisoners’ families are drawn into the criminal justice process and become subject to a number of harms as a result. In this chapter, we explore the experiences of the families of prisoners and argue that their circumstances need to be seen as more than just the by-product of criminal justice processes and that the inequities they experience should be addressed in their

own right, if a society is to claim to be just. As Lacey (2013) has argued we cannot deliver criminal justice without attending to problems of social justice. The chapter argues that the families of those who are punished need to be included in this endeavour and explores how this might operate. These issues are then examined in the context of two ongoing research studies, one which examines the children of prisoners, and another which focuses on the partners of long-term prisoners.

So why is the impact of imprisonment on the families of prisoners a question of social justice? And what exactly do we mean by social justice? Theories of social justice have a long history and vary in their conceptions of what a just society should look like. The aim of achieving social justice is claimed by parties from across the political spectrum and given varying interpretations to suit their rhetoric. As Cook (2006:4) has said, it is a concept laden with common-sense meanings and as Craig et al (2008: 1) have argued, social justice is something that everybody is in favour of, almost by definition. Furthermore, there is no single straightforward definition and each attempt to pin it down leads to further questions. For example, if it is about the distribution of resources, then how can we measure or define those resources? If it is about systematic inequality in society, then on what basis do we judge that inequality?

In this chapter we take a broad conception of social justice, drawing particularly upon the work of Iris Marion Young (1990) and the application of her analysis in the context of parental incarceration by Joyce Arditti (2012). Prior to Young's work, many theories of social justice had focused primarily on the inequitable distribution of resources in society. While acknowledging the importance of distribution of material goods, Young argues that the scope of justice is wider than this and stresses the importance of the institutional context that produces and reproduces disadvantage.

Young defines social justice as “the elimination of institutional domination and oppression” (1990: 15). She proposes what she describes as:

“..an enabling conception of justice. Justice should refer not only to distribution, but also to the institutional conditions necessary for the development and exercise of individual capacities and collective communication and cooperation. Under this conception of justice, injustice refers primarily to two forms of disabling constraints, oppression and domination. While these constraints include distributive patterns, they also involve matters which cannot easily be assimilated to the logic of distribution: decisionmaking procedures, division of labor, and culture.” (1990: 39).

Young further defines oppression as consisting “in systematic institutional processes which prevent some people from learning and using satisfying and expansive skills in socially recognized settings, or institutionalized social processes which inhibit people’s ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen.” (1990: 38).

Domination, in Young’s analysis, “consists in institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions. Persons live within structures of domination if other persons or groups can determine without reciprocation the conditions of their actions. Thorough social and political democracy is the opposite of domination.” (1990: 38).

Prison is an institutional structure of oppression and domination. By definition, prisons restrict the liberty of those imprisoned, and their freedom of expression, access to resources, self-determination, and democratic participation. The degree to

which this is so and the varying levels of, for example, disenfranchisement, is beyond the focus of our analysis but is addressed by other chapters in this Handbook. Our focus here is on the ways in which imprisonment as an institution imposes systematic disadvantage, oppression and domination on, not only prisoners, but on the families of those who are imprisoned.

In her US analysis, Arditti (2012) has argued that the context of parental incarceration has four key characteristics: ‘the demographic characteristics of incarcerated parents and their children’; ‘cumulative disadvantage’; ‘institutional practices’; and what she calls ‘sociopolitical: stigma and disenfranchisement’ (see also Codd 2008, and Comfort 2008: Appendix 2). We think these categories provide a useful guide for exploring the broader context of the impact of imprisonment on all family members. In particular, they allow us to consider the circumstances of families before, during and after imprisonment, and to explore exactly what it is that prison *does* to the family. Using Arditti’s distinction as a guide, we develop each category in turn and consider how they play out in the more general context of the impact of imprisonment on the family.

1. *Demographic characteristics and patterns of pre-existing disadvantage*

Prisoners and their families are more likely to come from backgrounds with systematic patterns of pre-existing disadvantage. In the US, imprisonment has a well-documented drastic impact on members of minority ethnic groups, and particularly African Americans. In the UK, a disproportionate number of prisoners are also drawn from ethnic minority groups – about a quarter of all prisoners (Berman and Dar, 2013). This is a large proportion when compared to 1 in 11 of the general population in 2009 (Prison Reform Trust, 2014). We can assume that many of these ethnic minority prisoners will have families who are also

from ethnic minority groups. Ethnicity has an impact on the likelihood of being drawn into the criminal justice system, but also on treatment within it (see Cheliotis and Liebling, 2006 and Bowling and Phillips, 2007). The consequences of imprisonment for prisoners' families might therefore be exacerbated by their ethnic background. For example, they may not only go through all the hardships experienced by prisoners' families in general, but may also have to endure racist abuse when visiting prison (Light and Campbell, 2007) or experience a misunderstanding of cultural or religious needs.

