Prison, Community Sentencing and Crime

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Prison, Community Sentencing and Crime:

The social costs of fewer custodial sentences

A 'liberal' use of statistics

'The first principle is that you must not fool yourself - and you are the easiest person to fool.'[1]

The last few weeks have witnessed an apparently concerted attempt to justify an increasing use of community sanctions in place of custody for convicted criminals. This note seeks to identify some of the means by which, naively or disingenuously, the issues are presented in ways which understate the role of imprisonment in public protection and characterise England and Wales as unduly high users of custody.

The first, long-standing means of depicting us as penal sadists is by asserting that the prison population is higher in England and Wales than elsewhere (the comparisons are primarily with Western Europe). The impression is created by calculating the prison population as a proportion of the general population, hence assuming that the frailest grandparent and the youngest baby are as likely to commit crime as the young adult. It is like expressing prostate cancer sufferers as a proportion of the population of men and women combined, rather than of men, the only people with prostate glands. When one calculates the prison population in relation to the number of crimes recorded, the impression of harsh sentencing disappears.[2]

The second means of making community sentences equal to imprisonment in terms of public protection is simple. It is by comparing reconviction rates in a way which takes out the primary effect of imprisonment, i.e. the temporary respite from crime which society enjoys when some of those who offend against it are absent. Published reconviction rates are invariably calculated from the time of sentence for community sanctions, and from the point of release for custody. For example, suppose one offender receives a community penalty. On the same day, another receives a prison sentence, meaning he will spend one year inside. Suppose both are convicted an average of three times a year. After one year, the person who got the community sanction will have been convicted three times, and the prisoner (assuming prison security is adequate) zero times. After two years, the ex-prisoner will have racked up a total of three convictions since his sentence. The person on the community sentence will have racked up six. *The way reconviction rates are calculated means that these two people will be regarded as equal successes (or failures).* The one year of respite that prison gave the community is simply spirited out of reconviction statistics, leaving the impression that imprisonment and community sentences are equivalent purveyors of public protection.

It is against this background of unconscious statistical legerdemain that recent advocacy of the increased use of community sanctions is to be understood. To stress the point, no deceptive intent is

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[1] Richard P. Feynman, Caltech commencement address, 1974.

[2] For an early demonstration, see Pease, K., (1994), 'Cross-National Imprisonment Rates', *British Journal of Criminology*, 34, 116-130. See also, 'Too Many People In Prison? How do we compare with Europe?' (2010), *Civitas*. http://www.civitas.org.uk/data/prisonTooMany.php

assumed, simply a policy climate and humanitarian sentiments which combine, unwittingly, to mislead. It is bad for any profession or body to be beyond serious criticism and we do the probation service and the Ministry of Justice no favours by accepting their case for decarceration at face value.

The most recent published contribution in favour of community sanctions is to be found in the Foreword of the Annual Report of HM Inspectorate of Probation 2009-2010, wherein HM Chief Inspector of Probation Andrew Bridges 'considers the costs and benefits of imprisonment as a means of providing public protection' and concludes that 'a high price is paid for the benefit provided'.[3] Bridges sets the annual cost of imprisonment at 'at least £40,000'[4] per head whereas Appendix 5 of the most recent Prisons Annual Report calculates annual cost per prisoner at £27,343.[5] This discrepancy probably reflects the general lack of anticipated scrutiny of arguments in support of community sanctions.

The Chief Inspector of Probation is to be applauded for his acknowledgement that imprisonment impacts on crime:

> 'the undiluted fact [is] that if a person is in custody they cannot commit an offence in the community. In my view it does the liberal argument no credit to suggest that the huge rise in the prison population has made no contribution to the reduction in the general crime rate in recent years.'[6]

Less than a month earlier, the Probation Chiefs Association had been less candid. In a press release issued on 21st June, the Association urged that prison building resources be 'redirected to the probation frontline to deliver community sentences effectively' and that 'This means fewer victims'.[7] Andrew Bridges' acknowledgement that this is not the case is welcome.

