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IGNORING THE OBVIOUS

Is incapacitation passé?

By Julius (Jay) Wachtel. In “[Imprisonment and Crime: Can Both be Reduced?](#)”, the lead essay in the current issue of *Criminology & Public Policy*, economists Steven Durlaf and Daniel Nagin suggest that the answer to their provocative question is a resounding “yes!”. [We examined the thesis](#) that certainty of punishment can work wonders last month. This time let’s revisit the one crime-fighting tool that they purposely left out:

...we note that our analysis does not address incapacitation effects, which constitute a logically independent way of reducing crime from deterrence. We recognize that the possibility that incapacitation effects are large represents a potential challenge to our objective of reducing crime and imprisonment....

What impelled them to skip over what is perhaps the most obvious approach to crime prevention? Simply, that it doesn’t fit their stated objective of reducing both crime and punishment:

...incapacitation, if strong enough, can lead to policy changes that reduce crime at the cost of greater imprisonment and so work against the spirit of our argument.

Softball commentaries on Durlaf and Nagin’s paper comprise most of the issue. Nearly all avoid substantial discussion of incapacitation. Two that don’t reprise the spirited debate between criminologists Alfred Blumstein and James Q. Wilson in their [April 2008 Q & A for the Pew Trust](#).

Blumstein has long criticized what he calls America’s “incarceration binge.” In “Approaches to Reducing Both Imprisonment and Crime,” he disputes the notion that the crime drop of the past decades can be credited to the well-known increases in imprisonment and sentence severity (for a post on point click [here](#).) As grist for his mill he points out that crime and imprisonment were both on the upswing well before 1993, the year when crime trends abruptly reversed. (He doesn’t address the possibility that the effect of punishment may have been lagged.) Although he concedes that incapacitation helped bring down the incidence of robbery and homicide, he insists that it wasn’t the only force at work, as though that somehow reduces its salience.

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Wilson disagreed in the Pew Q & A (he said that “tough-on-crime laws” were an important factor in reducing crime) and here. As evidence for his position he contrasts the experiences of the U.S. and Great Britain:

In the 1980s and 1990s [as the severity of punishment in the U.S. increased] English criminal law became softer: A new law discouraged judges from sending all but the most serious offenders to prison and encouraged them to ignore prior convictions, again unless the offense was very serious. As a result the American prison population rose and the English one declined. By 1996 the two countries had changed places with respect to property crime. Using national crime victimization surveys, the English robbery rate is one fourth higher, the auto theft rate one third higher, and the burglary rate twice as high as those in the United States.

Alas, that’s about as much support as punishment gets. In “Thoughts from Pennsylvania,” Mark Bergstrom mentions a study by his employer, the Pennsylvania Commission on Sentencing, which “found support for the use of incapacitation to address chronic and career criminals.” He nonetheless urges that long terms of imprisonment be sparingly imposed and carefully targeted. Actually, that’s not something that Durlaf and Nagin think possible: “To our knowledge, no proven ex-ante technology exists for the [pre-identification] of high-rate offenders with acceptable false-positive rates.” (What if anything might constitute an “acceptable” error rate they don’t say.)

Hostility to punishment infuses the essays. In “Challenges of Implementing Research-Based Policies,” Marc Mauer, a critic of mandatory sentencing, bemoans the difficulty of getting policy makers to listen to a “more nuanced” view of its costs and benefits, especially since locking up criminals offers the “intuitive appeal” (not to say, the factual certainty) of keeping them from victimizing innocent citizens. Elliott Currie’s “The Pitfalls of Spurious Prudence” goes so far as to chide Durlaf and Nagin for endorsing selective incapacitation in any form. Currie, you see, has found the matter settled:

But surely after decades of research and reams of findings, not to mention the damning evidence of 40 years worth of relentless prison growth, we no longer need to be so tentative about the relative ineffectiveness of mass incarceration as a strategy of crime control or about the potential attractiveness of alternatives.

Dr. Currie, meet Dr. Wilson.

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Most everyone seems to accept Durlaf and Nagin's deterrence-through-certainty thesis. But their suggestion that the best way to get there is through enhanced policing draws lots of skepticism.

Eric Baumer articulates the objections in "Uncertainty About Reduced Severity." He points out that in an era of diminishing resources, with many cops already deployed in high-crime areas, further gains in deterrence would probably be marginal. Even if broad improvements were possible, cranking up enforcement is likely to provoke resentment. For an example one need look no further than NYPD, whose aggressive use of stop-and-frisk, one of the tactics that Durlaf and Nagin apparently favor, has exacerbated tensions between officers and minorities. (For a related post click [here](#).)

Actually, since Durlaf and Nagin want to reduce crime *and* punishment, aggressive enforcement may prove problematic. Their retort, that "police might deter without actually apprehending criminals because their presence projects a threat of apprehension if a crime were to be committed," is the breathtaking conceit that inspired "[Having Your Cake](#)." As NYPD's campaign demonstrates, in the real world the path to deterrence through policing will be littered lots of arrests, meaning more processing by the criminal justice system and, as Baumer points out, serious criminogenic consequences for those who get caught in the sweep.

Marie Gottschalk is another skeptic. In "Extraordinary Sentences and the Proposed Police Surge," she argues that Durlaf and Nagin tailored their recommendations to the political climate. A critic of severe sentencing, but a realist about the possibilities for change, she argues instead for a "revitalization" of the parole and commutation process "so that even people who have committed serious crimes get a chance to prove they are rehabilitated..."

Sans the crusader's baggage, her approach forms the core of "Laudable Goals: Practical Hurdles," Dick Thornburg's brief but exceptionally enlightening essay. Here's an excerpt from what the former Pennsylvania governor and U.S. Attorney General has to say:

I consistently have felt that one of the most fruitful areas for investment in the criminal justice system would be an upgraded and sophisticated probation and parole system. If the object is to maximize the chances for offenders to avoid becoming recidivists and to "graduate" into the role of "good citizens," they must be provided with proper tools, rehabilitation, meaningful education and vocational training capabilities "behind the walls," and similar services plus the

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necessary support and monitoring of post-release activities to maximize the opportunities for success.

Wherever one stands on incapacitation, that sounds like a great idea. After all, parole was supposed to be an extension of confinement, not the “get out of jail free card” that it’s become thanks to unconscionable caseloads. In this economy, funding criminal justice is a zero-sum game, so Durlaf and Nagin’s recommended shift of resources to the police would inevitably make parole and probation even less meaningful. (They make passing reference to better post-release supervision, but it’s far from what Gottschalk, Thornburg or your blogger have in mind.)

Well, we’ve come to the end of this post. But don’t fret – there soon will be more! In forthcoming weeks we’ll be scouring recent reports on criminal justice policy for more nuggets of wisdom. So stay tuned – and thanks for reading!