Title

Ageing and dying in the contemporary neoliberal prison system: exploring the 'double burden' for older prisoners

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Abstract

Prison populations across the world are increasing. In the United Kingdom, numbers have doubled in the last two decades, and older prisoners now constitute the fastest growing section of the prison population. One key reason for this shifting prisoner demographic is the growing numbers of men convicted of 'historic' sexual offences, many of whom are imprisoned for the first time in old age, and housed in prisons not suited to their needs. These demographic changes have profound consequences, including increased demand for health and social care in prison, and rising numbers of anticipated deaths in custody.

Using the findings from a recently completed study of palliative care in prison, this paper proposes that older prisoners face a 'double burden' when incarcerated. This double burden means that as well as being deprived of their liberty, older people experience additional suffering by not having their health and wellbeing needs met. For some, this double burden includes a 'de facto life sentence', whereby because of their advanced age and the likelihood that they will die in prison, they effectively receive a life sentence for a crime that would not normally carry a life sentence. There has been little popular or academic debate concerning the ethical and justice questions that this double burden raises.

Drawing on the work of Wacquant and others, the paper proposes that these changes are best understood as unplanned but reasonably foreseeable consequences of neoliberal penal

policies. Although the paper focuses on the UK (which by comparison with other European countries has high rates of imprisonment), many of the challenges discussed are emerging in other countries across the world. This paper illustrates starkly how neoliberal policies and discourses have shaped the expansion and composition of the prison population with its consequent implications for health and justice.

Key words

United Kingdom; prison health care; older prisoners; sex offenders; palliative care; end of life care; neoliberalism; participatory action research.

Highlights

- The UK has rising numbers of older prisoners and natural cause deaths in custody
- Prisons are struggling to meet the health and social care needs of older prisoners
- Inadequate care in prison leads to a 'double burden' for old and dying prisoners
- This double burden is underpinned by neoliberal penal policies and discourses
- There is little public debate about health, ethics and justice for older prisoners

Introduction

The worldwide prison population is steadily increasing, and in the last 15 years has grown by 20% to around 11 million (Prison Lives, 2017). In many countries including Australia, New Zealand, Canada, the United States (US) and the United Kingdom (UK), numbers of older prisoners are also increasing, both in absolute terms and as a proportion of the prison population (Stevens et al, 2017). The focus of this paper is the UK, as it exemplifies the

trends and changes which we explore below, but these are also salient to other countries (Maschi et al, 2012).

In the UK, the contemporary prisons landscape has been the focus of much recent attention and debate, with the Prisons and Probation Ombudsman (PPO) describing the prison system as 'still very much in crisis' (PPO, 2017). News reports about the increasing availability inside prisons of new psychoactive substances (NPSs, previously known as 'legal highs' or more colloquially 'Spice'), have become distressingly familiar, and have drawn attention to the serious health issues, violence and disorder connected with the use of NPSs in prisons; severe reductions in the numbers of prison officers in recent years as a consequence of the 'benchmarking' process that began in 2013 have exacerbated these problems (Prison Reform Trust (PRT), 2017).

The significant challenges raised by these frequent crises, however, have served to move the spotlight away from what has been happening with the older prisoner population. The number of over 60s has almost tripled since 2003; prisoners aged 50 and over now account for 16% of the prison population (PRT, 2017), and there are increasing numbers of the 'oldest old' (those aged 85 and over). As the fastest growing section of a prison population that has doubled in the last 20 years, older prisoners differ markedly from the rest of the prison population. Many of them have complex health and social care needs due to poor physical and mental health, ageing and frailty, and thus pose challenges for health and justice as serious in scale and reach as violence and disruption, but which are largely hidden from view.

This paper explores the ethical, moral and political questions raised by ageing and dying in the contemporary British prison system, supported by findings from our recently completed study of end of life care in prison (Turner & Peacock, 2017; Peacock, Turner & Varey, 2017). It seeks to address two questions: what explains these recent changes in the prison population, and what can or should be done about it. We draw on the work of Wacquant and others who argue that the contemporary patterns of imprisonment can best be understood in the light of other key features of the wider neoliberal project; that is, that '**welfare and criminal justice are two modalities of public policy towards the poor**' (Wacquant, 2012a, p.242; emphasis in the original). The negative consequences of neoliberalism for health are well established (De Vogli & Owusu, 2015; Navarro, 2007) and there are lively debates concerning the nature of the mechanisms. What we mean by neoliberalism is a political and economic valorisation of market forces and orientation to market 'freedoms', which is both framed and reproduced by ideological, discursive and governmental strategies emphasising individualism, competition and restrictions on state intervention. The health and justice issues raised by the imprisonment of old and frail men illustrate, we propose, both the practical changes characterising neoliberal capitalism, and what Harvey (2010, p.131) has called 'new mental conceptions of the world' – structural and discursive changes that construct interactions between individuals, and between individuals and organisations. We argue that imprisonment in old age constitutes a 'double burden' of punishment above and beyond the deprivation of liberty that is the ostensible purpose of imprisonment. This double burden and in particular its connections with historic sex offending raise ethical and justice questions that this paper seeks to identify and address.

