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Crime and Punishment at Century's End

On any given day, you are likely to see or hear something in the media about crime and its victims. For instance:

- ◆ A 46-year-old woman is shot in the head during a home-invasion robbery and dies from her injuries.
- ◆ A number of new immigrants are surprised to find that the terms of their automobile lease contracts are different from the oral representations of those contracts, and the firm's owner is indicted on fraud charges.
- ◆ A teacher is struck in the head by a stray bullet, in full view of the fifth graders in his classroom, during an outside shoot-out between juvenile gang members.
- ◆ A newborn baby has two fingers shot off and her father is shot in the chest when two men in dark suits, posing as pie salesmen, open fire inside the home to which they have been admitted.
- ◆ A 12-year-old boy is sexually molested by a city employee, who is caught and prosecuted.
- ◆ Four people are methodically slaughtered by a man who is identified as a convicted felon and alleged gang member but who remains at large.
- ◆ A model is murdered and buried in a shallow grave in a national forest, and the photographer accused of her murder pleads not guilty.

Incidents like these are shocking because the victims are people just like us, going peacefully about their daily lives until they cross the paths of criminals.

Understandably, stories like these make us angry and fearful. We all cope with these strong emotions in different ways. We might carelessly ignore the dangers around us, or we might become little more than prisoners in our own homes or neighborhoods. We might buy a gun for self-protection. Or we might pressure our political representatives for more police, more prisons, greater criminal penalties. In fact, in recent years members of the public have responded in all these ways.

This book focuses on the punishments we have devised for convicted criminals. In the past few years, a number of “get tough on crime” measures have been adopted, including mandatory penalties, “three-strikes” sentencing, and expansion of the death penalty. These measures are intended to put criminals out of business and to keep more good citizens from being murdered, assaulted, robbed, and otherwise victimized. But they are expensive, especially in an era of tight government budgets. And so it is reasonable for us to ask whether we are getting our money’s worth from the crime-control system we have recently been building: Are the penalties we impose profitable, in the sense that they cost-effectively achieve our goals?

Crime and the Fear of Crime

The public’s response to certain crimes is dramatic. In 1993, when 12 tourists were murdered in Florida, frequent media reports about the crimes described how the victims were trapped in unfamiliar territory by vicious predators. The media advised people which areas to avoid and how to conduct themselves in public. Large numbers of Florida-bound tourists decided to avoid potential problems altogether by vacationing elsewhere. Many of the Florida victims were tourists from other countries, and so the hysteria spread worldwide. The state lost millions of dollars in canceled reservations.

But media publicity about the murders obscured some important facts. Most notably, Florida has more than 40 million tourists annually, so the prospect of a tourist being murdered was less than 0.0001%. This rate was lower than the murder risk for Florida’s 13.5 million residents or for the residents of other states. In addition, the tourist murder rate has sub-

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Exhibit 1.1. Number of Serious Victimizing Crimes Known to the Police per 100,000 U.S. Inhabitants, 1978-1993

sequently declined (Moran, 1995). Obviously, we cannot judge the prevalence or seriousness of crime solely by what we read in the newspapers and newsmagazines or hear on radio and television.

Crime Rate Trends

The media and some politicians have led us to believe that crime rates have been increasing at an alarming rate. In reality, however, research shows that crime rates have fluctuated somewhat from year to year with no clear trend up or down. Although trends in crimes reported to the police do seem to differ from trends reported in a confidential survey of U.S. residents, these differences make sense in light of the ways the two types of statistics are gathered.

Crimes known to the police (see Exhibit 1.1) are compiled by the Federal Bureau of Investigation (FBI) from data supplied by local city and county police agencies under its Uniform Crime Reports (UCR) program, through which police classifications of lawbreaking have become standardized. The FBI's *index crimes* (its term for serious victimizing crimes) can be categorized, for the period covered, as follows:

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Exhibit 1.2. Reported Victimization Rates for Personal and Household Crims in the United States, 1975-1994

- ◆ *Violent crimes:* murder and nonnegligent homicide, forcible rape, aggravated assault
- ◆ *Property crimes:* robbery, burglary, larceny-theft, motor vehicle theft

In contrast, the confidential survey of U.S. residents (see Exhibit 1.2)—now known as the National Crime Victimization Survey (NCVS)—relies on direct reports from the general populace. The U.S. Justice Department contracts for interviews every 6 months of a representative national sample of 110,000 persons 12 years old or older in 66,000 households. Randomly selected fractions of the sample are replaced periodically by new random selections from the total U.S. population. Members of the sample are asked whether in the past 6 months they were the victims of the crimes on a standardized list. For each crime that they report experiencing during this period, they are asked whether the police were notified.

