

Does Custody Cause Crime?

Nick Cowen

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It is clear that custody incapacitates offenders at least for the duration of their sentence. However, there is another hypothesized effect of custodial sentences that might count against its use. It is increasingly proposed that custody, compared with other criminal sanctions, makes it more likely that offenders will go on to commit further crime on release. In other words, the argument is that incarceration can engender criminal careers, turning offenders towards a life of crime which they otherwise may have avoided. This is held to be especially true of short custodial sentences. If this were true, any benefits of incapacitation during a custodial sentence might be offset by high rates of offending further down the line. This briefing examines the provenance and validity of this argument against incarceration. We conclude that there is little evidence to suggest that custodial sentences increase the likelihood of re-offending.

Received Wisdom

A number of causal mechanisms are identified to explain this putative result of incarceration. Martin Killias et al. have traced the argument as far back as De Bonneville de Marsangy writing in 1864. Marsangy argued that custodial sentences allow a 'criminal contagion' to spread from career criminals to low-risk offenders, and that short periods of custody only succeeded in cutting off offenders from their families, employment, and other sources of stability.¹ Similar arguments have been repeated by criminologists down the ages that prisons are 'schools of crime' which give offenders 'Ph.D.s in criminality'.² Ken Clarke, Secretary of State for Justice, echoed this refrain in a recent speech on prisons, saying:

*It is virtually impossible to do anything productive with offenders on short sentences. And many of them end up losing their jobs, their homes and their families during their short term inside.*³

Reducing the use of custody, and short sentences in particular, has become a cause célèbre amongst many contemporary prison reformers. In August 2010, Frances Crook, director of the Howard League for Penal Reform criticised Police Commissioner Paul Stephenson for his penchant for locking up criminals. She suggested:

*People often leave prison more damaged and more dangerous than when they first went in...*⁴

¹ Killias, M., Gilliéron, G., Villard, F., Pogia, C., 'How Damaging is imprisonment in the long-term? A controlled experiment comparing long-term effects of community service and short custodial sentences on re-offending and social integration', *Journal of Experimental Criminology*, 6:115-130, 2010

² Gendreau, P., Goggin, C., Cullen, F., 'The Effects of Prison Sentences on Recidivism', *Public Works and Government Services Canada*, 1999; <http://www.prisonpolicy.org/scans/e199912.htm>

³ Clarke, K., 'The Government's vision for criminal justice reform', *Ministry of Justice*, 30 June 2010; <http://www.justice.gov.uk/news/sp300610a.htm>

⁴ Crook, F., 'The Batman school of crimefighting', *Guardian*, 12 August 2010; <http://www.guardian.co.uk/commentisfree/2010/aug/12/batman-school-crimefighting-paul-stephenson>

In one recent news release, the Howard League claims, 'Short prison sentences are long enough to cause immediate disruption and long term damage' and that:

*Not only are community sentences more effective, they also save money. Lower reoffending leads to lower costs for victims and criminal justice agencies further down the line.*⁵

In 2009, *Do Better, Do Less*, the report by the Commission on English Prisons Today, established by the Howard League, argued for: 'radical and transformational change: a significant reduction in the prison population and the closure of establishments; the replacement of short prison sentences with community-based responses'.⁶

As evidence, *Do Better Do Less* cited another commission report, on Scottish Prisons which summarised its view as:

*Short sentences are not a solution to the problem of persistent offending; they are the cause of it.*⁷

The Statistical Bluff

The Commission on Scottish Prisons, which reported in July 2008, makes the reduction (or even abolition) of prison sentences of less than six months a key recommendation. The report certainly establishes that offenders given short sentences make up a large proportion of the Scottish prison population. However, their case that it is short sentences that cause more crime is curiously lacking. It is limited to drawing attention to the fact that a large proportion of prisoners have been given prison sentences in the past and that those on short sentences are the group most likely to re-offend and re-offend frequently. They note:

*[M]ore than half of offenders given a custodial sentence in 2005/06 had already been to prison; and nearly a third of all offenders had been to prison from three to ten times.*⁸

They go on to argue:

*This statistic alone provides stark support for the argument that short sentences have no impact on offending, and that many offenders are undergoing a lifelong process of institutionalisation.*⁹

⁵ News Release: 'Howard League calls for end to short prison sentences', *Howard League for Penal Reform*, 21 June 2010; http://www.howardleague.org/fileadmin/howard_league/user/pdf/Call_to_end_short_term_prison_21st_June.pdf

