



Community Sanctions as Pervasive Punishment: A Review Essay

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Abstract

Community sanctions involving supervision are a neglected field in criminological research and are widely viewed in political, media and public discourse as 'not prison' and a 'let-off'. An important new book, *Pervasive Punishment* by Fergus McNeill (2019), redresses this neglect by attempting to 'make sense of mass supervision' as a lived experience. Utilising a short story and allied projects with supervisees involving photographs and songs, he constructs a 'counter-visual' criminology that elucidates the ways supervision constitutes 'pervasive punishment'. This article reviews McNeill's argument and assesses its applicability in the Australian context.

Keywords

Community sanctions; Indigenous democracy; liminality; mass supervision; probation and parole; transcarceration.

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Introduction

Community sanctions are enacted in the shadow of the prison, a looming presence that shapes and frames conceptions of community sanctions. The prison is the ever-present metaphorical figure, the backboard against which community sanctions are pitched. Thus, there is a paradox: that consideration of the numerically far more common criminal justice sentencing sanctions—fines, probation, community service orders, intensive corrections orders, parole and other forms of supervisory orders—takes a distant second place to consideration of the prison. They are conceived and diminished as ‘not prison’, and bear the historical stamp of ‘leniency’, ‘mercy’, the ‘let-off’ or the ‘alternative to’ imprisonment. Among other effects, this makes it difficult for community sanctions to be justified normatively, and thus, to achieve legitimacy in public, political, media and legal discourse.

There are various reasons for this. One of these is how prison has permeated popular consciousness through film and television, novels, memoirs and biography, true crime, documentaries, and the almost daily diet of tabloid fascination/repulsion with what goes on behind prison walls. Most people, including the majority who have never inhabited or visited a prison, can conjure images of what they imagine them to be, and what might go on inside. *The Shawshank Redemption* (Darabont 1994) is one of the most popular films of all time (Heidenny 2014).

By way of comparison, there is little source material, and arguably little interest, from which to feed a popular consciousness and imaginary of what it means to undergo various types of community sanctions. There is no *Shawshank Redemption* equivalent portraying the experience of being on probation, parole or some other form of supervision-based order. Such sanctions lack the visceral, emotional connotations that envelop imprisonment. Their status as a ‘punishment’ is frequently denied. They are little thought about, save by those subjected to them and their families and friends, and they tend to attract media and political attention only when an individual instance is considered excessively lenient.

Pervasive Punishment by Fergus McNeill (2019) is an exciting attempt to suffuse this hollow surrounding community sanctions, to, in the words of the subtitle, ‘make sense of mass supervision’. McNeill confronts this task in an informed, imaginative and critical way, in a groundbreaking contribution, not just to this field but to criminology in general. This article reviews this important new work, outlines McNeill’s argument and considers its applicability in the Australian context.

Importantly, McNeill’s focus is on forms of community sanctions that involve ‘some form of penal supervision in the community’ (2009: 3). This includes sanctions such as probation and parole, home detention, various bonds that include supervision, community service orders and intensive corrections orders¹ and excludes sanctions such as fines.

‘Helping Us To Imagine’

Significantly, the book begins with a fragment of a short story, continued at the beginning of each chapter. Joe, who is undergoing a probation order, is in a waiting room pending his first meeting with his probation officer supervisor. The short story is used in conjunction with images from a joint project of photographs and with music and songs created alongside the book and available as a DVD/link. The use of the short story, photographs and music is an attempt to address our impoverished imagination surrounding supervisory sanctions. As McNeill (2019: 10) reasons:

Most people would struggle even to begin to imagine what supervision looks and feels like. It has no obvious architecture and shape. There is no familiar setting and no predictable script to guide our imaginations.

Not being able to visualise and imagine these situations and experiences—leaves us ill-placed even to formulate views about the justice or otherwise of a [particular] sentence.

Nevertheless, people do hold strong views on community sanctions involving supervision. Media, public and political comment on particular sentences, and sometimes on the whole genre of community sanctions, are often couched in terms such as ‘soft touch’, ‘let-off’ and ‘slap on the wrist’. Thus:

Home detention means she will sit at home, eat her favourite pizza and watch a DVD. Where’s the punishment in that? Home detention is a slap on the wrist for her and a whack in the face for us. (Vollmer 2009: para. 10)

This is not to deny the existence of sentences acknowledged on appeal to be unduly lenient, but to argue that the ‘let-off’ characterisation in relation to a community correction order lacks an understanding of the very real and ‘painful’ restrictions in the form of additional conditions that might be imposed. These can include, to take the Victorian legislation as an example, unpaid work, treatment, supervision, non-association, residence restriction, place exclusion, curfew, alcohol abstinence, a bond condition or a judicial monitoring condition (*Sentencing Act 1991* (Vic) ss 48C–48K). Such lack of understanding is reflected in public opinion surveys that show that people tend to: ‘know little about sentencing alternatives and focus instead on imprisonment’; and ‘underestimate the severity of sentencing practices for specific offences.’ (Gelb 2006: 24).

