



WHAT DO WE KNOW ABOUT PUNISHMENT IN WALES?

Robert Jones explores the latest disaggregated data on punishment in Wales

In stark contrast to Northern Ireland and Scotland, Wales remains a relatively undiscussed entity within research and debates on penal policy in the United Kingdom (UK). The lack of interest or serious attention directed towards Wales can perhaps best explained by the fact that, for the best part of five centuries, Wales has been part of a single England and Wales jurisdiction. Established through the Laws of Wales Acts 1535 and 1542 with the aim of abolishing any sense of difference between England and Wales, the single jurisdiction has largely rendered Wales invisible within a system where the taken-for-granted territorial framing for understanding penal policy has been, and indeed continues to be, England (Jones and Wyn Jones, 2022).

In recent years, however, the emergence of a unique and distinct set of constitutional arrangements has helped to forge open a space for debates on criminal justice in Wales (Commission on Justice in Wales, 2019; Independent Commission on the Constitutional Future of Wales, 2024). Although policing and criminal justice powers continue to be the jealously guarded preserve of the UK Government in Westminster, it is now widely recognised that devolution to Wales since 1999 has given the Welsh Government considerable autonomy over many important areas of policy which overlap with the UK Government's formal responsibilities for criminal justice. No longer simply defined by



Robert Jones

Lecturer in the Welsh Criminal Justice System
Cardiff University

uniformity and its assimilation with England, the Welsh criminal justice system is now best characterised as being constituted across a 'jagged edge' of intersecting competences and responsibilities shared between two governments with different political priorities and accountable through different electoral mandates (Jones and Wyn Jones, 2022: 8). As acknowledged by the UK Ministry of Justice when setting out its plans in 2018 for the reunification of probation in Wales, devolution has created a 'fundamentally different delivery landscape' for justice in Wales (Ministry of Justice, 2018: 36).

(England and) Wales

Notwithstanding the significance and importance of these recent developments, Wales largely continues to be subsumed within debates played out on an England and Wales level. Most criminal justice data, for example, continue to be published on an England and Wales basis without any Welsh disaggregation. Despite the UK Government's insistence that it recognises the problem (e.g. Ministry of Justice, 2017; House of Commons Welsh Affairs Committee, 2019), including the Parliamentary Under-Secretary of State for Justice's claim that the demand for Wales-only data 'is not an unreasonable request' (House of Commons Westminster Hall Debate, 29 November 2022), many sources of data remain publicly inaccessible.

We find ourselves, therefore, at a rather peculiar juncture. On the one hand, devolution has made it necessary to think about Wales as a distinct criminal justice policy space. On the other, exploring the Welsh context to prisons and probation remains fraught with difficulty. Over the past decade, however, research carried out using multiple requests for information under the Freedom of Information Act 2000 has helped to access Wales-only data on a range of topics, including prisoner numbers, probation caseloads, and the use of pre-sentence reports. Such efforts to disentangle Wales from England have helped to uncover a range of problems facing the Welsh criminal justice system. In the process of doing so, these data further underline the need for greater focus on the specificities of the Welsh context.

Wales' Imprisonment Rate

From drastic court closures, severe cuts to legal aid, the decline in the use of community sentences, a rise in the use of recall and remand, to clear evidence of racial disproportionality throughout all stages of the system, a recurrent theme throughout what limited work has been done in recent years is that the Welsh criminal

justice system is marred by 'undeniably poor outcomes' (Jones and Wyn Jones, 2022: 171). Interestingly, despite the existence of a supposedly unitary system, disaggregated data show that Wales often performs less well on several measures than England. By far the most striking and arguably the most concerning revelation is that when disaggregated from England, Wales has the highest imprisonment rate in western Europe.

There are two ways in which we can approach the measurement of Wales' imprisonment rate. Firstly, when looking at the number of people held in Welsh prisons ('in-country' method), the imprisonment rate per 100,000 people now far exceeds the level recorded in any other country in western Europe. While Scotland recorded the western Europe's highest imprisonment rate (137 per 100,000) in the most recent *World Prison Population List* (Fair and Walmsley, 2021), the level recorded in Wales in 2021 was considerably higher (156). With HMP Berwyn in Wrexham now reaching its full operational capacity, the 'in-country' imprisonment rate in Wales reached 174 per 100,000 in 2023. This level far exceeded the rate recorded in England (143), Scotland (142) and in Northern Ireland (97).

The 'in-country' rate, however, does not tell us the full story. Indeed, with an average 1,733 English prisoners held in Wales in 2023, and 1,425 Welsh prisoners located in prisons in England, the 'in Wales' measure largely reflects the capacity of the Welsh prison estate and how this space is being used by HMPPS. Disaggregated data based on home address, however, provide a more accurate representation of the number of people from Wales in prison. These data show that every year since 2013, Wales has recorded a higher imprisonment rate than England. In the most recent figures, the average number of Welsh people in prison surpassed 5,000, with the Welsh imprisonment rate (162 per 100,000) once again far exceeding the level recorded for English prisoners (142 per 100,000).

