



## research article

# Families, imprisonment and penal power: a radical analysis

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This paper is concerned with the exercise of penal power over families affected by imprisonment, and the implications for legitimacy and inclusion. Imprisonment imposes harms upon families, however theories as to how this shapes attitudes towards the justice system and feelings of citizenship are still developing. This paper brings together insights from prison sociology and Lukes' radical conceptualisation of power to argue that prison rules are the most 'solid' dimension of power which families encounter, and therefore it is the day-to-day decisions of officers which are most likely to be challenged. However, by excluding families from decision-making spaces, and shaping beliefs about what actions are possible and desirable, the justice system also exercises power over families in more diffuse ways which, while they provoke less resistance, are just as damaging to citizenship and inclusion.

**Key words** prisons • family • power • solidness • legitimacy

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## Introduction

As scholarship in the field of families affected by imprisonment has advanced, it is now beyond doubt that supporting a person through a custodial sentence routinely exposes families to penal power (Comfort, 2008; Lanskey et al, 2018; Jardine, 2019). The harms flowing from this exercise of power, such as damage to mental health, care arrangements, financial security, and social and family relationships, are not only often distressing and painful, but also highly gendered, with women overwhelmingly shouldering the burden of the caring labour required to support a person in custody (Condry, 2007; Codd, 2008; Halsey and Deegan, 2015). Furthermore, parental imprisonment diminishes the life chances of children, and deepens racial and social inequalities (Christian et al, 2006; Wildeman and Western, 2010; Wakefield and Wildeman, 2014; Lee et al, 2014). Consequently, there is an urgent need to develop the tools to help us to understand not only how families experience penal power as citizens, but also how they interpret and respond to its different manifestations. This is the aim of this article, which seeks to make sense of an apparent tension in the accounts of families who participated in a qualitative project exploring the experiences

of families affected by imprisonment in Scotland. In short, virtually all of these families experienced social marginality; something which was entrenched through the considerable resources they invested into supporting the person in custody (Jardine, 2019). Yet, while these families often expressed strong views as to whether the acts of individual decision makers, such as prison officers, judges or social workers, were fair or legitimate, they rarely (if at all) questioned the broader institutional, structural or political forces which shaped their current situations.

In an attempt to unravel this puzzle, I propose the concept of *solidness* as a means of better understanding how power manifests beyond the prison gate, and how this power is perceived and resisted (or not) by families. This concept of solidness is founded in the theorising which has challenged conceptions of penal power as monolithic or homogeneous – for instance by utilising metaphors such as depth, weight and tightness – to bring nuance to our understandings of the social, situational, relational and cultural factors which shape carceral power, and the very human costs which flow from its unexamined or careless use (King and McDermott, 1995; Downes, 1988; Crewe, 2011). Solidness is also grounded in what Steven Lukes has described as a radical approach to the theorising of power, which explains how willing compliance is secured, and even seen as legitimate, despite this being contrary to the interests of the subordinate party (Lukes, 2005). This compliance is achieved by the third dimension of power which, despite being challenging to identify, retains a potent ability to shape social norms and beliefs. Power operating in the second dimension takes on greater tangibility, but remains remote, professionalised, and often only made accessible where power holders choose to do so. Finally, the first dimension of power is the most visible, as it comprises the ability to impose one's wishes or demands over another. I suggest that each of these dimensions can be thought of as possessing an decreasing degree of solidness: the first dimension speaking to the embodied authority prison staff hold over families; the second the ability of authority figures to exclude families from operational and policy related decision-making spaces; and the third being the socialising effects of these interactions, which send powerful messages that families themselves are responsible for their own social difficulties. Thus, this analysis recasts the apparent acceptance of the reproduction of inequality on the part of families as a function of the power of the justice system, rather than a manifestation of lack of agency, because for an exercise of power to be challenged, it must have enough substance, or solidness, for those in subordinate positions to push back against it.

## Looking radically at penal power

While asymmetrical power relations are an inescapable part of prison life, they are also fluid, shifting and highly contextual. Power dynamics vary between institutions and different spaces within the same prison, giving rise to important questions as to what makes a prison more or less survivable (Liebling, 2011). For instance, Downes utilised depth to articulate the more punitive environment in UK prisons, as compared to those in the Netherlands, characterised by degrading relationships with prison staff, a more austere physical environment, and a regime governed by petty rules which afforded far less contact with family (Downes, 1988). In refining these ideas, King and McDermott suggest that many of these punitive elements are better described by the concept of weight, which more meaningfully captures the oppressive nature of penal power, and how this manifests through the deprivation of relationships, rights, and

hope (King and McDermott, 1995). Taken alongside weight, depth articulates feelings of being lost, buried and constrained within the prison; particularly for those who are a considerable distance from release (King and McDermott, 1995; Downes, 1988).