Mass Supervision

McNeill (2019) argues that our inability to imagine and thus, adequately analyse supervision is exacerbated by the significant increase in supervision numbers under conditions of ‘mass incarceration’. The notion of mass in ‘mass supervision’ is derived from ‘mass incarceration’, which is defined not only by reference to scale (higher than the comparative or historical norm). It is also defined, as Garland’s original formulation made clear, as falling disproportionately on particular (often racial) groups so that the effects cease to be explicable in terms of individual offending and involve whole communities: ‘part of the socialisation process ... a shaping institution for whole sectors of the population’ (2001a: 2).

The term ‘pervasive’ in the book’s title draws on the experiences of people being supervised, who stressed that the supervision, even when helpful, pervaded their lives and was painful, and how supervisory practices permeate wider society. McNeill, following Robinson (2016), notes that earlier criminological work from the 1980s—such as that of Scull (1977, 1983), Mathiesen (1983) and Cohen (1985)—warned of this spread of discipline throughout society. Indeed, in Lowman et al. (1987), the term ‘transcarceration’ was used to depart from the notion of supervision as an ‘alternative’ in favour of the notion of transfusion of social control through an interlinked network of institutions and practices. However, as Robinson argues, since the 1980s, most scholars have been preoccupied with mass incarceration, resulting in community sanctions having become the ‘Cinderella’ of ‘Punishment and Society’ studies, a ‘neglected and under-theorised zone’ (2016: 101, quoted in McNeill [2019: 6]; see also McNeill and Beyens [2013]). One of McNeill’s aims in *Pervasive Punishment* is ‘to help Cinderella come to the “Punishment and Society Ball”’ (7).

Punishment Changes

The second chapter continues the short story through the eyes of Pauline, Joe’s supervisor, who is regretful at the shift in supervisory practice from the previous ‘welfarist helping’ mentality and approach (‘to advise assist and befriend’) to the new managerial and risk-based approaches. These shifts are a source of ‘discomfort and dissonance’ (McNeill 2019: 39) to her and she has yet

to come to terms with them, a feeling common among older probation, parole and community corrections officers. This part of the story introduces a discussion of penal change, which proceeds via a brief overview of the leading work of Foucault (1979), Durkheim (1958) (as read by Garland [2013]; see also McNeill and Dawson [2014]), Wacquant (2009) and Garland (2001b).

McNeill then discusses the work of scholars such as Page (2013), and Goodman, Page and Phelps (2017), who work within Bourdieu's notion of 'penal field'. These scholars emphasise contestation within the penal field and criticise the 'pendular logic' of apparent ruptures in the penal field that invoke the metaphor of swings back and forward between welfarist and punitive approaches, leading to homogenised and over-generalised accounts. (For a similar criticism arguing for 'less dystopic analyses which stress contestation rather than hegemony to open up rather than close off resistant spaces, politics and passions', see Brown [2006: 36].) This 'agonistic' approach 'stresses the centrality of struggles between actors with different types and amounts of power, endlessly contesting the nature of criminal justice' (McNeill 2019: 38). While penal struggles are profoundly influenced by structural, cultural and political change, we need to understand how 'the internal stresses that these forces create are manipulated and managed by the differently situated and resourced penal actors who struggle to construct and reconstruct criminal justice in law, policy and practice' (McNeill 2019: 39) Such accounts, arguably aligned with some Australian analyses (see Cunneen et al. 2013; Tubex et al. 2015; Brown 2006) pay greater attention to national, regional and jurisdictional differences, and local context and influences including the effect of iconic cases and 'happenstance'.

Counting Mass Supervision

The third chapter begins with the short story segment involving Norman, Pauline's staff supervisor, who is conducting her quarterly appraisal. He scores her 'relational skills', 'structuring skills', 'use of authority' and 'brokerage', and her allocation of time to supervisees. This audit score would, among other consequences, determine the privatised provider's eligibility for a results-related bonus payment. This introduces a discussion of counting, in numbers, the scale and growth in supervision and whether supervision diverts people from prison or into it, whether it is a 'landmine' or a 'second chance'.

McNeill reviews the statistical data for Europe, the US and Scotland in detail. In relation to Europe, the data show that 'instead of being alternatives to imprisonment, community sanctions and measures have contributed to widening the net of the European criminal justice systems' (Aebi, Delgrande and Marguet 2015: 589, quoted in McNeill 2019: 48).

While the US prison population is now at least four times larger than it was in 1980, Scotland's is 1.6 times larger. However, in relation to probation and parole, the US figures increased for both by around four times since 1980, while Scotland's community sentences increased in number by seven since 1980 (see McNeill 2019: 66). The data also reveal that changes in the level of recorded crime cannot account for the growth in either imprisoned or supervised populations.

McNeill's (2019: 70) summary of the evidence from the US and Scotland is that the rapid expansion of supervision, even when intended to shrink the penal system:

has tended to draw more people into the penal net; and the people caught up have been predominantly marginalized and excluded people living in the most deprived parts of both countries. The greater the extent of their marginalization and exclusion, the more deeply they have been drawn into the penal net.

