

Punishment and rehabilitation in the community criminology essay



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Critically evaluate the use of the prison as a sentence of the court in England and Wales over the last 20 years.

The 1990's witnessed a sharp rise in the politicization and in the severity of sentencing policy (Maguire et al, 2007). Since the 1990's legislation has been heavily criticised, this saw the abandonment of key pillars, yet the rise of others. Therefore, The Criminal Justice Act as somewhat revolutionised bringing forward newer legislation over the years that have impacted on the way sentences are used. The change in government from Conservative to New Labour also saw a bewildered mixture of new policies, which have contributed and influenced the use of the prison.

Since the post war years the prison population began to expand, which led to a sense of crisis for the government from two perspectives. The first was in terms of social control. The significant and rapidly rising prison population had the potential to be perceived as a breakdown in social order. The other area of concern was due to the expanding prison population and the increase in expenditure. At the time the government were trying to reduce expenditure and instigate new community sentences to limit the number of offenders who actually went to prison. Consequently, there have been many theorists who have attempted to structure the criminal justice system. There have also been new ideologies for how the prison should be used as a sentence. By analysing the use of the prison it will help to define contemporary prisons in western societies, not least since there is considerable consensus that the penal system in England and Wales has been in a state of ever deepening crisis since the 1960's (Maguire et al, 2007).

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Statistics show a major increase in the prison population. In 1989 the prison population was 48,600 throughout the year and in 2008 the prison population increased to 83,190. Crime measured by the British Crime Survey (BCS) fell from 18.5 million offences in 1993 to 11.7 million by 2003/04. BCS crime fell by around a third in England and Wales at the same time as the prison population increased by two-thirds (Home Office 2008). These statistics suggest that the use of the prison has been very effective by how recorded crime rates have fallen over the years and that the number of offenders going to prison has increased. However, it strikes controversy due to the increase in prison populations. In 1997, Labour had created 16,000 more prison places when the Government were trying to reduce expenditure in that area.

'The lead up to the 1991 Criminal Justice Act witnessed a shift in penal policy. The ongoing concerns of ever growing prison numbers accompanied a widespread disenchantment with the 'rehabilitative ideal' and concerns were raised about the matching of sentences to offenders rather than the crime' (Brownlee 1998). The conservative government had issued major changes to the sentencing framework influenced by 'retributivist' theory and the concept of 'just deserts' where offenders were punished in proportion to the crimes they had committed. Also the 1990 white paper, Crime, Justice and Protecting the Public introduced new legislation in the criminal justice system. Now, Community sentences could be used as alternatives rather than the use of imprisonment. Home Office (1990) also claimed a more consistent approach to sentencing so that criminals get their just deserts.

The central aims of sentencing were just desserts and proportional sentences; however, deterrence was demoted as a sentence. This criticism was made of the 1991 Act and 1993 Act as there was an unworkable hybrid sentencing framework.

' The Criminal Justice Act 1991 was clear that the main sentencing decision was to calculate offence seriousness and a proportionate (commensurate) sentence. Prison therefore, was used to keep people in custody by the seriousness of the offence' (Easton et al, 2005). Consequently, the use of the prison had changed by acknowledging the seriousness of the offence, whereas before anybody who committed a crime would just go to prison. Thus, somebody convicted with murder would go to prison, whereas somebody who was vandalising would more likely pay a fine or have a community sentence depending on the circumstances.

' This significant piece of legislation appeared to pave the way for community sentences, and indeed the Probation Service to play a central role in criminal justice policy. Courts were now guided by seriousness thresholds, which required them to justify why a sentence was either " serious enough" for a community penalty, or " so serious" that only a custodial sentence could be warranted' (Cavadino & Dignan 2002). By 1993 however the incoming Home Secretary made it clear that he was an advocate of custodial measures for offenders in his statement " Prison Works".

