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## No longer a 'collateral consequence': Imprisonment and the reframing of citizenship

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# No longer a ‘collateral consequence’: Imprisonment and the reframing of citizenship

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## Abstract

This article examines the impact of imprisonment on citizenship. It identifies how civil, political and social rights are circumscribed with a sentence of imprisonment, and scrutinizes to what extent citizenship is limited for prisoners. Drawing on recent developments in England and Wales, it contends that citizenship has been eroded, not as a ‘collateral consequence’ of imprisonment, but rather as a determined penal policy. The boundaries of punishment have become blurred, moving from criminal justice institutions, and extending towards what is termed civil and political penalty. Finally, it argues that, because citizenship in prison is inevitably framed around the differences between freedom and captivity, prisoners respond to the constraints of imprisonment through alternative ways of expressing their citizenship.

## Keywords

Imprisonment, citizenship, England and Wales, penal citizenship

## Introduction

Along with the ‘pains’ of imprisonment (Sykes, 1958), a prison sentence can have a range of negative consequences (Irwin and Owen, 2011): family break-up (Hutton and Moran, 2019), reduced opportunities for employment (Brunton-Smith and Hopkins, 2014), difficulties in finding accommodation on release (Cooper, 2013), limited educational opportunities (Wright, 2014), and a spoiled identity (Goffman, 1963). A prison sentence has consequences beyond the convicted person, for family, friends and community (Comfort, 2008). Along with these, there is a deleterious impact on citizenship

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while incarcerated, and generally for a period thereafter, sometimes forever. The impact of imprisonment on citizenship is the subject of this article.

Although there has been a proliferation of academic literature on citizenship in recent years (Isin and Nyers, 2014), the scholarship on prisoners and citizenship has concentrated on two different aspects. First, there has been widespread examination of prisoners as citizens in the context of their rights and legal position (Easton, 2011, 2018; Scott, 2013; Van Zyl Smit and Snacken, 2009). Second, the opportunities for prisoners to engage in active citizenship have been scrutinized elsewhere (Anderson, 2013; Behan, 2014a; Brosens 2019; Faulkner, 2002, 2003; Levenson and Farrant, 2002; Schmidt, 2013; Weaver, 2018).

Outside the prison, Marshall's (1950) separation of citizenship into civil, political and social elements, was written at another time and about a different constituent group. He assumed that the history of rights in Britain from the 18th to the 20th century was progressive and linear (Glenn, 2011). Although Marshall's elements are fundamental to understanding citizenship, his framework bears scant relevance when examined in the context of the loss of these rights that is increasingly accompanying incarceration. As a consequence of the diminution of their social, political and civil rights due to the distinctiveness of the penal environment, prisoners now experience citizenship differently.

This article contributes to the scholarship on punishment and citizenship in two ways. First, Garland (1990: 12–13) challenged scholars to 're-think punishment in a way that is more sensitive to its many dimensions and contradictions'. It reveals some of these dimensions as the state now punishes in myriad ways, extending punishment from the criminal code to the civil and political sphere. Secondly, It considers how some prisoners express different forms of citizenship. Active citizenship (Hoskins et al., 2008) is promoted by governments, policy-makers and prison administrators. In contrast, 'insurgent citizenship' (Holston, 2009) is a counter-politics to established order, based on a 'right to rights'. Although they do not always begin in conflict with the established order – both penal and political – if prisoners and their allied movements seek to transform 'rights on the books' into 'rights in action', this can lead to conflict with, and retrenchment by, the state. Owing to the unique environment, some of what has become identified as citizenship in prison can be considered as 'rightful resistance' (O'Brien, 1996), activities that are on the margins of what is permitted within the rules. In considering how citizenship is restricted by imprisonment, the final section of the article will pay particular attention to how citizenship is expressed by those inside, in what is termed penal citizenship.

Penal citizenship is the space where the stripping of rights and the restrictions inherent in captivity meet the agency of prisoners. Using England and Wales as an example and drawing from literature on citizenship and legal judgments over the past 20 years, a study of penal citizenship allows for a consideration of structure (general prison conditions, changing laws governing prison administration, treatment of prisoners, punishment of poverty, and a shifting political economy) and agency (through resistance and/or acquiescence to prison administration). Penal policy and prisoner activism have changed the contours of citizenship. This study elaborates on how penal practices that impact on civic engagement are experienced by those who are subjected to them. Penal citizenship reveals how prisoners negotiate the albeit limited space behind bars to assert their autonomy through alternative expressions of citizenship.

An examination of imprisonment and citizenship demonstrates some of Garland's (1990) 'contradictions' of punishment. Although ostensibly encouraged to be better citizens as part of a law-abiding life, prisoners are increasingly denied the rights that accompany that status. Prisoners are 'othered' (Garland, 2001), treated as subjects of punishment, not as rights-bearing citizens. This initially materialized as a collateral consequence of incarceration, but later, with the punitive turn (Garland, 2001), this was solidified with legal sanctions. Despite governments encouraging prisoners to become 'good' citizens, legislative restraints and structural obstacles, along with their 'spoiled identity' (Goffman, 1963), are granite-like impediments to prisoners and ex-prisoners (although the latter are outside the scope of this article) exercising their rights, responsibilities and obligations intrinsic to the status of citizen.