Background

The prison population

England and Wales have the highest rate of imprisonment in Western Europe, with 146 prisoners per 100,000 population (there is a similar picture in Scotland and Northern Ireland, but as they have different prison systems this paper will focus on England and Wales). This compares with 128 in Spain, 103 in France and 77 in Germany; the US is the world leader at 666 per 100,000 (World Prison Brief, 2016).

Older prisoners exist in a system dominated by younger men. Of the 86,075 prisoners in England and Wales (Ministry of Justice (MoJ), 2017a), 84% are under 50 years of age (PRT, 2017) and fewer than 5% are female (the prison service has yet to find satisfactory ways of meeting the needs of the small but growing number of prisoners who identify as neither male nor female). In view of the very small numbers of older female prisoners, this paper will primarily consider male prisoners, but some of the issues clearly apply to women as well.

Prisoners are disproportionately socially disadvantaged in multiple ways when compared with the rest of the population. Over a quarter of prisoners are from black and minority ethnic groups, compared with 14% of the general population. Rates of mental illness are high; 26% of women and 16% of men in custody report having received treatment for a mental health problem in the year before they went into prison. Literacy skills are significantly poorer in the prison population and, in the academic year 2016/17, 32.5% of

prisoners were assessed as having a learning disability or difficulty (Skills Funding Agency, 2017).

Older prisoners

Older prisoners are now the fastest growing section of the prison population. There are currently 13,257 prisoners aged 50 and over (PRT, 2017), and numbers of the 'oldest old' are also rising sharply, with 226 prisoners aged over 80 (MoJ, 2017b). Nearly all those over 80 were sentenced when they were aged 70 or over (House of Lords, 2017). There is some debate about the definition of an 'older' prisoner, but it is widely accepted that prison accelerates physiological ageing, and that prisoners aged 50 have an equivalent health status to people aged 60 in the wider population (Hayes et al, 2012); therefore, this paper will follow the currently accepted practice of defining older prisoners as aged 50 and over. This group is expected to increase to 14,800 by June 2021, with the over 70s predicted to rise from 1,599 to 2,100 (Ministry of Justice, 2017c), a much sharper trajectory than for younger prisoners. The Ministry of Justice identifies the main reasons for the growth in numbers:

> *Volumes of offenders aged 50 and over being sentenced to custody is currently higher than the number being released – driven by increases in sexual offence proceedings since 2012. This effect is compounded in the interim by the longer sentences offenders are receiving, resulting in an increase in the number turning 50, 60 or 70 whilst in custody. Further growth relates to projected growth in recalls and an ageing lifer population.* (Ministry of Justice, 2017c, p.11)

Forty-five percent of the over 50s in prison are convicted sex offenders (PRT, 2017), and the increasing imprisonment of men in later life for 'historical' sexual offences adds another layer of complexity to this population. The rate of imprisonment for sexual offending in the UK is 7.3%, compared to the European average of 3.7% (Council of Europe, 2017). Many older prisoners are categorised as vulnerable prisoners (VPs) due to age, frailty or ill-health, but others (sex offenders) are in this category because the nature of their offending renders them vulnerable to bullying or intimidation by other prisoners. VPs are housed separately from other prisoners for their own protection, and being a VP is a highly stigmatised identity. This can result in difficulties for older prisoners who are not sex offenders but who are vulnerable for age or health reasons, as many prisons have located their older prisoner provision within VP wings because these areas already contain substantial older prisoner populations. Thus there is a question of access to appropriate facilities for those who need help and support but who resist the acquisition of VP status to avoid further stigmatising their identity or because they do not want to be housed with sex offenders.

Older prisoners do not constitute one homogenous group. The Prison Reform Trust has identified four subgroups of older prisoners, each with distinct characteristics: repeat prisoners (those in and out of prison for less serious offences and who have returned to prison at an older age); grown old in prison (those given a long sentence prior to the age of 50 who have aged in prison); first-time prisoners given a short sentence; and first-time prisoners given a long sentence (PRT, 2016). Some prisoners within these groups, particularly those (including high profile celebrities, clergymen and teachers) sentenced for the first time in older age for historic sexual offences, come from very different socioeconomic backgrounds from the rest of the prison population, and have enjoyed high

educational attainment, financial security and high social status throughout their lives. This is a marked shift in the composition of the prison population, indicative of how the increasingly punitive sentencing policies, characteristic of neoliberalism, begin to encompass those who have previously largely been outside the gaze of what is constituted as criminal.

