

## THE PROBLEMATIC RELATIONSHIP BETWEEN CRIME AND IMPRISONMENT

BY ANDREW RUTHERFORD

### INTRODUCTION

The article has four sections. First, it makes the familiar but crucial point that there is no predictable relationship between crime rates and prison usage. Why, therefore, the constant strain to insist upon such a relationship? The second section explores one aspect of this insistence: efforts to use crime rates as the denominator for prison population rates. In the third section, a further aspect is considered, the notion that prison serves as an effective instrument of crime control. Finally, it is suggested that more promising terrain is reached once it is accepted that prison population levels are driven not so much by the level of crime as by criminal justice policy and practice. It is at this point that *perceptions* of the level of crime and anxieties about particular crimes, along with other considerations, may come into play.

### CRIME LEVELS AND IMPRISONMENT

The idea that prison populations reflect crime levels (or vice versa) rests upon an unproblematic view of crime and the process of constructing crime rates. Notions of an automatic linkage between crime and imprisonment take insufficient account of the extended and tortuous path between the "crime event" and decision-making along the criminal justice process. Christie has provided a particularly comprehensive challenge to this type of thinking. (Christie, 1993, pp. 21-33; see also, with reference to the United States, Zimring and Hawkins, 1991, esp. pp. 121-124; and also Rutherford, 1986, pp. 43-45). It is not the conclusion of these studies that no connection exists at all, but that the relationship tends to be indirect and marginal.

How do we account for this powerful insistence on a direct relationship between crime and prison? Nils Christie has underlined the part played by reactive thinking: "If the criminal starts it, and all the authorities can do is react, then, naturally, the volume of prisoners is caused by crime and reflects the crime situation. It becomes destiny, not choice." (Christie, 1993, p. 32). Forcing such a relationship may be especially to the fore at a time of widespread concern about the extent of crime. This "something that must be done" is most likely to be located within the scope of criminal justice, and as Thomas Mathiesen argues, no other sanction fulfils this function as well as prison (Mathiesen, 1990, p. 139).

### CRIME OR GENERAL POPULATION AS THE DENOMINATOR

The strain to force a simple and direct relationship between imprisonment and crime is expressed in many ways. One such manifestation is to insist that a measure of crime be the denominator of prison usage rather than the total number of inhabitants. This

preference of denominator is not infrequently associated with an objection to the degree of punitiveness being attached to a particular state. For example, Nuttall and Pease have argued that although the prison population rate per 100,000 of the general population for England and Wales rose (from 50 to 90 per 100,000) between 1950-1990, the use of prison actually declined "relative to the presenting crime problem, to the number of cases cleared up and the number of people officially processed." Viewed in this way, the authors claim a lower use of prison in England and Wales than in some other European countries, suggesting "an important corrective to charges of the country's comparative overdependence on the prison as a penal sanction" (Nuttall and Pease, 1994, p. 321). Elsewhere, Pease has dismissed general populations as the denominator for prison population rates as being "useless" (Pease, 1994, p. 116).

There is also strong support from some scholars in the United States for using measures of crime as the denominator of prison usage. (See e.g. Lynch (1987) and Farrington and Langan (1992)). Not surprisingly this preference is most vociferously expressed by persons advocating yet further expansion of prison systems.

For example, as the United States approaches an imprisonment rate of 600 per 100,000 inhabitants, James Q. Wilson contends: "Nor does America use prison to a degree that vastly exceeds what is found in any civilized nation." (Wilson, 1995, p. 500). And John J. DiIulio holds: "Relative to the number of serious crimes being committed, America has not been on an imprisonment binge" (DiIulio, 1995, p. 16). Regarding measures of crime as unproblematic facilitates the ideological conviction that even tougher criminal policies are overdue.

#### PRISON AS AN INSTRUMENT OF CRIME CONTROL

The strain to make the connection between crime and imprisonment may also be expressed by efforts to inverse the relationship. "Let us be clear; prison works", Michael Howard, the British Home Secretary, told the annual Conservative Party conference in October 1993. Howard stressed the incapacitative effects of imprisonment, but ten years earlier the accent might have been on deterrence and ten years before that on rehabilitation. Careful reviews of this extensive literature have largely disposed of these instrumental rationales for the prison (see e.g. Mathiesen, 1990) and claims for incapacitation (collective and selective) as with deterrence and rehabilitation before have become increasingly restrained. With reference to selective incapacitation, one academic commentator has recently concluded: "(W)hen the probable effects were looked at more carefully, the numbers did not add up: the strategy cannot target a sufficient proportion of active offenders to make much of a dent on the crime rates." (von Hirsch, 1994, p. 27).

However, despite the cautionary tenor of the research findings, the enthusiasm of some scholars for a linkage between imprisonment and crime shows no sign of waning. For example, although James Q. Wilson recently acknowledged that it would be foolhardy to explain the drop in crime in the United States by the rise in imprisonment, in the next breath he remarks: "Though one cannot measure the effect of prison on

crime with any accuracy, it would be astonishing if it had no effect. For example: by 1986 there were 55000 more robbers in prison than there had been in 1974. Assume that each imprisoned would commit five such offences per year if free on the streets. That means in 1986 there were (sic) 275000 fewer robberies in America than there would have been had these 55000 men been left on the street." (1995, p. 500).