As prison staff have become increasingly professionalised, and material conditions have improved, it has become necessary to also attend to the *tightness*. This encapsulates a ‘softer’ form of penal power, characterised by a greater reliance on psychological programmes, risk management, and also faceless bureaucracy (Crewe, 2009). This softer penal power, as Crewe argues, binds people up in a web of uncertainty, where those in custody are required to embark on a project of rehabilitative transformation, but are often unsure as to what the ‘correct’ form of transformation might look like, or its relevance to their lives in the community (Crewe, 2009; 2011). Yet, this control extends beyond the prison gate, with the *breadth* of penal power manifesting in a number of ways, including: the recall of those on licence; interventions by social work and other state agencies; embodied and psychological changes from a period in custody; restrictions on access to employment and other civic roles; and the stigma associated with each of these (Downes, 1988; Ystanes and Ugelvik, 2019).

These concepts have been usefully applied to the experiences of families affected by imprisonment (Lanskey et al, 2018). For families, the concept of depth speaks to the forced removal of the person from family life, the fears this provokes, and perhaps also their geographic distance from home. The weight of penal power manifests in both the intrusions of the criminal justice system into their everyday lives (for instance, the monitoring of telephone calls) and the additional demands placed on family members in the absence of the person in custody. These encroachments, together with the anxieties that are commonly experienced by families – for example, fears that their loved one could be recalled to custody – can create a sense of tightness, strain and uncertainty. Further, such is the breadth of penal power that it can create considerable pain for families, both in terms of the stigma they experience in their communities, and the potential difficulties of re-establishing family life upon release. This analysis illuminates the ‘creep’ of punishment into the lives of those who have been neither convicted nor sentenced, as well as the relief imprisonment can offer families living with violence, conflict or addiction (Lanskey et al, 2018).

This diversity of experience underscores the need to develop a nuanced conceptual language to analyse the harms caused to families, which must no longer be seen as secondary, incidental, or collateral (Condry and Minson, 2020). The concept of solidness has much to offer here as while families undoubtedly feel the power of the prison encroach deep into their lives, this experience is not *in fact* imprisonment. Imprisonment is an inherently totalising punishment, creating a feeling of being ‘smothered’ by the institution, in the sense that the prison invades every aspect of the self ‘as a whole and all of the time’ (Warr, 2016: 590). Families may have different degrees of latitude to find spaces of respite from this power, but equally have their own specific struggles which may not be fully explained by concepts intended to shed light on the lived experience of imprisonment. Indeed, a number of participants were very clear that they felt their circumstances to be more difficult than those of the person in custody, who they saw as having very few responsibilities to meet, and little insight into the fact that, as women such as Leah put it, it is “the family that suffer, not him”.

This is an argument that needs to be made with extreme care, not least because some of the family members who participated in this project had also been in prison,

and some of the people who I interviewed in custody had also had experience of familial imprisonment. Families may also experience what has been described as simultaneous imprisonment, where siblings, children, parents or other relations are imprisoned at the same time (although not necessarily in the same place) (Deacon, 2021). These are the inescapable, painful, and deeply personal effects of a justice system which draws its prison population disproportionately from our poorest communities. Yet, while existing conceptual metaphors for penal power, and tightness in particular, cohere with both the work of Weber and Foucault (Crewe, 2011), Lukes' theorising is particularly appropriate for understanding the effects of a justice system which drives such social inequalities. As Lukes notes, Foucault's writings have made a ground-breaking contribution to our understandings of structural power relations and how 'ideal types' of citizens are rendered governable, but attend less closely to the outcomes and effects of power in specific circumstances, and in turn how exercises of power may constrain the choices of dominated groups (Lukes, 2005). Thus, citing Garland's analysis of Foucault's writings, Lukes notes that Foucault's primary concern is with the institutions and techniques of power and governmentality, rather than 'concrete policies and the actual people they involve' (Garland, 1990:75; Lukes, 2005). Engaging with these particularities of penal power is vital if we are to fully understand both the most confronting and less easily identifiable effects of penal power upon families, as the prison itself has very real effects on the lives of families which can impact their standing as citizens. Lukes' theorising therefore also aligns with a more critical criminological orientation which sees the drivers of 'offending' and imprisonment as structural, rather than as a consequence of individual failings or pathology (Scraton, 2016).

