

The Relationship Between Incarceration and Recidivism Rates

Connor Skustad

B.A. Candidate, Department of Criminal Justice, California State University Stanislaus, 1 University Circle, Turlock, CA 95382

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Abstract

In 1960's United States politics crime became a spotlight issue. With growing crime rates the public was looking for a solution to make their communities safer. With the election of Richard Nixon in 1968 the war on crime was in full force and the solution became to convict more people. Later in the 1980's mandatory minimums became commonplace. With California's Three Strikes Law in 1994 the philosophy of solving crime through harsh punishments solidified as the dominant thought among Americans. As a result of this tough on crime initiative we have quadrupled our prison populations and put tremendous strain on our prison infrastructure. Here we explore whether a tough on crime philosophy is effective at reducing crime or if recidivism rates, or re-conviction rates of prisoners, don't support the reduction of crime. Recidivism rates point to the effectiveness of a punishment technique. Preliminary results point to harsher sentencing not necessarily correlated to a reduction in future crime.

Keywords: Recidivism, Rehabilitation, Retribution, Mandatory Minimums, Tough on Crime

Introduction

Modern Punishments and Deterrence

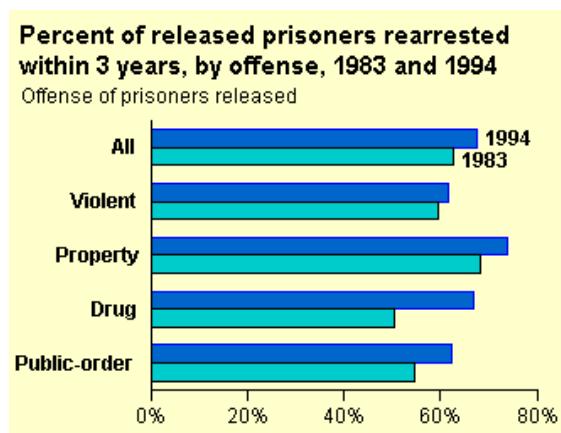
When viewed from afar criminality seems to be a fairly simple issue to solve, people commit crime, society punishes them and after experiencing the punishment they are less likely to commit crime in the future. However, it is not often this simple. Many have the idea that crime is committed by result of a cost benefit analysis within the mind of a criminal. If the cost (e.g., punishment, severed social ties, less financial stability) outweighs the benefit (e.g., money, status) of a particular crime then laws effectively deter a potential criminal. If the benefit outweighs the cost, then a crime is subsequently committed. Up until this point the main cost associated with committing a crime is jail time, this becomes ineffective if the offender does not view jail as a consequence. The logic dominating public opinion is that prison has a specific deterrent effect which serves to reduce recidivism. On the contrary, scholars have shown that the logic by which prison does, or does not, reduce recidivism may be more complicated (Mears, Cochran, Bales & Bhati, 2016). Many suggested alternatives to jail time are probation, limited opportunities for workers unions, fines, etc. These alternatives become more relevant when considering different sanctions for low level offenders vs. time served in jail.

Most modern punishments rely on the logic that severe and certain punishment will have a deterrent effect on crime. However, severity does not always deter. When the costs associated with

incarceration, such as reduced employability and access to public housing, decrease the benefits of non-offending recidivism upon release may become the more rational option. (Mears et al., 2016). In this way by incarcerating a low-level offender we could be inadvertently making crime a more appealing alternative when they get released. One example of this is the strain we've put upon the parole system by overcrowding prisons. In an effort to reduce overcrowding, parole officers have had to take on more people which has resulted in less oversight, and more parolees violating the rules and subsequently being sent back to jail. The Bureau of Justice Statistics has shown a considerable growth in probation and parole numbers since the 1980's, with this comes an increased caseload for officers (DeMichele, 2007).

Determinate Sentencing and Recidivism

Within the field of criminal justice recidivism is the rate at which convicted criminals reoffend. A study from the Bureau of Justice Statistics which compared recidivism data collected in 1983 and 1994 showed a 5% increase in rearrests rates as well as a fairly stable rate of reconviction. Overall, the 1994 study showed that 51.8% of prisoners that year returned to prison within three years from a separate conviction or a technical violation of their parole (Bureau of Justice Statistics, 2002).



If the ultimate goal of a prison system is to make society a safer place, then the primary goal would be to deter crime and the secondary goal should be to reduce recidivism rates among people who have already committed crimes. If jail doesn't serve as an effective deterrent to future crime, then more effort needs to be put into making crime a less desirable option after prison time is served. A rehabilitative model of punishment is one in which criminals are "fixed" and made more fit for society; in theory this model should be more effective at reducing recidivism rates than our current retributive model.