⁶ Commission On English Prisons Today, *Do Better, Do less*, Howard League for Penal Reform, 2009, p. 21; http://www.howardleague.org/fileadmin/howard_league/user/online_publications/Do_Better_Do_Less_low_res.pdf

⁷ The Scottish Prison Commission 2008, *Scotland's Choice*, Scottish Government, 2008, p. 39; <http://www.scotland.gov.uk/Resource/Doc/230180/0062359.pdf>

⁸ *Scotland's Choice*, p. 15

⁹ *Scotland's Choice*, p. 15

The claim that this statistic alone shows that short custodial sentences negatively alter the life outcomes of an offender, is made possible only by discounting another reasonable explanation: that an offender given a short sentence is likely to be already on a criminal career trajectory that involves a disordered personal lifestyle, frequent offending and numerous convictions. In fact, in many cases, a short custodial sentence is an advanced stage in a series of attempts to rehabilitate an offender who, while not guilty of the most serious offences, continues to commit crime at a high rate. As John Thornhill, Chairman of the Magistrates Association, has said (in the context of England and Wales),

*Many of the offenders that we deal with have committed a large number of offences, they've failed to comply with any previous prison sentences and they're back in the courts again, so what do we do with them?*¹⁰

Yet, without contending directly with this valid alternative explanation, the Scottish Commission goes on to argue:

*For... an ever growing proportion of the overall penal population, time in prison has only negative consequences. It removes them from access to any healthy and supportive social networks in their communities. It substitutes in their place a group of fellow prisoners with major deficits and anti-social tendencies.*¹¹

The implication here, once again, is that incarceration introduces factors into an offender's life that make them more likely to re-offend subsequently.

The National Association of Probation Officers (NAPO) makes a similarly superficial statistical case against custody. In one recent briefing, they say, 'at least 74% of this group re-offend within a short period of leaving custody' and suggest:

*[I]t would have been less expensive and resulted in less re-offending if the majority of these individuals had instead been sentenced to supervision in the community, with a condition of attendance at a probation programme.*¹²

Just as with the Scottish Commission's statistical case, this argument makes no attempt to account for the characteristics of offenders that tend to be given short sentences that might make them likely to re-offend at a high rate. Crook's own argument in an article for the Guardian follows exactly the same pattern as NAPO, stating simply: 'Over two thirds of those sentenced to less than a year in prison will be reconvicted within two years of release.'¹³

Carol Hedderman takes a different approach in order to make a similar argument. She argues that historical changes in raw re-conviction rates in England and Wales are associated with higher rates of

¹⁰ BBC News, 'Community sentence plan "will not cut jail numbers"', *BBC*, 22 July 2010; <http://www.bbc.co.uk/news/uk-10704001>

¹¹ *Scotland's Choice*, p. 15

¹² Briefing: 'Short-term jail sentences – an effective alternative', *NAPO*, June 2010; <http://www.napo.org.uk/publications/Briefings.cfm>

¹³ Crook, 'The Batman school of crimefighting'; <http://www.guardian.co.uk/commentisfree/2010/aug/12/batman-school-crimefighting-paul-stephenson>

imprisonment: 'for most of the period that our use of custody has been increasing, reconviction rates on release have also been rising'.¹⁴

She identifies an increase in reconvictions following short custodial sentences for theft, handling stolen goods, and summary non-motoring offences as the cause:

The most obvious explanation for the rise in raw reconviction rates on release from prison is that sentencers are employing custody less effectively now than they were in the early 1990s. It is quite plausible that by sending significantly more minor offenders... to prison for short periods of time, they are simply disrupting offenders' lives...¹⁵

In essence, while the Scottish Prison Commission, NAPO and Crook make a statistical argument on the basis of a comparison between offenders given custody and offenders given community sentences, Hedderman makes a temporal comparison instead. She compares overall reconviction rates from the early 1990s to 2008 and argues that its increase is due to the increased use of prison in sentencing. However, in another parallel with the Scottish Prison Commission, she can only claim that this is the 'most obvious explanation' by missing another explanation in plain sight: namely that the characteristics of those sentenced have changed over the same period. The Home Office (now the Ministry of Justice) has tried to capture some of these characteristics in a statistical model of predicted re-offending rates. When this model is used as a basis of comparison, it indicates that overall re-conviction rates are actually lower than expected. In other words, the increase in reconvictions is more than accounted for by observed factors suggesting a pre-disposition to re-offending amongst more recent cohorts of offenders. As Home Office statisticians have pointed out on a number of occasions:

