How to Have Less Crime and Less Punishment

Engineers have a sardonic saying: "When brute force fails, you're not using enough." For three decades, in the face of the great crime wave that started in the early 1960s, we have been trying to solve our crime problem with brute force: building more and more prisons and jails. Recently, the crime problem has diminished—though the downtrend stopped around 2004—but we still have a huge crime problem, to which we have now added a huge incarceration problem: there are now 2.3 million people behind bars at any one time, and that number continues to grow.[*]

Is there an alternative to brute force? There is reason to think so, and pieces of that alternative approach can be seen working in scattered places throughout the world of crime control. But the first step in getting away from brute force is to want to get away from brute force: to care more about reducing crime than about punishing criminals, and to be willing to choose safety over vengeance when the two are in tension.

Developing a consequence-focused approach to crime control would require that we blunt the emotional edge that debates about crime often have and ask the simple question: what are the stakes in crime control? If for a moment we thought about "crime" as something bad that happens to people, like auto accidents or air pollution or disease, rather than as something horrible that people do to each other—if we thought about it, that is, as an ordinary domestic-policy problem—then we could start to ask how to limit the damage crime does at as little cost as possible in money spent and suffering inflicted.

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[*]Except as noted, all statistics about crime rates, incarceration rates, numbers of arrests, probationers, parolees, and criminal-justice budgets are drawn either from the annual Bureau of Justice Statistics *Sourcebook of Criminal Justice Statistics* or the annual FBI Uniform Crime Reports (published as *Crime in the United States*). Detailed page and table references and extensive methodological notes are available. See http://press.princeton.edu/titles/9018 .html.

The answer to that question will not be the only factor that influences, or should influence, crime-control policy. Justice both requires and limits punishment. Laws, customs, and institutional arrangements—including the Constitution and ideas such as "innocent until proven guilty"—limit, and ought to limit, the range of options. Still, thinking about the advantages and disadvantages—what economists quaintly call "benefits" and "costs"—of different approaches to crime control is one place to start the inquiry.

Crime causes damage: directly to victims, and indirectly as people incur costs, and impose costs on others, to avoid victimization. The value of the total damage is hard to reckon, but serious estimates (even excluding "white collar" crime) run as high as $1.4 trillion per year: more than 10 percent of GDP.[1] Furthermore, this damage falls most heavily on the poor and socially marginal people least able to bear it; crime not only concentrates around social disadvantage but also sustains it, increasing costs for consumers and employers alike and thereby driving away resources and opportunities.

One possible way to reduce the amount of crime is to detect, apprehend, convict, and punish criminals. All of those actions cost money—currently about $200 billion per year nationwide—and do other kinds of harm, imposing suffering not only on those punished, but also on their families and friends. That the United States, with about 1 percent of its adults behind bars, now has the highest level of incarceration per capita in the world is not something to be proud of.

Nor are the conditions of incarceration. Some of the defenders of torture at Abu Ghraib, Bagram, and Guantánamo, and in the secret CIA prisons, argued that what was being done to detainees abroad was no worse than what goes on all the time in domestic prisons. That was false. But it was closer to true than it ought to have been. Twenty-five thousand prisoners in the United States live in long-term solitary confinement in "super-max" prisons, and tens of thousands more in "administrative segregation," sometimes for years on end. Prolonged isolation is one of the nastier ways of driving someone mad.[2]

Those harms, too, fall disproportionately to the lot of those already disadvantaged by poverty, social exclusion, and, not least, crime itself. "Criminals" and "victims" are not two distinct populations. Many victims commit no crimes, but few criminals avoid victimization,

and most were victims before becoming perpetrators. Victimization is criminogenic.

One way to frame the general problem of crime-control policy is, "What set of actions would result in the least total harm and cost, from crime and crime-control efforts combined?" Neither across-the-board lenity nor maximum severity offers the right answer to that question.