The levels of frailty and poor health in the older prisoner population mean that the consequences of these demographic changes are profound. Such prisoners are at greater risk of violence and intimidation because of their general frailty and because their complex multiple morbidities require numerous medications, which are a highly valued commodity in prison. The architecture and design of many prisons makes them unsuitable for those in poor health and in particular those with mobility difficulties, and their often complex health and social care needs represent a significant challenge for both prison officers and healthcare staff.

In recent years, awareness has been growing about the plight of older prisoners. A 2004 report from Her Majesty's Inspectorate of Prisons (HMIP, 2004) highlighted the problem of older prisoners being forgotten in high pressure environments, where the focus is on control and the safety of prisoners and staff. Ginn (2012) drew attention to the inadequacies of the British prison system in dealing with increasing numbers of older people, commenting that: '*the health of older prisoners is often poor, their social needs are inadequately addressed, and end of life care requires further attention'* (p.3). More recently, the PPO commented that: '*Prisons designed for fit, young men must adjust to the largely unexpected and unplanned roles of care home and even hospice'* (2017, p.3).

However, despite some examples of positive change and innovative practice, and a clear willingness by staff in individual prisons to improve the health and wellbeing of older prisoners, a recent systematic review found that interventions for older prisoners do not yet exist (Stevens et al, 2017); in addition, in the UK there has been little in the way of strategic direction, and the national strategy that Ginn argued was long overdue in 2012 has still not materialised.

Benchmarking

Importantly, these changes in the prison population have taken place against the backdrop of probably the most dramatic reorganisation of the prison service in decades. The 'benchmarking' that took place during 2013 and 2014 was introduced in an attempt to drive costs down as far as possible and further embed the neoliberal principles of market forces and competition. This programme was explicit in being an alternative to prison privatisations as: '*The Secretary of State for Justice proposed that the public sector could duplicate commercial models which have addressed the challenge of increased cost pressures and demand for lower prices'* (House of Commons, 2015; Section 3, Paragraph 61).

However, benchmarking produced a staffing crisis that led to sharp increases in prisoner deaths, assaults and self-harm incidents (PRT, 2016). Many experienced prison officers, feeling stressed, concerned and unhappy about the resultant funding cuts, took early retirement or reduced their working hours, thus diminishing not only the number of serving officers but also, crucially, the skill mix. In the year 2000, the ratio of prison officers to prisoners was 1 to 2.9; by the end of September 2013 this had fallen to 1 to 4.8 (PRT, 2014). Such chronic short-staffing has inevitably resulted in prisoners having to spend longer

periods of time in their cells, leading to frustration and, in some prisons, violent disturbances. Evidence collated by the Prison Reform Trust (PRT, 2017) clearly shows that safety in prisons, for both staff and prisoners, has deteriorated rapidly in the last six years. The present Government has belatedly acknowledged this, and is currently seeking to address the problem by recruiting new staff; nevertheless, it will take time for the skill mix to improve, even if the numbers of officers are increased back to their pre-benchmarking levels.

Healthcare and dying in prison

Prisoners are patients of the National Health Service (NHS), and are entitled to access NHS services either in prison or from a hospital or other service outside prison (Turner & Peacock, 2017). Most prisons do not have in-patient facilities, but prisoners can make primary care appointments in clinics that run within prison healthcare units during the daytime. If a prisoner needs assessment or treatment that cannot be provided within the prison (which is far more likely in the case of older prisoners with complex needs), he is escorted, usually by two prison officers, to an appropriate facility outside the prison. There can be long waiting times for appointments, both within and outside the prison, waits that have arguably increased since the widespread privatisation and contracting out of prison healthcare, and outside appointments are often cancelled because there are insufficient staff to provide the escorts.

Given the increasing numbers of older people in prison, it is not surprising that the number of deaths in custody has also risen in recent years. In the year to March 2017, 344 people died in prison, and whilst a third of these were self-inflicted deaths, 199 (3 out of 5) were

from natural causes (MoJ, 2017d); this is an increase of 29% from 141 deaths just three years earlier in 2014 (MoJ, 2015) and is the highest number on record. Although some of these deaths were unexpected (e.g. deaths from heart attacks), many could to some extent be anticipated, given the age, poor health and frailty of the prisoners concerned, and there is therefore a role for end of life care planning (Department of Health, 2008) or, in some cases, palliative care. Palliative care is defined by the World Health Organisation as:

> *An approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.* (WHO, 2017)

In order to provide palliative care to prisoners who require it, some prisons have linked with hospices and other specialist palliative care providers, and in a few prisons palliative care suites have been built to provide high quality care within the prison. Whilst they are undoubtedly innovative and valuable resources, their creation poses some challenges and questions; for example, how to ensure equity in access to such facilities; and whether the presence of a palliative care suite in a prison means that a prisoner is less likely to be considered for compassionate release at the end of life. Those with a life expectancy of less than three months (although this can be difficult to predict), or those bedridden or severely incapacitated, can apply for compassionate release. However, the numbers released on compassionate grounds are extremely low; between 2009 and 2013, only 45 prisoners in England and Wales were granted early release on compassionate grounds (PRT, 2014).

