The Effectiveness of Imprisonment as a Deterrence-based Criminal Justice Response

CRIM 420 – Crime Prevention and Criminal Justice Policy

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# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Deterrence Theory</td>
<td>1</td>
</tr>
<tr>
<td>Criticisms of Deterrence Theory</td>
<td>3</td>
</tr>
<tr>
<td>Contemporary Criminological View on Deterrence with Imprisonment</td>
<td>4</td>
</tr>
<tr>
<td>Evaluation</td>
<td>6</td>
</tr>
<tr>
<td>General Deterrence</td>
<td>6</td>
</tr>
<tr>
<td>Perceptual Studies</td>
<td>6</td>
</tr>
<tr>
<td>Criticisms and Limitations of Studies</td>
<td>7</td>
</tr>
<tr>
<td>Specific Deterrence</td>
<td>9</td>
</tr>
<tr>
<td>Meta-Analysis studies</td>
<td>9</td>
</tr>
<tr>
<td>Criticisms and Limitations of Meta-Analysis studies</td>
<td>11</td>
</tr>
<tr>
<td>“Scared Straight”</td>
<td>12</td>
</tr>
<tr>
<td>Conclusion</td>
<td>13</td>
</tr>
<tr>
<td>Appendix A</td>
<td>15</td>
</tr>
<tr>
<td>Appendix B</td>
<td>16</td>
</tr>
<tr>
<td>Reference Cited</td>
<td>17</td>
</tr>
</tbody>
</table>
Introduction

Deterrence through prison sentences, theoretically informed by the Classical School, is the oldest and most frequently used crime prevention. The public has often demanded tougher and harsher sentences because it believes it is best and only responses to crime. Researchers have questioned effectiveness of deterrence. The belief of deterrence’s effectiveness based intuition alone is insufficient (Varma & Doob, 1998: 167). Proponents of deterrence-based polices heavily relied on death penalty research (Williams & McShane, 1994: 19; Lab, 2004: 128; Canadian Sentencing Commission, 1988: 25). This research will be excluded for two reasons. First, Canada has abolished the death penalty. As a result, it cannot be considered as crime prevention approach in Canada. Secondly, death penalty research for deterrence is ironic because Cesare Beccaria and Jeremy Bentham, original writers of deterrence, opposed capital punishment (Williams & McShane, 1994: 19; Canadian Sentencing Commission, 1988: 4). Death penalty deterrence research contradicts the original deterrence theory. Consequently, one of the punishments left in Canada is incarceration. To evaluate the effectiveness of deterrence through incarceration, general and specific deterrence are evaluated separately using perceptual studies of severity and certainty and meta-analyses study of recidivism, respectively. Before proceeding, the Classical School’s original deterrence theory must be reviewed.

Deterrence Theory: Theoretical Basis

Beccaria and Bentham of the Classical School authored crime prevention using deterrence theory with incarceration. The theory views all individuals have free will, are rational, and operate on hedonistically (Williams & McShane, 1994: 17). This theory assumes all individuals are intelligent, informed and calculators of the costs and benefits of a choice (Varma & Doob, 1998: 167). Therefore, a criminal act is an individual’s rational choice to maximize
pleasure, while minimizing pain (Lilly et al, 2003: 15; Williams & McShane, 1994: 17). To prevent the decision to commit crime, the state attaches punishment (imprisonment) that outweighs benefits of choosing criminal acts. This threat of imprisonment or the individual’s fear of imprisonment is assumed to divert individual’s choice from criminal acts. Both authors believed the effectiveness of deterrence did not exclusively come from severity of the punishment, as commonly believed today, but also certainty, swiftness and frequent (Canadian Sentencing Commission, 1988: 2-4; Williams & McShane, 1994: 22). This means offenses come with severe, inevitable, quick, and frequent punishments. Modern deterrence proponents narrowly focus on severity of punishment (e.g., mandatory minimums, and the death penalty). This neglects the Classical School’s view that increased severity of punishment made the criminal justice system “unjust” (Canadian Sentencing Commission, 1988: 3).