Imprisonment also has a disproportionate impact on the economically disadvantaged. We know that the prison population in the UK are more likely to come from backgrounds of poverty, interrupted education, and other problems (Social Exclusion Unit 2002). Although systematic data has not been collected on the backgrounds of prisoners' families in the UK, studies from both the US and the UK suggest they are more likely to have lower socio-economic status and be contending with a range of associated problems ((see Condry, 2007; Comfort, 2008; Wakefield and Wildeman 2014).

Patterns of gender disadvantage are also important to understanding the experiences of prisoners' families. Those family members who support prisoners are usually women – wives, girlfriends, mothers and sisters (Condry, 2007, see also Christian, 2005 and Comfort, 2008 for the US context). These women will already be contending with patterns of gender oppression. Worldwide, women represent a disproportionate number of the world's poor – this 'feminisation of poverty' also includes deprivations of opportunities and capabilities (Nussbaum, 2011). Society often takes women's care-work for prisoners (and care work in general) for granted as a 'natural' female role or duty (Aungles, 1993), rarely recognising that this work may be financially, emotionally and socially burdensome. Women are subject to a prevailing conception of natural caregiving and responsibility for other families (see Condry 2007) which permeates society in general and criminal justice in particular. For

example, it is startling that women in the UK may lose their social housing if their sons, and/or male partners act antisocially, even when these women have done nothing wrong themselves (Hunter and Nixon, 2001). The underlying rationale seems to be that it is a woman's duty to control 'her' men and the domestic domain (see Hunter and Nixon, 2001).

These patterns of pre-existing disadvantage are complex and interrelated and will intersect in particular ways for individual prisoners' families. Other patterns of oppression might also be important, such as discrimination based upon sexuality or disability. Although it is important to recognise these common broader patterns of pre-existing disadvantage, the families of prisoners will come from a wide variety of backgrounds and will experience the intersection of disadvantage and the impact of imprisonment in different ways, a point to which we will return.

2. *Cumulative disadvantage*

Furthermore, imprisonment itself can compound and magnify patterns of economic, social, educational, health and mental health disadvantage and create new problems for families. Taking economic difficulties as an example, imprisonment is strongly correlated with a fall in the income of the prisoners' partner (Smith et al., 2007).

Supporting a prisoner can be expensive and might include spending significant amounts money to send parcels to prisoners, write letters, visit, and send money.

Prisoners earn very low wages and often rely upon family members to supply clothing or money to buy toiletries or food items within prison. Supporting a prisoner can be very demanding in terms of time and energy and impact draw upon the reserves of a family member's social and personal resources. Worries about the prisoner and his or her welfare and feelings of loss can further compound pre-existing mental health problems and create new anxieties for the family.

3. *Institutional practices*

Existing research on prisoners' families has found that punishment extends beyond prison walls and reaches into every facet of these families' lives. The restrictive institutional practices of the prison extend 'punishment beyond the legal offender' (Comfort 2007) to the prisoner's family members. Prisoners' families 'experience restricted rights, diminished resources, social marginalisation, and other consequences of penal confinement' (Comfort 2007: 7). Through her research in the US, Comfort found that prison visitors would have to adjust their choice of clothing according to somewhat arbitrary prison regulations, and that a huge amount of time would be absorbed by the hours spent visiting and waiting to go on a visit. The women in Comfort's study were themselves fundamentally changed by their interaction with the prison, assuming the status of quasi-inmates as they came under its rules and discipline, and as the boundary between home and prison became blurred. In the UK context, Condry (2007) described how some prisoners' partners arranged their daily lives around supporting their imprisoned loved one, which included waiting for phone-calls, going on visits, and writing frequent letters. Comfort (2007, 2008) has described this as 'secondary prisonization': 'a weakened but still compelling version of the elaborate regulations, concentrated surveillance, and corporeal confinement governing the lives of ensnared felons' (Comfort, 2009: 2). The ways in which prisons are organised and the channels through which relatives interact with the prison work together to produce an institutional burden of punishment for these families.

4. *Sociopolitical: stigma and disenfranchisement*

Prisoners families are subject to a range of exclusionary and stigmatising practices. Some of these stem from the exclusionary nature of imprisonment itself and the

treatment of the prisoner as 'other'. Dehumanising practices might include the way prisoners are spoken to and addressed, the deprivation of basic necessities, limits on their interaction with their families, restrictions on voting and political participation both during and after imprisonment, and curtailing of employment opportunities on release, all of which have implications for the 'negative othering' of prisoners and their families. Furthermore, the families of prisoners might be directly stigmatised themselves because of their relationship with a prisoner.

Condry's study of the relatives of serious offenders found that family members felt they were perceived to be the same as the offender because of their close association – 'tared with the same brush' - or because of a genetic connection that could provoke very primitive ideas of bad blood. Mothers in her study, for example, often spoke of their horror that someone born of their body had committed a heinous offence, and sons worried whether they might inherit some of their offending father's traits. Family members felt they were blamed directly for things they had or had not done that were seen to contribute to the offending (Condry, 2007). Explanations which locate the source of deviant behaviour within the family have a long history and are woven through political, media, and lay discourse, and expert and therapeutic analyses. The families in Condry's study felt they were constantly faced with the belief that serious offenders were somehow 'made' by their families. The consequences of being blamed and stigmatised could be severe. Friendships were lost, a mother was spat at in the street, another had eggs thrown at her windows and abuse from neighbours, and another received abusive phone calls. One wife had all the windows of her house broken, and another was taunted in the street: 'you murderer's wife' (Condry, 2007).