The lack of compassionate release together with longer sentences means that increasing numbers of older prisoners are serving 'de facto' life sentences for crimes that would not ordinarily attract a life sentence. De facto life sentences clearly raise existential issues that extend well beyond health and wellbeing or what a prison death might entail, but space only permits us to indicate these wider questions; our focus here is necessarily narrower. These de facto life sentences, together with environments that engender physical and mental suffering, fear and intimidation, constitute, we propose, a double burden for older prisoners. This double burden, a consequence of neoliberal penal policies, raises profound questions about ethics and justice for the older prisoner population.

The study: aims and methods

The purpose of the research was to understand the social processes at work in a prison setting and how they impact on the provision of health and social care for ageing and dying prisoners. The primary aim of the study was to improve palliative care practice in prisons; the study also aimed to influence policy on end of life care for prisoners. Ethical and governance approvals for the research were gained from the NHS Research Ethics Service and the relevant NHS organisation, as well as from the National Offender Management Service (NOMS) and the Governor of the study prison. The researcher (MP) undertook prison induction training, which allowed her free movement within the prison, and all participants gave written informed consent to take part in the research. The study took place in an adult male prison in North West England. This prison was chosen because of its high number of older prisoners; at the time of the research, around a quarter of the 1,176 inmates were aged 50 or over and many of them were classed as VPs.

The study used participatory action research methodology (Reason & Bradbury, 2008; Coghlan & Brydon-Miller, 2014) to achieve its aim. There were three phases to the study. In Phase 1, interviews with staff and prisoners were undertaken to develop in-depth understanding of how anticipated deaths were managed at the start of the research. In Phase 2, staff and prisoners engaged in action cycles to make a number of changes aimed at improving palliative care provision. Phase 3 focused on deliberation with stakeholders, using workshops and a consensus exercise to share findings and develop recommendations from the research.

Data were collected in a variety of ways, including both individual and group interviews and a case study centred around a prisoner who was approaching the end of his life (see Table 1: Phase 1 Study Participants); all interviews were audio recorded and transcribed in full. All participants gave written informed consent to participate in the study. Data were also collected in a survey of older prisoners, minutes from action group meetings, and notes and flipcharts from workshops with prisoners, staff and key stakeholders. Interview data were analysed using a thematic networks approach (Attride-Sterling, 2001), and numerical data from the survey were entered into IBM SPSS Statistics (IBM, 2015) and underwent descriptive statistical analysis.

Table 1: Phase 1 Study Participants

Individual interviews	**Number of participants**
Inside prison	
Nurses	10
Healthcare Assistants	1
Locum GP (doctor)	1
Senior prison officers	7
Main grade prison officers	1

Probation officer	1
Chaplains	5
Prisoners	1
Sub-total	***27***
Outside prison	
Palliative care consultant	1
Hospice nurses	3
Coroner	1
Sub-total	***5***
Group interviews	
Nurses	4
Main grade prison officers	10
Prisoners	14
Sub-total	***28***
Case study	
Prisoner approaching the end of life	1
Nurse	1
Chaplain	1
Fellow prisoner	1
Sub-total	***4***
TOTAL	**64**
NB. One participant took part in an individual interview and the case study; one in both an individual and group interview, and one in all three methods of data collection.	

The study yielded a wealth of important findings that not only shed light on palliative and end of life care, but clearly demonstrated that issues related to dying in prison cannot easily be separated from wider issues concerning the health and social care (as well as the safety and security) of prisoners, which are relevant to most if not all older prisoners. We identified two key themes – frailty and vulnerability, and the prison environment and resources – which are presented below with extracts of data to illustrate the 'double burden' experienced by older prisoners because of their age and poor health.