The probability that a discharged prisoner will be reconvicted is more strongly associated with factors other than the experience of custody, such as their age and previous criminal history.¹⁶

They specifically warn against drawing conclusions from raw re-offending statistics as Hedderman does:

When comparing the impact of custody on reconviction rates over time it is... necessary to control for changes in the characteristics of offenders being given custodial sentences.¹⁷

While it is certainly reasonable to be sceptical of the ability of a statistical model to capture all the relevant characteristics of an offender and make accurate long-term predictions of their likelihood of re-offending, it seems unwise to dismiss this information, as Hedderman seems to, out of hand.

¹⁴ Hedderman, C., 'Building on Sand: Why expanding the prison estate is not the way to "secure the future"', Briefing 7, *Centre for Crime and Justice Studies*, July 2008, p. 8;
<https://ira.le.ac.uk/bitstream/2381/7692/3/2008%20Building%20on%20Sand%20Briefing%207.pdf>

¹⁵ Hedderman, 'Building on Sand', p. 8

¹⁶ Prison statistics England and Wales 2002, *Home Office*, 2003, p. 152;
<http://www.archive2.official-documents.co.uk/document/cm59/5996/5996.pdf>

¹⁷ Prison statistics England and Wales 2002, p. 152.

Causation, or just correlation?

The missing ingredient in all the claims above is an attempt to show, or at least indicate a likelihood, that custody actually causes a higher rate rate of recidivism. What is needed is a method of disaggregating mere correlation from actual cause. Disappointingly, *Do Better, Do Less* does not present any explicit evidence for this causal relationship. Hedderman merely asserts the plausibility of this causal mechanism.

The Scottish Commission pushes the case somewhat further. They highlight the work of several academics reporting to the Canadian Correctional Service, which they describe as constituting ‘a large body of evidence showing that when [incarcerated offenders] return to their communities, they are more likely than those on community sentences, to be reconvicted and reimprisoned’. The main cited study, *The Effects of Prison Sentences on Recidivism*, is a meta-analysis published in 1999 which was compiled by Paul Gendreau, Clare Goggin and Francis T. Cullen. The study attempted to aggregate the results of analyses with good study designs, i.e. those that made substantial attempts to control for the character of offenders. It found twenty-seven studies that met this criteria. It concluded that ‘prison produced slight increases in recidivism’. However, when weighting the results of each individual study according to their size, the observable difference between a prison sentence and community punishment disappeared.¹⁸

A similar study, compiled by Gendreau, Goggin and Paula Smith in 2002, found thirty-one eligible studies comparing community sentences with incarceration. Once again, a small effect size suggesting that prison sentences might be associated with increased recidivism was found. However, when the studies were weighted according to sample size, this effect disappeared. They concluded that variations in the kind of sentence ‘did not produce decreases in recidivism’ although they did find ‘tentative indications that increasing lengths of incarceration were associated with slightly greater increases in recidivism’.¹⁹

The other study cited by the Scottish Commission, which also has Gendreau as a lead author, presents a summary of the evidence regarding the observed effects of incarceration on recidivism. While they broadly reject the notion that prison sentences reduce the likelihood of an individual re-offending (the specific deterrence hypothesis), they find the case for prison causing re-offending similarly lacking:

*The . . . conclusion, and one that is widely endorsed in some correctional circles, . . . that prisons do increase recidivism, in other words act as ‘schools for crime’... is problematic in our view.*²⁰

¹⁸ Gendreau, Goggin, Cullen, ‘The Effects of Prison Sentences on Recidivism’.

¹⁹ Smith, P., Goggin, C., Gendreau P., ‘The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences’, *Public Works and Government Services Canada*, 2002; http://www.ccoso.org/library%20articles/200201_Gendreau_e.pdf

²⁰ Gendreau, P., Goggin, C., Cullen, F., Andrews, D., ‘The Effects of Community Sanctions and Incarceration on Recidivism’, in Motiuk, L., Serin R., *Compendium 2000 of Effective Correctional Programming*, Correctional Services Canada, 2000; http://www.csc-scc.gc.ca/text/rsrch/compendium/2000/chap_3-eng.shtml

In other words, the researchers suggest that the evidence does not support the notion that incarceration either significantly decreases or increases re-offending after the sentence is complete. As a result, the main contention made by the Scottish Commission seems to be unsupported by their own evidence. This amounts to relatively slim pickings for what is billed as a strong body of evidence for prison sentences producing poorer outcomes than community equivalents. Perhaps more problematic, however, is the Scottish Commission's omission of a more recent, relevant and (arguably) higher quality body of research examining the effects of custodial sentences.

