

The different types of custodial sentences



For this report, I have decided to focus on the effectiveness of the use of non-custodial sentences and to explore how certain types of punishment may be the reason why some criminals re-offend.

Observations

Of the twenty cases I witnessed, almost three-quarters of them resulted in a community order sentence or fine, with a quarter either resulting in a conditional discharge, warrant of committal or extended sentence.

It appeared that the cases were dealt with subjectively; whereby individuals' circumstances were taken into account before delivering a suitable sentence. For example, in one case, a young woman pleaded guilty to possession of a Class A drug, which breached her suspended sentence. As she had attended two-hundred and thirteen hours of rehabilitation (out of a possible two-hundred and fifty), had otherwise not breached her sentence and her cravings had significantly reduced over the eighteen months of her sentence, the Magistrates' decided to remove her suspended sentence and offered her a six-month conditional discharge instead. In light of the theories of punishment, particularly the 'Self-Regulatory Penalty', I did not see how giving the defendant a conditional discharge was deemed to be a punishment. According to Braithwaite (1989), this is referred to as denunciation; whereby 'an otherwise upright citizen who has breached their contract with the local community is seen to be enough to shame and reintegrate them with that community.' (Worrall and Hoy, 2005: 5). However, this was the defendant's second offence and the 'self-regulatory penalty' theory fails to explain why some individuals' offend. On the contrary, the

breach was for a drug abuse problem which, understandably, is difficult to control and therefore can be said to justify her actions. Additionally, the defendant showed signs of remorse and disappointment as her charges were read out. Her solicitor explained, in the facts of the case, that she had earnestly handed over the drugs to the police when asked to do so.

Magistrates' have reported that 'generally female defendants are...widely perceived to be less threatening in their behaviour and appearance, and so more deserving of compassion.' (Evans and Jamieson, 2008; 119) But is this 'softening' towards female convicts a cause for concern? In a study conducted, three Magistrates disagreed, 'arguing that for a woman to be brought to court was in itself an indication of the seriousness of her conduct'. (Evans and Jamieson, 2008; 119)

Alternatively, the number of financial penalties given to the defendants compared with the number of community sentences given was almost equivalent. By simply imposing a fine, 'it hits them where it hurts-in the pocket, but is not always seen as holding the offender sufficiently accountable for their breach of contract with the community.' (Young, 1989 quoted in Worrall and Hoy, 2005: 5) The paying of a fine does not constitute the same emotions of guilt or infliction of pain that would result from a punishment. In order to determine whether these sanctions are working effectively, the government and probation services need to monitor the rate of re-convictions.

Studies have shown that the rate of males and females re-offending has decreased from 43.7 to 39.0 from the years 2002-2006 [1]. This reflects that the use of community penalties is having a positive effect on offenders'

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behaviour. However, the rates of reconvictions are not reliable as they do not include offences that have not resulted in a conviction and only cover the post-two year period from the individuals' previous conviction. (Davies, Croall and Tyrer: 2010; 845) Further data has shown that the likelihood of convicts reoffending is greater if the individual already has a history of previous convictions. The trends in the data show that it is often very difficult to control the behaviour or alter the attitudes of particular individuals who live the so-called 'life of crime'. In addition to this, the chances of an individual re-offending are often influenced and affected by extraneous factors such as; 'age, sex, previous history of offending, types of offence, as well as the sentence imposed.' (Davies, Croall and Tyrer, 2010; 486)

Thirteen of the twenty cases I witnessed were offences made by working class males between the ages of 21 and 50, with the other offences made by working class females between the ages of 32 and 45. The majority of the cases involved criminal acts of theft, violence, drug abuse and breaches of previous sentences. Having predicted that the majority of offences would be made by young males, I noted that whilst it was young men that were more frequently convicted than women, for first-time offences, the majority of them re-offended. According to Worrall and Hoy (2005; 110) 'Predisposing hazards, based on research, suggest that re-offending is more likely to occur in young men whose first conviction was at an early age' or 'who have a large number of previous convictions with no recent break in the pattern.' Contrastingly, 'the least likely to reoffend are older women with late first convictions' or 'few previous convictions with a long gap since the last

conviction.' It also appears that the seriousness of the present offence holds no weight on the likelihood of reoffending.

This leads me on to discuss the theory of 'individual deterrence'. This form of punishment stems from the branch of justification known as Reductivism (Walker, 1972). This form of justification serves punishment as a preventative measure for future criminal intent thereby helping to reduce crime. However studies have indicated that 'quite contrary to what the theory of individual deterrence suggests- that offenders who suffer more severe or punitive penalties (including penalties specifically aimed at deterrence) are more (not less) likely to reoffend.'(West, 1982: 109; Brody, 1976: 14-16; Lipsey, 1995: 74 quoted in Cavadino and Dignan 2007: 37) Therefore, if punishment, in general, is not having the desired effect on offenders, the justice system needs to consider the personal factors and elements, relevant, which may be influencing the behaviour of offenders.

Conclusion

As a prospective lawyer and current law student, this experience has enhanced my understanding and awareness of current issues within the criminal justice system. Theoretically the methods of punishment in place, so far, appear to be working but in practice, are not working effectively enough. The number of individuals re-offending may have reduced but the number of people committing first-time offences has increased. Probation services need to find alternative methods of eradicating criminal behaviour, attitude and intent in order to prevent reoffending.