In the United States, owing to the rate of incarceration and the increase in the numbers who are subjects of punishment more widely, there has been a proliferation of scholarship on punishment and citizenship, in particular political participation and civic engagement (Lerman and Weaver, 2018; Miller and Stuart, 2017; Owens and Walker, 2018; Manza and Uggen, 2006). The data are staggering: 600,000 people are released from prison each year; 20 million are estimated to have a felony conviction; and up to 100 million may have a criminal record (Miller and Alexander, 2016: 292–3). Furthermore, the American Bar Association (ABA) estimates that there are 45,000 laws that impact on convicts, from the more well-known restrictions on enfranchisement, to access to food stamps, housing and education (Miller and Stuart, 2017: 534). So great is the diminution of citizenship for those who involuntarily come into contact with the criminal justice system in the USA that a range of phrases have been advanced to describe how citizenship has been redefined. These include 'custodial citizenship' (Lerman and Weaver, 2018); 'carceral citizenship' (Miller and Stuart, 2017); and 'custodial citizens' (Owens and Walker, 2018). Travis (2002: 15–16) noted that punishment in the USA is now partly achieved through the erosion of citizenship. At the same time as criminal justice supervision has increased, laws and controls that reduce the rights of convicts have also increased. These 'invisible punishments' are a 'collateral consequence' of mass incarceration and are outside what is usually considered punishment within a criminal justice context.

Although England and Wales are usually counted alongside the USA as having encountered the 'punitive turn' (Garland, 2001), with characteristics of a neo-liberal economy (Newburn, 2007) and an exclusionary form of punishment (Cavadino and Dignan, 2005), the jurisdiction has not had the same level of scrutiny through the lens of citizenship (but see Meijer et al., 2019, for an examination of the more formal status of citizenship). The level of imprisonment in England and Wales, at 139 prisoners per 100,000 population compared with the USA's 655 per 100,000 (Institute for Crime & Justice Policy Research, 2019), is perhaps one reason. However, with an estimated 11 million people in the United Kingdom with a criminal record (although not all will have served a prison sentence) (Unlock, 2019), there are significant longitudinal impacts of a sentence of imprisonment on individuals and communities. Although the limitations on citizenship are not as widespread or long-lasting in England and Wales as in the USA (Cnaan et al., 2008; Whittle, 2018), they are more severe than in many other Western European jurisdictions. They range from near universal disenfranchisement of sentenced prisoners to a wide-ranging bar on jury duty post incarceration, and potentially for life.

Using the case of England and Wales, this article examines the expansion of the punishment beyond criminal justice institutions (Comfort, 2007) into civil, political and social penalty. With an analysis of the people imprisoned, the coercive nature of the institution and the power dynamics inside, it begins by considering whether or not citizenship is possible in a place generally devoid of the characteristics necessary for civic engagement and democratic participation. The next section examines how citizenship for prisoners has been undermined in England and Wales. Civil and political penalty, beyond the boundaries of the criminal justice system, are now used as instruments of punishment. It concludes by considering how, despite legal and structural impediments, prisoners find places and spaces to exercise agency and practice citizenship.

### **The prison as a civic space**

In design and operation, prisons are anti-democratic institutions (Drake, 2018) and have become places where tension and ‘tightness’ (Crewe, 2012) – in contrast to trust – are increasingly prevalent. Assaults, bullying, violence and self-injury in prisons in England and Wales are at record levels. Over half of respondents surveyed in adult male prisons felt unsafe and nearly half said they had experienced assaults or bullying from other prisoners, but only a third said that they would report it (HMCIP [Her Majesty’s Chief Inspector of Prisons], 2019: 23). In 2018–19, there were 83 self-inflicted deaths in male prisons, an increase of 15 percent from the previous year. There were 45,310 reported incidents of self-harm during the same period, an increase of 25 percent from the previous year (HMCIP, 2019: 25). Poor living conditions are the norm for many prisoners, with too much time spent in cells and, despite some progress on rehabilitative programmes, not enough purposeful activity (HMCIP, 2019). Of the female prison population, 46 percent have attempted suicide. The equivalent for male prisoners is 21 percent. This compares with 6 percent of the general population (PRT [Prison Reform Trust], 2018: 20). Nearly two-thirds (64 percent) have used Class A drugs at some stage, compared with 13 percent of the general population (PRT, 2018: 20).

Citizenship is not an abstract concept, separated from the context in which it takes place, and from the people who engage in it. Marshall’s citizenship is conceptualized and experienced very differently depending on class, gender, race, life experience and levels of traditional educational attainment. An appreciation of the demographics of the prison population is important when considering how convicts experience citizenship. Within the prison population in England and Wales, 59 percent regularly truanted from school, compared with approximately 5 percent of the general population; 42 percent were expelled or permanently excluded from school, compared with under one percent of the general population, and just under 50 percent had no qualifications, compared with 15 percent of the working population (PRT, 2018: 20). Fifteen percent of prisoners reported being homeless prior to custody, and a third leaving prison said they had no accommodation on release (Cooper, 2013: 5). Homeless people have difficulty registering to vote and do not have the same connection with, or investment in, a community or neighbourhood as settled residents, so have less experience of traditional networks of civic engagement. With civic and political representation biased in favour of more privileged, better-educated citizens (Lijphart, 1997) and individuals with low levels of literacy less

likely to engage politically outside, this diminishes the potential to enable civic engagement among prisoners.