Findings

Theme 1: Frailty and vulnerability

Both interview and survey data revealed high levels of frailty (both physical and mental) amongst older prisoners, and consequent feelings of insecurity and vulnerability. Staff and prisoners identified that older prisoners were very different to younger prisoners, requiring care rather than control, with one senior prison officer commenting:

> *I think [staff] probably do come into the Prison Service and don't expect to face end of life situations, particularly with older people. […] I don't think they've got any idea that we have such an elderly community in prison. I know when I talk to friends on the out and they say, 'Well, how old are they?' and I say, 'We've got people at 88.' 'I mean you can't possibly…' and I say, 'Yeah, we do, it's more like a care home than a prison wing.'* (Senior Prison Officer, Interview 16)

The survey of older prisoners supported the interview data by providing strong evidence of physical frailty as well as multiple and complex healthcare needs amongst this population. The survey was distributed to all prisoners aged 55 and over (n = 202) across all wings of the prison; 127 were completed and returned, giving a response rate of 62.9%. The mean age of respondents was 65; a quarter were aged 70 or over, and the oldest prisoner at the time of the survey was 91. An important finding was that only a quarter of respondents reported having served a previous prison sentence, indicating that 75% of this group are in prison for the first time in later life.

Figure 1: Key findings from a survey of older prisoners

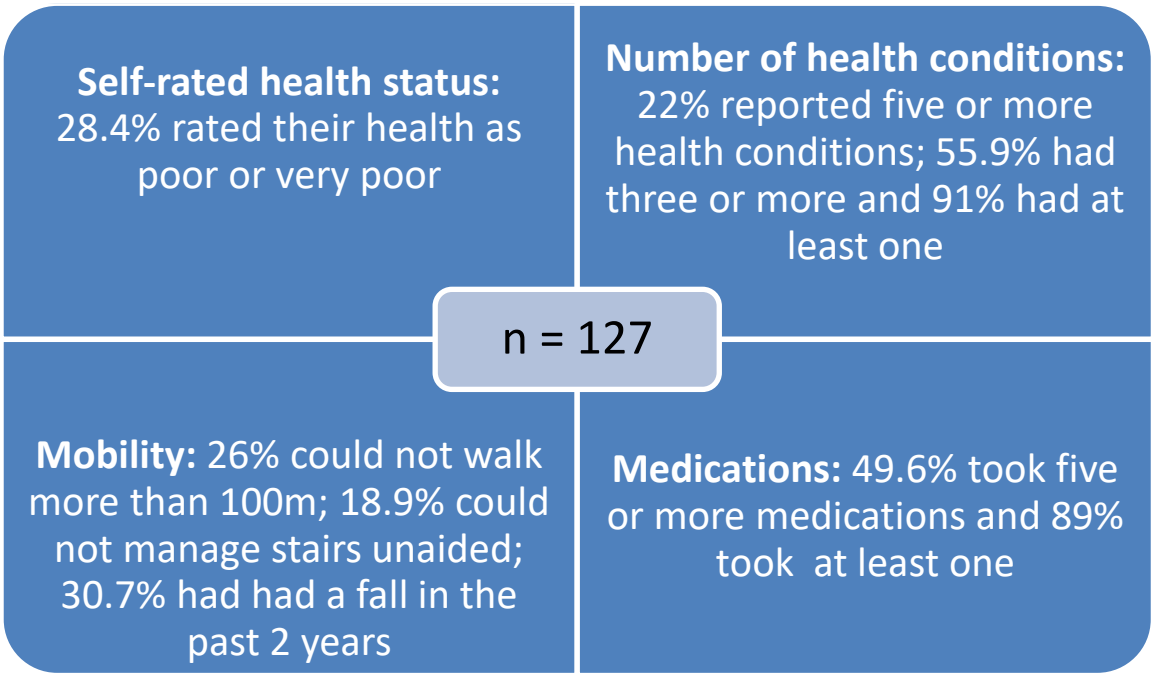

Figure 1 shows the key findings from the survey. These starkly demonstrate the extent of poor health, frailty and restricted mobility amongst the older prisoner population.

Perhaps unsurprisingly, free text data from the survey also revealed a great deal of anxiety, fear and vulnerability amongst older prisoners. Some respondents described how they had been bullied or felt intimidated by younger prisoners:

> *My main concern is the fact that due to all the changes within the prison system, staffing levels etc, older people in prison are more and more vulnerable to bullying by the younger prisoners. Even little things like queuing for meals, younger people will just walk in front of you. It makes you feel intimidated to say the least.* (Survey Respondent P015)

Some prisoners were also fearful of dying in custody and concerned about the care that would be available to them:

> *One of the greatest anxieties for older prisoners is becoming terminally ill in prison, cut off from the loving support of families and subject to a regime that can be unkind.* (Survey Respondent P045)

Another respondent listed his worries as: '*The possibility of growing infirmity, serious and sudden illness, falling and breaking a bone, death in custody*' (P055), whilst another bleakly commented: '*I don't think I have much future left*' (P095). A different aspect of vulnerability was highlighted by some respondents who voiced concerns about what life would be like following release from prison, as exemplified by the following data extract:

> *When I came to jail I had a family (including dogs), a house and a car. I go out at near 70 years old to no one and with nothing and nowhere to live. I will have no identity except as a "sex offender" with nobody to help or support me.* (Survey respondent P073)

Some respondents found the noise levels in prison intimidating and unsettling, and a large majority of them (72%) of them expressed a preference to be housed separately in a unit specifically for older prisoners rather than mixed in with younger offenders, mainly for reasons of safety and wellbeing.