Deterrence is often classified into general and specific. General deterrence is applied to potential offenders by threatening all members of society with imprisonment (Lab, 2004: 126). The vicarious experience of offenders receiving imprisonment for commission of an offense allows others to learn that such behaviour results in punishment that is swift, certain and severe. Knowing the consequences, others are assumed to rationally avoid crime (Williams & McShane, 1994: 19). Specific deterrence shifts from threatening all members of society with imprisonment to the actual application of punishment onto offenders. The application of imprisonment aims to prevent the offender from future criminal acts by outweighing the pleasure gained from the crime with pain (Lab, 2004: 253). This experience of imprisonment reminds the offender that punishment is swift, certain and severe. However, theorizing a second type of deterrence, specific deterrence, signifies that deterrence theorists expected general deterrence to fail. If general deterrence were truly effective, then there would be no need for specific deterrence.
Therefore, the creation of specific deterrence acknowledges general deterrence’s ineffectiveness. Nevertheless, the theory’s simple implementation and implications for crime prevention is appealing to common sense and intuition (Varma & Doob, 1998: 167).

**Criticisms of Deterrence theory**

Although simplistic, the theory faces diverse criticisms regarding its assumptions. First, deterrence requires knowledge of the offenses and the penalties attached. This creates a high expectation for everyone in Canada (tourists, recent immigrants or citizens) to know the entire Criminal Code of Canada. Secondly, deterrence assumes all individuals’ rationality is constant and stable. Stable rationality implies a person’s ability to consider long-term consequences. Gottfredson and Hirschi’s (1995) low self-control individual, characterized by impulsivity and shortsightedness, contests this assumption. Wright, Caspi, Moffitt, & Paternoster (2004) points out low-self control individuals may on average be more present-oriented. However, all individuals “discount future consequences to some extent” (p. 207). For example, people chain smoke cigarettes, binge drink alcohol, speed excessively, and not wash their hands despite knowing the harm. The theory also neglects the general impulsivity, and “diminished capacity” of youths and the inability to appreciate acts and consequences by persons with mental disabilities. Referring to hedonism, it assumes everyone has the same threshold level for punishment to offset gain of pleasure from crime. This has been a challenge for legislators and judges to find the exact degree of incarceration to offset gains of crime. The construction of a rational actor has two consequences (Williams & McShane, 1994: 19). First, it shifts responsibility from society onto the individual. Secondly, crime prevention simply requires punishment. The rational actor means the government needs not to fund expensive social
programs and restructure society to alleviate social conditions which breeds crime (Williams & McShane, 1994: 23). Therefore, the theory ignores other factors contributing to crime.

The theory can be seen as Euro-centric and andocentric developed by middle and upper class Europeans males for everyone. Consequently, the theory and crime prevention implications subject non-Europeans, and females to a middle and upper class European male view of a “rational” person. Lastly, unlike contemporary criminology theory that formulates theory from research, such as Laub and Sampson’s (1993) age-graded control theory from Sheldon and Eleanor Glueck’s (1950) longitudinal study (Lilly et al. 2002: 259), this theory was entirely based on reasoning or “armchair” thinking without empirical data (Williams & McShane, 1994: 16-17; Lilly et al. 2003: 15). Although faced with many criticisms, the theory also faces challenges from competing contemporary criminological theory.