## Methods

These arguments will be made by drawing on data collected in the course of a project, conducted in Scotland between 2011 and 2015, which sought to examine what it means to be a family within the restrictive context of imprisonment. The methods were qualitative, and included: over 350 hours of observation at a Prison Visitor Centre, documentary analysis, and unstructured interviews with men and women in custody (n=10 and 4 respectively), family members (n=19), prison officers (n=8), and Visitor Centre staff (n=4). Ethical approval for this research was granted by the University of Edinburgh, the Scottish Prison Service, and also the relevant statutory and voluntary organisations.<sup>1</sup> It is important to note that these interviews were conducted across two prisons, so I was only able to interview one 'family group', and in all other instances visitors and those in custody were not related. What participants did have in common was that despite both prisons housing both men and women, all but one of the adult family members who participated in the research were women, something which reflects the gendered nature of caring labour within families (Jardine, 2019). Furthermore, all participants were experiencing social marginalisation to a greater or lesser degree. This is likely attributable to my approach of 'hanging around' the Visitor Centre, as those with few resources tended to spend considerable time there.

The data were analysed thematically (Braun and Clarke, 2006). The listening and re-listening to recordings and the re-reading of all data on multiple occasions was key in generating an initial list of codes, which were then further refined into themes, with QSR Nvivo being used to facilitate this process. Similarly to other

scholars grappling with questions of power within prisons, the analysis focused on both a particular theme's frequency and its intensity, that is, the strength of feeling with which participants articulated a given theme (Symkovych, 2020). I wish to be clear here that this article seeks to explore a theme that was expressed with especially strong intensity (that not all actions of criminal justice professionals were seen as legitimate), and another which was more conspicuous by its absence (critiquing the structural factors that drive these conflicts). This tension is perhaps unavoidable; as Lukes acknowledges the third dimension of power is exceptionally methodologically challenging to explore through empirical means, as it inevitably entails examining decisions that are not taken, or demands which are not articulated (Lukes, 2005).

Yet, research which is methodologically challenging should not be conflated with research that lacks methodological rigour. This project was concerned with the topics of family, imprisonment, and the impact that punishment has on people and families as subjects with value and worth. These are emotive themes, and the meanings attached to them by participants are best explored through a social constructionist epistemological framework (Beyens et al, 2015). Thus, appropriate criteria for evaluating the rigour here might include: visibility of research practices; ongoing attention to ethics and reflexivity; and openness to unexpected findings, questions, and themes (Armstrong et al, 2017). I sought to achieve rigour in these terms by: immersing myself in the field; regularly reflecting on my own positionality; being mindful to actively look for patterns in the data that challenged my emerging analysis; and writing extensively on my methodological approach, the ethical issues arising, and also its limitations (Jardine, 2019). A particular limitation of the work presented here is that it is an attempt to make sense of a tension within the data that stayed with me long after I had left the field. Consequently, I have not been able to share this argument with participants, and I also recognise that some practices may have changed, improved, or worsened. Therefore, this theoretical framework is proposed as a means of beginning a necessary, and hopefully, in time, more inclusive conversation about the impact of penal power on families.

## Solidness

Supporting a person in custody often brings with it not only significant disruptions to housing, finances and relationships, but also a myriad of smaller encroachments into family life such as dictating the time and length of visits, when phone calls home can be made, and how much physical contact is permitted, and how significant events can be celebrated (McKay et al, 2018; Jardine, 2018; Bartlett and Eriksson, 2019). The accounts of participants echoed these findings, and the refrain "we do the sentence too" was uttered frequently both in interviews and informal conversations:

'We are the ones that are coming up for visits, we are the ones that have got to put the money in the Prisoner's Personal Cash, we are the ones that make sure they are clothed and everything do you know what I mean and like that you have got visits and ken you have got letters and pictures and ken like we are the key, his link to the outside world. But it is hard because if he gets five years, I get five years do you know what I mean.' (Tracey)

This naming of these effects of imprisonment as punishing and punitive is significant, as it conveys the unyielding, restrictive and often painful nature of the penal power

encountered by families. The concrete nature of these demands which are placed on families – such as dictating when they may visit, the distances they are forced to travel, the costs of phone calls which they must meet – render this aspect of penal power particularly solid. By this I mean these exercises of power are readily identifiable, confronting, and frequently taxing; often placing multiple and painful burdens upon families. Participants spoke movingly about lost homes and jobs, disruption to child-care arrangements, and damage to their mental health. Many struggled with loneliness, unmanageable additional caring responsibilities, and the financial strains of providing visits, phone calls and personal property

The solidness of this form of penal power does not only flow from its often overwhelming and painful effects. In addition, many of the rules families must comply with can feel rigid and unyielding, with many noting a lack of ‘give and take’ in their interactions with the prison.