The prospects for civic engagement are further undermined by a lack of trust in various criminal justice institutions among certain communities who are disproportionately imprisoned. A 2020 poll conducted in the wake of the Black Lives Matter protests found that 8 out of 10 Black Britons and 8 out of 10 Bangladeshi Britons believed that the ‘police are biased against people from my background and ethnic group’, with 65 percent of all ethnic minorities agreeing (Dodd, 2020). Despite making up just 14 percent of the population, Black, Asian and Minority Ethnic (BAME) men and women make up 25 percent of prisoners (Lammy, 2017: 3), and 51 percent of young people in custody are from BAME backgrounds (Grierson, 2019). Further, young Black men and women are eight times more likely to be convicted of minor offences than their White peers (Inside Time, 2020). BAME prisoners reported poorer relationships with staff and higher rates of victimization. They were less likely to have a prison job or to participate in offending behaviour programmes (OBPs) and, among BAME prisoners, the Incentives and Earned Privileges (IEP) system was widely perceived as unfair. Lammy (2017: 45) concluded that this ‘contributes to an atmosphere in which many rebel against prison regimes, rather than start on the road to a life without offending’. Added to this is the number of prisoners from outside the state (many of whom do not have citizenship rights outside prison), which stands at 11 percent of the prison population (PRT, 2018: 33).

Even before the legal impediments and spatial restrictions, *prima facie* prison is an improbable civic space, housing people who have characteristics that do not suggest widespread and deep civic engagement. Political, economic and social marginalization is compounded by imprisonment (Wacquant, 2002, 2009), with many prisoners ‘civically wounded’ (McNeill and Velasquez, 2017) prior to incarceration. The next section examines the legislative restrictions and spatial constraints that now accompany a sentence of imprisonment in England and Wales.

## Citizenship in prison in England and Wales

In England and Wales there is no comparable chronicle of penal restrictions to that undertaken by the American Bar Association, although the campaign group Unlock (2019) outlines a range of limitations that come with a conviction (not just a sentence of imprisonment). In order to avoid a narrative list of the potential restrictions (the codification as undertaken by the ABA remains to be done in England and Wales), four elements of civil, political and social citizenship have been chosen for illustrative purposes. First, prisoner councils embrace both social and political citizenship and encourage a democratic and participatory approach to prison governance (Solomon and Edgar, 2004; Weaver, 2018). Second, engagement with accountability and monitoring bodies is a form of social citizenship (Behan and Kirkham, 2016). Third, prison litigation – civil citizenship – is usually conducted through persistence from ‘jailhouse lawyers’ and their allies outside (Scott, 2013). Finally, voting is selected as the most common form of political citizenship in a democratic society (Putnam, 2000) and prisoner enfranchisement has been a source of controversy in the UK for the first two decades of the 21st century.

Under the 2006 European Prison Rules (Council of Europe, 2006) and Prison Service Order (PSO) 4480 (HM Prison Service, 2002), prisoners can elect and participate in prisoner representative organisations. Schmidt (2013: 13) found that for prisoners, participating in prison councils enabled them 'to construct new roles that they saw as productive, helpful, and beneficial to others'. This is active, political and social citizenship. However, PSO 4480 sets strict restrictions on the role and powers of prisoner representative bodies. They cannot be facilitated through cross-institutional representation and have no standing outside individual institutions. They have no right to negotiate with national authorities. Security and a wide range of personal issues are outside their remit. Prisoner councils have functioned with mixed results, depending, usually, on the attitude of local prison staff and management (Solomon and Edgar, 2004). Owing to the limitations on their powers and the framing of PSO 4480, which concentrates mostly on negative aspects (Easton, 2018: 77), prisoner councils remain carefully within the bounds of acceptable behaviour, as prison governors can restrict the activities in the interest of good order or discipline.

Although the tri-partite model of accountability and oversight consisting of Independent Monitoring Boards (IMBs), Her Majesty's Chief Inspector of Prisons (HMCIP) and the Prisons and Probation Ombudsman (PPO) represents avenues to seek redress, concerns have been reported by prisoners about access to these bodies, procedural fairness, trust, independence, legitimacy and, ultimately, fear of reprisal (Behan and Kirkham, 2016). Reflecting how women and young people experience citizenship outside, they felt that because they had broken the law and ended up in prison, they did not have a right to complain and would just have to put up with ill-treatment (PPO, 2015: 14). Further, research indicates that BAME prisoners do not have confidence in the system, especially when it comes to grievances about discrimination (Lammy, 2017: 53). More generally, Her Majesty's Chief Inspector of Prisons conceded that 'prisoners had little confidence in the complaints system' (HMCIP, 2015: 12).

Instead of, as Marshall may have it, engendering social citizenship and allowing prisoners to live a decent life according to prevailing standards, these bodies have become a feature of governance in late modern penalty that has 'authoritarian as well as humanitarian features' (Crewe, 2012: 448). The plethora of oversight and accountability mechanisms (and acronyms) – IMB, CPT, HMCIP, PPO, NPM – was created to oversee the human rights of prisoners, rather than protect their civil and political rights. Loader (2006) identified the role of 'Platonic Guardians' in developing 20th-century penal policy. With little agency now afforded to prisoners to determine what is in their best interests (Crewe, 2012), these paternalistic institutions have become 21st-century Platonic Guardians.

Access to the courts has been severely curtailed in recent years, which reduces opportunities for prisoners to challenge penal and political power and undermines civil citizenship. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 cut legal aid to prisoners, because according to the then Secretary of State for Justice, Chris Grayling, prisoners should not have access to legal aid for 'the conditions in the prison, or the choice of prison in which they are detained' (cited in Sood, 2014: 10). Although many of the government restrictions were overturned on appeal, prisoners are still denied legal aid to petition the courts over access to OBPs

(Bowcott, 2017). Lack of participation in OBPs can adversely impact on a prisoner's application to the parole board for release, especially those on indeterminate sentences who have to demonstrate that they have participated in these courses as a prerequisite for parole. With 15 percent of the prison population serving indeterminate sentences – Indeterminate sentence for Public Protection (IPP) and life sentences (PRT, 2018: 28) – this is particularly contentious, because overcrowding has been rife in prisons in England and Wales since the 1990s (PRT, 2018) and places on these courses are severely limited.

