

Queen Mary Bar Society Criminal Law Written Advocacy Competition

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In 2021, the prison population in England and Wales was found to be 78,756. In addition, there are 7,417 inmates in Scotland and 1,377 in Northern Ireland. Between 1900 and 2018, the prison population in England and Wales quadrupled while the population in Scotland doubled, and all continue to rise¹. The question that arises is in regard to the purpose behind having such a large number of people in prison and whether it is for the purpose of retribution and punishment, or for deterrence. This paper will argue that the prison system only serves the aim of retribution and does not serve the aim for deterrence.

RETRIBUTION

In 2018, the Justice Secretary addressed the purpose of prison being threefold: (1) to protect the public; (2) to punish offenders by depriving them of their liberty and of certain freedoms therefore acting as a deterrent; and (3) to rehabilitate offenders to prepare them to be law-abiding citizens when they are released². This paper will be focusing on the second purpose. In reality, prisons only serve the aim of retribution and punishment while failing the aim of deterrence. One example can be seen with Britain following an American-style prison system by increasing the lengths of sentences to focus on punishment³. Further, in the article *The Effects of Prison Sentences on Recidivism*, the authors reference a study by Fabelo which discovered a 30% increase in incarceration rates across the United States, yet only a 5% decrease in the crime for a five-year period⁴.

In the former article, Chris Daw who has been practicing criminal law for 26 years, states that there is no scope for deterrence or for an effective prison system when approximately 69% of the UK's offenders are 'nonviolent' offenders with many of them having mental health problems and being victims

¹ Sturge, G and Tunnicliffe, R. "UK Prison Population Statistics". (*House of Commons Library*, 2021). <https://commonslibrary.parliament.uk/research-briefings/sn04334/>

² The Rt Hon David Gauke, 'Prisons Reform Speech' (*GOV.UK*, 2018). <https://www.gov.uk/government/speeches/prisons-reform-speech>

³ Maggie Fogarty, 'Is the Core Purpose of Prison Punishment or Rehabilitation?' (*BASW*, 2020). <https://www.basw.co.uk/resources/psw-magazine/psw-online/core-purpose-prison-punishment-or-rehabilitation>

⁴ Public Safety of Canada, 'The Effects of Prison Sentences on Recidivism' (Public Works and Government Services Canada 1999). http://madgic.library.carleton.ca/deposit/govt/ca_fed/publicsafety_prisonsentences_1999.pdf

of abuse themselves⁵. The prison systems are not equipped to help those with mental health issues and often have no rehabilitation programs set in place for mental health or victims of abuse. Prisons also have conditions that often worsen mental health issues such as social isolation, stigma, and prison culture, and are therefore also sites of abuse. This was seen in the Stanford Prison Experiment. The psychologist Zimbardo wanted to determine whether brutality amongst guards in prisons was due to their own sadistic personalities or due to situational factors and the prison environment. Guards and prisoners quickly fit into their respective roles. Guards began to harass, bully, and abuse the prisoners and created many situations where they could assert their power and dominance over the prisoners. The prisoners gradually became more submissive while the guards became more assertive and aggressive. Within 36 hours of the experiment, one of the prisoners began mentally and emotionally suffering from “emotional disturbance, disorganized thinking, uncontrollable crying, and rage”⁶. By the 6th day, almost every prisoner had had an emotional breakdown. This experiment demonstrated the emotional toll that prison can have on prisoners and therefore shows how those who enter prison with a pre-existing mental health condition, or with no condition at all, can gradually develop worsened mental health.

As a result, the system simply punishes individuals regardless of the severity of their crime(s) and without consideration for any mitigating factors, rather than deterring them from reoffending by factoring the roots of their criminality into their sentencing. Through the Police, Crime, Sentencing and Courts Bill, the government in 2021 introduced a variety of laws that increase prison sentences with the goal of cutting crime and therefore being an effective deterrent. Contrary to this, however, the Minister of Justice argued that harsher prison sentences would be either a limited or ineffective deterrent. Ministry of Justice statistics showed that, despite the increasing jail terms, certain offence types such as knife crimes have hit an all-time high. Peter Dawson, director of the Prison Reform Trust, stated, “Sentences for serious crime

⁵ Maggie Fogarty, ‘Is the Core Purpose of Prison Punishment or Rehabilitation?’ (*BASW*, 2020).