Social injustice and prisoners' families

Crucially, this meshing of disadvantage produces and reproduces social injustice at the level of the individual member of the prisoners' family, and at the level of the prisoners' family group, but also at the level of society. These sustained and reproduced patterns of inequality and disadvantage – for hundreds of thousands of prisoners' family members in the UK and for several million in the US – have a profound impact upon the social fabric and organisation of society both in the current context and in the future.

More recently, attention has turned to this wider societal impact. One powerful book, Wakefield and Wildeman's (2014) 'Children of the Prison Boom' demonstrates clearly the devastating impact of mass incarceration for generations of children in the US and provides striking evidence of the impact this has on inequality in American society. For example, the authors show that children with an incarcerated parent are more likely to experience multiple difficulties including mental health and behavioural problems, the risk of being homeless, and even the chance that they will die before they reach the age of one. African Americans born around 1990 had a one in four risk of parental imprisonment by their fourteenth birthday, compared with a risk of one in thirty for white children. For those African American children whose fathers dropped out of high school there was a better than even chance of having a father imprisoned at 50.5 per cent; to put this in further context, black children are more likely to have a parent imprisoned by their first birthday than white children are before their fourteenth birthday. The authors argue that this is storing up deeply rooted patterns of inequality for the future of American society. This level of entrenched inequality and social injustice needs a more fundamental response and

cannot be addressed by family-friendly prison programmes which tinker at the edge of this devastating impact.

We therefore need to fully understand the harm inflicted by criminal justice processes upon society's already disadvantaged groups, of which the families of prisoners are one such example. At the same time, it is important to keep in mind that the category of 'prisoners' families' contains a range of different kin relationships; variations in demographics such as age, gender, ethnicity, and social class; variation in sentence type and previous experience of imprisonment; and a wide range of different life experiences outside of prison. Although we can discern common patterns in the impact of imprisonment on family members, it is important also to recognise their heterogeneity. We now turn to two ongoing research studies that focus upon specific groups to explore how patterns of social disadvantage play out in different contexts.

Children of Imprisoned Parents

That millions of children each year become separated from their parents looks, at first glance more like something caused by war or perhaps natural disaster than a product of a carefully planned and well thought out policy on crime and imprisonment in a modern democratic nation. (Scharff Smith 2014:10)

The past decade has seen an increased recognition amongst academics, governments and NGOs that significant numbers of children are affected each year by parental imprisonment, and that parental imprisonment can, and does, affect children in very significant ways. There is a growing body of work internationally, focusing attention on this population, some of the most recently published books on the subject being

those by Scharff Smith (2014), Wakefield and Wildeman (2014), and Arditti (2012). In England and Wales it has been estimated that around 200,000 children each year experience the imprisonment of a parent (Ministry of Justice 2012). This number is likely to be an underestimate as no data pertaining to children of prisoners is collected routinely, and the prison population has continued to increase over the past few years.

In the UK since 2013 the Department of Education has funded a programme (I-Hop – Information hub on offender’s families with children, managed jointly by voluntary sector organisations Barnardo’s and Partners of Prisoners Service), which provides information to those working with or encountering children of prisoners. I-Hop is working with higher education establishments to ensure that the particular needs of these children are covered in the training of teachers, social workers and health professionals. The issue has recently been brought before parliament in the form of proposed amendments to Bills, which would place a statutory duty on the courts to inquire at remand or sentencing about the welfare of any children who will be affected by the imprisonment of their parent. At the time of writing the proposals have not been accepted.

A number of factors may have influenced interest in this population. First and foremost the increasing number of children affected each year by parental imprisonment, and the realisation that this may fundamentally impact upon society both now and in the future (Wakefield and Wildman 2014) is of concern. Children’s rights in this context have been subject to academic attention in recent years, (Scharff Smith 2014 , Scharff Smith and Gampell 2011 , Minson and Condry 2015), and the Court of Appeal gave guidance in 2001 that the Article Eight right of a child to family life must be balanced with other factors when a custodial sentence is being considered for a parent (*R (on the application of P and Q) v Secretary of State for the Home*

Department 2001). There has also been a flow of research into the experiences of children of imprisoned parents which has countered assumptions that have been made in the past about these children.

Such assumptions may have facilitated seeming disregard for the children of imprisoned parents. For example, the assumption that criminally involved parents are bad parents, and therefore their removal through imprisonment benefits, or doesn't harm their children, may well have affected the behaviours and decision making of police, sentencers, media and the wider community. Recent research (Wakefield and Wildeman 2014) refutes that particular assumption and it may be helpful for the reader to consider those arguments at this stage.