‘Because even if you’re five minutes late, they are like you cannae get in, it is like “Oh well, that’s a shite”. (Laughter)... they should give you a little bit of leeway, you know, if you’re a bit late especially if you got kids. It should be like “Well, you’re only five minutes late, aye on you go”.’ (Sophie)

Furthermore, while these rules and requirements can be, and indeed often are, opaque, poorly explained and applied inconsistently, their solidness is heightened by the fact that they are regularly and directly enforced by the criminal justice professionals whom families encounter. Such embodied authority not only enhances the solidness of penal power operating in this dimension, but also provides a means of pushing back against decisions which are felt to be unfair, or questioning the legitimacy of authority figures who are deemed to have used their power without sufficient care. As I have argued at length elsewhere, the nature and quality of these everyday interactions between families and prison staff matter greatly, precisely because poor interactions can damage perceptions of legitimacy and communicate to families that they are held in low regard by the state as citizens (Jardine, 2019). This is evident in the accounts of participants such as Brooke, who explained how stigmatising interactions with prison staff caused her to ‘not care’ about their claims to authority:

‘... just the way that you are treated, you are the visitor not the prisoner and you get treated like one the way that they speak to you ken they will swear... they look up at you and look down so you can tell it’s like “oh you’re visiting the jail” but see now I just think to myself well – I just put my fingers up to them – I just think if that is the way that you are going to see me then I dinnae care.’ (Brooke)

While the solidness of this penal authority provides a clear direction in which Brooke can channel her frustrations, solidness should not be understood as inherently conflictual. Where penal power has the quality of solidness, this renders it not only seemingly immovable and intractable, but also visible and discernible. Consequently, families not only named these manifestations of power (such as rules governing how much physical contact is permissible, the limited circumstances in which family photographs could be exchanged, and so on), but they also articulated the strategies to negotiate these power relations. For example, Susan explained how after many

months of visiting she now knew which prison officers would allow her grandchildren to have a drink during a visit and those who would not, and had taught the children not to ask for one when this would not be forthcoming, as a means of avoiding conflict and disappointment:

‘... sometimes there are officers on who will go and get them [my grandchildren] diluting juice but others just no, they won’t even get them a glass of water... now I know who it is and I say don’t even ask for a drink today because you are not going to get one.’ (Susan)

Susan’s experience illustrates that the profound distress which can be caused to families by the careless use of penal power flows as much from these smaller, ‘everyday’ injustices as the larger disruptions to family life. This alerts us to the importance of getting these interactions ‘right’ (Liebling, 2011), and families appreciated instances where officers were able to use their authority positively to assist in resolving their concerns (for instance, an imprisoned child’s mental health crisis). Thus, the tangibility of these more solid exercises of penal power should not be conflated with a lack of complexity. As professionals have the capacity to utilise their power in more or less just ways, the exercise of power over families requires the same careful thought and reflection as its use within the prison.

### Putting families on the agenda?

In addition to these directly observable effects of penal power, families are also impacted by Lukes’ second dimension of power, which is primarily concerned with the ability to set ‘the rules of the game’ or influence which issues gain traction in the policy process. This is evident in the marginalisation of families in key decision-making spaces, both at policy level, and in their day-to-day encounters with the prison. For some families, then, compared to other actors in these forums, penal power lacks the same degree of tangibility and solidness *because* of the failure of power holders to allow them meaningful input and influence in these domains. For instance, at the time of the fieldwork for this project, the Scottish Prison Service (SPS) conducted an Organisational Review, setting out the new mission statement of *Unlocking Potential, Transforming Lives*. The review was underpinned by a more future-oriented, ‘preventative’ approach, broadly influenced by research into desistance (SPS, 2013). As a result, there are a number of references to families and communities within the Review, but often these are made with regard to how these connections might aid resettlement. Notably, in contrast to both prisoners and victims, families are absent from the list of ‘key stakeholders’ with whom the SPS should proactively engage (SPS, 2013).

