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MORE CRIMINALS (ON THE STREET), LESS CRIME?

Debating the virtues of a less punitive agenda

By Julius (Jay) Wachtel. During the early 1970s New York's "Rockefeller laws" sought to quell rampant drug dealing and drug-related violence by imposing mandatory prison sentences on persons caught selling or possessing modest quantities of heroin, cocaine and other illegal drugs. In 2009 the state changed course. Many so-called "low-level" drug offenders – meaning possessors and dealers whose involvement was modest and who lacked a prior conviction for a violent crime – could escape incarceration by completing a course of treatment. Six years later the [Vera Institute](#) announced the outcome of a study that compared matched samples of offenders processed under both schemes. The results seemed encouraging. Fifty-four percent of those sentenced under the old, punitive Rockefeller laws were rearrested within two years of release or discharge, six percent for a violent offense. For those diverted to treatment under the new laws, the outcomes were thirty-six percent and three percent, respectively.

New York isn't alone. Last year [we blogged](#) about California's Proposition 47, which reduced penalties from felonies to misdemeanors for grand theft, shoplifting, receiving stolen property, writing bad checks, and check forgery when losses were under \$950. Possessing drugs also became a misdemeanor. A similar approach was adopted by the Feds. In 2014 the [U.S. Sentencing Commission](#) relaxed Federal drug sentencing guidelines, [enabling as many as 6,000 inmates](#) to seek immediate release, and up to 40,000 more in the not-so-distant future.

Financial pressures and prison crowding prompted states and the Federal government to ease up on punishment. Approaches include releasing prisoners, amending penal codes to reduce sentence length and downgrade some felonies to misdemeanors, and instituting or expanding the use of diversion and treatment.

That doesn't mean that offending is being completely forgiven. Misdemeanors are still crimes. But shifting away from imprisonment increased the burden on parole and probation offices and local lockups. These, in turn, [accommodated the influx](#) by freeing jail inmates and limiting the length and intensity of post-release supervision. Unlike penal revisions, though, tweaks pulled off at lower levels aren't necessarily enshrined in codebooks. There is no obvious cost, until there is. In a notorious 2013 example, California authorities repeatedly reinstated a habitual parole violator until the man, a convicted sex offender, murdered a 76-year old woman and chopped up her body.

While the outcomes of going easy aren't always so stark, the consequences of the new normal may in time prove profound. "Now, you can get away with it" bragged a chronic offender, who [admitted he began stealing bicycles](#) when California raised the felony theft threshold to \$750. Even better, he could still use drugs because nothing happens when he fails to show up for drug rehab. L.A. County Sheriff Jim McDonnell said that's to be expected. "We've removed the disincentive, but we haven't created a meaningful incentive."

To help make their approach more palatable, advocates of leniency point to the crime drop that we've enjoyed since the madness of the eighties and early nineties. If crime is falling, why not experiment? However, as we mentioned in prior posts (click [here](#) and [here](#)), one likely reason for the "great crime drop" was that increased punishment deterred those who could be deterred while incapacitating the rest.

There are now disquieting signs that violence is again on the rise. As of August 2015, the murder rate in New York City was [nine percent higher](#) than at the same point in 2014. Dallas, Kansas City, Chicago and New Orleans have reported moderate upticks ranging from 17 to 22 percent, and substantial increases were recorded in Washington, D.C. (44 percent), Baltimore (56 percent), St. Louis (60 percent), and Milwaukee (76 percent). Property crime has also gone up in many areas; most recently, with "[double-digit](#)" increases in Los Angeles.

Some argue that the threat is overblown, as only drug possessors and other nonviolent offenders are in line for a break. First, as we pointed out in "[Rewarding the Naughty](#)," that's not necessarily true. As long as a California inmate's most recent offense didn't involve the use of significant force, those with past convictions short of murder are just as eligible for relief under the new laws as anyone else. What's more, the oft-repeated screed that a majority of inmates are there for drug possession doesn't hold up. According to the [Bureau of Justice Statistics](#), only 3.6 percent of state prisoners in 2013 were locked up for drug possession. Fifty-three percent were serving time for a violent crime and 10.5 percent for burglary. In 2014, 96.6 percent of [Federal drug convictions](#) were for drug trafficking, and only 0.9 percent for simple possession.

Secondly, and perhaps more importantly, citizens are far more concerned about the quantity of crime than the characteristics of its perpetrators. To claim that some offenders are somewhat less likely to be recidivists is little comfort when crime is on the rise. Still, this is not a call to "lock 'em up and throw away the key". Excessive punishment drains resources while consigning human beings – for that's what convicted criminals are – to needlessly prolonged misery. Your writer would be delighted to arbitrarily halve or even quarter prison terms if adequate resources were provided to help former convicts successfully integrate into conventional society. Naturally, there would have to be vast improvements in the delivery of education, counseling, housing and job training services. To help former inmates become self-sufficient, it would probably be necessary to provide financial incentives to potential employers. But as we know from the [failed deinstitutionalization movement](#), which promised great savings and more humane outcomes by shifting the mentally ill from state sanatoria to community treatment, successful remedies are expensive. Instead of making the necessary investments, we transformed street cops into orderlies and city jails into mental wards.

Unless we dig deep into our pockets, these are precisely the results that we will get by deinstitutionalizing criminal offenders. Count on it!