The central tenet of the rebuttals is that research evidence demonstrates that the negative impact to a child of their parent's imprisonment is not dependent on the quality of the relationship prior to the imprisonment, save for the caveat that there must have been a degree of connection to family life prior to imprisonment. For example 'cascading effects' such as stress in the home, financial loss, and stigma, will affect all children who lose a parent from the home, not just those who had a good relationship with their parent prior to the imprisonment. Their research also demonstrates that even when a parent is 'inconsistently involved' with their children, the child still experiences a negative loss when the parent is imprisoned. They also contend that as more people are imprisoned for non-violent offences, "the contemporary prison, then, may be more likely to house inconsistent or irresponsible parents but perhaps less likely to house harmful ones" (ibid : 46).

It if it accepted that children are, in general, negatively affected by the imprisonment of their parent, then it is arguable that the state is failing in its duty under Article Two of the United Nations Convention on the Rights of the Child 1989, to protect children from discrimination or punishment which they suffer as a consequence of the status or activities of their parents.

The next section of the chapter uses Minson's ongoing researchⁱ on the impact of maternal imprisonment to provide illustration of some of the disadvantages children face in England and Wales as a consequence of their mother's imprisonment, when viewed through the social justice lens of Arditti's (2012) four point analysis.

Focus on the children of imprisoned women

Demographic characteristics and patterns of pre-existing disadvantage

By looking at the characteristics of the female prison population in England, 66 per cent of whom are mothers of children under the age of 18 (Liebling, Maruna: 2005: 159), and 33 per cent of whom are lone parents (Social Exclusion Unit, 2002:137) , it is possible to gain some insight into the lives of children prior to their mothers' imprisonment. 46 per cent of women in prison report having suffered domestic violence (Prison Reform Trust 2014:4) . 25 per cent were looked after in care as children and 53 per cent report have experienced emotional, physical or sexual abuse as a child (Ministry of Justice 2012). They are five times more likely than women in the general population to have a mental health concern (Plugge et al, 2006 in Prison

Reform Trust, 2013:34) , and 41 per cent have attempted suicide at some time (Ministry of Justice 2013). It is widely recognised that they are a population of particularly vulnerable women. It is possible therefore that their children have experienced an unsettled childhood even prior to incarceration. The following excerpts from interviews illustrate this.

The grandmother and carer of a sixteen year old boy, who had been in her care full time since the age of four, spoke about his early childhood experiences prior to his mother's imprisonment:

"He [my grandson] used to tell us quite vividly how he remembered the police coming round and him hiding in cupboards or standing on the balcony or climbing over the edge of the balcony when the police used to appear, and this was all from when he was just one or two."

"... their Dad was there just comatose and [my grandsons] were just crawling around in all this filth and scraping chocolate and cheese off the floor to try and survive, so we brought them back and we had to soak them in a bath to get rid of their own faeces for about an hour."

The carer of a four year old boy spoke of how he was affected when he moved to live with her following the imprisonment of his mother:

"I think like him having a routine and going to nursery and coming back when he's supposed to things like that, it helped him."

Cumulative disadvantage

The primary disadvantage suffered by a child when their parent is imprisoned is the loss of that parent. Experts liken it to bereavement, but it is often made more difficult for the children by a number of issues. Firstly there is such stigma surrounding imprisonment that children are not always told the truth about their parents' whereabouts thus adding to their confusion about the situation. Secondly prison sentences are not set to a fixed date, as release can be influenced by a number of

factors, and therefore until someone is actually released from prison there is always some uncertainty regarding the end date of the sentence. It is difficult for children to maintain contact with the imprisoned parent particularly when it is their mother in prison as research figures indicate that when a mother is imprisoned only 9 per cent are cared for by their father during their mothers' absence (Corston 2007), indicating that many children may end up in extended family or friendship care, or in local authority care. Many women in prison do not receive visits from their children because those caring for them are unable or unwilling to bring them, or because the mothers do not wish their children to see them under those circumstances. The average distance women in prison are held from their home is 60 miles (Women in Prison 2013). An eleven year old girl whose mother had been in prison for ten years was asked about the frequency of visits:

“So how often do you get to see your Mum?

Not much. I think we've been like once or twice in the last couple of years. We used to go see her quite a bit but she moved further away and then she moved even further away.

So where is she now?

I don't exactly know. I only know we can't go and see her 'cos we can't afford it.”

Telephone contact is expensive and limited and relies upon the mother having sufficient money to pay for calls. It is difficult for children to be limited to set times for communication as illustrated by an interview with a sixteen year old boy whose mother had been in prison for three years:

“There’s certain days when you wake up and you’re like, I could really do with talking to my Mum and because of the situation you can’t.”

Only 5 per cent of children remain in the family home when their mother is imprisoned (Caddle, Crisp 1997), the remainder moving to live with other relatives, friends or into local authority care. Such moves can then also necessitate a change of school and separation from siblings and friends. All of these changes occur at time when the child is already experiencing significant loss.