Andrew Bridges goes on to contend that 'a high price is paid for the benefit provided' by imprisonment. He focuses on the reconvictions of two groups, those released on End of Custody Licences 2007-2010 and IPP (Indeterminate Public Protection) prisoners, i.e. offenders imprisoned beyond their tariff date in the interests of public protection. For the first group, he calculates the imprisonment costs of each prevented offence to be £80,000. For the second group, the basis of his calculations is unclear:

> 'I've calculated the net cost of keeping this group of prisoners locked up, rather than being carefully managed in the community, as being in the region of £80m per year. While you can never be sure of any precise answer to the 'What if' question, my cautious (pessimistic) projection is that if at liberty this group as a whole might commit as many as 40 serious crimes a year altogether (although it could well be as few as 12). This works out at around £2m or more per year to use imprisonment's incapacitation effect to prevent each individual further serious crime.'[8]

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[3] HM Inspectorate of Probation (July 2010), Annual Report 2009-2010, Independent Inspection of Adult and Youth Offending Work.

[4] Ibid, p9

[5] HMPS Annual Report and Accounts 2007-2008, Appendix 5.

[6] Independent Inspection of Adult and Youth Offending Work, p9.

[7] Probation Chiefs Association (2010), 'Probation Chiefs urge prison-building resources to be redirected to the Probation frontline to deliver community sentences effectively', Press release, June 21st.

[8] Independent Inspection of Adult and Youth Offending Work, p11.

The impact of imprisonment on crime

Crime rates have fallen continuously in some industrialised countries and intermittently in others since the early to mid-1990s. The reasons have been much debated. Writing specifically on violent crime in the US, Levitt opines:

> 'Most [claimed explanatory variables] actually played little direct role in the crime decline, including the strong economy of the 1990s, changing demographics, better policing strategies, gun control laws, concealed weapons laws, and increased use of the death penalty. Four factors, however, can account for virtually all of the observed decline in crime: increases in the number of police, the rising prison population, the waning crack epidemic and the legalization of abortion.'[9]

In contrast, van Dijk et al. contend:

> 'Prison populations have since the early nineties gone up in many EU countries but not consistently so. Between 1995 and 2000 rates went down, for example, in Sweden, France, Poland and Finland... Sentencing policies in Europe as a whole are considerably less punitive than in the USA... and yet crime is falling just as steeply in Europe as it is in the USA. No relationship between the severity of sentencing of countries and trends in national levels of crime is therefore in evidence.'[10]

So the factors driving the crime reductions of the 1990s remain in dispute, although the hypothesis is gaining ground that change in the quantity and quality of security, particularly of cars, was a key driver of the crime drop.[11] While requiring more research, trends in vehicle crime alongside vehicle security (see Figure 1),[12] changes in distribution of methods used in vehicle crime, and the importance of vehicle use in facilitating crime, are all suggestive of 'the security hypothesis' as an important contributory factor in accounting for the crime drop. This has the important advantage of taking account of the cross-national nature of the drop.

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[9]Levitt, Steven D. (2004), 'Understanding Why Crime Fell in the 1990s: Four Factors That Explain the Decline and Six That Do Not', *The Journal of Economic Perspectives* 18:163-190.

[10]Van Dijk, Jan J.M., Robert Manchin, John van Kesteren, Sami Nevala and Gergely Hideg (2007), 'The Burden of Crime in the EU, Research Report: A Comparative Analysis of the European Survey of Crime and Safety (EU ICS) 2005', p23.

[11]Farrell G. et al (in press), 'The crime drop and the security hypothesis.' *Journal of Research in Crime and Delinquency*.

[12]I am grateful to Prof Graham Farrell for permission to reproduce Figure 1, which first appeared in an issue of the Newsletter of the British Society of Criminology.