Theme 2: The prison environment and resources

There were numerous examples of the unsuitability of the prison environment (including architecture and design, accessibility, temperature, noise, etc) for people who are frail, ill or

dying. As well as the physical challenges presented to older people by the buildings and layout of the prison, the study also identified constraints in terms of resources and facilities that impacted on older prisoners and those trying to manage and care for them. Constraints were graphically illustrated by one nurse in an interview in Phase 1:

> *Mr H, for example, [was] doubly incontinent in the middle of the night. There was no provision to put him in the shower and give him a shower. […] 'You can't.' you know, 'Everybody's asleep. It's not happening.' So we had to […] wash him down, three of us trying to hold him up in a cell like that wide, to wash him, change him. Nobody had clean kit: we were borrowing off the rest of the landing at three o'clock in the morning. We didn't have a clean sheet to put back on his bed because nobody had a clean sheet.* (Nurse, Interview 36)

The facilities provided in prison were reported to be largely inadequate to meet the needs of older prisoners and those in the last stages of life; one example of this is the size of prison beds:

> *[Prisoners] are in a three-quarter bed, instead of a full-size single, so you can't get a pressure mattress to fit. And, you know, […] you wouldn't even blink an eyelid out in the community about [that], getting pressure equipment.* (Nurse, Group Interview 14)

The interview findings were again echoed in the survey data. Even older prisoners who were not explicitly approaching the end of life reported that prison beds contributed to their health problems; one highlighted '*the unnecessary pain caused by the bad conditions of fatigued metal bedstead and old worn out mattresses from which I get a lot of back pain and undue pressure on my hip joints*' (Survey Respondent P093).

Environmental factors such as the layout of the prison and the location of the healthcare department in relation to the cells were shown to impact on prisoners' health. The prison is set out over a large site, and attending the healthcare department was difficult for prisoners with restricted mobility; once they arrived, long queues could result in prisoners having to stand, often for long periods and with restricted access to toilet facilities. One fitter prisoner commented:

> *I can just waltz upstairs and get my meds [medications], but you see guys trying to get up the stairs and […] they just can't do it. But they've got to go up [those] stairs every day to get their medication.* (Prisoner, Group Interview 18)

Issues surrounding medications were viewed as particularly challenging, with nurses reporting problems such as not being able to get pain medication to prisoners at regular intervals to control pain effectively, even in the last days of life. Controlled medications, which are often used at the end of life, require two registered nurses to dispense them, but at the time of the study there was only one nurse on duty at night for the whole prison; nurses reported occasions when they or colleagues had gone into the prison during the night, even though they were not on duty, to dispense controlled drugs to a dying prisoner, rather than leave them in pain until morning. Staff shortages were frequently experienced, and left nurses with very little time to spend with each patient; limited resources also resulted in prisoners often experiencing long waiting times for appointments with healthcare staff. The effects of such pressures are felt particularly keenly by older, frail prisoners, who require more staff time because of their multiple health and social care needs, especially if they are approaching the end of life.

These frequent and multiple challenges led some staff and several prisoners to raise the contentious question of whether prison was ever a suitable environment for people in their old age. One prisoner commented:

> *On [prison wing] is an inmate of 91 years* [Respondent's emphasis]*. He is mentally unstable and should not be in prison. Other inmates are physically / mentally unstable and this places great strain on the prison system.* (Survey respondent P033)

Another survey respondent echoed this sentiment, stating simply: '*Too many men will die in prison, and it isn't necessary*' (Survey respondent P075).

Discussion

Our findings reveal some of the challenges associated with the imprisonment of growing numbers of older men with often complex difficulties, and the health and justice questions that this engenders. Whilst the underlying trends have been unfolding over the last decade, benchmarking and the sharp increase in imprisonment for historic offences form the backdrop for the contemporary crisis. Ginn (2012) commented that, *'Comprehensive data on older people as they move through the criminal justice system are not available'* (p.3), and this largely remains the case today. What has happened to the older prisoner population has profound practical, ethical, judicial and political consequences which are currently under-researched and under-acknowledged. Addressing these challenges requires changes in both policies and practices, but to understand how and why this has occurred and the likely barriers to change we need to look more broadly at the contemporary neoliberal prisons system and how it impacts on ageing and dying.

