The challenges of implementing research-based policies

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Durlauf and Nagin (2011, this issue) have developed a compelling argument for public safety policy initiatives that follow from criminological research. Two features of the piece are particularly useful. First, although a long history exists of examining deterrence within the field of criminology, surprisingly little discussion has taken place about the issue in broader public policy debates. In particular, the assessment of the relative impacts of the certainty and severity of punishment is important in the current era of “get tough” sentencing. Although prison populations have escalated dramatically as a result of changes in sentencing policy and practice, any discussion about the relative merits of these changes has focused largely on incapacitation effects. Such an assessment is not unreasonable, but it does result in overlooking a potentially significant area of analysis—analyzing the deterrent effect of increasingly longer prison terms particularly at a moment when such policies are already extremely harsh.

Durlauf and Nagin’s (2011) other contribution is to lay out a strategy that holds the promise of both less crime and less incarceration by using the deterrence findings to call for resource shifts designed to enhance the certainty of punishment at the level of law enforcement. In a rational world, both policy makers and the public would welcome such outcomes and engage in a process to consider how to implement such a strategy.

Thus, Durlauf and Nagin (2011) have provided us with a clear direction to advance policy objectives. To assess the feasibility and potential for such an initiative, let me raise some questions about the challenges involved in implementing such a strategy and the...
context in which such a shift would take place. The following issues in particular flow from this analysis.

**Advancing the “Certainty Versus Severity” Argument with Policy Makers**

It is no secret that the policies that have produced mass incarceration have run counter to virtually all research findings and recommendations of the field of criminology. As Rep. Bobby Scott, Chair of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, often has noted, “We have a choice—we can reduce crime or we can play politics” (Scott, 2009). Despite the fact that research-based evidence exists on how to produce public safety more effectively, far too many political leaders have embraced ideological and sound-bite–driven policies that have led to unprecedented prison populations along with diminishing returns for public safety. In recent years, several factors have come together to create a climate that is more hospitable for the consideration of broad-based strategies, one that could be receptive to analyses of deterrence issues. These factors include the constraints on spending produced by the fiscal crisis, the growing interest in evidence-based programming in sentencing and corrections, and bipartisan support for initiatives such as reentry and justice reinvestment as components of a public safety strategy.

Arguing against this development, however, are the decades-long dynamics of enacting criminal justice policy. All too often we have observed mandatory sentencing and other overly punitive policies adopted in the heat of the moment after a particularly sensationalized crime, with little regard for impact or effectiveness. Federal sentencing policies on crack cocaine, for example, were passed rapidly in 1986 after the death of basketball star Len Bias, and substantial, although incomplete, reforms were not passed until 2010, despite widespread criticism about their harmful effects and unwarranted racial disparity.

Arguments about deterrence effects face a particularly uphill road with policy makers. Public support for lengthy prison terms is based in large part on their intuitive appeal regarding incapacitation. That is, the knowledge that an offender is behind bars clearly conveys a message that the person will be prevented from committing any crimes in the community for the duration of his or her imprisonment. The longer that imprisonment, the safer the public might feel. That misinformed sense of security is stiff competition for the more nuanced assessment of potential deterrent effects (or lack thereof) produced by enhanced imprisonment.

None of these factors suggests that it is not worth the effort to try to convince policy makers that such a shift in policy would produce both fiscal and public safety benefits. Indeed, the theme of less crime and less incarceration is one that should appeal broadly. But clearly, achieving success in this area will involve not only the dissemination of sound research but also a political strategy that can garner broad bipartisan support for more rational and effective policies.
Law Enforcement Successes in Reducing Crime Might Be Challenging to Achieve

Durlauf and Nagin (2011) argue that to achieve gains in certainty of punishment, and hence reduced crime, that funding be made available for law enforcement initiatives such as hotspot policing and problem-oriented policing. This suggestion, again, is the type of evidence-based information that we need to make sound policy decisions. However, we should not underestimate the difficulty of targeting funding in ways that will prove efficacious. Consider, for example, the Clinton-era initiative to promote funding for community-oriented policing, amounting to an $8.8 billion allocation during 6 years for the COPS funding provision of the 1994 federal crime bill. Although debate persists regarding the actual number of positions filled under the funding formula (100,000 according to government officials charged with administering the funds, but perhaps as little as 69,000 according to policing analysts), it was nevertheless a substantial allocation that resulted in a significant increase in police resources to be devoted to community policing.