The question that naturally emerges out of these findings is quite simply: why? To begin to address this we might naturally turn to the conventional methods used by academics and researchers to explain prison population changes (Roberts and Ashworth, 2016; Millie et al. 2003; Sentencing Council, 2018). These conventional methods, however, provide us few answers. Firstly, crime levels in Wales provide no clear explanation. Since 2013, police recorded crimes per 1,000 people in Wales have been consistently lower than the rate recorded in England. Another possible theory is that courts in Wales are more likely to impose immediate custodial sentences than in England. Here, again, we find few answers. While data broken down by court type reveal some differences in custody rates between Wales and England (Jones, 2019a), the average custody rate in England has been higher than the level recorded in Wales since 2000. Finally, while increasing sentence lengths have been a major contributing factor to rising prisoner numbers in England and Wales (Ministry of Justice, 2016), there is limited evidence that this has had any disproportionate impact in Wales, with the average custodial sentence length consistently higher at courts in England (15 months) than in Wales (13.2 months) over the last two decades.

Despite sparking some initial attention and concern when it was first uncovered in 2019 (House of Commons Westminster Hall Debate, 22 January 2020; National Assembly for Wales Debate, 22 January 2019; Morris, 2019; Rees, 2019), UK justice officials have repeatedly failed to account for the fact that Wales has consistently recorded a higher rate of imprisonment than England, not to mention any other country in western Europe. The effects of

this indifference and the neglect shown towards Wales is that those with a keen interest in the Welsh criminal justice system can only continue to speculate about the possible causes. Without routine access to Wales-only data, and in the absence of any kind of serious or authoritative explanation for what is happening in Wales, there is little prospect that a solution to some of Wales' most intractable problems will be found anytime soon.

Conclusion

The Commission on Justice in Wales' (2019:10) landmark report reached the rather sobering conclusion that the people of Wales are being 'let down' by the Welsh justice system in its current form. For those familiar with prisons and probation in Wales, this verdict is one that is likely to have generated little surprise or controversy. However, what the Commission's report *has* generated since its publication in 2019 is a firmer interest and focus on the operation and performance of the Welsh criminal justice system. While the Welsh Government's efforts to prepare the ground for future justice devolution has unquestionably driven this agenda forward since 2019, the Commission's report will continue to offer future academics, politicians, and practitioners an authoritative evidence base upon which to challenge the hegemony of the unitary system and the use of 'England and Wales' as *the* dominant framing and unit of analysis for debates on prisons and probation. The contributions included in this issue represent a clear and important example of that challenge. After all, without it, what we know about punishment in Wales, both now and in the future, is likely to remain extremely limited indeed.

References

- Commission on Justice on Wales (2019), *Justice in Wales for the People of Wales*. Cardiff: The Commission on Justice in Wales. Available at: https://www.gov.wales/sites/default/files/publications/2019-10/Justice%20Commission%20ENG%20DIGITAL_2.pdf
- Fair, H. and Walmsley, R. (2021), *World Prison Population List*. Thirteenth Edition. London: Institute for Criminal Justice Policy Research. Available at: https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf
- House of Commons Welsh Affairs Committee (2019), *Prison provision in Wales: Government response to the Committee's Fourth Report*. Third Special Report of Session 2017-19. London: Stationary Office. Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwelaf/2584/2584.pdf>
- House of Commons Westminster Hall Debate (2020), *Commission on Justice in Wales*. Volume 670: debated on Wednesday 22 January 2020. London: House of Commons. Available at: <https://hansard.parliament.uk/commons/2020-01-22/debates/45A32F4F-4FD7-4AE5-99B6-2780FD13082B/CommissionOnJusticeInWales>
- House of Commons Westminster Hall Debate (2022), *Devolution of Justice: Wales*. 29 November 2022. Volume 723. Available at: <https://hansard.parliament.uk/Commons/2022-11-29/debates/3F64A897-1E73-43C6-8BF4-099FC68F9340/DevolutionOfJusticeWales>
- Independent Commission on the Constitutional Future of Wales (2024), *Final Report: January 2024*. Cardiff: Independent Commission on the Constitutional Future of Wales. Available at: <https://www.gov.wales/sites/default/files/publications/2024-01/independent-commission-on-the-constitutional-future-of-wales-final-report.pdf>
- Jones, R. and Wyn Jones, R. (2022), *The Welsh Criminal Justice System: On the Jagged Edge*. Cardiff: University of Wales Press.
- Millie, A., Jacobson, J. and Hough, M. (2003), 'Understanding the growth in the prison population in England and Wales'. *Criminal Justice*, 3(4): 369-387.
- Ministry of Justice (2016), *Story of the Prison Population: 1993 – 2016, England and Wales*. London: Ministry of Justice.
- Ministry of Justice (2017), *Report of the Justice in Wales Working Group*. London: Ministry of Justice.
- Ministry of Justice (2018), *Strengthening Probation, Building Confidence*. Consultation document. London: Ministry of Justice.
- Morris, Steven (2019), 'Wales has highest incarceration rate in western Europe - study'. *The Guardian*. 16 January 2019. Available at: <https://www.theguardian.com/uk-news/2019/jan/16/wales-has-highest-incarceration-rate-in-western-europe-prison-population-england>
- National Assembly for Wales Debate, Plenary, 22 January 2019. Available at: <http://record.assembly.wales/Plenary/5419#C158045>
- Rees, J. (2019), 'Wales has 'highest imprisonment rate' in western Europe'. *BBC Wales News*, 16 January 2019. Available at: <https://www.bbc.co.uk/news/uk-wales-46878107>
- Roberts, J. and Ashworth, A. (2016), 'The Evolution of Sentencing Policy in England and Wales, 2003-2015'. *Crime and Justice*, 45(1): 307-358.
- Sentencing Council for England and Wales (2018), *Written evidence submission to the House of Commons Justice Committee's Prison Population 2022: planning for the future inquiry*. London: Sentencing Council for England and Wales.