There is a spin off story here based on the work of Phelps (2017b), exploring (US) state-level variation, which is of particular interest to Australian readers. In an earlier analysis, Phelps

(2013b) shows that state-level variations in the relationships between prison and probation populations ('mass incarceration and mass probation') were shaped by : 'the extent to which probation diverts from or feeds into imprisonment' and 'the extent to which probation supports people (through processes and practices of rehabilitation) away from future prison admission or pushes them more deeply into these institutionalised forms of penal control' (quoted in McNeill 2019: 51). In a later longitudinal analysis, Phelps (2017b) demonstrates a 'decoupling' of the previous uniform expansion in both imprisonment and probation rates, concluding that (2017b: 66, quoted in McNeill 2019: 54) reliance only on imprisonment rates in comparative research: '*fundamentally misconstrues state variation*' (emphasis in original).

In Australia, as elsewhere, the focus in much of the 'mass incarceration' and 'popular punitiveness' literature has been almost exclusively on imprisonment rates, both national and state. It seems clear that this focus needs to be expanded to include rates of community sanctions. Further, rather than remaining at a broad level of historical and sociological analyses, such as a 'culture of control', state- and territory-level variations in judicial and correctional structures need to be examined. There is a paucity of such work in the Australian context (Tubex et al. 2015). Such work might show that rather than being over-determined by macro-economic, social and cultural structures, state-level variations can be explained by lower-level institutional practices and histories (e.g., specific forms of supervision that are targeted and supportive, as in Victoria's previously long-standing lower imprisonment rates and better post release support services, the former currently being eroded).

Legitimizing Mass Supervision

The short story continues with an interview between Pauline and her supervisor Norman, who reprimands her for her low audit score. The interview is tense and Norman seeks to disabuse her of the 'illusion' that her job is 'to help these people': 'It's not ... Your job is to stop them from reoffending'. Later, he states 'we are not here to build the community, we are here to protect it'. Again, this clash in vision introduces a chapter on the legitimization of supervision, which involves an examination of various narratives deployed in the penal field, a site of contestation:

in which different institutions and actors struggle for and employ material resources (finance, infrastructure, capacity), symbolic resources (status and prestige), social resources (connections and alliances) and cultural resources (knowledge and skills). (McNeill 2019: 78)

The chapter outlines the history of the constitution of and fluctuations in supervision in Scotland. McNeill attempts to address a paradox in which a fundamentally penal welfare institution, probation, which appeared to be floundering by the 1990s, nevertheless was rapidly expanding in both the US and UK. To explain this, McNeill refers to earlier work (Robinson et al. 2013), which characterised developments as a 'braiding' of new and old forms, involving four 'adaptions' through which probation had 'more or less successfully adapted to new social conditions': 'managerial', 'punitive', 'rehabilitative' and 'reparative' (79-80). These interlinked adaptions offer various resources to the advocates of supervision in the course of struggles for legitimacy in three forms: pragmatic, cognitive and moral. The authors concluded that none of the adaptions delivered cognitive legitimacy, or 'taken-for-grantedness'. Nevertheless, supervision continued to expand rapidly in Scotland, because, McNeill (2019: 82) argues, 'supervision had become too big to fail'.

There follows a detailed history of supervision in Scotland under the rubric of 'where reductionism produced expansion', with the narrative of the utility of probation being a means of penal reductionism as 'perhaps the central recurring theme in the history of supervision in Scotland' (McNeill 2019: 85). The narrative is traced through the history of Scottish devolution at

a political level. Recent Scottish civic nationalism, in seeking new narratives to justify independence, opened more space for supervision based on the 'four Rs: reparation, rehabilitation, restriction and reintegration' (98).

McNeill (2019: 101) characterises the outcome as a form of 'successful failure'. Successful in that supervision has become a central feature of the Scottish penal landscape (largely at the expense of fines, which have dropped dramatically) and a failure in that it had not reduced Scotland's continuing comparatively high rate of imprisonment. In the shifting discourses legitimating supervision in Scotland from social work assistance to welfarist education, then to responsabilisation and risk-management and public protection, 'penal supervision's *penal* character has been continually elided. Arguably even now, whatever its legal status, supervision is not seen as punishment but as an alternative to punishment' (101). This takes us from discourse and narratives of legitimation to the practice and experience of supervision.

Experiencing Mass Supervision

The short story continues with an interview between Joe and Pauline. Joe has 17 months' supervision remaining, together with an electronic tag and a 7 pm–7 am curfew for the next five months. He is finding the 'freedom' of the days the hardest. Sacked from his job and unable to find another, he is separated from his family, visits his children once a week and feels a profound sense of hopelessness. Pauline suggests he needs a sense of purpose and has an idea. The story introduces a discussion of experiencing supervision.