Originally, the survey was known as the National Crime Survey. It had several noteworthy differences from the NCVS, which replaced it in 1992. For instance, the category “household crimes” in the National Crime Survey included

attempted and completed crimes that do not involve personal confrontation. Examples of household crimes include burglary, motor vehicle theft, and household larceny. (Bureau of Justice Statistics, 1994, p. 134)

The questionnaires were redesigned for the NCVS by adding numerous probes regarding theft. As a result, respondents reported many more small personal losses than before, especially losses blamed on persons whom the victims knew or suspected (often a friend or relative). The distinction between personal theft and household crimes became less clear, and so the categories were combined.

NCVS crime rates are higher than crime rates known to the police because, according to the NCVS interviews, only about 36% of all victimizations are reported to the police. The police are notified in only 34% of property crimes (including, however, 78% of motor-vehicle thefts) and 42% of violent crimes, the survey indicates. Most nonreporting of crimes to the police seems to be due to the relationship between the victim and the perpetrator and some due to the victim's reluctance to get involved with the police.

Both sources of data on crime rates—the UCR and the NCVS—greatly underreport a significant portion of all crime. Experts believe that the most frequent crimes in the United States are illegal drug offenses, such as the sale, purchase, or possession of marijuana, cocaine, heroin, or other legally forbidden substances by persons other than the physicians, pharmacists, or others who are licensed to handle these drugs. Very few drug crimes are reported either to the police or to crime victimization surveyors, however. This problem is discussed in more detail in Chapter 5.

Rates of total victimizing crimes known to the police have been stable overall in recent decades, according to Exhibit 1.1, although the 10% to 14% that are crimes of violence have increased somewhat. This small increase may be due only to growth in the rates of notifying the police of violent crimes, perhaps because more crimes are committed by strangers now than formerly. The United States has become more urbanized, and therefore people know a smaller percentage of the other persons in their communities than most people once did.

Unlike the rates of crimes reported to the police, the rates of violence reported to victimization surveyors have been remarkably stable overall, as Exhibit 1.2 shows. Furthermore, the rates of personal theft and household crimes reported to the surveyors have declined, probably mainly

because of demographic trends. Teenagers are not only the majority of arrestees for crimes of this type, with peak arrest rates for boys from 16 to 18 years old, but these youngsters also have the highest rates of reported victimization by these crimes. In 1960, one third of the U.S. population was under 18, but today only one fourth are that young. After about 1985, the postwar baby-boom children started reaching their thirties and forties, when crime rates diminish. A small “echo boom” in crime rates may mark the end of the 1990s and persist briefly after the year 2000, because these are the years when the offspring of the baby boomers—the so-called boomerang generation—will become teenagers and young adults. However, at the same time more people will be reaching old age, when few engage in serious crimes and few keep the hours or go to the places where victimizing crimes by others are most frequent.

Reasons for the Fear of Crime

Despite the moderate trends in crime rates in the 1990s, fear of crime has become a major source of anxiety for many people. One reason for the discrepancy is that today a larger percentage of violent attacks are by strangers and a larger percentage are by gun, both of which are more fear-provoking than the other offenses that most people have experienced. In earlier times, people were less frightened by crime because it was rarely life-endangering and it could usually be ascribed to relatives, friends, or acquaintances, whose motives were easier to discern.

Another explanation for the recent surge in the fear of crime is greater media attention to scary offenses. In addition, when politicians exploit the public’s anxiety about crime to get votes, media coverage of their campaign rhetoric means all the more dramatic news stories about crime. All this attention to crime leads the public to believe that they have more to fear than ever before.

Finally, demographic trends have increased the fear of crime, despite their contributing to the decline in crime rates by reducing the proportion of youths in most communities. Older people, whose numbers are growing, are persistently the most fearful of being attacked, and they agitate most for giving criminals severer punishments. Policymakers cannot help focusing on complaints about crime from the elderly, as older persons as a group vote more regularly than others and are active and vocal on matters that concern them.

The Escalation of Penalties

The result of growing fear of crime has been a notable change in the way we punish convicted criminals. In the 1960s and 1970s, sentencing principles were multidimensional. Judges could freely choose among confinement, supervised release into the community, restitution and fines, and suspended sentences. Thus penalties varied greatly from one court to another. Punishments could be tailored to suit not only the crime but also the criminal and the prospect of reforming the offender.

In the 1980s and 1990s, as crime became a staple of the nightly news and fear of crime began to mount, governments adopted an escalating series of measures designed to stop crime. Legislators always find that their easiest and most popular response to the fear of crime is to support a law mandating higher penalties.

One dramatic consequence has been revival of the death sentence. For the first few years after the U.S. Supreme Court reinstated capital punishment in 1976, only one or two persons were executed each year in this country. But in 1985, five were executed; in 1986, 21 received punishment by death; and an irregular increase occurred thereafter. The total peaked at 38 in 1993 and has remained over 30 per year since then.