**Contemporary Criminology View on Deterrence with Imprisonment**

Most contemporary criminological theory regards general deterrence as ineffective or irrelevant, and specific deterrence as counter-productive. Gottfredson & Hirschi (1995) argue persons with low-self control have limited capacity to appreciate long-term consequences, such as imprisonment. This leaves the individuals “[un]restrained by the fear of detection” for deviation (p. 31). Wright et al. (2004) contradict this claim based on a longitudinal study (ages 18, 21, and 26) of sample from Dunedin, New Zealand. Those with highest reported self-criminality and low self-control averaged 7.5 self-reported crimes when getting caught was low and 3.9 self-reported crimes when getting caught was high (see Appendix A). Contrary to Gottfredson and Hirschi (1995), they believe those with low-self control do consider long-term consequences, and general deterrence may be more effective against this group than previously believed. However, this finding is questionable and discussed later in perceptual studies section.
Regarding specific deterrence, General Strain Theory (GST) sees the imprisonment component as criminogenic. Imprisonment satisfies all three strains: blockage of achievement of goals, removal of positive stimuli and introduction of negative stimuli (Agnew, 1995: 44-45). Reintegrative shaming theory and age-graded control theory also views specific deterrence as criminogenic, but for different reasons. “Prisons are the best places to see stigmatization at work” (Braithwaite, 1995: 194). Prisons do not shame or denounce the act, but stigmatize the individuals by portraying them unacceptable and “evil,” which prompts individuals to reject the rejecters. Therefore, crime is the result of stigmatization, the disrespecting and rejecting of individuals (Braithwaite, 1995: 194). To Laub, Sampson, Corbett & Smith (1995), incarceration without vocational or interpersonal relationship skills training damages the offenders’ ability to maintain or create bonds to individuals or employment after prison (p. 103). Without these bonds, individuals are unrestrained and more inclined to criminal behaviour. Besides viewing specific deterrence as criminogenic, reintegrative shaming theory and age-graded control theory disagree with threat of imprisonment as effective.

Braithwaite (1995) argues “the fear of disapproval by others has more [of an] effect on crime than the fear of formal punishment” (pp. 191-192). A more powerful deterrent is self-disapproval. Braithwaite (1995) theorizes that reintegrative shaming, the process of disapproving the act while respecting the individual to promote remorse, internalizes the notion crime is wrong and makes it unthinkable (p. 194). This internalization establishes a conscience that initiates self-disapproval and fear disapproval from others. Self-disapproval is more effective because it precedes the act, whereas social disapproval requires detection and occurs later (Braithwaite, 1995: 192). Similarly, the age-graded control theory argues the fear of losing highly valuable pro-social social bonds deters individuals from crime, not fear of punishment (Laub, et al. 1995: 103).
Theoretical criticisms are not enough to judge deterrence. To evaluate the effectiveness of deterrence with prison sentences, perceptual studies and meta-analyses are reviewed.

**Evaluation**

**General Deterrence**

Out of three components of deterrence, only two have been studied extensively: certainty and severity. Generally, studies have found the component of certainty to be most effective out of the two (Lab, 2004: 140). Varma & Doob (1998) studied income tax evasion because it is the ideal context to testing for rational person under deterrence theory. They reasoned a person would have to make the rational choice to not report other income under certainty of apprehension, severity of penalties and swiftness of penalties. They found certainty did deter (p. 169-181). Self-report study of university students about drinking and driving found certainty deterred the behaviour (Pogarsky, 2002: 432). Wright et al (2004) found certainty reduced self-reported crimes (p. 203). Grasmick & Bryjak, (1980) found certainty reduced theft, illegal gambling, tax evasion and assault (p. 480). For homeless male youths, certainty deterred property crimes (Baron & Kennedy, 1998: 43). Under the opportunity to cheat on tests, university students were deterred by certainty rather than severity (Nagin & Pogarsky, 2003: 182). The finding of certainty as the most effective component has lead policy makers to decide increasing certainty through apprehension is the best way of deterring crime (Mendes, 2004: 69).

With regards to severity, evidence fails to support its effectiveness alone. Pogarsky’s (2002) found severity did not deter the behaviour (p. 432). Similarly, severity of penalties did not deter the respondents from tax evasion (Varma & Doob, 1998: 169). Severity of penalties did not deter homeless youth from violent crimes (Baron & Kennedy, 1998: 52). Although finding perceived severity alone is ineffective, Grasmick & Bryjak (1980) found support for their
hypothesis that perceived severity, with high levels of perceived certainty, has a significant
deterrent effect in their sample (p. 471). If research neglects celerity (Lab, 2004: 128; Pogarsky,
2002: 431) and fails to find severity’s effects, it cannot be said general deterrence is supported.