The limited results of this initiative, though, are sobering. A sophisticated analysis by Worrall and Kovandzic (2007: 159) concluded that “COPS spending had little or no impact on crime.” The authors speculated that several factors might have contributed to this outcome. Although the funding allocation was substantial, it only amounted to less than 1% of total police agency expenditures. Also, although the bulk of the funding was targeted to hiring police officers, less attention was paid to the strategies actually employed by police agencies and the degree to which they implemented problem-oriented policing. Thus, it is somewhat difficult to discern whether the relative failure of the initiative was a result of limited funding or of an inability to identify strategies that proved to be more effective. Overall, however, if an initiative as large as the COPS project had only minimal impact on reducing crime, then this outcome gives us an indication of the challenges involved in spending tax dollars in effective ways.

Efforts to promote community-oriented policing also are challenged by having to compete for attention with the high-profile New York City policing strategies promoted in the 1990s in the Giuliani/Bratton era. Although officials in New York have credited these strategies with the bulk of the crime decline since that time, some analysts portray a more nuanced view, which suggests that a confluence of factors came together to produce the declines (Karmen, 2000). In addition, one controversial element of that strategy, the broad expansion of “stop-and-frisk” practices, poses a significant threat to policing strategies that have emphasized the development of constructive law enforcement and community partnerships. Under the “stop-and-frisk” policy, the number of such police actions grew from 160,000 in 2003 to 575,000 in 2009; in some neighborhoods, it is estimated that up to 90% of young Black men have been stopped by the police (John Jay College of Criminal Justice, 2010). In addition, with 90% of the stops not resulting in a summons or arrest, the prospects of creating long-term distrust of the police are significant, especially in
communities with histories of difficult relations with law enforcement. Clearly, not many jurisdictions have adopted such policies to the degree that New York City has, but the city’s high profile suggests that challenges will be faced in gaining attention for competing models.

**Challenges of Achieving a Shift in Funding and Priorities**

As Durlauf and Nagin (2011) point out, even if we believe that the funding shift they propose from a back-end to a front-end strategy would be beneficial, structural challenges are necessary to accomplish this switch. As they note, one complication is that penal institutions are funded by state and federal governments, whereas policing is a local function, and therefore, the funds are not sitting in the same “pot.” Even more challenging is how to shift limited funds from criminal justice institutions to social policy initiatives, such as preschool education, in which the direct public safety trade-offs might not be as obvious to policy makers. Nonetheless, it is worth thinking about how these transitions might be accomplished and what obstacles exist to doing so.

In the current era of fiscal constraints, it is difficult to imagine a substantial shift in funding for law enforcement without commensurate cuts in prison funding, but often strong institutional resistance persists to cutting funding for prisons, even when populations are declining. In New York State, for example, despite a 12,000-person reduction in the prison population from 1999 to 2009, it was not until 2009 that state officials could close several prison camps and annexes (Gangi, 2009). Much of this resistance was related to local economics, with the upstate rural communities that had become dependent on prisons for employment (albeit less successfully than many had imagined) fiercely resisting any closures. Unless entire institutions are closed, the marginal cost savings achieved by prison reductions are relatively modest and certainly not at a level that can sustain significant increases for law enforcement.

Fortunately, some history exists of successfully establishing fiscal incentives as a means of shifting the focus of criminal justice programming. In the 1970s, several states enacted community corrections legislation that provided fiscal incentives for counties to supervise certain categories of offenders in the community rather than send them to prison and in some cases established a “chargeback” provision to be employed if counties exceeded their quota of prison beds (Harris, 1996). More recently, justice reinvestment strategies have adopted similar structures. In Kansas, for example, the state legislature offered $4 million in grants in 2008 to counties that pledged to reduce their technical parole revocation rates by 20%, which most participating counties met or exceeded with no adverse public safety impacts. Therefore, it seems possible that state governments could provide similar fiscal incentives to local police agencies that can implement resource shifts along the lines of the Durlauf and Nagin (2011) proposal.