Figure 1: Car Insecurity and Car Crime Trends
(England and Wales)
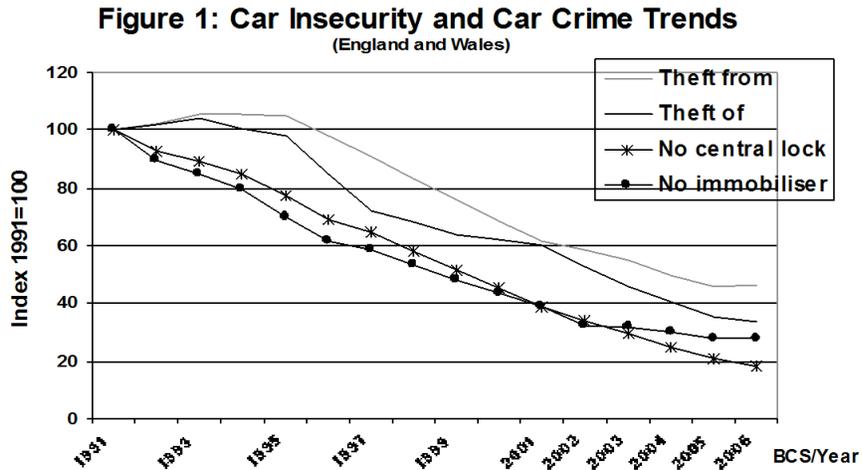
Improvements in cancer survival rates should not lead one to take up smoking. Likewise acceptance of the security hypothesis should not lead one to forgo possible contributions to the crime drop from other sources, including the incapacitation by custody of active offenders. Against a background of swiftly changing crime opportunities, the question of the contribution of imprisonment to crime trends tends to beget tetchy exchanges between econometricians. Of particular interest, because it constitutes something close to a natural experiment, is a unique and technically excellent study of the effect of prisoner pardons in Italy. Recurrent collective pardons are a feature of Italian criminal justice. They typically involve the release of those whose sentence length is less than two or three years, imposed for offences committed before a threshold date. This can involve the release of up to 35 per cent of the prison population. The most recent such pardon was in 2006, but Barbarino and Mastrobuoni examine pardons from 1962. They conclude that 'the estimated marginal social cost of crime is more than two times the cost of incarceration. Our very conservative estimate of the total net social cost due to the July 2006 pardon is equal to 2 billion euros.'[13]

Lacking the natural experiment of collective pardons afforded to the Italian researchers, the approach taken in this report is necessarily pedestrian. It is restricted to a count and rough costing of the offences committed by those released from prison and resulting in a conviction, and some estimation of the number and cost of offences committed by them but not resulting in a conviction.

Estimates of the cost of imprisonment per offence saved as presented by Bridges are inflated by three means:

1. Restricting attention to offences leading to convictions, ignoring undetected offences, those where evidence is deemed insufficient to achieve a conviction, and so on.

2. Not calculating the offsetting financial cost of offences.

3. Assuming no deterrent effect.

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[13]Barbarino, A. and Mastrobuoni, G., 'The Incapacitation Effect of Incarceration: Evidence from Several Italian Collective Pardon' (working paper), Collagio Carlo Alberto, August 2008. http://www.wzb.eu/mp/conf/io08/papers/mastrobuoni.pdf (accessed 12th July 2010)

In attempting partially to remedy the first two omissions, rather than concentrate on Bridges' two atypical groups and try to guess the details of his approach, we can reach more general conclusions by looking at statistics for all adult prisoners. These can be found in the Ministry of Justice Statistics *Bulletin Reoffending of Adults: Results from the 2008 Cohort*.[14] The method used in the *Bulletin* is that of comparing actual reconviction with reconviction predicted on the basis of prior history. This approach has Andrew Bridges' approval '. . . the technique of measuring "actual offending" versus "predicted offending" is a credible technique, and I welcome the fact that it is one of the current methods used by the Ministry of Justice to measure progress over time nationally.'[15]

The conclusions which can be reached after a careful reading of the *Bulletin* are as follows. Generally, one can predict probability of reconviction at the time of sentence on the basis of criminal history. There is no evidence that choice of sentence adds predictive power. The reconviction figures for both community sentences and custody are almost exactly as would be predicted beforehand. In short, community sentences as currently delivered have no evident effect on rates of reconviction.