It was not until 2017 that the SPS Family Strategy was published; it includes a welcome commitment to ensuring that the views of families are to be considered in any relevant decision-making processes (SPS, 2017: 10). Nevertheless, it seems that difficulties including families in decision-making spaces persist. In April 2019 the Scottish Parliament Cross Party Group on Children and Families Affected by Imprisonment met to consider the Family Strategy. In the discussion that followed, the formation of Family Strategy Groups at each prison, tasked with implementing the Strategy, were highlighted as a form of good practice. However, it also became

clear that the activity of such groups varied across the estate, that families did not participate in these groups at all establishments, and in some prisons, these groups had 'fallen by the wayside' ([Cross Party Group on Children and Families Affected by Imprisonment, 2019](#)).

This lack of engagement with families is one way in which how the 'rules of the game' are set are not made apparent to families. Consequently, this second form of power lacks the solidness of the first: its operation is more professionalised, more bureaucratic, and exclusionary. There are parallels here with Crewe's analysis of tightness, in that this second dimension seems to be both anonymous, and also 'everywhere but nowhere' ([Crewe, 2011](#): 515). However, this is not experienced by families as tightness: it does not grip, entangle or snag. Rather, it lacks solidness and form, leaving families unable to confront, challenge or push back against it. For example, while families often expressed frustrations regarding a particular process or decision (for instance, their family member being transferred to another prison to complete a required course), they were rarely critical of the larger policy context which led to that decision being made, such as the dominance of psychological discourse in modern prisons, or the lack of resources provided to ensure these could be accessed closer to home.<sup>2</sup> Further, as their views on these issues are often not sought or invited, families are left with only bureaucratic, institutional channels to raise their concerns. Thus, whereas the first dimension of power is embodied through the authority of frontline professionals, this second form of penal power is 'faceless' and depersonalised, in that families may never meet the people making key decisions which impact their lives. Perhaps unsurprisingly then, some participants had little confidence in these processes:

Author: "Do you feel like if you complain they will listen to you?"

Brooke: (sarcastic laugh) "Nope, never ever ever ever".

Notably, Lukes' second dimension of power is also concerned with how non-actions by power holders prevent the demands of subordinate parties from being voiced. To support this proposition Lukes draws on the work of Crenson to give the example of the delay of the introduction of measures to tackle air pollution in Gary, Indiana, which Crenson suggests can be explained by the failure of a key polluter – and also large employer of the citizens of Gary – to enter into local debates or adopt a clear position on this issue. This evasiveness prevented any real 'fight' emerging between the company and activists, depriving activists of the opportunity to build support for their cause ([Lukes, 2005](#): 46). While operating on a much smaller scale, the decision *not* to pursue meaningful co-productive engagement with families affected by imprisonment can equally frustrate the articulation of clear demands for change. This helps us to understand why, despite being clear that the prison should do more to become more 'family friendly', participants such as Sophie found it challenging to express an alternative vision for how things should be:

'I dinnae ken, it is hard to explain. You don't really know what you want or how you want things to change because there is nothing you can say that's going to change the way the jail is because they [prison officers] are the jail and (whispering) they're arseholes (laughing). Most of them are.' (Sophie)



In sum, the lack of solidness of power in this form ensures that actions of power holders are difficult to observe, challenge or counter. Importantly, families are differently positioned from the professionals shaping these policy discussions, not only in that they are routinely excluded from these spaces, but they are also directly impacted by the effects of these decisions in ways which professionals are not. As we have seen above, the effects of imprisonment for many families are inherently negative – often leading to emotional distress, social isolation and financial precarity – thus leaving little time or energy to devote to countering this exclusion. Indeed, the sense that any attempt to influence how the day-to-day running of the prison impacts upon families at operational or policy level would come with more costs than benefits was pithily encapsulated in words of one participant, Alisha, who quipped: “you cannae fuck the system, because the system will just fuck you”.

