

Judicial Symposium on Using the Law and Economics to Reform the System of Criminal Justice: Theory, Empirical Evidence, and Some Applications

Short title: The Economics of Crime and Punishment

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Mason Judicial Education Program, George Mason U Sch of Law, Law and Economics Ctr

Selected Notes:

Daniel D. Polsby, Professor of Law, George Mason University, Former Dean:

There is a generalized perception that punishment perceived as being from a fair system has a general deterrent effect. But offenders are fuzzy on the details, for example, "15 years rather than 12 years" does not deter. Legislatures deal with the details. There is a basis to conclude that there is some specific deterrence. General deterrence is supported but less strongly.

Jonathan Klick, Professor of Law, UPenn:

To what do we attribute the across the board crime drop in the US in the mid-1990's?

There is some effect from Roe v. Wade, but there is possibly some doubt about this. The incarceration rate did not cause the crime drop. Broken Windows policing did not cause it. The mid-90's crime rate drop was international. Some effect of Prozac but not Ritalin. Possibly the advent of videogames. The question is still being studied. Not the death penalty. Not prison changes. Lead paint removed from gasoline which puts lead in the environment at same time as advent of abortion. This had some possible effect. Possible effect of publication of studies on the negative effect of alcohol use during pregnancy on fetus. The timing is the same. The economy and demographics do not explain the lion's share of the crime decline and crime staying low.

The death penalty does not deter murder as the death penalty is currently used. Guns do not cause crime or deter crime (as in possession of guns by potential victims). Kleiman has discovered that quick and sure punishment which is not severe works better. These are micro-studies with some positive results. Youthful offenders are sensitive to costs and benefits even though their brains are developing. The effects of policing on the crime rate are much greater for property crimes than for impulsive crimes like assault, murder and rape but policing does have some effect. Societies with greater income inequality seem to have more crime but causation is difficult to show.

Professor Heckman has shown that work with 3-4 year old children on non-cognitive skills, the ability to socialize with peers and do simple tasks, following directions and other non-school tasks, shows that these skills are important in reducing the crime rate but that otherwise investing in education does not reduce crime. There is some limited evidence that the perceived legitimacy of institutions and access to justice reduces personal honor crimes.

Increasing police reduces property crime. It is hard to find an effect for murder, rape. Opportunistic crimes seem to be highly deterrable. 10% increase in police causes a 40-45% decrease in opportunistic crime. Opportunistic is almost everything short of murder and rape.

You can price out averted crime. This is insurance or market data. \$1 increase in police causes \$1.50 reduction in crime costs. Police, at least on the margins, pay for themselves.

It is difficult to quickly and effectively increase the size of police forces.

PRISONS

Incapacitation seems to reduce out-of-prison crime. 3 strikes laws and harsh prison seem to deter crime. Women with children were deterred from crime if prison was far from their children.

\$1 spent on prison provides a \$1 return.

Might be able to reduce prison costs and increase police costs in a way that would reduce crime.

Some studies say that in a 20 years versus 15 years situation, the defendant will say that the punishment of 20 years is worse but not change his behavior as a result.

Some studies say that after you cross the threshold of 4-5 years, prison increases recidivism.

There is some speculation that a judge to judge differential has a small deterrent effect.

Joanna Shepherd's paper says that limiting the use of sentencing guidelines caused crime to go up. But this is just one model. The two competing models are of a risk-averse offender (unpredictable sentences reduce crime) vs. sure but not severe sanctions (predictable sentences reduce crime).

UNDER STUDY:

John McDonald is looking at an aspect of Broken Windows with federal money. Does fixing up vacant lots versus not fixing up vacant lots reduce crime.

Early Childhood Effect – 90's welfare reform effect on the crime rate. Comparing certain welfare measures' and other non-crime policies' effect on crime.

WRAP-UP

Offenders are rational and respond to subjective costs and benefits that we may not be fully aware of.

We see changes in behavior. Opportunistic crimes are more sensitive to costs and benefits.

People respond with less crime to certain punishment.

Prison costs are not wasted (\$1 for \$1) but do incur opportunity costs that could have been spent on police, universal pre-K and Head Start type programs with greater benefit. Put money into 3-4 year olds for cognitive non-school skills. Teaching family-community skills not school skills will reduce crimes committed by teenagers. Heckman's work concludes this has more bang for the buck.

Paul H. Robinson, Professor Law, UPenn:

In Pennsylvania they gave the public grading charts (to fill out?) that showed what crimes were comparable. The criminal code should reflect the shared judgment of the citizens.

Paul J. Larkin, Jr., Heritage Foundation:

Focus is on the corporate mens rea and the overcriminalization of corporate crimes.

BAIL AND PRETRIAL DETENTION

Matt Alsdorf, Director of Criminal Justice, Laura and John Arnold Foundation

Marie Vannostrand, Justice Project Manager, Luminosity:

Framing concepts are resource allocation and system change. They did a study of 15,000 Kentucky defendants, controlling for all risk factors:

Detained defendants are four times more likely to be sent to jail and are sent to jail three times longer. Three times more likely to go to prison and go to prison twice as long. The differences are largest for low-risk defendants, although there are negative effects for all risk levels.

Detaining low and moderate risk defendants for just a few days correlates for criminal offending. There is a 40% increase in criminal offending when the defendant is detained for just 2-3 days versus release within 24 hours for low risk offenders.

We need to implement a risk-based system of pretrial release by measuring and managing risk.

The Arnold Foundation did a public safety assessment using 1.3 million pieces of data from 30 jurisdictions.

Identified 9 risk factors.

Studied the impact of pretrial supervision outcomes on 3000-4000 probationers.

One conclusion: Moderate to high-risk offenders are more likely to appear in court.

Implementation of a praxis – a structured decision making tool based on results of a public safety assessment.

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Defendants in the praxis pretrial supervision program, in which conditions of supervision are suggested by the instrument, controlling for all risk factors and levels of risk are:

20% less likely to have any kind of pretrial failure

30% less likely to fail to appear

30% less likely to have a new arrest

Elevated risk individuals are flagged by the instrument for the judge, for example for risk of violence.

New Criminal Activity (NCA) is given a numerical value 1-6, but each number has two levels

Failure to Appear (FTA) is given a numerical value of 1-3 and each number has two levels.

And the instrument gives a recommendation. Judges deviate 10-15% of the time.

Preliminary results are promising:

In Kentucky there are more people out with less crime. Kentucky has been a national leader in data-driven pretrial release.

North Carolina has reduced its jail population by 20%.

It is performing well from a predictive validity perspective.

It is undergoing a randomized control trial now.

Risk assessment instruments are not a silver bullet for criminal justice systems that have other problems.

MICHAEL WILSON

Economist and Criminal Justice Research Consultant

PRETRIAL COST-BENEFIT MODEL

You can monetize these impacts and measure the marginal costs (incremental cost changes) and the average costs.

Graph omitted.

When you graph costs versus risk level for releasing a defendant, only the highest risk individuals that you release cause crime costs that exceed or equal detention costs. Stated another way, low and mid-level risk defendants cost more to detain than the avoided crime costs that are saved by their detention; at some point between medium and high-risk the costs of detention exceed avoided crime costs.

Quick release of low-risk defendants maximizes cost avoidance.