This is not to say that well delivered non-custodial programmes (for example of restorative justice and of the types identified by McKenzie)[16] or reviewed by the Campbell Collaboration would not have effects on reconviction, simply that current community sentences taken in the aggregate do not. We can regretfully set aside the notion that community sentences currently have rehabilitative superiority over custody. This is an important point which merits elaboration. It suggests that community sentences afford no measurable level of public protection. If true, this makes claims of the effectiveness of current probation work in protecting the public entirely hollow. The writer's view is that the characterisation of community sentences as better than prison, and the misleading way in which reconviction rates are compared, reduces the motivation of practitioners and supportive academics to resource and innovate in making community sanctions more effective in truncating criminal careers. Success in doing so is much to be desired but while political expediency and short-run cost considerations conspire to depict community sanctions as effective when they are not, the task of making them work is neglected.

Were decarceration to be implemented, the most obvious group for diversion from custody comprises those now given short custodial sentences. This is (and has been for many years, perhaps always) the group with the highest rate of reconviction.[17] Substituting community sanctions for short prison sentences thus frees the group most likely to reoffend to do so sooner, with no evidence of a current treatment benefit from community sanctions to offset that.

The *Bulletin* reports the convictions within one year of those released from custody or starting a court order in the first quarter of 2008. To reiterate a point made earlier, the convention of 'starting the clock' at the point of release from custody rather than the point of sentence serves to divert attention from the public protection afforded by imprisonment. If public protection were the key measure, the clock should be started at the point of sentence not the point of release.

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[14]Ministry of Justice, 'Reoffending of adults: results from the 2008 cohort England and Wales', *Statistics bulletin*, March 2010. http://www.justice.gov.uk/publications/docs/reoffending-adults-2008-cohort.pdf (accessed 29 July 2010)

[15]Independent Inspection of Adult and Youth Offending Work, p9.

[16]Sherman, L. W., Gottfredson, D., MacKenzie, D., Eck, J., Reuter p. and Bushway, S. (1998), Preventing Crime: What Works, What Doesn't, What's Promising, National Institute of Justice. http://www.ncjrs.gov/works/

[17]Pease, K. (1980), *Prison Populations*. Milton Keynes: Open University Press.

The relevant question can be posed in any number of ways, of which I have chosen one as an illustration: How much crime might be saved if those given custody of less than twelve months served an extra month inside?

It appears that 10,251 people were released from custody of less than twelve months in the first quarter of 2008. In the twelve months following release they were convicted of an average of 3.08 offences. Some 11 per cent of those in the cohort committed offences during their first month at risk which led to conviction.[18] This cohort represents only one quarter of annual prisoner discharges, which therefore run at around 41,004. The relevant calculation thus yields some 13,892 offences saveable annually in respect of this group by an increase in effective sentence length of one month.[19] There were 1.3 serious offences resulting in convictions during the year following release for every 100 offenders released from short periods of custody. Assuming the distribution of offences during the first month after release was the same as for offences generally, 59 'most serious' offences are saveable annually by an increase in effective sentence length of one month on top of time served by those sentenced to less than one year.[20]

All the above makes the naïve and crucial assumption that the offences for which someone is officially processed are the only offences committed. Calculations of the range of rates of offending relative to rates of official processing are the root cause of the variability of incapacitation estimates in the literature.[21] Figure 2 shows a somewhat dated summary of the rate of attrition from offence to custody within the criminal justice process in England and Wales. It suggests that convictions occur in only 40 per cent of cleared cases and 9 per cent of recorded offences.[22]