### The unarticulated effects of imprisonment

Finally, Lukes’ third dimension of penal power attempts to illuminate how systems function to prevent subordinated groups gaining political traction on matters which impact upon them and, further, even prevent demands for change being made. This third dimension occurs when those subject to power accept their domination, either because they come to believe in the norms, values or practices which entrench their subordination, or because they simply become resigned to them. Here, this means that although this third dimension of power lacks solidness, it is nonetheless able to reinforce a damaging and reductionist narrative amongst families that they are largely responsible for their own difficulties, and that a criminal justice intervention is an inevitable response to these issues. While this argument is challenging to demonstrate empirically, it resonates with a growing body of scholarship examining how contact with the justice system socialises both citizens in general, and also families supporting a person in custody in particular, in ways which shape their views and beliefs about both penal fairness and legitimacy, and also their own value and worth as citizens (Weaver and Lerman, 2010; Justice and Meares, 2014; Lee et al, 2014). Notably, this sentiment that families affected by imprisonment, and especially those who were also living in poverty, experienced stigmatising treatment at the hands of state agencies was expressed by families, people in custody, and professionals who participated in the project:

‘I’ve got nothing mean to say about the visitor centre staff, they are so nice, but the prison staff are different!’ (Leah)

‘... they treat your visitors as if they have done wrong as well, do you know what I mean, it’s not nice.’ (Lorna)

‘Services could be better equipped to deal with this group of people but a lot of it is to do with lack of understanding, lack of knowledge from professional people I would say on what the issues are... If you drink in an affluent area its fine... nobody will bat an eyelid – but you see somebody from the scheme in the pub on a Tuesday night then they are a bad parent. So it’s quite funny – rules that apply to different groups.’ (Charlie)

Thus, the exercise of penal power over families in interactions with the prison – for instance, the decision about whether or not to accept an item of personal property, or whether to make allowance for a visitor who is late – possess the form and solidness which allow families to challenge or push back against them. However, the accompanying socialising effects are much more diffuse. Indeed, the intent of this exercise of power need not be to disrespect or demean families; it may be being used in the pursuit of another aim such as security or organisational efficiency, yet this does not prevent this exercise of power as being experienced as punitive (Brisette, 2020). For instance, the decision to move a person in custody to another prison may be taken for operational reasons such as regulating prison numbers or maintaining security, but the suddenness of these decisions, and the lack of information and consultation with families, may all be experienced as deeply harmful:

A young woman came into the office to speak to the Visitor Centre staff – she was stressed and upset because her partner had told her on the visit that he was being moved to another prison. She was in the office for about an hour and was in tears twice. She seemed very vulnerable: her baby is in care; she takes large amounts of prescription medication daily; she is on dialysis; she had a miscarriage and feels like everything is falling apart because she doesn't know where he is going to be tomorrow. (Fieldnote March 2014)

This extract from my fieldnotes demonstrates the devastating effects imprisonment can have for families; exemplifying how this form of punishment can create a level of distress and crisis which leaves little room for political action. The decision to move her partner is both painful and confronting (and therefore solid), prompting the young woman in question to seek support and challenge its fairness. Yet, such exercises of penal power also communicate to families their status and value in the eyes of state institutions: in this case, that this young woman is not worthy of recognition or engagement. Such socialising effects are inherently less solid and tangible, yet this does not negate the damage they can create. Indeed, there is wider evidence to suggest that women who have experienced the incarceration of a partner have been found to be less likely to participate politically *because of* these socialising effects (Sugie, 2015). Considering the solidness of penal power therefore allows us to begin to analyse not only how interactions with the justice system communicate to families their perceived value as citizens, but also the extensive harms such messages can create by limiting what families believe to be possible, desirable, or an immediate priority.

Solidness also brings visibility to the interactions which serve as a mechanism through which power is exercised in this third dimension, which might otherwise be missed, especially given the mundane or everyday nature of many of these encounters. For instance, Ruby told of how she did not like prison visiting because of the way that officers “watch you all the time... it's not nice”, resonating with research which suggests prison surveillance may make families feel stigmatised and viewed with suspicion (Hutton, 2018). Yet, the very fact that it is the meanings and emotions associated with these actions which is painful for families – rather than the stated purpose of the action itself<sup>3</sup> – inevitably makes this exercise of power more diffuse and less decipherable. If we accept that interactions with power holders can have these socialising effects, we must also consider the nuances of the messages contained within them. The work of Sered is particularly instructive here, as she argues that repeated

involvement with both criminal justice and welfare institutions coaches women to adhere to a very particular conception of citizenship: one where they must take personal responsibility for what are largely structural issues, and consequently accept that the solutions to their problems lie in making ‘better’ choices (Sered, 2020). This narrative is also evident in the accounts of participants who spoke of their aspirations for achieving a better future through individual actions such as finding employment, “getting my grades”, or “changing my social circle”. For some, the criminal justice system was seen as an enabler for positive change. For instance, Chloe spoke at length of her partner’s time spent in care as a child, and his mother’s (and subsequently his own) struggles with drug use, telling me that he was “dragged up, not brought up”. Chloe goes on to explain that she felt prison would not help him, but a community order might: “My boyfriend doesn’t need prison, he needs help. I’m hoping he will get a DTTO [Drug Treatment and Testing Order] so he can get some help”.