The 1993 Criminal Justice Act rescinded on some of the positive aspects of the earlier 1991 Act, and marked a resurrection of law and order rhetoric in

determining criminal justice policy. By 1995 in the Green Paper 'Strengthening Punishment in the Community', despite the considerable changes brought about to community sentences by the 1991 Criminal Justice Act, the claim was made that probation supervision was still regarded as a soft option. The subsequent White Paper 'Protecting the Public' clearly emphasised the need for community sentences to have a punitive rather than rehabilitative focus, and called upon these sentences to be physically, mentally or emotionally challenging with a stress on personal responsibility and discipline.

'The rapid increase in the prison population and the numbers sent to prison represented a radical break with the virtual stability of previous decades. Even so, two considerations should be borne in mind before attributing the total responsibility for the increase in prison population solely to Michael Howard. First there is some evidence that public opinion took a more punitive turn in the 1990's, which might explain why the anticipated public outcry against Howard's policies was so muted, and why the mass media were largely supportive of these policies' (Hough, 1996). Ryan (2002) also argued that 'a series of 'moral panics' was manipulated by politicians to win the support of voters for a tougher law and order platform. 'Populist Punitiveness' had a major effect on legislation because it became central to the concerns of the general public and their responses to crime.

A synopsis of the 1991 and 1993 Criminal Justice Act highlight the use of the prison by how serious the crime is. The prison is used to confiscate liberty and by 1993 and the use of community sentences made it more definable by the level of crime committed by using seriousness thresholds. However, by <https://assignbuster.com/punishment-and-rehabilitation-in-the-community-criminology-essay/>

1995 they recognised that the probation service was too soft and needed amendments. The use of the prison was now seen as a last resort or for very serious offences. In addition, public opinion had a major influence on crime, which is argued one of the reasons why the prison population is said to be so high due to the public's view and fear of crime.

' In May 1997, the Conservative Party was ejected from power as Labour; Led by Tony Blair enjoyed a landslide victory. Tony Blair, thought to alter Labour to New Labour, and one of the ways he did this was through public image by becoming tough on crime' (Mathews 1999). Labour introduced a various amount of legislation, which led to the circulation of community penalties. This was evident in the 1998 Crime and Disorder Act, which created the Drug Treatment & Testing Order, and the 2000 Criminal Justice and Court Services Act. This brought about the Probation Order, Community Service Order and the Combination Order. Two further sentences were also created that are the Exclusion Order and the Drug Abstinence Order. However, the Drug Abstinence Order was later abandoned as it was proved unworkable; this could be due to ' Populist Punitivism'. The conservative government have a right wing approach, whereas New Labour comes from the left. This however, had little effect for the use of the prison as labour emphasised on the conservative approach to crime and made it stronger.

Although there was new legislation that gave the court more power and options over the offender, prison numbers continued to rise. This was also apparent when David Blunkett became Home Secretary as the prison population started to rapidly grow months after (Guardian 2001). In 2001, the prison crisis of over crowding, and the fiscal problems were highlighted <https://assignbuster.com/punishment-and-rehabilitation-in-the-community-criminology-essay/>

again, which resulted in new legislation from results drawn from the Halliday Report.

‘ The review was born out of a belief that the present sentencing framework suffers from serious deficiencies that reduce its contributions to crime reduction and public confidence’ (Halliday 2001).

The report highlighted key limitations and suggested new approaches to strengthen the criminal justice system. One of the highlighted problems was the short prison sentences of less than 12 months and that they had no effect on the offender. It was also noted that persistent offenders do not appear to receive significantly longer prison sentences. Halliday (2001) shows that in a sample of male offenders aged over 18 and sentenced in 1998, the average sentence for burglary for an offender with 10 or more previous convictions was only 4 months more than somebody with no convictions.

The Halliday Report led to the White Paper in 2002, Justice For All, which sets out the Government's far reaching proposals for the reform of the criminal justice system and resulted in the 2003 Criminal Justice Act. ‘ The Halliday Report noted that just deserts and the punishment fitting the crime are key features of the statutory framework set up in 1991 and that there is nothing wrong with this in itself. However the report now focuses on three tiers of seriousness established by the Act: fines, community punishment and custody’ (Easton, 2005). This created a new framework and therefore saw the collapse of just deserts. Instead of focusing on just how serious the crime

was for punishment, the court now had power to punish the offender in many of different ways depending on the offence.

