4. NON-CUSTODIAL PUNISHMENT FOR OFFENDERS

4.1. Introduction
4.2. Fines
4.3. Community orders
4.4. Effectiveness of non-custodial methods
4.5. References

4.1. INTRODUCTION

Any system of punishment for offenders used by society must achieve four aims (Billingham et al 2008):

- Retribution - punishment of the individual for breaking the rules.

- Deterrence - as a threat to deter the individual from re-offending, and to deter the population as a whole.

- Rehabilitation (or reform) - to "cure" the offender of their "deviance", or at least to help them with a second chance.

- Protection of society - to protect individuals in society from becoming victims.

Punishment tends to be either custodial (imprisonment) or non-custodial. Two types of non-custodial punishment are included here - fines and community orders.

4.2. FINES

The punishment for the offender involves the payment of a sum of money to the State.

ADVANTAGES

1. Most common form of non-custodial punishment, particularly for minor offences.

2. Costs the State very little compared to imprisonment.

3. The offender does not experience prison.

4. The offender is not removed from their everyday life.

5. Aids in situations where there is prison overcrowding.
6. Most appropriate means of punishment for minor offences (eg: littering) or certain types of offences (eg: copyright infringement or plagiarism).

**DISADVANTAGES**

1. Depending on the level of the fine, it may not be retribution for rich offenders.

2. The level of the fine may be too high for poor offenders, and cause them to commit more crime to pay it.

3. Does not involve rehabilitation.

4. Does not protect society from the offender.

5. Young offenders may have the fine paid for them by parents, and so do not feel the punish.

6. The problem of setting fines at the correct level, and for the correct crimes.

**4.3. COMMUNITY ORDERS**

These involve specific restrictions being placed on the offender (eg: curfews in community rehabilitation orders) and/or the offender being required to undertake unpaid work for the benefit of the community (community punishment orders).

**ADVANTAGES**

1. Clear retribution for offender in terms of restrictions and work required to undertake.

2. Keeps the offender within their everyday life and community.

3. Costs the State less than imprisonment.

4. The visible presence of individuals on community punishment orders is a deterrent to others as well as the community seeing justice being done.


6. Aids in situations where there is prison overcrowding.

7. The offender does not experience prison.
DISADVANTAGES

1. Victims may not feel that they are protected to see the offender still around.

2. The problem of checking that the offender obeys the curfew etc.

3. It may not feel like retribution for some offenders.

4. The problem of setting the penalty at the correct level (eg: length of order, time of curfew).

5. Not appropriate for some types of crimes.

6. Attempts to change individual's behaviour (eg: drug treatment) may be limited if they return to behaviour as soon as community order stops.

7. Like imprisonment, the success of community orders in stopping future offending (recidivism) depends on what happens after the sentence completed. For example, does the individual have a job?

4.4. EFFECTIVENESS OF NON–CUSTODIAL METHODS

The big issue with non-custodial methods is whether they are as effective as custodial sentences in reducing re-offending.

Killias et al (2000) reported an experiment in the Swiss Canton of Vaud to randomly assign minor offenders to jail (up to fourteen days) or to community service between 1993 and 1995. One day in jail was viewed as the equivalent to eight hours of community service (which included unpaid work in nursing homes or schools, or "cleaning" the environment). The focus was upon 84 individuals undertaking community work and 39 sent to prison.

There was no significant difference between the two groups in number of re-convictions, but the figure was higher for jail (25.6% vs 21.4%). It was found that a few individuals (drug addicts) increased their offending after their custodial sentence.

Killias and Villetaz (2008) produced a meta-analysis based on twenty-three studies (27 comparisons) that compared custodial ⁶ and non-custodial methods ⁷. Eleven

---

⁶ Custodial sentences involved the deprivation of liberty as in prison, but also "boot camps" or closed therapeutic settings.
out of the 27 comparisons showed significantly more re-offending after a custodial sentence, and only two for non-custodial sanctions. The other studies showed no significant differences.

However, there are a number of problems with the studies used which limit the applicability of the findings (Killias and Villetaz 2008):

i) Most of the studies were quasi-experiments which meant the offenders were not randomised to custodial or no-custodial sentencing. In reality, decisions were made by judges, for example, to incarcerate certain individuals (seen as more dangerous, say) than others. Thus the two groups are not comparable.

ii) Most studies have follow-up periods of two years or less to see who re-offended.

iii) Re-offending is usually based on official records (ie: re-arrest or re-conviction), and thus ignores re-offending not caught.

iv) Re-offending tends to be measured as "yes" or "no" rather than amount of re-offending which could be affected by the sentence. "Some studies have shown that most offenders reduce offending rates after whatever type of intervention... Thus, the relevant question may be to what extent they improve differently by type of sanction. Therefore, it would be urgent to look in future studies at rates of improvement (or reductions in offending) rather than merely at recidivism as such" (Killias and Villetaz 2008 p32).

v) Other measures of success of type of sentencing could be used, like social integration (eg: finding work, lack of family problems).

vi) Individuals receiving non-custodial sentences may feel that they have been treated better than expected, and change their behaviour as a consequence. This can be viewed as a "placebo effect".

Any calculation of the success of a sentencing technique based on reconviction rates must take into

---

7 Non-custodial sentences included community work, electronic monitoring, financial penalties, and suspended sanctions (probation).
account the type of crime, previous convictions, and age of the offender. For example, Walker et al (1981) observed that different techniques had no effect for multiple recidivists with five or more previous convictions among men in the UK and offences related to violence, criminal damage, and theft. While for "first offenders", imprisonment followed by fines followed by probation and suspended sentence reduced re-offending.

4.5. REFERENCES