Chloe’s account also highlights an important nuance of Lukes’ theorising: that the third dimension of power is ‘never, except in fictional dystopias, more than partially effective’ (Lukes, 2005: 150). This is because subordinate groups can both internalise a particular position (for instance, that both individual effort and criminal justice interventions are the most appropriate solution to particular social problems such as poverty, trauma and addiction), while also taking steps to resist this exercise of power, or to respond agentially to maximise the strategic benefits that can be derived from within these power relations. Indeed, the concept of solidness has been grounded in Lukes’ theorising because Lukes resists the charge that this third dimension of power constructs the powerless as irrational, or as cultural dupes without agency or choice; arguing that the third dimension of power itself transforms the views of the powerless as to how best to get ahead, or even get by, in their current circumstances. Accepting domination, or at least not actively resisting it, therefore becomes a means of survival; just as imprisoned people may offer only ‘muted’ objections to the fairness of their sentence in an attempt to tolerate the pains of imprisonment (Schinkel, 2021). Indeed, Chloe is likely correct that a community justice order may well be the best avenue to receiving support, due to the gatekeeping role the criminal justice system often plays in accessing these services (Price et al, 2021). Thus, while seeking treatment for addiction through the justice system reproduces this logic that individualistic interventions are the central means of addressing social problems, challenging or disengaging from the workings and practices of the justice system would cost Chloe two things she highly values: regular time with her partner; and the hope that they might – this time – be able to access some support for his struggle with addiction, which is rooted in a lifetime of poverty and failed state interventions.

## Concluding discussion

Attention to the solidness of penal power is necessary because the metaphors of depth, weight and tightness do not fully capture the experiences of families: the power of the prison does not bury or ‘grip’ families within the constraints of the justice system, it shapes their experiences as citizens in multiple and diffuse ways. This conceptual refinement provides a means of beginning to unravel the intellectual puzzle as to why – despite it being widely recognised that prison creates multiple personal, financial, and civic harms to families – the frustrations of families were often directed at individual professionals or decisions, rather than the structural processes

and practices that perpetuate these conflicts. Crucially, I have argued that grounding this conceptualisation of solidness in Lukes' radical theory of power illuminates that this is not due to a lack of agency on the part of families; rather, this tension is a consequence of the characteristics of penal power itself. Due to its three-dimensional nature, penal power has the ability to exclude families from spaces of influence, and shape their views of what changes are desirable and possible, and therefore worth the investment of their (extremely) limited resources.

There is a clear resonance between my argument that the socialising effects of repeated contacts with the prison dampen demands for structural changes, and a wider body of work which suggests justice systems themselves reinforce a particular narrative of the need for people, rather than systems or structures, to take responsibility for their problems and to become 'empowered' to change (Baldry and Cunneen, 2014; Clarke and Chadwick, 2017; Hart, 2017; Rutter and Barr, 2021). As many others have observed, Western jurisdictions have firmly embraced actuarial assessments and evidence-based programmes, both of which have their roots in behaviourist psychology, and have a consequent aim to alter individual behaviours and reduce reoffending (Goddard and Myers, 2017). The programmes and interventions which dominate criminal justice institutions now tend to focus on individual risks, needs and deficits, with the effect that structural problems are all but erased (Hannah-Moffat, 2005). In this climate, conceptions of welfare and responsibility can become intertwined in such a way that legitimate support needs are reconstituted as criminogenic risks, entrenching highly classed narratives of personal failing (Gray, 2013). By surfacing this more 'hidden' way in which imprisonment harms families, solidness provides a conceptual framework for advancing a parallel critical research agenda which resists positioning families either as criminogenic, or as a potential aid to desistance, and instead examines the role of the justice system in (re)producing and maintaining social disadvantage.