The rising number of death penalties has been far overshadowed by increases in prison terms, however. Several developments in law enforcement and corrections have contributed to the increase in prison populations. Especially important is a change in sentencing laws, which in many jurisdictions now force judges to incarcerate each person convicted of certain crimes for a *mandatory minimum prison term*, the length of which is based only or mostly on the person's current crime. Courts pay less attention than in the 1960s and 1970s to the defendant's prior, noncriminal life. Indeed, they tend to pay less attention than previously to whether an offense was the defendant's first, second, fifth, or fiftieth.

Since 1980 we have also been engaged in a largely futile intensification of the "war on drugs." By the early 1990s in most large U.S. cities, about two thirds of arrests were for drug-related crimes. Roughly a third of first-timers in state prisons are serving sentences for drug possession or sale, and many others are there for crimes committed to get money for drugs. More than 60% of federal prisoners are sentenced on drug charges. In California, although the total number of prisoners increased fourfold in the 12 years from 1980 through 1991, the number confined for drug crimes increased fifteenfold (Zimring & Hawkins, 1995, p. 162).

California's burden of prisoners rose especially after 1994, when the state passed a *three-strikes law*. Several other states followed with similar legislation. Such laws require, for a third felony conviction, prison terms of 25 years to life without parole. Some states enacted two-strike laws and one-strike laws to mandate long prison terms for a second or even first instance of a specified type of violent felony. Such rigid rules have produced some obvious injustices. In one much publicized case, the third-strike offense that evoked a sentence of life imprisonment was stealing a pizza. In another, it was stealing a pound of meat. The frequency of these sentences diminished slightly after a 1996 court decision that gave judges discretion to overlook as "strikes" some less serious felonies and those committed by a very young person or by a previously convicted felon who had since had more than 5 crime-free years. However, politicians quickly drafted laws to weaken the impact of these court rulings.

When public demands for more severe punishment coincided with widespread money shortages in state and local governments, a host of other measures were introduced. These innovations imposed harsher penalties but a briefer period of confinement than typical of imprisonment. For example, "shock incarceration" and "boot camps" spread rapidly during the 1980s and 1990s, primarily for young offenders. Shock incarceration briefly exposes impressionable young people to the harsh realities of prison and criminal life, in the hopes that they will be scared into obeying the law from then on. Boot camp incarcerates them for a relatively brief term of vigorous drill and exercise, as in basic training for military recruits. Some boot camps also provided hard work and remedial education, which are justified as increasing the postrelease employability of inmates. There have also been scattered revivals of chain gangs in the South, with much publicity, but mostly they have been used to handle a few jail inmates who are serving short sentences. Other places have removed TV sets and weight-lifting equipment from buildings where prisoners are housed. Officials assert that these much publicized innovations "get tough on crime" by making punishments harsher.

The High Cost of Getting Tough on Crime

Our crusade to get tough on crime is not without costs. New prisons and jails, new courts, and additional police are expensive. Exhibit 1.3 shows the rapid escalation in U.S. expenditures for criminal justice from 1982

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Exhibit 1.3. Total State and Federal Expenditures for Criminal Justice Services in the United States, 1982-1992 (in billions of dollars)

through 1992, a period when we were instituting many new “get tough on crime” measures.

Most of the growth in costs of all criminal justice agencies—police, courts, and corrections—comes from our increased efforts to suppress illegal drug use. From 1988 to 1992 the Bush administration spent more than \$45 billion in its war on drugs, yet illegal drug imports increased, heavy users became more numerous, and seized drugs became purer—suggesting a more plentiful drug supply. In addition, billions were squandered overseas in vain efforts to stop the growth of crops that yield illegal drugs. Meanwhile, legislators kept raising penalties for drug crimes, often mandating long prison terms. These trends, continued in the Clinton era, required crash spending for prison construction by states and the federal government, a form of spending that is much more expensive than well-planned and budgeted.