The right answer, as far as the operations of the criminal-justice system are concerned, will use the minimum amount of punishment necessary to achieve any given level of crime control. That in turn requires that most punishments be swift and certain, rather than severe. Theory and evidence agree: swift and certain punishment, even if not severe, will control the vast bulk of offending behavior. One problem with the brute-force, high-severity approach is that severity is incompatible with swiftness and certainty. Severity means using a large share of punishment resources on a (relatively) few offenders, and (as the American experience with capital punishment since its reintroduction illustrates) the more severe a sentence is the more reluctantly it will be imposed and the more "due process"— and therefore the more time—it will require.[3]

The resources of the current criminal-justice system, matched against the volume of crime, simply do not allow it to punish, even modestly, all offenses or all offenders. Trying to control everything and everyone—the tough-sounding "zero tolerance" approach—leads to sporadic and delayed punishments as the system overloads. The result is great quantities of punishment, much of it severe, and effective control of nothing and no one except those actually behind bars: a bad bargain.

That implies two additional design principles for enforcement regimes to add to the use of swiftness and certainty in place of severity: concentration of resources, and the direct communication of deterrent threats to likely offenders.

Concentration exploits a central, but poorly understood, phenomenon: positive feedback in rates of offending.[4] (See chapter 4.) In a group of generally well-behaved individuals, enforcement can concentrate on a small number of miscreants, delivering swift and certain sanctions, and the resulting high probability that any offense will lead to punishment will make misbehavior an unattractive option.

The same amount of enforcement attention applied to a badly behaved population will lead to only delayed and sporadic punishment,

because the level of offending will "swamp" the enforcement response.[5] As individuals learn that the most likely result of offending is getting away with it, offense rates will tend to rise, aggravating the inadequacy of the enforcement response. Both high and low levels of offending will be self-sustaining, and increases and decreases in offending levels will tend to be self-reinforcing. Positive feedback (the technical term for self-reinforcement) generates both vicious circles—bad situations getting worse—and the opposite: what might be called "virtuous circles." Sometimes both extremes are stable, but no place in the middle is stable: a "tipping" situation.[6]

Then the problem, once caught in a vicious circle, is how to move from the bad, high-violation equilibrium to the good, low-violation equilibrium. One way to do that is to add enforcement capacity so that it is possible to convincingly threaten even a large number of offenders. Since a low violation rate, once achieved, tends to be self-sustaining, it will not be necessary to maintain that additional capacity forever; a level of enforcement activity inadequate to suppress a riot is ample once the riot is under control. The challenge is to find, even temporarily, enough additional capacity to do the job.

One approach to finding those resources might be called "dynamic concentration." Start somewhere: with a geographic region, a set of offenses, or a set of offenders. Borrow existing capacity from other areas, offenses, or offenders to concentrate on the chosen target. Once offenders have gotten the message that, in the words of the old music-hall song, "You can't do that there here," and reduced their level of activity accordingly—once that original target has been "tipped" from high offending to low offending—the temporary increase in enforcement directed at that sector can be relaxed without letting the target "tip" back. That frees up those extra resources for a new target, which tips in turn. Continue until the cost of the enforcement activity required to maintain good behavior where it has been achieved exhausts the available resources. Only at that point will it be true that achieving more compliance will require inflicting more punishment.

Right now the U.S. criminal-justice system is a long way from that point: we could have much less crime, and many fewer people behind bars, than we now do, simply by applying dynamic concentration. ("Simply," of course, in concept only; actually doing it is hard.)

The cost of "tipping" a high-violation situation to the alternative low-violation equilibrium depends on how quickly offenders respond to the new level of deterrence. That transition cost can be reduced—to the benefit of law enforcement and offenders alike—by warning offenders in advance. Actual crime control, unlike the playground game of "cops and robbers," is not a zero-sum game where any gain to one side must reflect a loss on the other side. Since punishment—as opposed to the crime re-duction punishment intends to bring about—is a cost, not a benefit, to the public, officials who design and carry out crime-control efforts share a common interest with the people whose behavior they are trying to control: both sides would gain by reducing the level of punishment. (See chapter 4.)

That makes it in the interest of real cops, as opposed to playground cops, to warn potential lawbreakers of the consequences of lawbreaking. In some situations, the warnings alone can do most of the work, but they need to be backed up with the capacity to deliver on the threat when necessary. As any parent knows, a warning that turns out to be a bluff devalues future warnings.[7]

The same principles that apply to controlling the behavior of actual and potential offenders in general apply, but with even greater force, to controlling the behavior of offenders under "community supervision": parolees (under supervision after incarceration), probationers (under su-pervision instead of incarceration), and those released on bail or their own recognizance while awaiting trial (a special case, given that they are still presumed innocent).