McNeill (2019: 108) notes that criminological research has largely focused on the 'effectiveness of different kinds of supervision in terms of reoffending' with significantly less work on how people experience it. Different forms of supervision share certain common features:

They place an offending citizen under the authority of an agent of the state; they confer on that agent an unusual degree of power and influence over the fate of the supervisee with (further) punishment in the event of non-compliance. (McNeill 2019)

There follows a review of English, Scottish, European and US research under the rubric of the 'pains of probation'. Significantly, McNeill slates the recent privatisation of much probation and parole work in England conducted under the 'Transforming Rehabilitation' slogan now carried out by Community Rehabilitation Companies. This has resulted in 'more reliance on phone contact or automated check-ins and lower levels of human contact' (111). McNeill's own experience of supervision as a practitioner and a researcher is that 'it has been and remains a highly variable and contingent one'. He notes various methodological limitations in much research flowing from an over-reliance on surveys and interviews, namely, selection bias and low response rates; insensitivity to diversity; and reliance on accounts of supervision rather than observations of supervision. This prompts him to argue for ethnographies of supervision.

McNeill (2019: 113–114) draws on Crewe's prison ethnography (2011: 522) and his analysis of the 'depth, weight and tightness' of imprisonment, categories, which arguably are also helpful in analysing the pains of supervision.

Depth refers to the degree of physical security to which one is subject and to the distance from release and from the outside world that this implies, represents and constitutes. Weight refers to the psychological burdens of imprisonment, to how heavily it bears down upon prisoners. Tightness captures the feelings of tension and anxiety generated by uncertainty ... the way that power operates both closely and anonymously, working like an invisible harness on the self.' (McNeill 2019: 113–114)

The penal character of rehabilitation in its current risk-focused form requires the penal subject to perform the 'internalised containment of risk'. The project of rehabilitation is restricted to personal rather than social transformation. 'Official recognition and endorsement of this performance is key to progression, release and then also to the maintenance of the supervisee's semi-freedom' (McNeill 2019: 115) Importantly, as Miller shows (2014: 325), responsibility for eliciting these performances of personal transformation is increasingly being 'devolved beyond the penal state's agents' to the 'para-professionalised resources of low income communities themselves' (McNeill 2019: 116).

McNeill describes a Scottish pilot study that required participants to take photographs that reflected their experiences of supervision and then discuss them in a group. The images produced tended to cluster into five themes: positive developments or change; time, often time lost; constraint; waste; and signs and words implying direction and discipline. While most studies tend to focus on the supervisory meetings themselves, the themes elucidated in the pilot project and other ethnographies suggest that:

the experience of supervision is much more diffuse and pervasive; it seems to extend in time and in impact across the life of the supervisee. Crucially, this pervasiveness is very often experienced as painful. The pains of supervision consist largely in being (continually) judged and constrained over time in the omnipresence of a suspended threat. (McNeill 2019: 122)

In terms of making supervision audible, McNeill describes a songwriting workshop, a collaboration between himself and colleagues, a Scottish arts organisation and supervisees, inspired by the pictures described in the previous paragraph.² McNeill (2019: 130–131) argues that the pictures and the songs illustrate themes that emerge in the ethnographies and suggests that:

both the symbolic and the material aspects of being gripped tightly by the penal state's processes and agents hurt penal subjects in significant ways, but also that these pains can be moderated by helpful and legitimate supervision.

McNeill (2019: 131–132) suggests the notion of 'misrecognition' is a common theme emerging from the photographs, songs and ethnographies and that, contrary to the metaphor of the panopticon, '*penal subjects suffer not hyper- or super-visibility; rather they suffer the pain of not being seen; at least not as they would recognise themselves*' (emphasis in original). He suggests the term 'Malopticon' to characterise these forms of misrecognition that construct the supervisee as 'untrustworthy' or 'unworthy of dominion', so that mass supervision becomes not just the dispersal of discipline but also 'the dispersal of degradation' (McNeill 2018: 20; quoted in 2019: 134).

Seeing Mass Supervision

The short story continues with Joe and Pauline attending a meeting of the 'Conviction Collective' comprising ex-prisoners, current supervisees and community activists, social workers, students and academics. In this meeting 'for the first time since the incident—Joe felt the stirrings of interest in something beyond his personal troubles' (McNeill 2019: 136). Pauline suggests to Joe that he volunteer to be treasurer of the group. This raises issues of 'how we might best challenge the invisibility of "mass supervision", making it the subject of public and democratic dialogue and deliberation' (137). One of the difficulties in 'seeing' mass supervision is that 'despite the crucial and often observed importance of punishment's expressive aspects (Freiberg 2001), it is not clear what supervisory sanctions communicate, for whose benefit and to whom' (McNeill and Dawson

2014: 141–142). This lack of clarity in what is being communicated by community sanctions also points to a gap ‘between what policymakers and practitioners think they are doing in promoting and practising supervision, and different kinds of evidence about its systemic and human effects’ (143) This is particularly important given the role of ‘progressive policymakers and practitioners’ who have ‘unwittingly, driven the expansion of penal control, partly by failing to properly police the boundaries between diversion and net-widening, both in the ways it is imposed and the ways in which it is delivered’ (141).