From the 2001 Halliday Report and the 2002 White Paper the new findings created a new framework to sentences. The Act clearly sets out the purposes of sentencing, which include retributive, deterrence and reductive, reform & rehabilitation, public protection, and reparation, (Criminal Justice Act 2003). The Halliday Report also influenced the new legislation in 2003 by identifying a gap in the sentencing framework. The Act replaced all the adult community sentences with a generic community sentence. This allowed the courts to attach requirements to this community sentence from a number of options; supervision, unpaid work, activities, prohibited activities, accredited programmes, curfew, exclusion, residence, mental health treatment, drug rehabilitation, alcohol treatment, attendance centre (for under 25 yr olds) (Criminal Justice Act 2003).

The Criminal Justice Act 2003 also introduced a number of other measures such as Conditional Cautions, Strengthened deferment of sentence to include an element of probation supervision, Custody Plus, Intermittent Custody, new Suspended Sentence Order; however, these measures show unclear boundaries between community and custodial penalties. Thus, the argument against this is whether the courts will favour a custody followed by a rehabilitative sentence and that they will become more popular, which will help reduce overcrowding. Faulkner (2002) prior to the 2003 Criminal Justice Act urged caution in seeing the introduction of a new sentencing framework as the answer to addressing crime. He states that: ' If the new sentences are to contribute to reduced rates of crime or re-offending, they will at the very <https://assignbuster.com/punishment-and-rehabilitation-in-the-community-criminology-essay/>

least have to be applied in the context of a prison system which is no longer distracted by overcrowding, of a well-resourced and innovative National Probation Service'. This may suggest that there is a covert meaning under the new framework for the use of imprisonment. By utilising community sentences it is thought that this will free prison space, which will stop overcrowding and make punishment worthwhile. However, statistics show far greater use is being made of the prison and probation service because 'in 1996, 85,000 offenders were given a custodial sentence and 133,000 were given a community sentence. By 2001, both had increased by 25 per cent, with 107,000 offenders given a custodial sentence and 166,000 offenders receiving a community sentence' (reference).

The use of the prison has changed significantly over the years, with a major influence from the change in government and the change in the sentencing framework. Originally, the prison was used for any type of crime but due to overcrowding the government came to recognise that the prison should be used for the more serious offences and introduced the community service for petty crimes. Community service was perceived to free up prison space and the fiscal crisis, however the prison population kept expanding over the years. This could be due to the numbers of offenders caught and sentenced as police powers had expanded or the increase in the overall seriousness of the crimes brought to justice or the increase in the sentence severity for specific offences. New legislation allowed the courts to have an option, however, this soon expanded focusing more on community services using the prison as the last resort. Nobody wants to go to prison; therefore by issuing a community service it is giving them a strong warning using the

prison as the most feared punishment. Individuals who then break the community service punishment will then be sent to prison.

A new Act came Criminal justice and immigration act 2008 brought forward the release date of prisoners serving sentences greater than 4 years imposed before 4 April 2005. It did not apply to prisoners serving life sentences or serving sentences for violent or sexual offences. This section came into force on 9 June 2008. This was in order to alleviate prison overcrowding.

prisons are for suspects refused bail and detained before trial, or convicted but not yet sentenced, are held in custody to ensure that the course of justice proceeds to its conclusion and that everyone concerned is protected against the likelihood of harm in the interim.

The system needs to ensure that the increased investment in prison and probation is targeted effectively to reduce crime and maintain public confidence. The use of prison and probation has increased by over a quarter since 1996, even though the number of people arrested and sentenced has remained broadly constant. The growth is due to the increased severity of sentences, which is linked to the fall in the use of fines.

terrorists

#3 strikes

mandatory life sentence 2003