The goal of a law is to deter a crime but a law on its own is not an effective deterrent. A sign on the side of the street that shows a maximum \$1,000 fine for littering deters crime only if the punishment for breaking it is severe, swift, and certain. In this case the \$1,000 fine would be effective because it is a severe monetary inconvenience to someone, the ticket would come immediately after the offense, and you can be sure that if a police officer witnesses you littering you will get a ticket. If a law is lacking either severity, swiftness, or certainty then there is little deterrent effect. In many ways the Three Strikes law in California was made in an effort to increase the deterrent powers of criminal law and to make crime less desirable. Consequently, the California Three Strikes Law has been called a policy born of "rage, pain, and fear" (Giovanni, 2012). Created as a reaction to the murders of Kimber Reynolds and Polly Klaas which were both committed by repeat offenders. Under the law someone could be committed to life without the possibility of parole if they had two prior serious convictions, even if the third offense was nonviolent and not serious (Giovanni, 2012). As a result, prison overcrowding has become an epidemic severely straining the state's prison systems. California's prison expenditures have risen from 1 percent of the state budget to 8 percent, increasing as

the prisons filled to capacity. Needless to say, we are now feeling the effects of the Three Strikes Law.

Effects of legislation: The Three Strikes Law

Recently, habitual offender legislation in New Zealand has shown to have the same unfortunate consequence as the California Three Strikes Law. No tolerance legislation within an area serves as an indicator that the populace believes incapacitation is a more appropriate response to crime than rehabilitation. Ultimately no tolerance legislation also results in the weakening of judicial discretion, disproportionate law implementation, and an increase in prison population. The three strikes laws are created to, "*criminalize criminality itself* and ... to make sentencing harsher" (Oleson, 2014). Implementation of the three strikes law in California served as a fairly regressive move across the board, however some claim a 20% reduction in crime due to the law's deterrent effects, however this is a hard figure to estimate. Three strikes laws also heavily favor determinate sentencing over judicial discretion. This is all relevant to the article because as a new adopter it is interesting to see whether New Zealand will fall into the same rut. The researcher looked at data from convictions and three strikes warnings from California and then compared them to early statistics from New Zealand. The study concludes that even though New Zealand's three strikes laws are much more lax in terms of sentence length it will still produce a lot of the same consequences (Oleson, 2014). It will lead to a reduction of judicial discretion (transfers discretion away from judges to legislators and prosecutors) which makes a more one-sided judicial system with less adaptation.

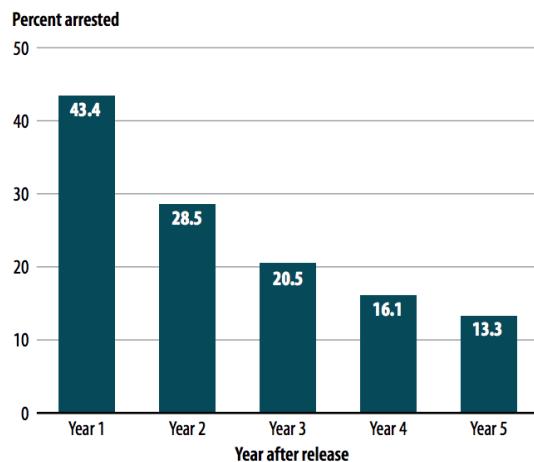
Violent crime rose sharply in the United States from the 1960's to the late 1980's peaking in 1991. This was justification for many to enact tough on crime laws such as the violent crime control and law enforcement act of 1994 which provided for mandatory life without parole sentences after three serious violent felonies. It also greatly increased government spending on law enforcement and prisons. With this greater spending on prisons it would be more likely that people would be caught and sent to prisons. In an effort to speed up this process courts also began to remove safeguards that excluded certain types of illegally obtained evidence from trials, making it easier to convict. The efficacy of increasing incarceration efforts in order to incapacitate the most criminals possible is still disputed. Scholars still argue on whether an increase of incarceration has a notable effect on crime rates (Mears et al., 2016). In spite of drastically increased incarceration rates, there is no evidence that recidivism rates have improved. "A 2005 Bureau of Justice Statistics (BJS) national assessment of recidivism rates among prisoners released from thirty states in 2005 found that, within five years of release, 77% of prisoners were rearrested for a felony or serious misdemeanor, 55% were reconvicted of a new crime, and 28% were sent to prison for

a new crime”(Mears et al., 2016). This data seems to suggest that even though being sent to prison serves as a deterrent, it doesn’t necessarily reduce reoffending after release. How do we reconcile this difference with the goal of making society safer from repeat offenders?