Despite the Justice Secretary's assertion, most prisoners are hesitant about undertaking action that might single them out as troublemakers. According to one former prison governor, '[i]n prison parlance there is no more dirty word than the adjective "litigious" when applied to a prisoner' (Peter Quinn, cited in Eady, 2007: 266). Owing to the 'tightness' of the late modern prison where they are unsure of the limits to their autonomy (Crewe, 2012), prisoners tend to self-censor in relation to complaints. Many fear that to be seen complaining could have negative consequences for their sentence, their progression through the penal system and their potential for parole, with the threat of being 'ghosted' to another prison (Behan and Kirkham, 2016).

The restrictions on political activity that accompany conviction date back to the 19th century (Easton, 2011). They were further extended after the death of IRA hunger striker Bobby Sands MP in May 1981, with the government determined not to allow another prisoner to secure victory in the subsequent by-election (Beresford, 1987). The Representation of the People Act 1981 prevents anyone from being elected to the House of Commons who has been sentenced to more than one year in prison. However, the widespread ban on voting by prisoners has been the most significant restriction on political citizenship (Behan, 2014a). Despite the 2005 *Hirst v. United Kingdom* judgment in the European Court of Human Rights (ECtHR) ruling that that the blanket ban on sentenced prisoners from voting contravened the European Convention on Human Rights, the debates on the issue led to a hardening of attitudes in favour of political exclusion of prisoners. In the government's response, which took 12 years to formulate, the Justice Secretary assured the House of Commons that there would be 'no changes to the Representation of the People Act 1983, but instead would entail a change to Prison Service guidance' (David Lidington, *Hansard*, HC Debates, 2 November 2017, vol. 630, col. 1008). The minimalist response from the British government allows prisoners who are registered to vote and who are release on temporary licence on election day to exercise their franchise. This accounted for approximately 100 out of nearly 86,000 prisoners (*Hansard*, HC Debates, 2 November 2017, vol. 630, col. 1008).<sup>1</sup> Resisting the judgment for over a decade, David Cameron as Conservative Prime Minister told the House of Commons that it would make him 'physically ill even to contemplate having to give the vote to anyone who is in prison' (*Hansard*, HC Debates, 3 November 2010, vol. 517, col. 921). As the traditional party of law and order (Farrall et al., 2016), it was understandable that Conservatives would respond as they did. Nevertheless, the Labour Party demonstrated that it would not be outdone and, while in government (1997–2010), rejected the ruling (Behan, 2014a) and continued the 'law and order arms race' between Conservatives and New Labour (Lacey et al., 2017: 16).

## Back to the future?

The legal basis of citizenship for prisoners has been eroded. What has replaced it is infused with a moralistic and utilitarian tone, harking back to the Victorian treatment of the poor. The Gladstone Committee Report (on Crime and Punishment, Prisons) (Departmental Committee on Prisons, 1895: para. 25) argued that prison discipline should be 'more effectually designed to maintain, stimulate or awaken the higher susceptibilities of prisoners to develop their moral instincts, to train them in orderly and industrial habits'. This was echoed over one hundred years later. In *Breaking the Cycle* (Ministry of Justice, 2010: 9), the Coalition government argued that the public expected 'robust and demanding punishments'. It continued: 'Hard work for offenders is at the heart of our plans to make punishments more rigorous. Prisoners will increasingly face the tough discipline of regular working hours. This has been lacking in prison regimes for too long.' Michael Gove (2015) as Secretary of State for Justice argued that, during their time in prison, convicts 'can become assets – citizens who can contribute and demonstrate the human capacity for redemption . . . offenders whose irresponsibility has caused pain and grief can learn the importance of taking responsibility for their lives, becoming moral actors and better citizens'. Further, he believed that prisons 'can become purposeful places where offenders can learn self-discipline, the skills and the habits which prepare them for outside' and, quoting Winston Churchill, he wanted to rehabilitate prisoners 'in the world of industry'. He suggested the potential of early release for those 'who show by their changed attitude that they wish to make a contribution to society and who work hard to acquire proper qualifications which are externally validated and respected by employers'.

Although Britain did not import these policies wholesale from the USA, this attitude coincides with the rise of neo-liberalism and the punishment of poverty (Wacquant, 2002, 2009). The treatment of prisoners has its modern antecedents in a more punitive attitude towards other marginalized groups – immigrants, the unemployed and welfare recipients (Farrall et al., 2016) – which developed into a neo-liberal citizenship that emerged with the coming to power of Margaret Thatcher in 1979 (Farrall and Hay, 2014). With citizens exhorted to be responsible for their own circumstances and welfare, neo-liberal penal policy manifested itself in 'responsibilization' (Garland, 2001), where prisoners are spurred on to become responsible for their own rehabilitation.

