

The Virtual Prison

The last twenty-five years have seen dramatic rises in the prison populations of most industrialized nations. Unable to keep up with increased numbers of convicted offenders, governments and criminal justice systems have been seeking new ways to control and punish offenders. One sanction adopted in Canada and some parts of Europe and the USA is community custody, which attempts to recreate the punitive nature of prison but without incarceration. This book analyses the effectiveness of this approach and explores its implications for offenders and society as a whole. It demonstrates that if properly conceived and administered, community custody can reduce the number of prison admissions and at the same time promote multiple goals of sentencing. When appropriately constructed, community custody is a sanction which holds offenders accountable for their conduct but which permits them to change their lives in ways that would be impossible if they were in prison.

JULIAN V. ROBERTS has been working in the area of sentencing and public opinion for over twenty years. He is editor of the *Canadian Journal of Criminology and Criminal Justice* and has written and co-edited ten books including *Public Opinion, Crime, and Criminal Justice* (1997); *Making Sense of Sentencing* (1999); and *Criminal Justice in Canada* (2003).

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The Virtual Prison

Community Custody and the Evolution of Imprisonment

Julian V. Roberts



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Foreword

The dominance of imprisonment in many Western penal systems is well known. Some governments have tried to bring about reductions in the use of imprisonment by introducing alternative sanctions, but successes in this endeavour have been relatively rare. Criminologists have analysed the causes of the frequent failures of efforts to reduce reliance on imprisonment, and are ready to raise doubts about the prospects of new initiatives of this kind. This study, however, is different. It discusses an alternative form of sentence that was designed to reduce reliance on imprisonment and appears to have done so, and this gives Julian Roberts the opportunity to explore the conditions for success and methods of avoiding the route to failure.

The measure that is the focus of this study does not have a single name internationally, even though variations of it have been tried in several different jurisdictions. In Canada it is called a conditional sentence of imprisonment, whereas in other jurisdictions it is referred to as home detention, home confinement, or some other term. What it involves, usually, is a sentence placing an offender under curfew in his or her home for certain hours of the day and/or at weekends. In certain cases 'absolute house arrest' is a condition, and the offender is confined at home at all times except for a very limited number of court-authorized absences. The sanction is enforced by random checks by probation officers, or through the use of electronic monitoring. In all cases, judges have the power to commit the offender to prison in the event that conditions of the sentence are breached without reasonable excuse. The home becomes the prison, at least during the hours of confinement. This experience is clearly not the same as being sent

to prison, since it is not a form of social exclusion, does not expose the offenders to the close company of other prisoners, and lacks some of the other pains of imprisonment. On the other hand it is certainly restrictive, preventing much normal socialization and inevitably imposing strain on social relationships and creating hardships for the offender's family or spouse.

In what terms can it be said that the introduction of community custody in Canada has been a success? The use of conventional prison sentences has declined since 1996, when the new measure became available. Criminologists would look immediately for signs that community custody is being used in cases where imprisonment itself would not have been imposed prior to 1996, but there appears to be evidence of only a small 'net-widening' effect of this kind, dwarfed by the overall decline in custody. Moreover, the proportion of orders that have been completed without breach is high; this will dampen fears that community custody might become a 'back-door' route into prison for non-compliant offenders. Other jurisdictions with these kinds of sentence report similarly positive results.

In practice, of course, this means that sentencers have 'played ball'. Measures of this kind cannot succeed if they are either infrequently used by the courts or not used in the intended way. The prospects of success would also be reduced if there were public and media opposition. But Julian Roberts, a world leader in the assessment of public opinion on crime and sentencing, is able to show how public support for such measures can be mobilized – by giving publicity to the details of what the orders involve and the restrictions they impose, thereby confronting the misapprehensions that often drive opposition.

The book concludes with a set of well-argued propositions about the requirements for introducing a successful measure of this kind, emphasizing the importance of presenting it as a form of custodial sentence, and dealing with some of the obvious difficulties such as the reactions of victims to having offenders living close by. This study does not duck the many issues of principle raised by new measures of this kind, such as whether they are humane, whether the effects on third parties are likely to be disproportionately destructive, and so on. It represents a well-rounded and searching examination of the claims of community custody to have broken away from the trend of failure of alternatives to the prison, an examination all the more pertinent to English readers in view of the introduction of the new suspended sentence and kindred measures under the Criminal Justice Act 2003. The book may be said to chart a journey by Julian Roberts from

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sceptic to supporter, from agnostic to advocate of community custody when it is appropriately constructed and imposed, and others will surely be persuaded to join him. It is a privilege to be able to commend this volume to policy-makers and criminologists alike.

Andrew Ashworth
Vinerian Professor of English Law,
University of Oxford

Preface

In 1996, community custody came to Canada, when Parliament created a new community based form of custody called the conditional sentence of imprisonment. Since then I have been grappling with understanding this sanction in light of similar developments in other jurisdictions. It struck me that one way to understand the nature and potential of this sanction was to write a book about the topic. Whether I have achieved this understanding, the reader alone will decide.

Some readers may find the central thesis – that community custody with house arrest should be more widely used – inherently conservative; an attempt to promote punishment, and to recreate the conditions of imprisonment in the last refuge from state power: our homes. To these readers I would add (if they are still reading) that community custody should only ever be used as a substitute for secure detention, and that community custody permits offenders to influence their lives and the sentences they are serving. This can only but benefit these individuals, their families and the communities to which they belong.

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