

Custodial sentencing

Judicial sanctions for offending

Most justice systems have a variety of sanctions that can be imposed on offenders. In the UK, imprisonment is the most severe such sanction in a scale that runs from admonishments (e.g. police cautions), fines, supervision, compulsory service to the community, suspended prison sentences and finally incarceration. These sanctions potentially serve a variety of purposes including:

- Retribution - making the offender 'pay' for their offence.
- Reform - altering the offender so they do not reoffend.
- Deterrence – 'making an example' of the offender to discourage others from committing crimes.

The issue of retribution is a moral and philosophical one that is not resolvable by empirical means. Therefore, psychological discussions of judicial sanctions generally focus on reform and deterrence and whether the things that are done to offenders have a measurable impact on future offending.

Prisons and imprisonment

According to Morgan (2002) prisons have three principal functions: custody (containing prisoners on remand awaiting trial), coercion (forcing prisoner to comply with legal judgements e.g. payment of fines) and punishment. It is the third purpose that most concerns us. Compared with many other countries, England and Wales imprisons a lot of people. Fairly recent figures indicate that there are 140 people in prison for every 100,000 population in England and Wales. This rate of imprisonment is about 50% higher than in France, Germany and Italy (Howard League for Penal Reform, 2006). Contrary to media-sponsored perceptions of a judicial system that has 'gone soft' on crime, the prison population has been rising steadily since the mid 1940s as has the proportion of the prison population serving sentences longer than 4 years (Home Office, 2001). Between 1991 and 2008 the prison population in England and Wales nearly doubled from 42,000 to 82,000 (BBC News, 22nd Feb 2008).

Recidivism

A return to criminal activities following judicial punishment is termed 'recidivism'. Recidivism is generally used as an index of the effectiveness of different judicial sanctions. Where a sanction is effective the recidivism rate should be low, or at least lower than that associated with alternative sanctions. Many people who serve prison sentences reoffend. Morgan (2002) suggests that three quarters of young offenders and about half of adult offenders commit further offences within two years of release from prison. Reconviction rates seem to be stable over time. Bottomley and Pease (1986) found that the reconviction rate in the UK ran at 60 per cent throughout the 1970s and into the 1980s, and Zamble (1990) reports a similar picture in Canada. Since not all crimes result in convictions and not all these result in imprisonment, the reoffending rate amongst released prisoners is probably significantly higher. Is prison more effective than the alternatives? Smith et al (2002): reviewed more than one hundred research studies looking at the relationship between reoffending, length of sentence and the use of prison vs. non-custodial sentences. They found that the recidivism rate following imprisonment was no lower than for non-custodial sentencing and that longer prison terms did not lower the risk of reoffending.

Generally, recidivism research does not support the idea that prison is any more effective than other judicial sanctions. Some researchers have suggested that the opposite may be true: that a prison may act as a 'college of crime' and actually increase the probability of later offending. This does not appear to be true either. Farrington and Walker (1981), for example, compared the recidivism rates of first offenders given probation or suspended sentences with those fined or imprisoned. The latter

group was slightly less likely to reoffend. So imprisonment doesn't obviously make a difference to reoffending one way or the other.

Why doesn't prison prevent reoffending?

Common sense suggests that prison *should* work, so it is useful to consider why it appears to have such a minimal impact on offending. One possibility is that common sense is wrong. The common sense view of imprisonment is that it represents an unpleasant consequence that should act to deter the potential offender and especially to motivate the imprisoned offender to act differently upon release. This view assumes that the offender is a rational agent who makes a free decision to commit an offence after weighing up the potential costs and benefits of doing so. This is not necessarily the case. For example, substantial numbers of crimes are committed by those under the influence of alcohol or a range of other substances. If we allow that their capacity to make rational judgements was impaired by intoxication or the effects of substance withdrawal then it follows that their offending behaviour was not the result of a free decision.

A more psychologically informed view might be that prison *could* work but doesn't because it does not conform sufficiently to the principles of learning theory. Behaviourists would argue that punishment is an effective suppressant of behaviour only under specific conditions: it must be probable (i.e. it must always or nearly always follow the targeted behaviour), prompt (i.e. must follow the targeted behaviour with minimal delay) and aversive (i.e. it must be genuinely unpleasant). It is easy to see that, in the case of imprisonment, these conditions are frequently not met. First, many crimes are not solved and so in the offenders case, punishment may not be probable. Second, even if the offender is caught and convicted there may be a long delay between the committing of the offence and its eventual consequences, so punishment is rarely prompt. There is also the fact that the offender may have benefitted from his offence e.g. through financial gain, so the short term reinforcements from offending may outweigh the long term punishments for doing so. Ainsworth (2000) further reminds us that the offender's perceptions are significant in understanding this process. For example, a criminal may regard imprisonment not as a consequence of committing crimes but of getting caught. His behaviour does change as a consequence, just not in the way we might wish: he takes steps to avoid detection in future.

There is then the issue of aversiveness. Hollin (1992) points out that whilst being separated from family, friends and work, deprived of liberty and confined in cramped and unsanitary conditions might seem very aversive to most people, prison might be perceived differently by some offenders:

'What was on offer when they left – family problems, unemployment, probation, poor housing, little money – was considerably worse than their current plight [...] at least they had three square meals a day and the company of some good mates.'

(Hollin, 1992; p.111)

There have been occasional attempts, usually politically motivated, to address the problem of reoffending by making prison a more unpleasant experience. One example is the 'short sharp shock' initiative of the early 1980s in which young offenders in England and Wales were subjected to a prison routine involving military-style drill and discipline and lots of physical exercise. Intended to make returning to prison an unattractive prospect, it had no effect on reoffending (Thornton et al, 1984). Similar findings have been reported for a range of other 'get tough' initiatives (Gendreau and Ross, 1987). Hollin identifies two implications of these findings: either we rethink the prison system or we try to make prison even more unpleasant than it already is. The second option, he argues, leads us down a dangerous road as a society. And there is evidence that it would not have the desired effect anyway. There is some evidence that suggests that the more unpleasant the prison environment (as assessed by, for example, overcrowding) the *more* likely it is that released prisoners will reoffend (Farrington & Nutall, 1980). Perhaps a rethink is warranted after all.