With the emergence of New Labour – in particular Tony Blair's accession to Shadow Home Secretary in 1992 – the party began to echo the criminal justice tone set by the Conservatives' 'Prison Works' philosophy. Blair's moralistic tone (Newburn, 2007) established itself in the 1997 New Labour manifesto, which promised to be 'tough on crime, tough on the causes of crime', and proclaimed that 'we believe in personal responsibility'. As Prime Minister, Tony Blair delivered the 'kind of moralising sermons that one would expect to hear from the Church pulpit' (Carrabine et al., 2000: 194). Jack Straw, at his first Labour Party conference as Home Secretary in 1997, proudly proclaimed: 'We said we would make Labour the party of law and order. And we did.' True to their word, along with a sharp increase in criminal justice offences (Morgan, 2012: 466), the Labour Party's White Paper *Justice for All* (Home Department, 2002: 107) declared that while serving a custodial sentence, 'the rehabilitation of prisoners involves

getting them to accept responsibility for their actions and understand the consequences of offending on both their victims and themselves'. Subsequently, even in opposition, New Labour's 'visceral fear of being labelled "soft on crime" persisted' (Annison, 2018: 1081) and led them to oppose any attempts at penal reductionism proposed by the more liberal-leaning Ken Clarke during his brief tenure as Conservative Justice Secretary.

The promotion of moral, good or active citizenship by successive governments concentrates on the duties and obligations that are expected. While government ministers were promoting the moral elements of citizenship, they were weakening social citizenship by presiding over deteriorating conditions, chronic overcrowding and an upsurge in self-harm; undermining civil citizenship through cuts in legal aid; and resisting the implications of political citizenship inherent in *Hirst*. The promotion of citizenship has become a moral enterprise, not for the common good but rather, to remind prisoners of their immoral actions and to engender a law-abiding life, while preparing them to make an economic contribution to society. Citizenship for prisoners is not about civil, political and social rights. It concerns their duties and obligations. It is about hard work and good works. Following Foucault (1977), it is hoped the prison will now recast the soul, with prisoners schooled into industrial habits and trained into how to conform to social order in neo-liberal society. However, without the civil, political and social rights that are central to its status, the promotion of citizenship with all its noble aspirations is emasculated. During their time inside, prisoners are in effect reduced from the status of citizen to denizen.<sup>2</sup>

## Towards civil and political penalty

Marshall (1950: 29) set out an 'image of an ideal citizenship against which achievements can be measured and towards which aspirations can be directed'. Although it is nigh on impossible to achieve this ideal in unequal, neo-liberal societies, legislative restrictions and penal policies have significant consequences. Citizenship involves identity and action (Delanty, 2003). Although there are spatial limitations on prisoners acting as citizens, removing or impeding the right to *act* subsequently undermines their *identity* as citizens.

Downes (1998: 187) used the term 'breadth' to indicate the 'penetration of control into civil society'. The breadth of a sentence of imprisonment has widened out from criminal justice institutions towards a form of civil and political penalty. Because punishment in late modern society is a 'complex set of interlinked processes, institutions, rather than a uniform object or event' (Garland, 1990: 16), we now have to go beyond the criminal justice system (Comfort, 2007) to appreciate the levels of punitiveness in a particular jurisdiction (Hamilton, 2015; Wacquant, 2002, 2009). The countries included in Cavadino and Dignan's (2005: 15) neo-liberal regime type, with high levels of punitiveness, are also those that have greater restrictions on citizenship. These include England and Wales and the USA, which have features that contain exclusionary modes of punishment and individualized, limited social rights outside, and are inclined towards social exclusion. However, Newburn (2007) rightly cautioned us not to overplay the globalized nature of developments that are characterized as populist punitiveness and suggested that there were significant divergences between Britain and the USA, particularly in scale.

England and Wales have taken a different approach to penal policymaking (Lacey et al., 2017) from that of their Western European neighbours. Although the jurisdiction embraced a more punitive attitude towards prisoners as citizens, it has not adopted the widespread legislative restrictions on citizenship rights post incarceration, that are in place in the USA. The most obvious difference with the USA is disenfranchisement, which has over 6 million citizens divested of their right to vote (Uggen et al., 2016), the majority of whom are no longer incarcerated. Even accounting for proportionality and scale, this dwarfs the near total disenfranchisement of the approximately 86,000 sentenced prisoners in England and Wales. Limited though the restrictions that come with a sentence of imprisonment are compared with the USA, they can have a substantial bearing on civic and political engagement, considering the make-up of the prison population in England and Wales. The impact on certain communities in the USA – the most politically, civically and socially marginalized (see Wacquant, 2002, 2009) – is so significant that ‘institutions of justice have emerged as an important force in defining citizen participation and understanding for democratic ideals’ (Weaver and Lerman, 2010: 817). These ‘invisible punishments’ have become so widespread in the USA that they have become ‘instruments of social exclusion’ (Travis, 2002: 19). In England and Wales, Lammy (2017: 3) found a ‘greater disproportionality in the number of Black people’ in prison than in the United States. Therefore, the restrictions on citizenship have the potential to become similar instruments of civil, political and social exclusion in some communities in England and Wales. They weaken prisoners’ connection to civic society inside and the potential for political engagement outside. These restrictions have detrimental longitudinal effects on individuals and communities that already suffer from economic, social and political exclusion.

In their approach to citizenship, England and Wales incline more towards a moralistic tone than the more punitive rhetoric that tends to dominate in the USA. Prisoners are encouraged to become ‘moral actors and better citizens’. However, although speaking the language of citizenship as a form of rehabilitation, little faith is demonstrated in rehabilitation and transformation. The objective of rehabilitation has morphed into responsibility. Prisoners can ‘constructively engage in their own penal management’ (Crewe, 2012: 58) and demonstrate their responsibility by participating in active citizenship while eschewing political and civil engagement. Despite the noble language of citizenship, penal policy is premised on a strategy of a penal doctrine that is ‘devoid of any moral commitment to citizenship: it is a strategy of containment and a discourse of denunciation’ (Carrabine et al., 2000: 206). While promoting ‘active’ or ‘moral’ citizenship, successive governments have imposed structural limitations on the exercise of citizenship by constructing a concept of citizenship that is limited and limiting. It is the iron fist of imprisonment wrapped in the moralistic velvet glove of citizenship.