At least Wilson has cautioned against using race as a criterion for selective incapacitation purposes. Such qualms do not appear to unduly worry DiIulio who argues that America does not have a crime problem but that inner-city America does. He urges tougher action to address black Americans' rising fear of crime. "There is no group of Americans would stand to benefit more from policies that kept convicted felons, adult and juvenile behind bars for all or most of their terms than crime-plagued black inner-city Americans and their children" (DiIulio, 1995, p. 15) and: "If the question is how best to protect inner-city citizens from known, convicted, violent and repeat criminals, then prison is far more of an answer than most experts would allow" (*ibid.* p. 19).<sup>11</sup>

Finally, there are those who are intent upon claiming that prison pays. For example, in 1987 Edwin Zedlewski, an economist on the staff of the National Institute of Justice in the US Justice Department concluded from a literature survey that: "Incapacitating prison-eligible offenders now crowded out by today's space constraints would likely cost communities less than they pay now in social damages and prevention." (Zedlewski, 1987; for a critique, see Zimring and Hawkins 1991, pp. 90-104). More recently, DiIulio, on the basis of interviews he conducted with prisoners in Wisconsin, suggested that it costs society twice as much to let the typical prisoner out as to keep him in. From this and other studies, DiIulio concludes that, "there can be little doubt that empirical studies will continue to find that it clearly pays to keep the vast majority of convicted criminals behind bars for longer periods than we currently do." (DiIulio, 1995, p. 23). Against such unbridled enthusiasm for the incapacitative effects of imprisonment, Jerome Miller has cautioned. "Locking up offenders has minimal effect on crime rates. Incapacitation works only when it is so massive as to challenge the nature of a democratic society." (Miller, 1991, p. 182).

## CRIMINAL POLICY AND CRIMINAL JUSTICE PRACTICE

It is not suggested that no relationship exists between crime rates and imprisonment, but that the interactive effects are at the margins of a full understanding of the dynamics of prison population changes. Other considerations seem to be much more important. In particular, there is a dynamic political and policy context within which criminal justice practitioners operate: the day-to-day ambience of criminal justice practice.

Consider, for example, developments in England and Wales between 1987-1995 as set forth next page.

During the late 1980 there was a reasonably high degree of congruence between policymakers and practitioners in seeking to reduce prison numbers as one aspect of the search for more rational criminal policy and which culminated in the Criminal

| Total prison population<br>(including persons held in police cells)<br>England and Wales, as at end of June: <sup>2)</sup> |               |
|--|---------------|
| 1987   | 50846         |
| 1988   | 50302         |
| 1989   | 48758         |
| 1990   | 45466         |
| 1991   | 45626         |
| 1992   | 46832         |
| 1993   | 44246         |
| 1994   | 48706         |
| 1995   | 51678 (March) |

Justice Act 1991. Practice initiatives initially focused upon juveniles, but towards the end of the decade there was a willingness to apply these approaches to young adults and indeed adults generally. However, in the early months of 1992 the political-policy mood began to distinctly change and within a year the penal policy scene had been totally transformed. It is not possible here to attempt a full analysis of the various factors at work, but perceptions that the level of crime was rising and anxieties about particular offences (notably the murder of a toddler by two ten year old boys in February 1993) played some part. Although these concerns were never far from the surface in the 1980s, at least during Douglas Hurd's period as home secretary (1985-89) a calmer and more reflective public discourse prevailed on crime and punishment as efforts were made to reduce expectations of what criminal justice, and especially prisons, could deliver. However, during 1992-93, the Government found itself on the defensive and shifted its posture to one of attack. No longer were prisons regarded "an expensive way of making bad people worse" (white paper, 1990) but were, instead, emphatically declared to "work". Furthermore government ministers explicitly abandoned the notion that there was merit in seeking a reduction in prison numbers. As with respect to developments during the 1980s in California, it is far from obvious as to what forces might serve to limit the growth of punitive sentiments of this sort. (See Zimring and Hawkins, 1994, pp. 92-93).

However, despite these developments in England over the last two or three years, and similar experience elsewhere, criminal justice practitioners may be able to act so as to limit these pressures for growth, not least by rejecting perceptions of a lock-step relationship of crime and imprisonment. (See Mathiesen, 1990, pp. 153-161; Rutherford, 1993, esp. pp. 160-166).

Adresse: The University of Southampton  
Faculty of Law  
Southampton SO17 1BJ, UK



*Notes:*

- 1) A parallel anti-crime proposal by DiIulio is the removal of 500000 black children from their natural families. See John J. DiIulio, Congressional testimony, 20. January 1995.
- 2) In July 1987 the prison population reached a record high of 51239 and then began a decline; after implementation of the Criminal Justice Act 1991 on 1/10/92 the total number hovered between 43-44000 until June 1993 when the recent rise began. Between 1987-1993 the prison population declined by 6600 (13%; an average annual decline of 2.1%). Between 1993-95 the prison population increased by 7432 (16.8%; an average annual increase of 8.3%).

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