The concept of solidness also encourages a more careful reflection on the connections between legitimacy and (in)justice. In my own work, I have argued that considering the experiences of families can bring additional nuance to theories of legitimacy, prompting us to recognise its interpersonal nature, and to attend to how it is shaped by memories, embodied experiences and emotions, and biographies (Jardine, 2019). What conceptualising penal power in terms of solidness adds to this analysis is that it underscores that just as not all oppositional responses to penal power should be seen as politically motivated acts of resistance (Rubin, 2015), neither should we accept a lack of resistance as an indicator of fairness, or as evidence that criminal justice institutions are functioning in socially just ways. In addition to avoiding oppositional conflict for reasons of self-preservation (Bosworth and Carrabine, 2000; Scraton, 2016), I have argued here that challenges to legitimacy may not arise because the third, and least solid, dimension of power ensures that some beliefs *are* more likely to be shared as common sense or inevitable. As the justice system erodes the resources available to families, excludes them from decision-making spaces, and undermines their sense of self as valued citizens, it may well be that the solutions offered by the system – such as the drug treatment order Chloe hoped for – become the most, or perhaps only, accessible option to some families in addressing their immediate problems. In making this argument, it cannot be ignored that the primacy of the prison as a solution to many social problems is routinely reinforced mainstream UK political and media discourses (Sim, 2009), or that reforms intended to reduce the harms of the contemporary prison may serve to reinforce the attractiveness of the

prison amongst sentencers, politicians and policymakers (Carlen, 1998; Carlton, 2018; Malloch, 2018). Thus, by illuminating how penal power closes down opportunities for resistance, the concept of solidness adds a further strand to an established body of work which demonstrates the multiple ways in which the prison is able to absorb attempts at reform and evade critique (Hannah-Moffat, 2000; Mathiesen, 2005; Carlton and Russell, 2018).

Perhaps more hopefully, a key contribution made by metaphors such as depth, weight, tightness and solidness is that they transform aspects of penal power which might initially be challenging to grasp into more apprehensible ideas. By providing this framework for not only naming some of these more diffuse penal harms, but also evidencing their damaging socialising effects, the concept of solidness may support the work of groups which seek to advocate on behalf of families and safeguard their rights.<sup>4</sup> Indeed, attending to the solidness of penal power can provide valuable recognition to families who report that the justice system erodes feelings of full (and respected) citizenship. This framework may also aid researchers, practitioners and activists in producing new knowledge, for instance by encouraging them to examine where families are excluded from strategic spaces, and to reflect on what might make penal power more tangible (and therefore potentially more able to be challenged or resisted). There is much to be learnt here from the transformative efforts of families who do engage in activism, and there is a small but growing number of support and advocacy organisations and campaigning groups which have been established by families for families.<sup>5</sup> Yet, how and why families become involved in activism is poorly understood: previous research points to both higher levels of social capital, and supporting someone through a particularly long sentence, as being characteristics shared by families who do engage in resistance or activism (King and McDermott, 1995; Comfort, 2008; McCarthy and Adams, 2019). The conceptual framework of solidness suggests that this interaction between social advantage and penal power may be complex. Those with more social capital may feel less stigmatised and more empowered, but equally the disproportionately punitive nature of Imprisonment for Public Protection sentences, Joint Enterprise convictions, or indeed very long sentences may render them especially solid, and therefore more possible to resist, precisely because there is less social consensus that these punishments are just or necessary. Thus, future research with activist families should be alert to the often subtle socialising effects perpetuated by the prison itself – and the consequent role it plays in dampening such actions – if we are to develop a fuller understanding of the links between penal power, legitimacy, resistance and (in)justice.

## Notes

<sup>1</sup> These included the relevant Local Authority Social Work services, and also the voluntary organisation providing services to families at the Prison Visitor Centre.

<sup>2</sup> In contrast, an Audit Scotland (2019) report highlighted high prison numbers, significant staff sickness absence, and financial pressures as factors which were cumulatively contributing to a reduction in the number of people completing rehabilitation programmes and qualifying for parole.

<sup>3</sup> Indeed, many families worried about the safety of the person in custody and were broadly supportive of measures to maintain security.

<sup>4</sup> As Lukes observes an important reason for identifying and naming power relations is to ‘fix responsibility for the consequences’ of their effects (Lukes, 2005: 58).

<sup>5</sup> See, for example, Partners of Prisoners (POPs), Loved Ones of Prisoners Scotland (LOOP Scotland), UNGRIPP (United Group For Reform of IPP) and JENGBA (Joint Enterprise Not Guilty by Association).

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The author declares that there is no conflict of interest.

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