Does incarcerating people reduce recidivism?

Mass incarceration was mainly a response by legislators to the massive crime growth in the 1970’s to the 1980’s. Even though the United States is home to 5% of the world’s population it is home to 25% of its prison population. There are five times as many people incarcerated today than there were in 1970. This is not to mention that most of these prisoners are disproportionately people of color. What has been the shift then? Has our society really become five times more likely to commit crime? Financially, \$80 billion a year in the U.S. is allocated to prisons and jails, nearly what the Department of Education gets (Roeder et al., 2015). In the state of affairs today we have the highest per capita prison population in the world and half the violent crime we witnessed at the peak of crime rates in 1991. While this may sound as if incarcerating more people leads to lower crime, many studies point to an aging population, an overall drop in alcohol consumption per capita, and less crack use in the inner cities to explain the decline (Roeder et al., 2015). In many ways the tough-on-crime movement has become a case of diminishing returns. At first the more people we imprisoned the lower crime rates fell; now, with an all-time high of incarcerated people, we don’t see as big of a return. Does it then become counterproductive to incarcerate people with harsh sentences only to expose them further to the world of crime and criminal techniques, and thereby increasing recidivism?

Percent of prisoners arrested during the year who had not been arrested since release in 30 states in 2005



A big problem in our modern-day prisons is that they operate almost exclusively upon a model of retribution. This model, while useful, focuses on giving the criminal what they deserve. When the United States experienced its tough on crime movement, one consequence of this was mandatory minimums. Mandatory minimums acted as a way to level the playing field and make punishments for certain categories of crimes roughly equal across the board. While they did make headway in standardizing punishments, the downside to this is that it didn’t leave much room for judicial discretion or mitigating factors. There were set time sentences across the board and the burden was placed upon the parole board to release convicts upon good behavior and other qualifications. Mandatory minimums served a big part in prison overcrowding, but through research have not been shown to have a big effect upon recidivism. One study suggests that time served in prison may exert mixed effects on recidivism, though more recent work suggests that the effect may be minimal (Mears et al., 2016). More research is needed, but what is clear from multiple studies is that a lengthier prison stay does not necessarily mean a lower rate of recidivism. One study even suggests that in communities which are disproportionately affected by imprisonment, and especially longer prison stays, people have a higher chance of imprisonment from the very start (Hatzenbuehler, Keyes, Hamilton, Uddin, & Galea., 2015). A 2014 study looked at the differences between six states that used indeterminate and determinate sentencing models and compared recidivism in each. It found that mandatory parole release was likely to have a deterrent effect in Maryland and Virginia and discretionary release tended to be more effective in New York and North Carolina. States like Oregon and Texas with a mixed release program showed no meaningful difference between the two styles (Zhang, Zhang, & Vaughn, 2014). What this study concluded is that it matters more on how a system is implemented than WHICH system is implemented that makes the difference in recidivism.

Studies have shown that those who didn’t finish high school are more likely to be arrested again than those who graduated and those who finished college were less likely to reoffend than either of the groups (Keller 2016). This is important for those who advocate for education behind bars. Even more important is the idea of introducing rehabilitative techniques into the incarceration processes.

If a shift is made towards effective rehabilitation, we can invest in giving criminals the means to reintegrate back into society. This would mean not only a lower rate of recidivism, but also a lower incarceration rate down the line. Examples of this reduction in recidivism rates can be observed in more liberal states like Norway. Many re offenders do so because of factors such as socioeconomic status, interpersonal issues, or the inability to find employment, helping to remedy these problems would likely lower recidivism.

Critiques

While making an argument for rehabilitation and indeterminate sentencing, some may argue that this defeats the purpose of a prison system. If we as a society do not punish crime “harshly” then how is this fair to the victim? The point of retribution is to give the criminal what’s coming to them, if we don’t do this as effectively then it defeats the point of a prison system.

Others would say that by investing in rehabilitative programs we are wasting money on the lowest common denominator in our society. Why invest money in these people when we can invest more in people who aren’t criminals? However, when evaluating levels of recidivism, it is a long-term game. Through the implementation of rehabilitation programs more money will be spent in the short term, but in the long term the benefits of a more productive work force and less of a strain on police resources outweighs those costs.