**Limitations and Criticisms**

Although general deterrence receives most of its support from self-report studies, study
limitations and validity problems exist. First, perceptual studies have sampled from an
unrepresentative random sample, such as university students (e.g., Pogarsky, 2002; Nagin &
Pogarsky, 2003). Secondly, the validity of self-report studies is questioned. It has been criticized
that intent is measured, rather than the rational decision-making process at the specific situation.
Intent for a future situation should not be confused with decision-making at situation leading to
criminal act (Lab, 2004: 136). Furthermore, self-report studies give hypothetical situations. Then,
the possibility of individuals “trash talking” exists. Given the hypothetical situation, the
respondent may feel free to answer in the manner of fashion demonstrating rebellion but act with
contradictory claim that low-self control individuals are more affected by deterrence’s certainty,
this may be due to “trash talking.”

Thirdly, deterrence theory and perceptual studies have assumed perception of certainty is
constant. Baron & Kennedy (1998) identified being homelessness, association to criminal peers,
substance use, absence of moral commitment, and lack of normative constraints diminishes fear
of punishment (p 27). Criminal peers decrease perceptions by providing positive support,
approval, and accurate information about certainty and severity of punishment. Heavy drug use
results in inhibition and lower judgment, which temporary eliminates fear of punishment (Baron
Similarly, studies do not take into account of personal experiences that affect perception of certainty (Varma & Doob, 1998: 169). This relates to the issue of actual deterrence or “experiential effect.” In other words, is it the perception of certainty or individual’s previous apprehension that raised the individual’s perception of certainty that deters crime? Lab (2004) sees this as a confounding factor for deterrence studies (p. 139). For example, Baron & Kennedy (1998) found substance use and homelessness of youths attracted police attention and suspicion. The increased police contact increased perceptions of certainty among the youth (p. 49). In addition, this effect may be considered as specific deterrence because the respondent actually experiences it as oppose to fearing it. As a result, perceptions regarding threat of imprisonment is not constant but varies by situational factors and experiences.

Besides claims of deterrence being ineffective against low-self control individuals, there are claims that deterrence may be irrelevant against a group of individuals. Wright et al. (2004) found those with low self perceived criminality did not self-report more crimes under the situations of high and low risk of getting caught, and high and low risk of social sanctions (See appendix A & B; p. 204). A similar group was found in Pogarsky’s (2002) study. This group reported they would not drink or drive in any situation (p. 445). The group’s tendency to conform is seen as stable. It is believed that the law or deterrence does not restrain this group, but rather by extralegal factors such as fear of self-disapproval and social disapproval (Wright et al. 2004: 204; Pogarsky, 2002: 445). Deterrence theory fails to account for this group.

Researchers and theorists questioned if such studies are measuring the fear of punishment or the fear of losing relationships. In other words, do potential offender fear going to prison or fear their offence will result in social disapproval and break valuable relationships they have formed. Sherman, Gottfredson, MacKenzie, Eck, Reuter & Bushway’s (1997) found that
arresting employed suspects reduced re-offending. However, arresting unemployed suspects did not reduce re-offending. If the deterrence theory held true and increasing certainty of apprehension is the best policy, the arrest of the unemployed would have reduced offending, like the arrest of the employed. The differences in offending between arresting employed and unemployed can be explained by referring to Laub et al (1995) and Braithwaite’s (1995) notions that deterrence does not come from formal sanctions but rather fear of disapproval and losing valuable relationships. Those with employment have relationships to fear disapproval from or losing. Several studies support Laub et al (1995) and Braithwaite’s (1995) idea when they found self-disapproval, fear of social disapproval and fear of breaking relationships also deters criminal behaviour (Baron & Kennedy, 1998: 52; Pogarsky, 2002: 444; Varma & Doob, 1998: 169).

Similarly, Wright, et al. (2004) found those with low-self control self-reported few crimes when told certainty of social disapproval (See Appendix B; p. 207). Although general deterrence has some support, mainly regarding perceptions of certainty and severity in relation to certainty, studies supporting general deterrence have many limitations and criticisms.

**Specific Deterrence**

**Meta-analysis studies**

Recent meta-analyses failed to support imprisonment as effective specific deterrence. Gendreau et al.’s (1999) meta-analysis of 50 studies with 336,052 offenders did not support deterrence. Longer sentences were associated with 3% in increase recidivism. Comparing incarceration to community-based corrections, incarceration had 7% more recidivism. Regarding high and low risk offenders, longer prison sentences did not deter either. Both high and lower risk offenders who spent more time in prison had increased recidivism of 3% and 4%
respectively (p. 16-17). However, this meta-analysis did not study possible differences for youths, females and minority groups.