Figure 2. Attrition in Criminal Justice

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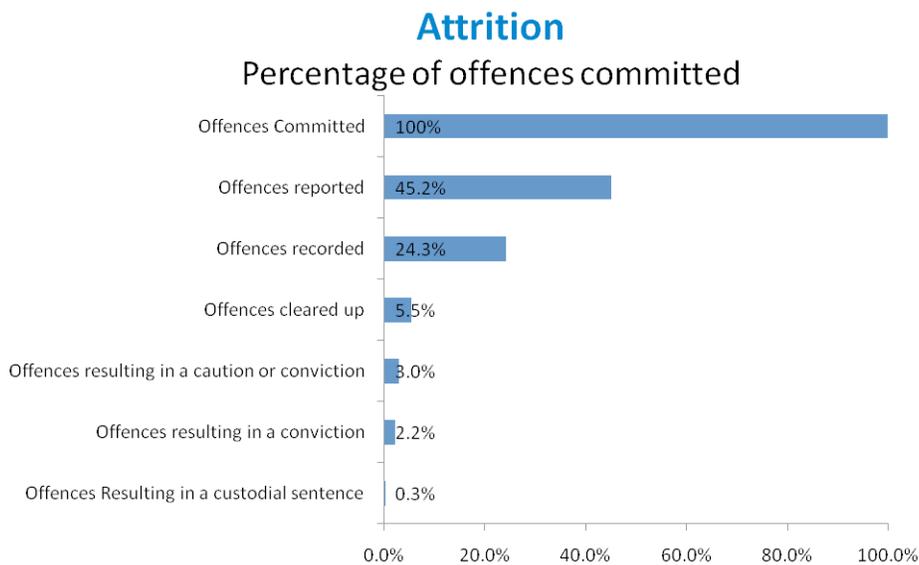
[18] See Reoffending of adults: results from the 2008 cohort England and Wales, Figure C.

[19] I.e. 10251 * 3.08 * 0.11 * 4

[20] 10251 *.013* *.011 *4

[21] Blumstein A. et al. (1986), *Criminal Careers and Career Criminals* (2 vols), Washington DC: National Academy Press.

[22] Barclay G.C. and Tavares C. (1999), Digest 4, London: Home Office.

Approaching the problem in a different way, Farrington and Jolliffe provide an estimate of offending rates per conviction (see Table 1).[23] The offence categories used are not ideal for present purposes but they are sufficiently varied to be instructive. They are presented below as the number of offences committed per conviction. For example, this yields in the case of burglary '..an estimate that the probability of an offence (or rather of one offender committing one offence) leading to a conviction was 1 in 136'.[24]

Table 1. Offences per Conviction by Offence Type[25]

Offence Type	Offences per conviction
Burglary	136
Robbery	167
Vehicle Theft	56
Assault	37
Rape	20
Homicide	1.5

Other data (for example Jacqueline Schneider's demonstration that 88 per cent of her sample of convicted burglars shoplifted, over half of them daily) strengthen the impression of the high average number of offences committed per conviction.[26] US data detailing arrest (not conviction) risk per offence shows such risks for burglary to run at around 4 per cent.[27]

The writer wishes to avoid the trap of specifying a rate of offending per conviction to apply to the Home Office data analysed. Any such estimate would invite criticism. Rather he will seek to estimate the number of offences per conviction which would yield a break-even point between the costs of imprisonment and the costs of prevented crime, and will find them to be quite low relative to the general run of estimates of offences per conviction. This suggests the distinct possibility that, far from a high price being paid for the crime reduction benefit provided by custody, a price is being paid for the failure of community sentences to reduce criminality.

Costs of preventable crime

Looking at Home Office crime cost estimates, theft (non-vehicle) is the most common crime committed on reconviction by the *Bulletin* cohort.[28] So a conservative estimate of money saved by extra incarceration can be reached by taking all offences other than the most serious to have been theft, and the most serious offences to cost what the Home Office estimates violence occasioning serious

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[23] Farrington D.P. and Jolliffe D. (2005), 'Crime and Justice in England and Wales, 1981-1999', in Tonry M. and Farrington D.P. (2005) *Crime and Punishment in Western Countries 1980-1999*, Chicago: University of Chicago Press.

[24] Ibid, p54.

[25] Figures other than for burglary may be imprecise, having been examined from a printed Figure rather than a Table.

[26] Schneider, J.L. (2002) 'Shoplifting: Patterns of Offending Among Persistent Burglars' in M. Gill (ed.) Managing Security: Crime at Work Series, Vol. 3. Leicester: Perpetuity Press.

[27] Blumstein A. et al (1986), 'Dimensions of Active Criminal Careers In Criminal Careers and Career Criminals', Vol 1., Washington DC: National Academy Press.

[28] Dubourg R. and Hamel J. (2005), *The economic and social costs of crime against individuals and households 2003-4*, Home Office Online Report 3-/05.

injury to cost. Table 2 shows the incarceration options distinguished above and the cost of saveable crime.