There are growing numbers of old, frail, ill and disabled men in a prison system ill-equipped to meet their needs, and some will die in prison before their sentences end. The inadequacy and structural restrictions of prison buildings designed for young, able men; the reduction in officer numbers; and the unevenness of healthcare provision (as well as the escalating costs of providing care for a population with such a high level of need) represent, we propose, a double burden; extra punishment in addition to the loss of liberty consequent upon a custodial sentence. Unlike other changes in the criminal justice system such as indeterminate sentences, there has been little or no public debate about the merits or legitimacy of these recent changes. In large part this may be because there is scant sympathy for offenders and sex offenders in particular. It is only recently that the voices of victims and survivors of childhood abuse have been heard both in the criminal justice system and across society as a whole. Recent cases in the UK, such as Jimmy Savile (Grey & Watt, 2013) and the Rotherham girls, have shown (for the first time for many people) something of the extent and nature of childhood abuse and the damages consequent upon it. Stories now emerging from around the world (for example, the revelations surrounding Harvey Weinstein) provide new evidence of widespread sexual abuse and harassment of adults. Raising questions about offenders in this context can seem perilously close to shutting the door on victims when it has barely opened.

Considering a 'just' alternative to ever-increasing incarceration, particularly for sexual offences, is seldom considered. As McGlynn (2011) puts it:

> *What constitutes justice for rape victims? Is it seeing the perpetrator convicted and imprisoned for a significant period of time? Is it being believed and treated with respect by prosecuting authorities? It is receiving compensation, from the offender or*

> *the state? Is it having the opportunity to tell one's story in a meaningful way, perhaps directly to the offender? The answer, of course, is that justice for rape victims can take any or all of these forms, as well as many more possibilities. The problem is that it has come to be so closely associated with punitive, carceral punishment that other means of securing justice have been almost completely obscured.* (p.825)

Championing the rights of sex offenders will never be a popular cause, particularly in the context of how recently victims have been believed. Even for those who might critique prisons and the carceral system, there is a pull towards the idea of justice being seen to be done by the processes of prosecuting crimes and sentencing accordingly. Dodge & Gilbert (2015), Fraser (2009) and others have argued that feminist discourses can and have been co-opted or colonised by neoliberal capitalism, for example to legitimise the contemporary sex industry (Dodge & Gilbert, 2015). As Fraser (2009) argues:

> *Capitalism periodically remakes itself […] in part by recuperating strands of critique directed against it. In such moments, elements of anti-capitalist critique* [such as feminist discourses] *are resignified to legitimate an emergent new form of capitalism, which thereby becomes endowed with the higher, moral significance.* (Fraser, 2009, p.109)

This co-option of feminist discourses has also occurred, we propose, within the criminal justice system, legitimising increasing incarceration on the terrain fought for by feminism but with the exclusion of other forms that justice might take. It is also arguable that this individualised, punitive focus serves to draw attention away from larger, more systemic and

intractable social and political issues that go to the heart of sex offending and the creation of the sex offender. As Gottschalk put it in a recent contribution to the Boston Review:

> *Problems such as crime, poverty, mass unemployment, and mass incarceration are no longer seen as having fundamental structural causes that can be ameliorated via policies and resources mobilized by the state. Rather, these problems are regarded as products either of fate or individual action. Thus, instead of state action, reformers focus on devising micro interventions at the local and community levels to change the behavior of individuals.* (Gottschalk, 2017)

Acknowledging a problem of masculinity as shaped and performed under neoliberal capitalism is not a strategy readily embraced by those in positions of power.

Wacquant (2012b) has argued that it is impossible to understand burgeoning prison populations *'unless we place them in the framework of a broader* ***transformation of the state****'* (p1, emphasis in the original), a transformation that is at the heart of the wider neoliberal project. For Wacquant, welfare (including health) has been transformed into 'workfare', with workfare and mass imprisonment underpinning the neoliberal management of poverty. Thus '*the sociology of traditional policies of collective "well-being" – assistance to dispossessed individuals and households […] education, housing, public health […] income redistribution etc – must be extended to include penal policies'* (Wacquant, 2008, p.27). Wacquant's work relates primarily to the US, which differs from Europe in most aspects of penal policy, and Wacquant's functionalist account of the transformation of 'workfare' into 'prisonfare' has rightly been critiqued by Garland (2017) and others. However, Waquant's work is also relevant to the European and global pictures and has been used by others to

explore neoliberal penal policies outside the US. What we are proposing in directing our critique towards neoliberalism, is that neoliberalism as a broader political project has consequences that shape what happens within prisons, even if prisons are not its focus. Further, there are particular aspects of neoliberal governmentality and policy directed explicitly at prisons, and discursive resources are deployed to rationalise and bolster the legitimacy of these practices and their consequences. Prisons as places filled with the least advantaged that serve to do little to rehabilitate or address what 'justice' might be are not a feature only of neoliberal capitalism, but neoliberal capitalism sharpens the damages and serves to construct particular and key aspects of penal policy and those it targets.