As things stand, the community-corrections system reproduces the flaws of the larger criminal-justice system, having more rules than it can reliably enforce and imposing sporadic but sometimes severe sanctions; a parent who acted the way the probation system acts—letting most misconduct go unpunished, but occasionally lashing out with ferocious punishments—would be called both neglectful and abusive. A small set of rules—each clearly linked to the goal of reducing re-offending—ad-equate capacity to monitor whether those rules are being observed, and a system of swift, reliable, and proportionate sanctions to back up those rules would perform much better. If we can make community corrections a genuine alternative to incarceration—in other words, if we can learn how to punish people and control their behavior when not paying for

their room and board—we can have less crime and less incarceration, to the benefit of victims and offenders alike.

The good news is that programs embodying these principles are beginning to spring up around the country and in all parts of the criminal-justice enterprise. H.O.P.E., CeaseFire, and High Point aren't yet "celebrity" ideas, but they deserve to be.

Of course, crime levels respond to factors other than punishment: both social services and social reforms can reduce crime. (See chapter 7.) But not every social program or reform, not even every worthwhile one, is crime-reducing. Since a relatively small number of people account for a very large proportion of all crime, broadly distributed social services have low "target efficiency" as crime-control measures.

For example, since high-school dropouts have higher crime rates, on average, than people from similar social backgrounds who manage to graduate, it makes sense that improving educational outcomes, especially for students from high-crime neighborhoods, would tend to reduce crime.[8] But there is no convincing evidence that increasing spending on public education by 10 percent would actually improve educational outcomes enough to measurably reduce crime, while 10 percent of the public education budget is more than a quarter of the *total* criminal-justice budget. So while there are many good reasons to want to improve K-12 education, it is unlikely to be a cost-effective means of crime control.

There are things that non-crime-control agencies can do to reduce crime, many of them with much more effect per dollar spent than routine criminal-justice activities. Some of them do not even cost money. If high-school classes started at 10 a.m. rather than 8 a.m. and ended at 5 p.m. instead of 3 p.m., after-school crime would be greatly reduced, and there is no reason to think that pre-school crime would rise correspondingly. But since no one thinks to blame the school superintendent for after-school burglaries, school systems face no pressure to make the change. Similarly, teaching first-grade teachers techniques of classroom order maintenance demonstrably improves not only learning, but also pupils' behavior outside the classroom well into adolescence, if not beyond.[9]

Only social programs that are either very cheap or very effective are likely to be worth doing universally for their crime-control benefits alone. But it is not very hard to spot people, even fairly young children, whose behavior and social circumstances mark them out as high-risk for criminal

activity. The ranks of serious and persistent adult offenders are drawn largely from juveniles with records of misconduct in school and a succession of increasingly serious juvenile arrests.[10] Most of those active juvenile offenders will not develop into high-crime-rate adults, but enough of them will do so to warrant targeting them in crime-prevention efforts. Services that would not be cost-effective as crime control if scattered may look much more attractive if focused on those most likely to become serious criminals when they grow up.*

On the other hand, because crime is so very expensive, any modest-sized social program with measurable crime-control benefits is likely to pay for itself many times over. Positive feedbacks in the system create synergies between social programs and enforcement programs; reductions in crime due to social programs increase the efficacy of the law-enforcement system by reducing the number of crimes competing for enforcement attention.

Nurse home visits for expectant mothers, high-quality preschool programs (and perhaps even Head Start[11]), and reducing children's exposure to lead have all demonstrated that they can reduce crime, some of them quite spectacularly compared to their costs.[12] (See chapter 7.) Yet social-service programs get very little attention in the discussion of how to control crime, and crime-control benefits tend to be peripheral to the way such programs are designed and evaluated.

The bad news is that current policies leave us with unnecessarily—unforgivably—high levels of both crime and incarceration. The good news is that the knowledge of how to do better grows from year to year. This book is intended to push that learning process one step forward, and to help create public pressure for public agencies to do what is needed to shrink both the crime problem and the population behind bars.

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*This is the other side of the Schuck and Zeckhauser (2006) "bad apples and bad bets" analysis. Donohue (2007, p. 390) argues that targeting by race and poverty would be fairly efficient, but notes the difficulty of openly doing so.