Table 2. Crime Costs, Imprisonment Costs and Unconvicted/Convicted Rates Leading to Financial Break-Even: Scenario of Extra Month Served by Short-Sentence Prisoners

	Minimum Offences Saveable	Minimum Most Serious Offences Saveable	Minimum Cost Saving (£million)[29]	Additional Imprisonment Costs (£million)[30]	Unconvicted crimes per conviction to reach break-even
Short custody +1 month	13,892	59	15.1	89.8	5.9

The number of crimes not leading to a conviction needed to reach the break-even point is 5.9, i.e. the point at which the costs of prevented crime completely offset the cost of extra imprisonment (in the extra one-month scenario). The break-even number is considerably less than the Farrington and Jolliffe estimates set out earlier. Tentatively, the writer concludes that the cost of prevented crime in the scenario provided more than offsets the additional costs of imprisonment.

Figure 3 presents the data in a different way, as the net cost of imprisonment relative to crime saved. As evident from Table 2, the break-even point occurs at a point between five and six offences per conviction.

Figure 3. Net cost of imprisonment (£million)

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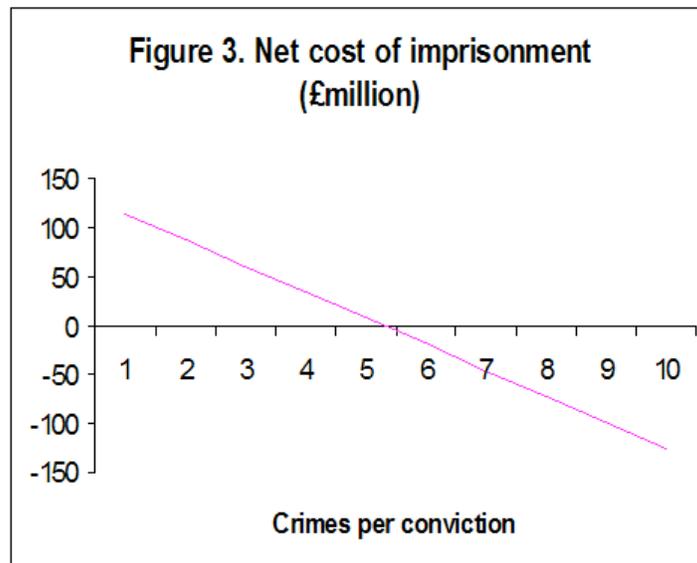
[29] Adjusting for inflation, the current average cost of a theft is £1,000 and of a serious wounding £21,000. The calculation is thus (59*21000) + (13833 * 1000).

[30] Excluding dispersal prisons, the monthly cost per prisoner is £2,189. There are (using *Bulletin* figures) 41,004 prisoners who would serve the extra month.

Conclusion

The above commentary is not meant to be remotely definitive. It sets out one scenario for punishment change. It makes no adjustment for the lesser criminal justice costs of crimes not resulting in conviction, nor for the hugely increased costs of dealing with the most serious crimes, still less changes in benefit payments to the dependents of offenders and their families, the wider economic ripples involved in the flight of people and businesses from the most crime-challenged areas, and any deterrent effect of imprisonment. It does at least demonstrate that the inference in Andrew Bridges' foreword that we pay a high price by imprisoning people for a low return in crimes prevented should be contested. It all depends on the size of the iceberg of which convictions are the tip.

The wish to minimise harm to victims and perpetrators has driven the writer's career from concern with the 2.2 per cent of crimes leading to conviction towards concern with the 100 per cent that are committed, and thereby towards research on situational crime prevention. It is the level of elementary security precautions built into places, products and services, rather than the use of custody, which seems pre-eminent among the reasons for the crime decline of the last decade throughout Western Europe and North America. Nonetheless, it is important for any move away from the use of custody to be based on something more than short-term political exigency. The debate about imprisonment costs and effects has been distorted by the received wisdom that prison is expensive, community sanctions are as effective as custody in protecting the public, and that dissent from these convenient fictions marks someone out as a penal sadist.