Smith, Goggin, & Gendreau (2002) conducted a meta-analysis of 117 studies with 442,471 offenders that focused on finding possible differences for youths, females, and minority groups. This meta-analysis produced similar findings to the Gendreau et al.’s (1999) study: incarceration and more time served in prison did not reduce recidivism but had an increase for recidivism of 3%. Furthermore, meta-analysis specifically found no difference for the youth, female or minority groups. This meant all three groups consistently had a 3% increase in recidivism (Smith et al. 2002: 19-20). Gendreau et al.’s (1999) findings and Smith et al.’s (2002) updated findings show using incarceration for specific deterrence is ineffective but also counter-productive. The authors concluded they found no support for specific deterrence and incarceration’s effectiveness (Smith et al. 2002: 20; Gendreau et al. 1999:19).

Finding incarceration and longer sentences are associated with recidivism challenges deterrence theory. If incarceration and longer sentences are associated with recidivism, then they cannot be effective crime prevention initiative. Laub et al. (1995) and Braithwaite’s (1995) argument that imprisonment is criminogenic may account for this finding. Also, the ineffectiveness of longer sentences is similar with perception of severity is not effective in perceptual research. Interestingly, both findings regarding severity are consistent with the original deterrence theory’s view on severity of less importance.

Other research has found lack of support for prison sentences. Defina &Arvanites (2002) found significant negative and positive effects for different states of imprisonment on crime from 1971 to 1998. Consequently, Defina & Arvanites (2002) refer to Spelman’s (2000) speculation that some states could benefit from more prisons but some states have too many prisons already
to do any good (p. 125). For the majority of the states, no statistical significance was found (Defina & Arvanites, 2002: 651). But, Spelman (2000) claims to have found some “effects” of prisons (p. 124).

Spelman (2000) predicts the average “elasticity” to be -.40 (p. 120). “Elasticity” is the percentage change in the crime rate associated with one percent change in the prison population (Spelman, 2000: 99). This means if the prison population increase one percent, the crime rates should or would drop by forty percentage points. But, Spelman (2000) admits the crime drop was evitable due to demographic changes. However, the drop would be approximately 27% smaller than it has been without the prison expansion between 1970s to the late 1990s (p. 125). He admits its methodology is unable to separate incapacitation and deterrent effects (p. 6). Specific deterrence is often confused with incapacitation because they have the same goal. Both aim to prevent criminal behaviour by intervention of those who have offended already. However, incapacitation differs from specific deterrence because it makes criminal activity physically impossible by physically removing the offender from society to protect society (Lab, 2004: 253). The study’s inability to differentiate deterrent and incapacitation effects minimizes support for deterrence. Based on the fact that the United States’ courts hand down longer sentences, it may be incapacitation effects dropping crime rather than deterrence.

Limitations and Criticisms

The finding that recidivism increases with harsher or longer sentences is contested. Some may counter-argue that courts give out harsher sentences to problematic, repeat and serious offenders (Lab, 2004: 259). However, this counter argument misses the fact the studies are testing for specific deterrence. If specific deterrence does work, the problematic, repeat and serious offenders would have desisted after their sentence.
Smith et al. (2002) & Gendreau et al. (1999) point out several limitations of the study. Admittedly, 95% of the studies are American and outdated, early as 1958. Another limitation is recidivism as a measurement. Researchers do not use a consistent definition of recidivism. The definition has ranged from another arrest for new or same offense, violation of parole condition, to conviction to incarceration (Smith et al. 2002: 1; Gendreau et al. 1999: 1). The definition may also have a specific time period for re-offense (John Howard Society, 2002: ii). Other concerns include that the offenders first must be detected. Therefore, there is an unknown amount of recidivism. With this issue, studies may be under measuring. Offenders with parole conditions are under more rules than non-parolees, which increases probability of offending. In this case, studies may be inflating results (Lab, 2004: 255). Although both meta-analysis adopted the standard for the studies must have had minimum of 6 months follow-up period and control group (Smith et al. 2002: 12; Gendreau et al. 1999: 5), they neglected the varied definitions of recidivism. This reveals actual imprisonment or specific deterrence does not decrease crime. The idea imprisonment is ineffective is also supported by “Scared Straight” programs.