## **Articulating citizenship in penal institutions**

In late modern society, citizenship is everywhere. Leaving aside the meaning related to nationality and legal status, citizenship can be ‘lived’ (Hall and Williamson, 1999), ‘substantive’ (Delanty, 1997), ‘formal’ (Jansen et al., 2006), ‘good’ (Davies et al., 1999), ‘productive’ (Andersson, 2004) and ‘active’ (Hoskins et al., 2008). Owing to the legislative, spatial and cultural differences, the characteristics of citizenship in prison can be

distinguished from the exercise of citizenship outside. For obvious reasons, the opportunities to engage in many citizenship activities in prison are limited. However, under late modern penalty – with legislative restrictions, power imbalances, coercive restraints and the treatment of prisoners as irresponsible and immoral citizens – prison can never be an ideal civic space. When an individual enters prison, it is into a ‘complex social system with its own norms, values, and methods of control’ (Sykes, 1958: 134). Not only does prison physically break the connection with outside, it will likely frustrate attempts at forming positive social relations on the inside. By its very nature, imprisonment confines, restricts and prevents an individual from the freedom of choice necessary for agency, building trust, developing social capital and engaging in networks of engagement essential for a robust citizenship (Putnam, 2000).

Citizenship is a broad term and remains a contested concept with diverse meanings, in particular in the criminal justice sphere (Faulkner, 2002). It is a multidimensional concept and can be understood only in the context in which it occurs (Kallio et al., 2015). This context changes over time and across space. Local practices can determine what becomes substantive citizenship (Glenn, 2011). Penal policy, prison conditions and prison rules in a specific jurisdiction, along with the unique social structure and penal culture in a particular prison, can determine how features of citizenship – agency, participation, identity, networking, community building and social capital – are conceptualized and experienced by prisoners. Citizenship in prison is inevitably framed around the differences between freedom and captivity. This section considers how prisoners respond to the constraints of imprisonment, which necessitates alternative expression of citizenship.

Despite the erosion of citizenship rights, prisoners find a variety of ways to articulate their citizenship, some approved by, and others unacceptable to, prison authorities. Involvement in charitable activities by prisoners is presented as an example of good citizenship (Burnett and Maruna, 2006). Education can be an ‘intelligent riot’ (Davidson, 1995: 9), a transformative process, an opportunity to become a better informed and more politically conscious citizen. Some prisoners find practical expression of their citizenship in their new community through legal activism, the ‘peaceful equivalent of a riot’ (Jacobs, 1980: 459) and others by rebelling through riotous behaviour (Scott, 2011).

Although the essence of imprisonment seems inimical to the exercise of citizenship, there are places and spaces that tend to eschew the coercive nature of the institution. They include schools, libraries, gyms, and houses of worship, areas where individuals can temporarily overcome the prisoner identity (Behan, 2014b; Warr, 2016; Wright, 2014). Active citizenship is promoted in prisons across England and Wales (Edgar et al., 2011), and throughout Europe (Brosens, 2019) and the USA (Inderbitzin et al., 2016). Through volunteering, charitable works and peer-to-peer support, prisoners practise active citizenship in their community and wider society. Active citizenship among prisoners includes health and first aid volunteer schemes (CBHFA, 2013), charitable fun runs (Brosens, 2019) and prison radio (Anderson, 2013). Engagement with society outside includes repairs done by prisoners to bicycles, wheelchairs and electrical goods for donation to charitable causes (Burnett and Maruna, 2006), publication of prison magazines online (Hartnett et al., 2011) and California Fire Camps (Bunton, 2012; Goodman, 2012). Although these activities are opportunities to develop pro-social identities (Burnett and Maruna, 2006), they are within the parameters set out by the prison regime, either nationally or locally. Usually organized

or facilitated from the top down, this type of citizenship activity is always in a form acceptable to prison management. These are the type of activities that would be promoted by Gove, Cameron and their fellow penal moralists.

Although participation through active citizenship is generally applauded by everyone, the ‘applause is reduced to slow handclaps . . . when this principle is advocated by the have-nots’, especially ‘when the have-nots define participation as the redistribution of power’ (Arnstein, 1969: 216). When prisoners – generally part of Arnstein’s have-nots – seek to participate in civil, political and social citizenship, assert their agency in a way that challenges penal order and/or seeks some redistribution of power inside and/or outside the institution, citizenship becomes contested. This is rarely welcomed by prison authorities, locally or nationally, because it can highlight deficiencies in the penal system and wider injustices. It usually engenders different responses from those that occur when prisoners participate in active citizenship.