McNeill draws upon Carlen’s (2008) notion of ‘imaginary penalties’, and Loader and Sparks’s (2010) ‘public criminologies’ in reflecting on how mass supervision might be better seen and understood. Carlen’s term highlights how prison staff sustain a fiction of rehabilitative practice in an institutional context that denies its possibility. Loader and Sparks (2010) argue for a public criminology better attuned to democratic decision-making. McNeill suggests that public criminology needs a ‘counter-visual criminology’ that enables penal subjects ‘both to speak for themselves and to be heard’ (2019: 156). Rather than debate, which is adversarial and exclusionary in nature, ‘dialogical approaches’ are required to enable discussion of supervision and ‘in that dialogue we need to listen to those most intimately involved in it—supervisors and supervisees’ (155). He suggests that such dialogue ‘will likely be enabled and enhanced by creative practices, processes, representations and responses that help us see, hear and sense supervision’. For ‘counter-visual and other sensory criminologies have the potential to disrupt our imaginaries, and ... to stimulate our imaginations’ (155).

Supervision: Unleashed or Restrained?

The final part of the short story comes in the form of two very different but possible endings. In the first dystopic future, Joe is biometrically monitored through his bracelet and attends an empty reporting booth in which he wears a headset and engages with ‘Virpro’, a virtual probation officer on a computer screen. At the end of the exchange, Joe receives a message from an avatar, Future Joe, who he might become ‘if you want it enough, if you really commit’ (McNeill 2019: 159). Upstairs, Norm (Pauline’s supervisor) ponders the adoption of a new technology that enables nausea-inducing drugs and taser-style shocks to be administered to supervisees electronically from afar.

In the alternative, positive version, at Pauline’s insistence, Norm attends a meeting of the Conviction Collective, for which Joe is now treasurer. The Collective produced a manifesto, ‘Just Conviction, Fair Supervision’, which attracts public and political support. Norm leads a successful ministry-sanctioned pilot project of Just Conviction, Fair Supervision, and is about to give evidence about it to a parliamentary committee.

A brief conclusory chapter restates the book’s main argument: that challenging mass supervision requires three interlocking strategies:

The first focused on scaling down supervision; the second focused on clarifying and circumscribing its legitimate purposes and role, and the third ... focussed on developing and delivering it constructively. (McNeill 2019: 140–141).

McNeill (2019) argues that this task is bound by the three Ps: parsimony, proportionality and productiveness, not as philosophical principles, but as informed by the lived experience of supervision. As supervision involves the infliction of pain, it should be restricted and justified only in the interests of justice, not in the supposed best interests of the offender. The proportionality of supervision should consider the depth, weight and tightness of supervision, the ‘depth of the supervision’s interference with autonomy, the weight of its burdens, the tightness of its controls, and the degradations of status dependent upon it’ (170).

Productiveness in the design and delivery of supervision requires that punishment should be restricted to the shortest time necessary. There should be a 'positive right to re/integration' that includes 'honouring the punished citizen's claim for access to services during supervision', with the overall aim of 'full civic requalification at the end of punishment' (McNeill 2019: 171). The argument is that adherence to these principles 'in the design of supervision laws, policies and practices, might do much to properly guard the entry points into supervision' (171–172). In short, a 'counter-visual, sensory, public criminology of mass supervision can contribute to serious political engagement with the issues this book has tried to render more visible, to analyse and address' (174).

In summary, *Pervasive Punishment* is a tightly argued and accessible work that draws much-needed attention to the neglected field of community sanctions. It does this in a critical way and perhaps most significantly, by arguing that the process of 'making sense' of mass supervision as a lived experience is enabled by a 'counter-visual' criminology (i.e., the short story, photographs and songs alongside traditional text).

Mass Supervision in Australia

The tendency of criminologists of various persuasions to adopt theoretically informed analyses deriving from the metropolitan 'north' has come under sustained critique in recent years in the development of a 'southern criminology' (Connell 2007; Carrington et al. 2016, 2018a, 2018b). McNeill (2019: 14–15) restricts his analysis to England, Wales and Scotland, North America and Europe. He openly admits that he 'does not aim to analyse supervision in Africa, Australasia or South America', because he is insufficiently familiar with developments there and because 'I suspect that the imposition upon them of Western, Eurocentric and/or Anglophone frameworks of analysis would be highly problematic and properly contentious' (15).

The comments that follow will discuss the extent to which the Australian context is both similar to and different from that outlined by McNeill, identifying how his analysis might be both utilised in Australia and diverged from. Community-based supervision in Australia has been marked over the last decade by a heightened focus on managerialism, the widespread use of risk assessment instruments and the rhetoric of 'evidence-based practice' and 'what works', together with a shift in the role of community corrections officers from welfare/support to compliance/public protection. A recent A\$300 million expansion in community corrections programs in New South Wales (NSW), structured largely around a risk/needs/responsivity and 'rehabilitation works' framework, has opened the possibility of a revitalisation of the sector. However, following McNeill, community sanctions in Australia are similarly largely invisible, characterised as 'not prison', under-researched, lacking in a clear normative foundation, increasingly dominated by risk discourses, and evaluated largely through the lens of recidivism with little appreciation of the lived experience of supervision and its pains.