Institutional practices

The notion of punishment extending beyond the legal offender to his or her legally innocent family members has been clearly articulated by Megan Comfort (2007; 2008) and it applies to children of prisoners in many of the same ways as it applies to adults. If children attend prison visits they will be subjected to the rigorous security checks and visitor restrictions which can feel very oppressive to children. Although it has recently been found to be the right of a child to have visits in a way which is not frightening for them this is not always the case (Hoyrech v Poland ECHR 17.04.2012). The restrictions on contact with prisoners e.g. by telephone calls impose a level of ‘prisonization’ on a child, whose need to have contact with their parent at particular times, is not facilitated by prison regimes and suffers due to the high cost of telephone calls from prison. An eleven year old whose mother was serving a life sentence, and who has been cared for by her grandmother since her mother’s imprisonment, explained:

Stigma and exclusionary practices

“Marginalisation is perhaps the most dangerous form of oppression. A whole category of people is expelled from useful participation in social life and thus potentially subjected to severe material deprivation and even extermination. The material deprivation marginalisation often causes is certainly unjust.” (Young 2011:53)

Whether real or imagined, the perception of children whose parents are imprisoned is that there is shame attached to the status of their parent. When a sixteen year old boy whose parents have both been in prison was asked what advice he would give another child in his situation, he said without hesitation:

“Lie – well not lie, just don’t tell the full story. Just change it.”

Another sixteen year old boy whose mother had been in prison for four years was asked whether his friends knew about her imprisonment:

“Some of them do. Like my really close friends do, but to others I say my Mum’s on holiday .I didn’t want to make it really public”.

It seems that such feelings, whether expressed as stigma, shame or privacy, may in some instances cause children to self-exclude from situations and relationships, causing them to become marginalised. Parental imprisonment is a taboo subject, and the boy above disclosed that in the four years his mother had been in prison he had not been asked by anyone how he felt about the situation. So from the ages of 13-16 no one was willing to broach the subject with him.

At a recent international conference on children of imprisoned parents (COPE 2014) a Norwegian worker reported that the children she worked with felt that their dignity and respect had been removed by their parents’ imprisonment. It was only when the

Norwegian Children's Ombudsman sought their views that they felt that those things were theirs again (Holden at COPE: ibid)

Moving forward

“Young's political philosophy established a much needed framework for thinking about justice under conditions of modern mass politics, where citizens seek liberty and egalitarian community in contexts where they are for the most part strangers to one another.” (Allen in Young 2011)

Within our society it seems unlikely that any arguments would be made for treating the children of prisoners in a different or lesser way to any other child. yet perhaps because they are pushed through disadvantage and stigma to the margins of our society they are 'strangers' to us and it is for that reason that their systemic disadvantage has been ignored.

It can only be hoped that as the body of research on these children grows there will be a number of changes in the way that they are viewed and treated. Firstly, a recognition that although for some children there is benefit in the removal of a parent from the family through imprisonment, for the majority of children there is no benefit, and there is in fact negative loss. Secondly, no longer should the impact on children of parental imprisonment be regarded as anticipated and acceptable collateral damage. The idea that because a parent committed a crime the state has no need to consider their dependent children in sentencing, should no longer form any part of judicial or community thinking. It is encouraging that an analysis of Court of Appeal transcripts has indicated that there is a willingness to recognise the need to look at the sentencing of primary carers within a more holistic framework but this needs to become standard

practise across the court system with a starting position of non-custodial sentencing options being the preferred outcome when a parent, in particular a primary carer, is to be sentenced (Minson and Condry 2014). In cases where imprisonment is the only possible outcome, a greater awareness of the impact of different sentence lengths on children would assist the courts in making decisions. It would also make a great difference to children and those who care for them during the course of the imprisonment if sentences of imprisonment had definite end dates, which would not be altered save for grave circumstances. There is a lack of social justice in the impact of prison on unimprisoned children which needs to be addressed in a more deliberate manner.

Female partners of long-term male prisoners

A large proportion of male prisoners in the UK have partners, with a 2012 study reporting that 8% have partners they are married to and 24% are in an unmarried partnership (Williams, Papadopoulou and Booth, 2012). Over 90% of male prisoners say that their children are cared for by their partners (Home Office 2004), therefore even if the prisoner is separated from his partner, his access to his children is likely to be mediated through her. The impact of imprisonment on the child may also be mediated or exacerbated by the impact on the carer (see Murray 2005). Lowenstein (1986: 86) found that the extent to which a mother is able to cope with a father's imprisonment has a significant impact on how well the child copes.

A growing body of academic work, both in the UK (e.g. Condry 2007; Codd 2003, 2010; May 2000) and the US (e.g. Comfort 2007, 2008; Fishman 1990; Girshick 1996) has explored the impact imprisonment has on partners of male prisoners, to

uncover the wide range of consequences affecting this group when their husband or boyfriend is imprisoned. These consequences can be emotional and centre on loss; financial, such as when a breadwinner is removed from the family home, for example; social, such as the loss of friendships or taunting by others in the community; as well as the exposure to petty humiliations and deprivations when visiting a prison. Condry (2007) posits that a long sentence may exacerbate these problems and deprivations, but there has been little research in the UK into the impact of long-term imprisonment itself on partners of prisoners.