As the late modern prison is neither a generic nor a total institution (Crewe, 2012), prisoners find ways to create spaces for citizenship, a ‘fluid status that is produced through everyday practices and struggles’ (Glenn, 2011: 1). When done on their own terms, it moves from active citizenship to prisoner activism. This can become a form of insurgent citizenship (Holston, 2009), an alternative expression of citizenship that can act as a counter to the established order. Insurgent citizenship is as old as the prison itself. Either as individuals or as a collective, prisoners have resisted the disciplinary limitations inherent in the denial of liberty, because ‘recalcitrance is not an incidental mechanism of defence but rather an essential constituent of the self’ (Goffman, 1997: 89). From the earliest days of enforced silence in the penitentiary, prisoners communicated through pipes, floors and walls (Teeters, 1949) in an articulation of insurgent citizenship. Sending commissary ‘down the line’, to pass on goods to fellow prisoners (Stewart, 2015), similarly breaks prison rules. Reacting to, and moulded by, penal environments, small gestures of solidarity and silent acts of citizenship include micro and macro practices that disrupt the power structures within the established penal order. These can be as subtle as prisoners’ refusing to allow officers to close their cell door by doing it themselves (Maguire, 2008), which upends traditional power dynamics, to self-organization in food halls (Walker, 2016), which both upsets the prisoner–prison officer dynamic and creates new frameworks for social order among prisoners. Although theorized around the poor urban dwellers’ right to the city, insurgent citizenship emphasizes a creativity of practice that cannot be readily assimilated into established conceptual frameworks (Holston, 2009).

Discussing insurgent citizenship, Glenn (2011: 16) argues that it ‘is precisely at the margins of society that we can meet the possibilities for change’. Perhaps the most marginal place in the penal estate is on Death Row, where, for example, prisoners awaiting execution in Holman Prison, Alabama, set up their own book club. When the prison warden eventually shut it down, this did not stop death row prisoners reading and discussing themes from the book through the bars in their own alternative civic space (Hinton, 2018). On Texas’ death row, restrictions included, according to Rob Will, one of its inhabitants, ‘being locked in a small cage for 22 to 24 hours a day . . . constantly deprived of sleep, unable to touch another human being, fed disgusting food, and having to face a host of other means designed to break the human mind and body’ (Will, 2008).

Despite these restrictions, Will and his fellow prisoners organized the Death Row Inner-Communalistic Vanguard Engagement (DRIVE), which is one model of ‘empowered citizenship’ (Hartnett et al., 2011: 344).

Two of the essential elements of citizenship are community participation and political representation, which directly contradict the individualization of punishment at the heart of the late modern penalty (Crewe, 2012). One can be an authentic citizen only in a community. Although the British government allowed prison councils after a recommendation in the *Woolf Report* (Woolf and Tumim, 1991), this was a reform achieved through riot (Player and Jenkins, 1993). However, British governments have steadfastly resisted community representation from the ground up and have snubbed prisoner organizations that emerged organically. They refused to recognize the short-lived Union for the Preservation of the Rights of Prisoners or to negotiate with its leaders, and they would not countenance its demands, which included the right to representation, to vote, to join a trade union, to be allocated to local prisons, to marry and exercise conjugal rights, and to have a criminal record expunged five years after discharge (Fitzgerald, 1977). More recently, the Association of Prisoners, led by serving and now former prisoners, has not gained traction among prisoners, or in its attempt at representation, either locally or nationally (Gunn, 2010). Launched in the UK in 2016 and inspired by the work of fellow prisoners in the USA, the Incarcerated Workers Organising Committee (IWOC) of Industrial Workers of the World is ‘fighting against prison expansion and the increased capitalist exploitation of prison labour, as well as against IPP sentences and other forms of injustice in the prison system’ (IWOC, 2020). Organizations such as the Anarchist Black Cross, IWOC and the Revolutionary Communist Group, through their ‘Prisoners Fightback’ pages in their bi-monthly publication *Fight Racism, Fight Imperialism*, provide a voice for prisoners. However, other than during the Conflict in Northern Ireland, when the British government negotiated with prisoners and their representatives (Beresford, 1987), there is no evidence of any official contact with prisoners’ groups as a collective since then.

Jailhouse lawyers engage in ‘rightful resistance’ (O’Brien, 1996) by using the language of the law and policies instituted by powerful elites to curb penal power and to show them up if they do not live up to their professed ideals. The ‘rightful resistance’ of prisoners who used New Labour’s introduction of the Human Rights Act to pursue their right to vote to the ECtHR was one example of a ‘critique within the hegemony’ (O’Brien, 1996: 33). However, instead of the judgment in the ECtHR (which found in their favour) leading to an expansion of rights, it unleashed a wave of attacks on ‘European interference’, ‘judicial activism’ and, for good measure, prisoners’ rights (Behan, 2014a). In trying to push back against the enfranchisement of prisoners post-*Hirst*, not only did the British government obfuscate in its response to the ECtHR judgment, the Court itself rowed back in *Scoppola v. Italy* (No. 3) (2012), when it stressed again to the UK government that it had a ‘wide margin of appreciation’. In his dissenting opinion, Judge David Thór Björgvinsson suggested that, although there are differences between *Scoppola* and *Hirst*, ‘the judgment in the present case has now stripped the *Hirst* judgment of all its bite as a landmark precedent for the protection of prisoners’ voting rights in Europe’ (*Scoppola v. Italy* (No. 3)). In *McHugh and Others v United Kingdom* (2015), despite finding in their favour, the ECtHR denied any costs to prisoners. This will likely discourage prisoners (and their

advocates), most of whom have limited resources, from seeking redress in the ECtHR and potentially the domestic courts, because the Human Rights Act 1998 requires British judges to apply the Convention so they are bound by the Court's jurisprudence.

In the USA, after the Nation of Islam began challenging prison authorities through strikes and law suits, the number of prisoners engaging in court actions increased (Jacobs, 1980: 434). Although their focus may have been more on religious concerns than prison conditions, the Nation of Islam's legal activism had wider implications. It brought judicial oversight more directly into US prisons and provided models for future litigation (Smith, 1993). The response to this prisoner activism came with the Prison Litigation Reform Act 1997. Similar to LASPO in England and Wales, this has constrained prisoners with limited or no resources in accessing the federal courts. In particular, it has frustrated prisoners in their attempts to pursue claims on their conditions of confinement (Boston, 2001).