The dominance of the prison is illustrated in the comparative levels of expenditure. In Australia in 2017–2018, expenditure on prisons was A\$3.4 billion and on community corrections A\$0.6 billion (PCR 2019, s. 8.3) A significant difference in the Australian context is that while both the numbers and rates of community sanctions are roughly half as large again as imprisonment numbers and rates, there has not been the significant increase in community sanctions outlined by McNeill in the jurisdictions studied.³ So, the net-widening/ diversion argument is not as prominent in the Australian context. The major point of difference is that any analysis of the 'mass' character of supervision in Australia needs to focus on the communities of vulnerability disproportionately subjected to and affected by community sanctions, namely Indigenous people, particularly Indigenous women, and people with mental and cognitive impairment.

While there is an emphasis in *Pervasive Punishment* on the selectivity of mass supervision on vulnerable communities and neighbourhoods, Garland's (2001a: 2) second and most important defining characteristic of mass imprisonment, it is the notion of sheer scale that tends to dominate. While this is more understandable in relation to Scotland, where community sentences have increased sevenfold since 1980, in the Australian context, both imprisonment and community corrections cannot be adequately understood without a primary focus on the difference between Indigenous and non-Indigenous rates, experiences and meaning.

The national imprisonment rate in Australia from 2008–2009 to 2017–2018 has increased 29.5 per cent to 216.8 per 100,000, whereas the community corrections rate increased only slightly from 344.3 in 2008–2009 to 360.6 per 100,000 in 2017–2018. (PCR 2019, s. 8.5). These bald figures are misleading; they are based on a census and thus, do not include the much larger 'flow' of people through prison and community sanctions over the course of a year, predominantly on less serious offences. The national crude imprisonment rate per 100,000 Aboriginal and Torres Strait Islander population was 2,465.9 in 2017–2018 compared with a rate of 158.8 for the non-Indigenous population (PCR 2019, Table 8A.5), a disproportion of nearly 15 times. Indigenous people comprise 28 per cent of the prison population and 21 per cent of those under community corrections. The Indigenous disproportion is lower for community corrections (eight times on an age-weighted basis or 11 times on the crude rate). These disproportions are even greater for Indigenous juveniles, who are 17 times more likely to be under supervision in the community and 25 times more likely to be in detention (Australian Institute of Health and Welfare 2017: 98), and Indigenous women, who are 16 times over-represented, exceeding the equivalent male over-representation of 10.9 times (ALRC: 105).

National figures in the Australian context hide considerable state variation in both imprisonment and community corrections rates. Crude imprisonment rates per 100 population in 2017–2018 were 216.8 nationally, but ranged between 900.4 in the Northern Territory (NT) and 335.1 in Western Australia (WA) to 147.1 in Victoria. The total crude community corrections rates in 2017–2018 were 360.6 nationally, but ranged between 704.3 in the NT and 268.2 in WA (PCR 2019, Table 8A.5). Three states account for three-quarters of the national number of persons under community sanctions: Queensland with 30 per cent or 20,991 persons; NSW with 28 per cent or 19,579 persons; and Victoria with 20 per cent or 13,824 persons (ABS Corrective Services 2018, Table 1). While in the NT, Aboriginal and Torres Strait Islander people comprise 76 per cent of those on community-based orders, it is the only state or territory where the community corrections rate is lower than the imprisonment rate, demonstrating a history of high use of imprisonment, predominantly of Aboriginal people. In comparison, in NSW, Indigenous people comprise 24 per cent of those on community-based orders and 7 per cent in Victoria (ABS 2018, Tables 18–19).

Australian Research into Community Sanctions

In recent decades, Australian research has focused on particular community sanctions such as fines (O'Malley 2009) and community service orders (Bray and Chan 1991), rather than on community sanctions as a whole.⁴ Australian studies have produced valuable knowledge about the 'effectiveness' of particular sanctions or approaches, especially as measured by recidivism (Bartels 2013; Snowball and Bartels 2013) and demonstrated that compliance-focused supervision is less effective in reducing recidivism than are other models (Trotter 2012; Wan et al. 2014). However, apart from the significant contributions by Chan and Zdenkowski (1986a, 1986b), and Freiberg and Ross's (1999) overview of the history of penalties in Victoria, Australian research has rarely considered the field of community sanctions as a whole. There is no work like that of Phelps (2013, 2017a, 2017b) analysing the history of both imprisonment rates and community corrections rates across the Australian states and territories. Thus, we are poorly placed to trace the different trajectories and trends across the states and territories and

investigate the local institutional, political, cultural and legal histories of contestation that have produced differences (Tubex et al. 2015). One area in which there has been a recent burst of research is in public attitudes to community sanctions, especially parole (Bartels et al. 2018; Fitzgerald et al. 2016, 2018).