There is, in the UK, very little structured support for prisoners' partners and it is notable that there is no single governmental authority responsible for addressing the needs of prisoners' families generally (Action for Prisoners Families 2013). Front-line support that does exist is usually provided by small organisations with limited resources. Adult partners of prisoners do not garner the same level of support or sympathy as the children of prisoners, being viewed as having chosen, to some degree, their circumstances.

An ongoing UK study into the impact of long-term imprisonment on female partners of male prisoners in the UKⁱⁱ can be used to illustrate some of the injustices and disadvantages these partners face. We know very little about the social backgrounds of female partners of long-term male prisoners, though we may assume that they are likely to experience the patterns of social disadvantage described above. Prisoners' families are notoriously difficult to access for research purposes and narrowing the field to those partners 'standing by' and supporting prisoners through long-term sentences of ten years or more increases this difficulty considerably. In this ongoing

research, participants have been sourced widely through voluntary organisations, social media, and newsletters such as Inside Time. Those who responded to requests and eventually agreed to interview have tended to have fewer pre-existing disadvantages and to be of a higher socio-economic status (with some exceptions) than that reported in other prisoners' families research. This might be due to a number of factors, but it is likely to be heavily influenced by the willingness to volunteer for and participate in research.

What is interesting for the purposes of this chapter is that coming from less difficult circumstances prior to imprisonment does not provide protection or insulation from the social injustices that follow. Following Arditti's framework, these partners particularly experienced cumulative disadvantage centring upon financial and health difficulties; disadvantage that developed from the institutional practices and the extension of punishment to them as partners; and practices of social exclusion and 'othering'.

Cumulative disadvantage

Partners in this study reported a range of difficulties stemming from the imprisonment of their partner. These included the emotional consequences of separation and loss, the difficulties of sustaining a relationship through such a prolonged period of separation, and particularly financial consequences and an impact on their own health.

A wife, whose husband had been sentenced to 15 years, reported having a relatively comfortable lifestyle prior to imprisonment, but that this changed immediately following her husband's arrest and imprisonment:

“...my mother supports me, it’s the only way I’m living in my house, she pays my mortgage. And that’s the only way I survive at the moment, and I’ve got friends and family that help me with food and that.” (Wife, sentence 15 years).

Another participant was unable to continue her job as a result of her long-term relationship with a life sentence prisoner. This had devastating financial consequences:

“I’ve lost my job, I’ve lost my career, I’m losing my house... [because] I can’t pay the mortgage... No job.” (Partner, life sentence.)

While another participant had lost a crucial source of financial support following her fiancé's eleven year sentence:

“I’m now on benefits.. -- If he was with me, he’d be supporting me [financially].” (Fiancée, sentence 11 years.)

Overall, the financial impact of long-term imprisonment was severe and compounded by the cost of supporting the prisoner through the sentence.

Partners of long-term prisoners in this study also reported health difficulties which had either emerged or worsened following imprisonment. Some of these were stress, anxiety and mental health-related, others were physical, and yet others were harder to

disentangle. A wife said her GP had:

“...sent me for counselling, because I couldn’t cope with the injustice of it”, and went on to say that she had “developed stress asthma”. (Wife, sentence 15 years).

A fiancée reported a worsening in a health condition thought to be stress-related, which she put down to her partner’s imprisonment:

“Since he’s been gone, I’ve developed inflammatory arthritis, so I’m on medication and I can’t work now because my wrists and shoulders pack up. It’s a nightmare.”

“I don’t think the arthritis would have kicked in [if my fiancé had not gone to prison]. He reckons it’s stress-related. I wouldn’t be surprised. I’m sure I’m depressed, I know some evenings I just sit there and cry”. (Fiancée, sentence 11 years).

The difficulties reported by these partners are likely to be increased by the length of the prison sentence.

Institutional practices

Comfort (2009: 2) has defined ‘secondary prisonization’ of prisoners’ partners as ‘a weakened but still compelling version of the elaborate regulations, concentrated

surveillance, and corporeal confinement governing the lives of ensnared felons'. Prisoners' partners may get heavily entangled within the criminal justice system and the many ways in which it supervises and controls individuals – and this is likely to be all the more onerous when a long sentence is involved. A partner of a life sentence prisoner described this as:

“...constantly hitting barriers where the Prison Service wishes you didn't exist...”

She went on to explain how she felt the prison system treated families unfairly:

“But when you're dealing one-to-one with a system that says - go and wait outside in the rain for an hour, no you can't stand in this little bit that's dry. We want you stand there in the rain. And that's what they do to us.”

A wife whose husband had been sentenced to twenty years continued this theme of inconsiderate treatment of families by the prison:

‘It doesn't take Einstein to work out that you don't change a system so that everybody has to book by phone and then close the booking line for a week’.

‘You've got to be prepared to fight for everything. And you have to keep finding this inner strength from somewhere...’ (Wife, sentence 22 years).

She then went on to say how this was particularly hard across a long sentence

and the prospect of doing it for a long time, with no release date on the horizon, was difficult.