During the social and political activism of the 1960s and 1970s, prisoners throughout the USA and Europe found their voice. As they began to protest collectively, they established a range of representative organizations and prisoner unions (Behan, 2018; Fitzgerald, 1977; Huff, 1974; Lichtenstein, 2011; Rusche and Yaley, 1980; Singleton, 1973; Woolpert, 1978). When these representative organizations were either outlawed or snubbed by the penal authorities, and the conditions of confinement deteriorated to an unacceptable standard, riots ensued as expressions of autonomy. Some of the most famous include the riots at Attica Correctional Facility in Upstate New York (1971) (Thompson, 2016), the New Mexico prison riot (1980) (Useem and Goldstone, 2002), and the most significant prison disturbances in post-war British penal history at Strangeways Prison in Manchester and other institutions throughout the UK (1990) (Player and Jenkins, 1993).

Although they are rarely directly acknowledged, reforms emerged from these acts of resistance (Scott, 2011). In England and Wales, for example, the riots at Strangeways and in other British prisons led to the *Woolf Report* (Woolf and Tumim, 1991) and the recommendation for a Prison and Probation Ombudsman, the end of slopping out in British prisons, and a renewed focus on penal reform. Although riots are less frequent, demonstrations of rightful resistance such as work stoppages, hunger strikes, organized prisoner movements and prisoner litigation have, to a greater or lesser degree continued since then (Bosworth and Carrabine, 2001; Carrabine, 2005; Haslam and Reicher, 2012; Useem and Goldstone, 2002; see <https://waprisonhistory.org/> for a digital archive of prisoner activism in the USA). Linking back to the previous prison organizing in the USA, tens of thousands of prisoners participated in the prison strike that began on 21 August 2018, the 47th anniversary of the death of George Jackson, and finished on 9 September to coincide with the anniversary of the 1971 Attica prison rebellion. Along with improved prison conditions, the prisoners demanded the restoration of social, political and civil rights, including the rescinding of the Prison Litigation Reform Act, improved access to, and more rehabilitation programmes, as well as the reinstatement of Pell grants for access to college education. The final demand of those involved in the work stoppages, sit-ins, boycotts and hunger strikes was the right to vote, one of the fundamental elements in Marshall's citizenship. They believed that: 'The voting rights of all confined citizens serving prison sentences, pre-trial detainees, and so-called "ex-felons" must be counted. Representation is demanded. All voices count!' (cited in Kennedy, 2018).

In understanding how imprisonment frames citizenship, we have to look beyond formal criminal justice sanctions to capture what civic, social and political life is like in prison. Despite the constraints of confinement, prisoners retain some agency and express their citizenship, albeit in alternative, insurgent and creative ways. Whether in England and Wales, the USA or elsewhere, prisoners find spaces and places to remain autonomous actors. Micro acts of defiance and solidarity, as well as the more public displays of mass resistance through riots, protests and hunger strikes, indicate that the erosion of rights has not erased prisoners' autonomy. Citizenship in prison has always been, and is today, constituted as much through informal channels and local practices as it is through formal ones.

## Conclusion

Using England and Wales as an example, this article found that, owing to legislative restrictions, penal culture and the demographics of those housed therein, the prison is an unlikely civic space. However, as it demonstrated, with penal practices outside the criminal justice sphere being increasingly used as additional punishments, this further undermines opportunities for prisoners to express their civil, political and social citizenship. Although these penal practices initially began as a collateral consequence of incarceration, the boundaries of punishment have become blurred, moving from criminal justice institutions and extending towards what is termed civil and political penalty. In a Janus-faced approach, prisoners are being stripped of rights associated with citizenship, while they are exhorted to demonstrate their 'rehabilitation' through exercising 'active', 'good' or 'moral' citizenship.

However, as this article illustrated, consideration must be given to both the agency of prisoners – individually and collectively – and legal and structural impediments to the exercise of citizenship. Civic engagement in prison is inevitably framed through the distinctions between freedom and captivity. The restrictions that accompany the deprivation of liberty compel prisoners to exercise citizenship differently. Reacting to and moulded by penal environments, and with or without approval, prisoners engage in silent acts of dissent, small gestures of solidarity and macro collectivized actions. Through navigating the space available to assert their autonomy, the contours of citizenship have changed for prisoners. This has led to the emergence of penal citizenship: the space where the stripping of rights and the restrictions inherent in captivity meet the agency of prisoners.

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## Notes

1. The Scotland Act 2016 allows the Scottish Parliament to make its own rules for local and Scottish Parliament elections. Under the Scottish Elections (Franchise and Representation) Act 2020, prisoners serving a sentence of less than 12 months are allowed to vote in local and Scottish Parliament elections. For further details, see BBC News, Scotland Politics, URL (accessed 9 September 2020): <https://www.bbc.com/news/live/uk-scotland-scotland-politics-51530843>. Under the Wales Act 2017, the Welsh Assembly has similar powers. At the time of writing, the Welsh government has outlined plans to allow prisoners serving a custodial sentence of less than four years to vote in local government elections in Wales. Separate legislation is necessary to allow eligible prisoners to vote in future Senedd elections. For further details, see BBC News, Wales, 20 March 2020, URL (accessed 9 September 2020): <https://www.bbc.com/news/uk-wales-51770334>.
2. ‘Denizen’ is a late medieval term used in England to describe an individual resident in a place who enjoys only certain rights of citizenship, but is excluded from political rights.

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