Understanding why these changes are happening entails looking more broadly than just at prisons. As the state increasingly restricts and narrows entitlements to welfare provision it can also legitimate this in part by '*public anathematisation of deviant categories – chief among them the […] pedophile'* (Wacquant, 2008, p.14). It is this latter point that has become particularly salient in relation to the older prisoner population. Whilst part of this group is composed of the sorts of poor or marginalised populations that have primarily been the focus of Wacquant's work, there is a new population of older but often better educated and more affluent prisoners that forms a significant part of the contemporary UK older prisoner population. It is to this population that we can extend aspects of Wacquant's theorising concerning neoliberalism.

The health and justice issues currently associated with the UK's criminal justice system shed light on a location where neoliberal policies and practices, largely unplanned but, as we have argued, easily foreseeable, intersect to produce the negative and problematic picture

that our findings capture. This is in three ways; firstly, in who is sent to prison in the form of the 'traditional' marginalised and impoverished; secondly, in a criminal justice system that privileges incarceration over diversion or rehabilitation; and thirdly, the use of narratives and discourses about contemporary patterns of imprisonment including historic offending. Together with the use othering (an extreme form of othering in the case of sex offenders), the effect is to minimise critical responses to incarceration and to divert attention which might otherwise be paid to the structural roots of criminality. Further, as large scale imprisonment means reduced access to healthy resources, food, healthcare, meaningful work or recreation, the result is a widening of the gap between the prison and wider populations. Wacquant (2012c) argues that *"My contention here is that **welfare and criminal justice are two modalities of public policy toward the poor**'* (p.242 emphasis in the original), and we contend that in the case of the UK prison population, the reach of the neoliberal project has widened to include other groups (the middle class sex offender for example) that were previously largely free from scrutiny.

These changes in the prison population resulting from neoliberal penal policies have largely unfolded with limited scrutiny in terms of both academic and popular debate. Thus a starting point for change means asking difficult questions about justice, grounded in the practical reality of life in the contemporary world of prison and its consequences for health and wellbeing. Identifying what constitutes justice for older prisoners as well as for victims and survivors means recognising the reality of the conditions that sentences are served in, the double burden that we have detailed, and includes, in particular, de facto life sentences. This in turn raises questions for sentencing policies and then, for those for whom there appears to be no realistic alternative to incarceration, looking at sentence length, where

sentences are served, compassionate release, dying in prison and the provision of end of life care. Women, young people and those with mental illness, are treated as protected populations and held in institutions more explicitly intended to meet their needs, and one strategy might be to provide specialist services for the old and frail (a counter argument however is that the provision of specialist facilities could serve to increase the likelihood of imprisonment). As we have previously argued (Peacock, Turner & Varey, 2017), the needs of prison staff also require attention, as many are currently bearing the consequences of decisions that pay scant heed to the implications for those who have to manage ageing and dying prisoners.

Conclusion

In prisons around the world, increasing numbers of older prisoners are bearing a double burden because of their age and infirmity. However, there have been relatively few studies in this area, and a key part of addressing the issues raised in this paper is further research to determine the nature and scope of the contemporary picture both nationally and internationally. Effective interventions for older prisoners need to be developed and evaluated, whether they involve specialist older prisoner units, shared provision (which addresses the needs of older prisoners alongside younger ones), or the creation of community-based solutions for prisoners who need care more than they need punishment. Debate concerning what is fair and just can serve to shape urgently needed national strategies, which would allow the sharing of best practice within and between prison systems. There are, however, considerable barriers to both productive debate and to the development of national policy. Prisoners in general, and sex offenders in particular, are never an easy subject for discussion.

Whilst there is clearly a need for sensitivity in relation to these issues, the troubling questions raised by the incarceration of older offenders remain and require an effective response. However, the scale and nature of the challenge also needs to be clear. Prisons and increasing incarceration, as we and others have argued, are intrinsically tied to the neoliberal project both practically and discursively, and there is much to be gained for those who are in the forefront of welfare state shrinkage in ensuring that the gaze of those most affected by such measures can be drawn away from the source and towards the demonised other in the form of the older sex offender, thus legitimising punitive approaches. The justice issues we highlight here do not simply concern an attempt to 'balance' offenders' and survivors' claims and rights, but go to the heart of the health consequences of neoliberalism and the multiple sites in which these play out.

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