A partner of a life sentence prisoner drew attention to the ways in which the lives of supporting partners become enmeshed with the prison and its routines:

“The prison shapes our lives as well, very much so, because we work round their bang-up times. And you get a day where they don’t fit into the routine we’re in, because we’re so institutionalised by it, and it’s panic. Absolute panic.[when he does not call for some reason]” (Partner, life sentence).

When asked whether bearing with these difficulties gets any easier with time, most women admitted that although they got to know the ins and outs of the prison system over time, the emotional burden did not improve. The frustrations and deprivations – such as lack of privacy - still affected them. To cope, some adopted, to quote one participant, a “sod you” attitude. The partners in this study had chosen to continue to support the prisoner and therefore had to accept the controls and deprivations associated with maintaining a relationship with someone with a long sentence.

Social stigma and ‘negative othering’

Partners reported being stigmatised and experiencing negative treatment in the prison itself (both from some prison officers and from fellow visitors, in the cases of partners of men convicted of sex offences especially). A participant said:

“We’re treated so badly [by the Prison Service]... ..we’re treated absolutely

appallingly". She reported constantly thinking - "...*how am I gonna be treated this week [by the Prison Service]? What sort of rubbish am I going to have to contend with with these people?*" (Partner, life sentence).

In her words, the weight of these thoughts, over the years, had built up into a 'horrendous' emotional burden.

Some women were also stigmatised in the community, describing incidents of people crossing the street so as to avoid them and dog's mess being thrown through letterboxes. Others were simply cautious whom they told about their partner's imprisonment, fearing potential stigma and negative reactions. One participant described herself as 'wearing a mask 24/7'.

The experience of stigmatising and exclusionary practices in the community was common to a number of partners:

"I've got quite a few friends that don't speak to me anymore..." -- "I've been trying to get a couple of jobs even as a carer, and the stigma that's attached...it's just like - you're a liability". (Partner, life sentence).

"I'm disowned [by the family], as well as [my husband]. And [my husband's son] is getting married this year, so, you know, obviously, [my husband] is not going to the wedding, and I haven't been invited either. So I'm clubbed along with [my husband], when, you know, the rest of his family are all preparing for a wedding! So, it's hurtful..." (Wife, life

sentence).

"It came in the paper, of course, in the local paper... So you're wondering: who knows? Who doesn't know? You've no idea how it is, going out the front door, and make that effort to walk to the bus stop, and get the bus... And thinking: who knows? ... somebody had graffitied on the front of my house. So that was awful". (Wife, IPP).

This ongoing research indicates that long sentences have a continuing negative impact on partners of prisoners, even those for whom pre-existing disadvantage was not so evident. The practical, emotional and social consequences are both negative and lasting, and the burdens do not necessarily get easier as the years go by. In fact, a few participants indicated that new problems arise as times passes by, such as fears about dying while the partner is still in prison, or health issues as both the prisoner and the partner get older.

Reducing social injustice for prisoners' families

What can be done to improve the circumstances of prisoners' families and to reduce the impact of imprisonment upon the legally innocent? As we have suggested in this chapter, there needs to be a broader focus on social inequality and social injustice which addresses the complex difficulties facing prisoners' families, and it needs to see the family members of prisoners as citizens in their own right, not just as prison visitors who only become visible when they walk through the prison gate.

There are fundamental issues that go beyond the family of the prisoner to the impact of punishment broadly and imprisonment specifically on groups in society who are

already contending with layers of intersecting social disadvantage. The extension of this impact to families and communities is profound and needs to be understood and recognised as interwoven with firmly entrenched patterns of ethnic, gender, and socio-economic disadvantage. There needs to be a clear recognition of how imprisonment impacts upon families who are already subject to a range of restricted central capabilities and freedoms (Nussbaum 2000) which are then compounded as they are drawn into the criminal justice system. Selection into prison both reflects existing stratification processes and generates ongoing inequalities in its own right (see Wakefield and Uggen 2010 for a review).

As Lacey and Pickard (2013) argue, this need not be so. Systems of punishment could adopt an approach that holds offenders accountable and responsible as is more common in a clinical model, without resorting to harsh and stigmatising measures. Exclusionary practices include depriving prisoners of the opportunity for meaningful work, restitution, education and therapeutic opportunities and such measures as restriction on employment, voting, or access to welfare benefits on release (Lacey and Pickard 2013), all of which have significant implications for families. Prisoners and those that come into the prison to visit them are also entitled to dignified, respectful and humane treatment, which is not always forthcoming in an under resourced and poorly valued prison system.

The detrimental impact of imprisonment on legally innocent family members might also be taken into account at sentencing where non-custodial measures could be used instead. This is more likely to hold sway where the family members concerned are recognised as dependent on the defendant, such as in the case of children, or adult relatives who require care. However, we might think carefully about a wider definition of ‘dependency’ and the detrimental effect on the family.

There is already a general consensus amongst both researchers and the judiciary that short sentences are not effective as punishment or to reduce re-offending. In circumstances where a short sentence could be considered it is becoming more consistently the practice that the court will consider non-custodial alternatives. However in more serious cases there is still a reluctance, influenced by sentencing guidelines, to use non-custodial alternatives as the means of punishment.