Mandatory minimum sentences and three-strikes laws have also been expensive. Mathematicians of the Rand Corporation calculate that full implementation of California’s three-strikes law might reduce serious crimes there by 25%—but at a cost of \$5.5 billion annually (“Three Strikes,” 1995). The state’s entire annual budget is \$61.5 billion, including income from the federal government and payments for education and welfare, so

the cost for three-strikes laws seems prohibitive. The Rand study pointed out that most crime reduction attributable to the three-strikes laws would come from confining youthful offenders, for it is in the late teens and early twenties that the highest rates of conviction for felonies occur. Because life in prison for these offenders would mean paying their room and board for 50 or more years, the study concluded that

dollar for dollar, [three-strikes laws] are not as effective in reducing violent crime as more targeted laws. They cast too wide a net and catch a lot of little fish—nonviolent offenders and older felons who no longer pose much threat to society but who are going to spend the rest of their lives in prison getting geriatric care. (“Three Strikes,” 1995, p. 1)

Ironically, three-strikes laws and some of the other harsh new measures have actually impeded the ability of the criminal justice system to get tough on crime—that is, to give criminals what they justly deserve. Defendants facing life terms are much more likely to insist on a jury trial, which increases the financial difficulties of budget-strapped prosecutors and courts and exacerbates the shortage of courts and judges for civil cases. Because of the logjam, prosecutors have been charging only misdemeanors for many persons arrested on felonies, if they agree to plead guilty. Such covert bargaining defeats efforts to achieve justice.

Questions of justice have also been raised because racial minorities are disproportionately being penalized with long prison sentences for their crimes. Nearly two thirds of all prison inmates are black, Native American, or Hispanic, yet these minorities make up only about a fifth of the total U.S. population. More than 9% of all African American adult males are in jail or prison or on probation or parole, compared with not quite 2% of all white adult males (Browne, Gilliard, Snell, Stephan, & Wilson, 1996, Table 1.2). Of males in their twenties, about one in three African Americans and one in seven Latinos are under these court-ordered restraints (Ostrow, 1995). African Americans, about an eighth of the U.S. population, are nearly half of its adult prisoners; they are only a third of its probationers. Yet researchers have found that people of the same income level and neighborhood tend to commit crimes at similar rates, except for the low rates of some Asian groups (Sampson, 1987). We must therefore ask to what extent the predominance of minorities in prison is due to prejudiced police and courts and to what extent it reflects the lower incomes and inferior educations of these minorities and their segregation in slum neighborhoods.

Focusing on crime and punishment also raises some issues of social priorities. Partly to pay for the explosive rise in prison costs, states have already sharply cut funding of universities and other educational institutions. Doing so, however, jeopardizes long-run economic growth. Work technologies are changing at an exponential rate, making higher levels of knowledge mandatory for those who seek well-paying jobs. It seems impractical for a society to spend more on punishing youth than giving them an education.

The Search for Profitable Penalties

The financial and social costs of getting tough on crime would perhaps be acceptable if we knew that they were buying significant decreases in crime. Yet little attention has been devoted to determining whether the higher penalties change crime rates. What little research has been done is inconclusive. For example, evaluations of boot camp effectiveness usually find that its releasees return to crime at about the same rate as similar offenders with longer confinement in jails or prisons. Educational and drug treatment programs in the camps appear possibly to reduce future criminality, but the data that have been gathered are inadequate to test the results of these programs well (Harland, 1996, pp. 102-112; Mackenzie, Brame, McDowall, & Souryall, 1995). Also not well assessed are the diverse special programs of postrelease control and assistance given boot camp inmates (Bourque, Han, & Klein, 1996).

Similarly, it appears that efforts to establish mandatory minimum prison terms have neither achieved justice in sentencing nor protected the public from crime, for several reasons:

- ◆ Nearly all drug crimes and large fractions of property offenses, as well as almost all acts of violence within families, are never reported to the police.
- ◆ Criminals are caught and convicted for less than a 10th of their serious crimes against others and for a fraction of 1% of their illegal drug transactions (Chaiken & Chaiken, 1982; Felson, 1994, p. 9). Many surveys of high school seniors and others show that even extensive illegal drug taking generally does not result in arrest.
- ◆ A majority of those who most often commit serious crimes engage in many different types of offense (Sampson & Laub, 1993; Wolfgang, Thornberry, & Figlio, 1987). Chance alone determines whether they are

caught for their worst crimes or for lesser ones. Even if they are convicted of and punished for their lesser crimes, they are in effect still getting away with more serious lawbreaking.

- ◆ A term in prison or jail is in itself unlikely to keep some offenders from returning to criminal activity. The likelihood of a criminal's future lawbreaking can be most accurately assessed by four factors: frequency and severity of the person's previous crimes; age at which the person became active in crime; extent of drug and alcohol use; and extent of legitimate employment in recent years (Blumstein, Cohen, Roth, & Visher, 1986). Future criminality of drug offenders is especially tied to their history of drug and alcohol use.

The lesson we should be absorbing is that despite the great costs of imprisoning people convicted of serious crimes, we have not yet succeeded in reducing crime rates, at least not to a level that justifies the expense. We need to seek ways to make our penalties more profitable—that is, legislators and judges need to consider what researchers have found about how alternative penalties, which are described in Chapter 2, affect various types of offenders. For every dollar spent on crime control, we should try to achieve the maximum result.

Note

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