Experimental Evidence

There are two main ways of addressing complex questions in social science, such as whether prison sentences increase recidivism. One is by using statistical analysis to control for other variables in order to see what effect the actual sentence may have. This is the method taken by Gendreau and his colleagues. The other is to use experiments (whether designed or natural) to test the specific effects of varying a sentence. In a 'natural experiment', researchers take advantage of a sudden shift in policy that causes two otherwise similar groups to be treated differently. Examples of this include mass pardons during a national holiday which gives a select group of offenders a much shorter sentence than another set with similar characteristics. However, the widely considered 'gold-standard' are Randomised Controlled Trials (RCTs), where a set of individuals are randomly assigned to a treatment group and a comparison group. This randomised selection provides the best form of control for other variables: in theory, the only possible difference between the two groups will be the particular treatment under examination. For this reason, it is only studies of this kind that are granted significant credence in medical research.

Both scientific approaches have their strengths and weaknesses. Statistical analyses can easily fail to control for the significance of hidden variables that turn out to be an important explanatory factor in an observed difference between two groups. Commenting on Gendreau et al.'s meta-analysis, for example, Eric Maurin and Aurelie Ouss explain that such a method relies on complex statistical analyses that 'mix the true effect of incarceration length and a selection bias (i.e., inmates who served longer terms are those with the highest potential of recidivism)'.²¹ On the other hand, experiments, especially in criminology, can be expensive (and even unethical) to conduct and often take place on too small a scale to draw robust conclusions. Experiments can also introduce their own potentially confounding variables, such as placebo or Hawthorne effects. Medical researchers try to tackle these problems by using double- or triple-blind trials where possible. Natural experiments, that do not have potentially confounding variables, can be hard to find.

Despite these practical challenges, experiments (and especially RCTs) are considered the best methodology available to empirical social science and are increasingly used to address questions in criminology. The Campbell Collaboration, an organisation established to extend the same rigour found in medicine to the social sciences, commissioned a systematic review of current experimental evidence

²¹ Maurin, E., Ouss, A., 'Sentence Reductions and Recidivism: Lessons from the Bastille Day Quasi Experiment', *Institute for the Study of Labor*, IZA DP no. 3990, 2009; <http://ideas.repec.org/p/iza/izadps/dp3990.html>

on the effects of custodial sentences. The report, *The effects of custodial vs. non-custodial sentences on re-offending: A systematic review of the state of knowledge*, was compiled by Killias, Patrice Villettaz and Isabel Zoder. Although they found many studies that claimed to find a causal relationship between prison and increased re-offending, when they restricted their analysis to experimental research designs (they found four RCTs and one natural experiment), the significant effects disappeared. They conclude that any detrimental effects of prison as compared to alternative sanctions are 'limited at best (or worst), at least as far as confinement is relatively short in duration'.²²

In a follow-up discussion paper, Killias and Villettaz explain 'custodial and non-custodial sanctions do not differ very much in their effects on re-offending' and suggest that 'claims about "damaging" effects of short-term confinement may have been overstated'.²³ These conclusions, based on the most valid method available to social scientists, seem to have passed by many prison reformers. And yet the conclusions suggest that their main claim, that short custodial sentences are actively counter-productive when compared to alternatives to prison, is either simply mistaken or, at least, highly exaggerated. Current evidence proposes that there is little in terms of levels of observed re-offending to suggest that alternative sentences are better than short periods of custody.

²² Killias M., Villettaz, P., Zoder, I., 'The Effects of Custodial vs. Non-custodial Sentences on Re-offending: A Systematic Review of the State of Knowledge', *Campbell Systematic Reviews*, 2006, p. 44; www.campbellcollaboration.org/lib/download/108/

²³ Killias M., Villettaz, P., 'The Effects of Custodial vs Non-custodial Sanctions on Reoffending: Lessons from a systematic reievw', *Psicothema*, vol. 20, no. 001, 2008, pp. 30-31; <http://redalyc.uaemex.mx/pdf/727/72720105.pdf>