If we think such incentives might be feasible, then it also could be possible to provide fiscal incentives for research-based initiatives outside the justice system that could contribute
to reducing crime, such as preschool education, improving high-school graduation rates, and substance abuse treatment. For example, reduced spending on prisons could help to support universal preschool programming in local school systems. By expanding the discussion about public safety, such practices also would help to develop a broader base of discussion, one that would involve parents, educators, and social-service providers in a conversation about the appropriate balance of approaches, and thereby gain support for responsible reductions in prison populations.

**Impact of a Certainty/Severity Shift on Sentencing Policy and Practice**

A key hoped-for outcome of Durlauf and Nagin’s (2011) policy proposal would be a significant reduction in the use of incarceration, primarily achieved through reduced crime and therefore reduced prison admissions. Such an outcome would be welcome, of course, but it still leaves us with the question of whether this change would have any effect on sentencing policy. That is, we might have fewer people going to prison overall, but for those who are incarcerated, time served in prison could continue to be excessively long in many cases.

One possibility is that reduced crime would have a positive effect on the political environment for sentencing reform. As we have observed with the generally declining rate of crime since the early 1990s, public safety issues are now not as emotional or politicized as they were in the heyday of the war on drugs in the 1980s. Such a shift in the climate provides policy makers with a greater degree of comfort in considering policy changes that they otherwise might fear would be perceived as “soft on crime” but now can be characterized as evidence-based reforms and as fiscally responsible.

However, it is conceivable that the deterrence strategy shift would have little impact on sentencing policy overall. For many policy makers, a declining rate of crime is clear and convincing evidence that imprisonment “works” and therefore should be sustained at current levels. This perception is common today, but it easily could be assumed in policy-maker circles even at a lower level of incarceration. In addition, fewer people in prison and consequent reductions in overcrowding could reduce pressure on parole boards to use parole release as a “relief valve” for population control. Therefore, although the proposed deterrence shift hopefully would result in less incarceration, it would not necessarily change the overall dynamics of the “tough on crime” era. Such a change in direction is a tall order, of course, and it would be unreasonable to expect it to develop from Durlauf and Nagin’s (2011) proposed strategy, but it does serve as a reminder of the scale of the problem of mass incarceration.

**Advancing Public Safety—Strengthening Criminal Justice or Promoting Opportunity?**

Notwithstanding the potential impact of the proposed shift in policy, we at least should be mindful of the limitations of the shift in regard to an overall approach to public safety.
Therefore, it is useful to examine differences in approaches to crime and incarceration between the United States and other industrialized nations. Although the United States often is portrayed as a lawless nation, in fact, rates of property and nonviolent crimes are comparable with other industrialized nations, with the key distinction being the higher rate of violent crime in the United States (Zimring and Hawkins, 1997). Although the relationship between crime and incarceration of course is complex, at the very least, such outcomes suggest that similar (property crime) or lower (violent crime) crime rates in other nations are clearly not a function of a commitment to mass incarceration. However, neither is it obvious that they result from policing strategies that are significantly distinct from those in the United States. Explanations for the higher rate of violent crime in the United States include easier access to firearms, the particularly lethal nature of drug markets, mass-media imagery, racial and economic inequality, and a more limited social safety net. Clearly, adopting more effective public safety strategies within the criminal justice system is not mutually exclusive with embracing socioeconomic and other societal shifts that would pay public safety dividends, but we should be mindful that criminal justice initiatives represent only one component of an overall approach to public safety.

Conclusion
At a moment when the United States is experiencing a considerably reduced crime rate from the peak of the late 1980s, as well as serious fiscal constraints in public spending, it is opportune to consider how finite criminal justice resources could be used more strategically and effectively. Durlauf and Nagin (2011) have laid out an agenda that provides a research-based strategy for reducing both crime and incarceration. One would hope that such a proposal would be embraced by both policy makers and the public.

The questions raised in this essay are designed to stimulate thinking about the challenges that develop in considering such a policy shift in a political environment as well as in exploring the opportunities and limitations of a criminal justice approach to public safety. Hopefully, such inquiries can help to shift our policy discussion away from the “get tough” climate of recent decades toward a more constructive policy agenda as laid out in Durlauf and Nagin’s (2011) proposal.

References
Durlauf, Steven N. and Daniel S. Nagin. 2011. Imprisonment and crime: Can both be reduced? Criminology & Public Policy. This issue.
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