The impact on children should be considered when a parent is before the court. Case law has set out that even when sentencing a parent for more serious crimes the court should consider a child's right to family life. In the case of *R (on the application of P and Q) v Secretary of State for the Home Department* (2001) it was determined that a criminal conviction doesn't remove that right from the child or the parent. In any case to which Article 8 of the Human Rights act 1998 applies (the right to family life) the court should ask three questions: i) Is there an interference with family life? ii) Is the interference in accordance with law and in pursuit of a legitimate aim? iii) is the interference proportionate given the balance between various factors? (*R v Petherick* 2012).

That case, and others which followed (*R v Dartford Magistrates court* 2011 and *R v Petherick* 2012) established the principle that when state intervention disrupts a right there must be compelling justification for the disruption. The courts stated that the more serious the intervention the more compelling the justification must be, and interventions cannot be much more serious than the act of separating a mother from a very young child.

In England and Wales the courts already have the power to suspend custodial sentences which are up to two years in length, and they have the power to defer

sentence in order to allow a defendant the opportunity to prove a willingness to engage with non-custodial alternatives. It may be the case that in order to take family impact into account, no new sentencing options need to be created, rather those that already exist could be used with a greater frequency and flexibility than is currently the norm.

A number of other countries have already engaged with this issue, in particular with regard to the children of prisoners. In South Africa the 2007 case of *M v State* explored the reasons for taking children's rights into account when sentencing defendants with dependent children:

“the purpose of emphasizing the duty of the sentencing court to acknowledge the interests of the children, then, is not to permit errant parents unreasonably to avoid appropriate punishment. Rather it is to protect the innocent children as much as is reasonably possible in the circumstances from avoidable harm.”

The case identified the two competing interests which sentencing judges must endeavor to balance – the integrity of family care, and the duty on the state to punish criminal misconduct. Such balancing should ‘promote uniformity of principle, consistency of treatment and individualization of outcome’. The problems which the children in that case would suffer if their mother was imprisoned were listed, and it is a clear articulation of the breadth of issues which a judge should consider in relation to dependents:

“loss of their source of maternal and emotional support; loss of their home and familiar neighbourhood; disruption in school routines, possible

problems in transporting to and from school; impact on their healthy developmental process; and separation of the siblings.”

In that landmark decision the court allowed the appeal, and suspended the remaining 45 months of a 4 year sentence.

Since that decision a number of other cases have demonstrated that it is now established in South African law that the rights of children of defendants must be considered fully by the court. This has led courts to use innovative sentences such as weekend imprisonment for a defendant convicted of murder, which enabled him to care for, educate and financially provide for the children Monday to Friday, whilst also punishing him with imprisonment (*S v Ntikedzeni* (CC 26/2010) [2011] AZLMPHC 2).

Other countries are more aware of child dependents than the UK and the US. In Italy, for example, women with children under a certain age, serve their sentence under a home curfew rather than in a prison, to enable them to continue to care for their children. Measures such as this could be extended to take account of exclusionary impact of imprisonment on the family.

Finally, when imprisonment is inevitable, we can note some very practical measures which have improved the experience of family members visiting the prison and supporting a prisoner. These include measures to improve the experience of visiting including supportive visitors' centres, family days, and attention to the impact of rules and regulations upon visitors as well as measures to improve family contact such as reducing the cost of telephone calls. Family-focused prison programmes which allow prisoners to improve, for example, their parenting skills are beneficial, and perhaps

consideration should be given to more consistent home leave or conjugal visits – though the latter never occur in the UK.

We suggest that family-friendly prison policies and measures to improve contact between prisoners and their families are important and have immediate practical benefit, but that a full understanding of the experience of prisoners' families requires a social justice perspective. It may be that many of the 'collateral consequences' of imprisonment on family members are not really collateral at all, but rather an in-built part of a system of imprisonment that is both exclusionary and stigmatising and fundamentally entwined with social inequality.

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Acknowledgements:

Our thanks to the Sir Halley Stewart Trust for funding Anna Kotova's doctoral project. All views expressed in this chapter are those of the authors, and not necessarily those of the Trust. Shona Minson would like to acknowledge the ESRC for funding her doctoral studentship.

i

□ The interview material referenced in this section is taken from Shona Minson's ongoing PhD study considering the impact upon children of maternal imprisonment. Participants were recruited via prisoners support organisations, social media and snowball sampling. The interviews were conducted in person and were semi-structured in format.

ii

□ This is Anna Kotova's ongoing PhD study, as part of which 26 (at the time of writing) wives, girlfriends and fiancées of men serving a determinate sentence of 10 years or more, or an IPP or life sentence, have been interviewed. Participants were recruited via social media, voluntary organisations that support families of prisoners, snowball sampling, and written pieces in voluntary organisations' newsletters and InsideTime. The interviews were in-person and semi-structured and explored the experiences of supporting a prisoner through a long sentence.