Similarly, there has been little ethnographic work on community sanctions as a lived experience. Thus, we are restricted in ability to assess differences in the use, availability and experience of community sanctions for Indigenous people, those with mental and cognitive impairment, and women (NSWLRC 2012; Baldry et al. 2015; Mahoney 2005; Schwartz 2010; Stubbs 2013). The Royal Commission into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC 2017: 235–272), among others, identified substantial geographical disparities in the availability of community sanctions and services in regional, rural and remote areas, and the absence of suitable programs especially for Indigenous people, who have been found to have poor outcomes on mainstream orders or programs (Mahoney 2005; NSW Audit Office 2009; Baldry et al. 2015).

The Politics of Community Sanctions

Australian political commentary on community sanctions has largely focused on addressing media characterisations of community sanctions as a ‘let-off’ by stressing tighter monitoring and revocation for breach of conditions, and restrictions on availability for particular types of offenders, moves evident in the areas of bail (Brown and Quilter 2014), suspended sentences (Freiberg and Moore 2009; Gelb 2013) and parole (Callinan 2013; Bartels 2013; Freiberg et al. 2018a, 2018b; Moffa, Stratton and Ruyters 2019). High-profile cases—such as those of Adrian Bayley, Julian Knight, Sean Price, Craig Minogue, Dimitrios Gargasoulas and Yacqub Khayre in Victoria and Man Haron Monis in NSW—have prompted legislative change in parole and bail. Freiberg (2017, 247; see also Freiberg et al. 2018a, 2018b) identifies five key themes in recent changes to Australian parole laws:

- prioritisation of community safety over all other relevant considerations
- limits on the discretion of courts to set non-parole periods through the use of mandatory or presumptive non-parole periods
- restrictions on the discretion of the Parole Board to make decisions in cases involving serious violent or sexual offences
- elevation of victims’ rights such as ‘no-body, no parole’ laws
- a shift from an emphasis on reintegration to prisoners forfeiting rights to parole by virtue of having been convicted.

Freiberg’s last theme has been most evident in the Victorian parliamentary debates and in the *Callinan Review* (2013: 69) which argues that parole is a privilege, not a right, and in any event rights should be denied to convicted persons (Moffa et al. 2019: 79). In policy debates, community sanctions such as parole are now justified largely in terms of ‘promoting community safety by supervising and supporting the conditional release and re-entry of prisoners into the community thereby reducing their risk of offending’ (NSW LRC 2015: xvii).

In terms of developing a politics around community sanctions, much in McNeill’s approach is helpful. Counter-visual approaches to contest the invisibility of supervision and supervisees are certainly to be encouraged (for an Australian example involving an interactive theatre performance of a parole interview by a group involving former prisoners, see Brennan et al. 2019), along with an emphasis on dialogue rather than debate, a commitment to listening, to treating supervisees as individual humans rather than points or ‘dividuals’ on an aggregate risk-scale profile, and to stimulating their agency and autonomy. The three ‘Ps’ might serve as a useful

touchstone, but given that parsimony and proportionality are already recognised sentencing principles, the issue relates more to how they might be operationalised in specific legal, bureaucratic, fiscal and professional practices.

Indigenous Democracy

The key to addressing disproportionate Indigenous imprisonment and community sanction rates and the generally destructive impact of the criminal justice system on Indigenous communities and people is Indigenous democracy. This is a short-hand way of encompassing Indigenous governance, empowerment, self-determination and nation-building (Brown et al. 2016: 6). Two recent developments hold much promise (see Brown 2019). One is the Uluru *Statement from the Heart*, issued by the 2017 National Constitutional Convention, a national gathering of Indigenous leaders, which ranked high imprisonment rates and disproportionate juvenile detention rates as defining issues in the Indigenous condition. The Statement highlights the key issue in addressing that condition: ‘the torment of our powerlessness’, as the provision of a structural mechanism for Indigenous people to have a ‘voice’ in the political process and in their own governance, a voice through which a *Makarrata* or treaty-making process reflective of Indigenous sovereignty can be pursued. Thus, criminal justice issues are inextricably linked with fundamental issues of democracy. ‘When we have power over our destiny our children will flourish’ (National Constitutional Convention 2017).

Another development emerging from within criminal justice specific research and activism is the push for a justice reinvestment approach to criminal justice-related issues in Aboriginal and Torres Strait Islander communities, further promoted in *Pathways to Justice* (ALRC 2017). The key defining characteristic of the push for justice reinvestment (JR) policies in the Australian context is that it has come from within Indigenous communities, and that leadership of and control over the formulation of policies and programs is located within those locally based communities (Brown et al. 2016). JR policies and pilots are currently promoted by various Indigenous and non-government organisations, and two state and territory governments. The most developed, ‘The Just Reinvest Maranguka Justice Reinvestment Project’, was initiated by the Aboriginal Legal Service in conjunction with the Burke Aboriginal community and developed organically following an Indigenous self-governance model involving a community initiative ‘substructure’. It uses a collective impact methodology similar to that of community development. Other Indigenous-based pilot schemes are underway but none as yet are at an evaluation stage (Schwartz et al. 2017: 7).