“Scared Straight”

Although at risk youth and young offenders were not officially incarcerated, they spent sessions in prison under the “Scared straight” program. While in prison, adult prisoners confronted the young offenders about the harsh realities of prison life as specific deterrence. The program hoped the vicarious experience teaches young offenders certainty, severity of punishment and deter the youth from further crimes (Sherman et al. 1997; Bell, 2003: 306). Although the program initially claimed 90% of the participants desisted from delinquency in a documentary (Bell, 2003: 306), Finckenauer (1982) found within 6 months of the sessions, 41.3% of the youth committed a new offence compared to 11.4% of control group (p. 135).
Clearly “Scared straight” did not have the intended but the reverse effect. Consequently, “Scared straight” falls under Sherman et al.’s (1997) “What Does Not Work?” If superficial temporary imprisonment or vicarious experience of imprisonment, actual imprisonment, and longer sentences is associated with recidivism, it should be concluded the use of imprisonment is criminogenic, rather than crime prevention.

**Conclusion**

When politicians and modern proponents of deterrence impulsively demand harsher, longer prison sentences to curb crime, they demonstrate their lack of rationality and shortsightedness. They ignore research showing ineffectiveness, counter-productivity, and recidivism of incarceration. Oddly, these same attributes of impulsivity, irrationality and shortsightedness are found in Gottfredson and Hirschi’s (1995) low-self control individuals. The only difference between them is that the politicians and proponents have political power to satisfy their immediate gratification.

The enlightenment era constructed a rational man through “armchair thinking” (Lilly et al. 2003: 15). This philosophical abstraction and social construction of a rational person is void of preceding empirical research. It should not be a surprise using prison sentences as crime prevention based deterrence theory lacks empirical support.

Current evidence does not support the specific deterrence argument. Specific deterrence faces accusations of being criminogenic by contemporary criminological theory. This accusation is supported by meta-analyses showing that incarceration is associated with increased recidivism (Smith et al. 2002: 20; Gendreau et al. 1999: 19). Therefore, research has shown the ineffectiveness of specific deterrence through imprisonment as crime prevention.
Despite limitations regarding general deterrence’s research, certainty and severity in relation to certainty, but not severity alone, supposedly affects an individual’s choice to pursue criminal behaviour (Lab, 2004: 140; Pogarsky, 2002: 445; Grasmick & Bryjak, 1980: 471). Since researchers neglect to research celerity, the component highly cherished by classical school authors, this leaves testing of the deterrence theory incomplete. Subsequently, current research fails to support general deterrence as a whole.

If deterrence is to be effective, it cannot solely rely on imprisonment (Varma & Doob, 1998: 183). As a result, researchers have suggested a new version of deterrence for crime prevention by combing both informal and formal sanctions (Williams & McShane, 1994: 23; Baron & Kennedy, 1998: 52). This is supported by the meta-analysis study finding arrests of employed spousal assaulters reduced offending (Sherman et al. 1997). Then, what is effective deterrence may be combining certainty of apprehension and the perquisite having social relationships. This is based on perceptual studies showing certainty is effective (Varma & Doob 1998:181; Baron & Kennedy, 1998: 43; Pogarsky, 2002: 453; Nagin & Pogarsky, 2003: 182) and individuals can be deterred from crimes through the fear of self-disapproval, social disapproval, losing accomplishments, and breaking valuable social relationships (Varma & Doob, 1998: 182; Baron & Kennedy, 1998: 52; Braithwaite, 1995: 192; Laub et al. 1995: 101; Pogarsky, 2002: 444; Wright et al. 2004: 203), rather than the fear of imprisonment.
Appendix A

Level of certainty of apprehension and self-reported crimes

Figure 3: Self-Reported Offending by Perceived Risk of Getting Caught and Reported Self-Criminality

Source: (Wright et al. 2004: 203)
Appendix B

Threat of Social Sanctions and self-reported crimes

Source: (Wright et al. 2004: 203)
References Cited