Method

Participants

What I hope to find with this study is a correlation or lack thereof between harsher sentencing techniques and a reduction in crime. In order to do this, I will focus on three different studies which collected data on recidivism and compare their findings. The three studies I am referring to were conducted by the Bureau of Justice Statistics (BJS) in 1983, 1994, and 2005. Recidivism was shown to be higher progressively with each subsequent study conducted. However, the 2005 study collected data on twice the amount of states and analyzed for three times longer than the previous two studies. Using only the 2005 study as my main data pool I will compare recidivism rates to states with different sentencing policies. What I expect to find is less recidivism in states with more rehabilitative sentencing. Ultimately, the key in reducing crime is to punish people effectively. By doing this we can reduce the effects of crime on our society in the long term. I will also compare how other countries implement rehabilitative techniques into their sentencing practices. By doing this I feel I can make a well-rounded analysis of recidivism and determine whether rehabilitation would be better at reducing long term crime.

Materials

My only materials will be reports from the BJS. In these reports they break down offenses by the type of crime, demographic, location, etc. The type of crimes evaluated will be felony offenses at the state level. BJS reports only account for formal police

contacts and convictions. This may constitute a shortcoming when accounting for unknown crime.

Procedure

Within the BJS I will compare recidivism data for felony offenses for different states with different sentencing laws in regard to determinant or indeterminate sentencing practices and legislation. I will then compare these offense rates with the level of recidivism in each category. I will try to take into account third variable situations and will address conflicting factors such as socioeconomic class and race when possible.

Results

I expect to see a noticeable difference in recidivism rates between states with different sentencing legislation. In states where this legislation provides more rehabilitation, I expect to find lower recidivism rates. States which provide more retribution than rehabilitation are expected to have higher recidivism rates. What was made clear by analysis of the BJS data is that what matters most is the socio-economic conditions that the felon is returning to. In regard to reducing recidivism more of a focus should be put on rehabilitation efforts within prison, but oversight and resources also need to be made available once felons are released.

Discussion

I believe that the subject I am studying should be of paramount importance within the criminal justice community. The goal of a police force and a judiciary system should be to reduce crime at its source to a point where there is less crime to chase and more time to foster growth within communities. A very important aspect of this is whether our punishments are actually effective. This can have fiscal impacts because of the fact that so much of our national and state budgets go towards housing prisoners. Ideally, we could find a better way to punish criminals with the ultimate goal being to make them more fit to return to society and give them less motivation to commit future crime. This would in turn reduce the number of people in prisons and relieve strain on our resources. The impact of information of this sort would be holistic because it would affect countless fields and determine whether our modern methods of creating and enforcing laws is effective in the modern world.

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References

- Bureau of Justice Statistics. (2002). Reentry trends in the U.S. Retrieved from <https://www.bjs.gov/content/reentry/recidivism.cfm>
- DeMichele, M. T. (2007). Probation and parole's growing caseloads and workload allocation: strategies for managerial decision making. *American Probation & Parole Association*.
- Giovanni, T. (2012). '3-Strikes' Penalties are Costly, Waste Lives. *Sacramento Bee*. Retrieved from <https://www.brennancenter.org/analysis/3-strikes-penalties-are-costly-waste-lives>
- Hatzenbuehler, M. L., Keyes, K., Hamilton, A., Uddin, M., & Galea, S. (2015). The collateral damage of mass incarceration: Risk of psychiatric morbidity among nonincarcerated residents of high-incarceration neighborhoods. *American Journal of Public Health, 105*(1), 138-143.
- Keller, B. (2016). Seven things to know about repeat offenders.
- Mears, D. P., Cochran, J. C., Bales, W. D., & Bhati, A. S. (2016). Recidivism and time served in prison. *J. Crim. L. & Criminology, 106*, 83.
- Oleson, J. C. (2015). Habitual criminal legislation in New Zealand: Three years of three-strikes. *Australian & New Zealand Journal of Criminology (Sage Publications Ltd.)*, 48(2), 277-292.
- Roeder, Oliver K. and Eisen, Lauren-Brooke and Bowling, Julia and Stiglitz, Joseph E. and Chettiar, Inima M., What Caused the Crime Decline? (2015). Columbia Business School Research Paper No. 15-28.
- Zhang, Y., Zhang, L., & Vaughn, M. S. (2014). Indeterminate and Determinate Sentencing Models: A State-Specific Analysis of Their Effects on Recidivism. *Crime & Delinquency, 60*(5).