Early results from the Burke scheme show some significant reductions in offending, breach rates and criminal justice system involvement over a one-year period, including: a 23 per cent reduction in police-recorded incidents of domestic violence and comparable drops in rates of reoffending; a 31 per cent increase in student retention and a 38 per cent reduction in charges across the top five juvenile offence categories; a 14 per cent reduction in adult bail breaches and a 42 per cent reduction in days spent in custody (KPMG 2018: 6); and evidence of a significant lift in community cohesion, solidarity and wellbeing.

These results show that substantial shifts can occur in communities and neighbourhoods with high rates of crime, policing and criminal justice intervention and sanctions, where programs are initiated and controlled by local Aboriginal and Torres Strait Islander organisations in conjunction with government agencies. Similar gains might be possible if the supervision of community sanctions such as community work orders, intensive corrections orders, bail, probation and parole conditions of Aboriginal and Torres Strait Islander offenders were under the control of Aboriginal and Torres Strait Islander organisations.

Liminality

Finally, I wish to return to the issue of transcarceration. While it is argued by McNeill and this review that community corrections must be analysed in their own right rather than as simply 'not prison', this does not deny the interconnections between them but rather redresses what Robinson (2016) characterises as the preoccupation with mass incarceration that stifled interest in supervisory based sanctions, except those closest to imprisonment, such as parole and electronic monitoring. Robinson (2016: 105, quoted in McNeill 2019: 7) suggests that this neglect of supervisory sanctions lay partly in the question of whether 'such sanctions are in fact instances of punishment at all'.

Research into the lived experience of supervision, especially through ethnographies, suggests that the answer is yes. McNeill's use of Crewe's 'depth, weight and tightness' notions, originally formulated in a prison ethnography, suggests these notions are also applicable to the lived experience of community sanctions. Another way to approach this issue, not invoked by McNeill, is Jewkes's (2005: 376) notion of 'permanent liminality', which evokes 'a state of being in-between, neither inside nor yet fully part of the outside world' (Cunneen et al. 2013: 150). People are 'trapped in this third space which ebbs and flows between the prison and the community' (Peacock 2008: 310) characterised by disconnection, forms of civic disenfranchisement and marginalisation. Baldry and colleagues (2006) use the notion of liminality to analyse the compounding disadvantages that accrue to a large proportion of the prison population, particularly Indigenous people and those with cognitive and other disabilities. Thus, the 'liminal marginalised and fluid community-criminal justice space' (Baldry 2009: 20) 'has been a space a majority of people in the prison who have mental and cognitive disability have lived in most of their lives' (Baldry 2010) and 'this normalised space operates as a funnel into the criminal justice system' (Cunneen et al. 2013: 152).

In conclusion, drawing on McNeill, we need to develop an approach to community sanctions that treats them as diverse in nature; as differentially experienced, especially by vulnerable populations; as constituting punishment and featuring the delivery of pain; as requiring analysis through a range of methods including 'counter-visual' and ethnographic research; and as deserving of scrutiny, justification and restriction in their own right, while simultaneously recognising their clear links to the prison through transcarceration and liminality.

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¹ Community sanctions are defined by the Council of Europe as those 'which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose. The term designates any sanction imposed by a court or judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment' (1992, Appendix, para 1), quoted in McNeill, 2019: 102). In the Australian context, this would include community work orders (NT); community service orders (Qld, SA, Tas); home detention (NSW, NT, SA); community-based orders (WA); community correction orders (Vic, NSW); intensive correction orders (NSW, ACT); non-association and place restriction orders (ACT); suspended sentences (WA, Tas); intensive supervision orders (WA) and good behaviour orders (ACT) (see ALRC, 2017, Table 7.1).

² The pictures are available at <http://www.offendersupervision.eu/supervisible> and the songs on an EP by Vox Liminalis, available at: <https://voxliminalis.bandcamp.com/album/seen-and-heard-ep>

³ There appears to be a very recent sudden increase in the number of people serving community-based orders in NSW, increasing from 19,500 in September 2018 to 24,600 in January 2019 (NSW Justice 2019: 6) following the overhaul

of intensive correction orders (ICOs) and the abolition of suspended sentences. Over September 2016–January 2019, ICOs increased 313 per cent, bond with supervision increased by 86 per cent (6,379 to 11,869); and home detention increased 72 per cent (111 to 191). Similarly, community correction numbers have increased in Victoria in recent years following the abolition of suspended sentences, the tightening of parole following several notorious cases of parolees reoffending and increasing duration of corrections orders.

⁴ A current ARC-funded project, 'Rethinking Community Sanctions Project' by Stubbs, Baldry, Brown, Cunneen, Russell and Schwartz, is researching community sanctions across three states: NSW, Victoria and NT. This project will examine shifts in the use of community sanctions over time, compare present practices across the three jurisdictions and examine disparities in the use of community sanctions between 'mainstream' offenders and three vulnerable groups poorly served by existing programs (Indigenous people, those with mental illness/cognitive impairment, and women).

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