At one time, students of crime were roughly divided into two camps: those who believed that a good criminal justice system would keep as many people as possible out of prison (whatever the effects on the crime rate) and those who argued that reducing the crime rate through imprisonment was essential (whatever the effects on the prison population). Today, however, a growing number of scholars argue that we can simultaneously cut both the crime rate and the prison population. In his recent book, Mark Kleiman (2009) argued that we can have both less crime and less punishment.

And now we have this excellent paper by two of the best economists who study crime, Steven N. Durlauf and Daniel S. Nagin (2011, this issue), who show that we can cut crime by increasing the certainty while lowering the severity of punishment. They direct our attention to studies that suggest that increasing the likelihood of a police arrest (or at least the extent of police surveillance) can reduce crime. More can be gained by this strategy than by making marginal increases in the length of time an offender spends in prison. One reason for the minor gains from increasing sentence length is that American prison terms are already long; converting a 10-year term into 15 years may have little effect on whether the prospect of going to prison deters more would-be offenders.

A good deal of evidence suggests that certain police tactics reduce crime rates beyond what would happen if the officers responded only to 911 calls. One is hot-spots policing where officers are heavily represented in the small fraction of addresses where crimes have frequently occurred, whereas another is problem-oriented policing in which the police focus on specific transactions (such as open-air drug markets or pupils being assaulted while going to and from school).

Durlauf and Nagin (2011) wisely note that strategies for increasing the certainty of arrest vary in their effects across cities, and so they urge scholars to investigate why they work in some places and less in others.
Much as I admire what they have written, they do not address certain issues that will profoundly affect the public debate about moving away from deterrence based on the risk of prison and that based on higher chances of being arrested.

Can We Shift Resources?
One is obvious: We do not have an integrated criminal justice system in which resources are allocated to their most productive use. Durlauf and Nagin (2011) acknowledge this problem. Prisons are managed by state governments (and in many by unionized prison guards), prosecutors are elected by voters in each county, and police departments are overseen by mayors and city councils. Whatever the evidence scholars produce, it is hard to imagine a state saying that it will close a prison and send the saved money to one or more police departments. This cautionary remark does not mean that scholars should stop trying; over the long run, ideas have consequences.

Why Has America’s Crime Fallen Faster than in Many Other Countries?
A second issue is the relative costs and benefits of this country’s decentralized criminal justice system. As I have written elsewhere, it is easy for commentators to criticize decentralization when a state legislature, or the voters in a state referendum, adopt a law that increases the length of a sentence for some crimes, such as rape, without doing anything about increasing the likelihood that the rapist will be caught, or when it imposes a three-strikes law without asking whether the additional sentence length will either deter crime or reduce the chances of crime by keeping an increasingly elderly inmate population off the streets.

But offsetting benefits to a decentralized criminal justice system do exist. Beginning in the early 1960s and continuing into the 1990s, America and Europe experienced a sharp increase in crime. America did something about it; many European nations did nothing.

America and England offer a sharp contrast. In 1976, England was more likely to send a robber to prison than was California, and robbery rates were lower in England. But in the 1980s and 1990s, 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 (Rosenberg, 1994). 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 (Wilson, 2008).

The pattern in other European nations is complicated, but there are some interesting trends in some nations. In the Netherlands (a nation that Durlauf and Nagin [2011] point to as a country that sends very few people to prison for more than 1 year), victimization
surveys show that its robbery rate has risen so rapidly that it now has a higher level than one finds in America, Australia, Canada, England, Scotland, or Switzerland (Farrington, Langan, and Tonry, 1994).

The United States leads all of these countries in average time served per robbery conviction but has a lower robbery rate than any of them. These gross comparisons do not settle the question of the connection between robbery and the combined effects of imprisonment and time served, but they obviously create a major opportunity for research.

**Have Durlauf and Nagin (2011) Ignored Retribution?**

Scholars tend to think of crime control in utilitarian terms. We try to reduce crime by deterring offenders, incapacitating convicted inmates, rehabilitating those who have offended, or preventing crime among people who have not yet broken the law. But there is another standard of action that by and large owes nothing to consequences: Does the punishment fit the crime?

For Westerners, the earlier statement of this view is found in the Old Testament where punishment is to be based on “life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” (Deuteronomy 19:21 and Exodus 21:24–25). Immanuel Kant argued that judicial punishment can never be used to attain some other good for the convict or society but must instead rest on what the convict deserves. Utilitarian arguments for punishment allow innocent people to be punished if society will benefit or is unaware of their innocence. Of course retribution as the basis for punishment has a comparable defect because it leaves open the possibility of imposing savage penalties for modest offenses unless judges can make the sentences truly proportional. Kant’s argument followed, he believed, from his view that people should be governed by pure reason and the obligation to act on principles that can be made universal. If a man kills another man, the killer must be executed.

Retribution, whether endorsed by the Bible or Kant, has not done well among moderns. Cesare Beccaria denounced the death penalty because by using it the state commits a crime on the accused. John Stuart Mill disliked Kant’s view because it rested morality on reason while Mill thought it should rest on happiness. These sharply conflicting opinions have led supporters of utilitarian theories to dislike retribution because it seems to ignore human nature, degrade personal choice, and support tougher sanctions.

These views are correct up to a point, but they neglect how societies or social elites have modified what protections they will afford its members, including those who have been convicted of a crime. For the average person, unlike for the typical scholar, judgments about sanctions are based on a combined set of utilitarian and moralist views, often not spelled out carefully. In democratic nations with strong central governments and hierarchical criminal justice systems, these judgments tend to reflect what political elites believe; in the United States, with powerful state and local governments and a decentralized criminal justice system, these views tend to reflect local opinions.
These popular views sometimes lead to unwise and extreme decisions, but just as often they lead to the preservation of important distinctions among the seriousness of offenders and the gravity of their crimes. The British Parliament that passed the law urging judges to avoid prison was not made up of careful students of Kant.

One example may make clear why retribution, properly understood, is essential to formulating sanctions. Suppose that science creates a pill that, once used by a rapist, makes it impossible that he will ever rape again. (I have no idea whether this pill will be discovered, but given the remarkable advances in biomedicine, I would not be astonished if it happened soon.) The rapist's recidivism rate will fall to zero, the incapacitation gains from imprisonment will be zero, and the deterrent effect on would-be rapists, although unknown, might well be high. Should the penalty for rape then become the pill? I cannot imagine rape victims or their legislatures agreeing.

A more realistic problem is the use of prior records in imposing punishment. Consider a repeat offender or three-strikes statute. Utilitarians might well argue against them if the final case involved a minor offense, but retributivists would probably support them on grounds that displaying a criminal career is a graver matter than having committed a trivial final offense. (Much, of course, would still have to be decided, especially how long the final sentence should be.)

Reducing the prison population must be governed to a large degree by the magnitude of the offense and the prior record of the offenders. Durlauf and Nagin (2011) do not come to grips with this issue, but I suspect it will be the key question surrounding any decision to rely on the certainty rather than the severity of sanctions. There is no doubt in my mind that in many states there are prisoners who could be released now with little harm to deterrence, incapacitation, or retribution; the major analytical task is to specify who they might be.

References

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