<https://www.basw.co.uk/resources/psw-magazine/psw-online/core-purpose-prison-punishment-or-rehabilitation>

⁶ Dr. Saul McLeod, ‘The Stanford Prison Experiment’ (2020). <https://www.simplypsychology.org/zimbardo.html>

have been getting much longer for two decades now, turning our prisons into places of despair. But there is not a shred of evidence to show that this runaway inflation in punishment reduces crime”⁷. With all of this evidence and with there being no evidence to provide a positive correlation between increased sentences and less crime rates, it is seen that the sentencing and prison system is predominantly for punishment rather than also for the purpose of deterrence.

DETERRENCE

There are three predominant schools of thought when it comes to the correlation between sentencing and deterrence: (1) prisons suppress criminal behaviour; (2) the ‘schools of crime’ perspective argues the opposite that prisons increase criminality; and (3) the minimalist/interaction position argues that the effect of prison on offenders is minimal⁸.

Regarding the first school of thought, prisons do not suppress criminal behaviour specifically and therefore do not prove to be a deterrent. This can be seen through recidivism rates. In the July to September 2019 cohort, the overall reoffending rate was 26%⁹. Further in the October to December 2019 cohort, the overall reoffending rate was 25.2%¹⁰. In addition to the point above, increased lengths for sentencing are not a deterrent either because, in a practical sense, criminals do not expect to get caught and so they were not necessarily concerned about sentencing in the first place.

⁷ Lizzie Dearden, ‘Government to increase prison terms despite minister saying longer sentences have ‘no deterrent effect’ (The Independent, 2021). <https://www.independent.co.uk/news/uk/home-news/prison-sentences-crime-jail-police-b1814486.html>

⁸ Public Safety of Canada, ‘The Effects of Prison Sentences on Recidivism’ (Public Works and Government Services Canada 1999). http://madgic.library.carleton.ca/deposit/govt/ca_fed/publicsafety_prisonsentences_1999.pdf

⁹ Ministry of Justice (2021). *Proven reoffending statistics: July to September 2019*.

<https://www.gov.uk/government/statistics/proven-reoffending-statistics-july-to-september-2019/proven-reoffending-statistics-july-to-september-2019>

¹⁰ Ministry of Justice (2021). *Proven reoffending statistics: October to December 2019*.

<https://www.gov.uk/government/statistics/proven-reoffending-statistics-october-to-december-2019/proven-reoffending-statistics-october-to-december-2019>

As a result, the reality is more-so in line with the second school of thought that prisons can increase criminality, where many argue that prisons in fact exacerbate recidivism rather than being a deterrent. For instance, Nagin, Cullen, and Jonson in their article *Imprisonment and Reoffending*, present the argument of 'prisons as criminogenic' in that prison place offenders in a unique social scenario that makes them more likely to reoffend because of their exposure to other criminal offenders and other criminal elements¹¹. This is because, in prison, offenders are exposed to other offenders and are therefore able to make connections with others who have broken the law.

Contrary to the second school of thought, the final school of thought states that prison has essentially no effect on offenders, which can be seen by the lack of deterrence that occurs. The issue, as outlined by the National Institute of Justice from the U.S. Department of Justice, is that "The certainty of being caught is a vastly more powerful deterrent than the punishment"¹². For example, the National Institute of Justice found that hot spots policing are specifically effective as a potential offender's behaviour has a higher chance of being altered when seeing a police officer rather than by a new law which increases their length of sentence. This increased likelihood of being prosecuted for crimes would prove to be more of a deterrent than prison sentences would¹³. As a result, prison sentences do not deter any offenders and so have virtually no impact on offenders. The fact that prisons do not suppress criminal behaviour, that they do in fact increase criminality, and that prison has minimal effects on offenders, all demonstrate that the prison system has not been set up to focus on deterrence.

¹¹ Daniel S. Nagin, Francis T. Cullen and Cheryl Lero Jonson, 'Imprisonment And Reoffending' (2009) 38 Crime and Justice.

¹² 'National Institute of Justice Five Things About Deterrence' (U.S. Department of Justice, 2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

¹³ 'National Institute of Justice Five Things About Deterrence' (U.S. Department of Justice, 2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf>

CONCLUSION

To conclude, the prison system can be seen to only serve the purpose of retribution while essentially failing the purpose of deterrence. Britain has been increasing the lengths of prison sentences in an attempt to provide a deterrence, however this has failed and has instead pushed the position of prisons being used for punishment only. Further, many of the offenders who go to prison have pre-existing mental health problems or develop mental health problems while in prison which proves prison sentences to be only a punitive measure. The fact that prisons are not a deterrent and are only a form of punishment, can also be seen through the high recidivism rates. Instead of reducing crime and being a deterrent, prison tends to either exacerbate recidivism or have no effect on offenders at all where, in both cases, there is no deterrence. The sole purpose of prison is to punish offenders rather than also prevent recidivism and deter further citizens from committing criminal activities.