

POLICY ESSAY

IMPRISONMENT AND CRIME

Less imprisonment is no doubt a good thing More policing is not

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If policy makers were to take account of evidence, as Steven N. Durlauf and Daniel S. Nagin (2011, this issue) argue, then American crime-control policies would look very different. Here is how and why. Prison sentences have few general deterrent effects, if any. The effects of imprisonment on individual deterrence are most likely perverse; people sent to prison tend to come out worse and more likely to reoffend than if they had received a lesser punishment. Some things police do, however, can reduce crime rates. American jurisdictions should reduce their use of imprisonment and increase their investment in policing, thereby lowering crime, victimization, and imprisonment rates as well as saving money simultaneously. Everybody—offenders, prospective victims, and taxpayers—wins.

Yes, probably, concerning imprisonment and possibly concerning policing, but serious problems of unwanted unintended consequences would need to be overcome.

The conclusions and proposals are based in part on Nagin's recently completed comprehensive reviews of the literatures on general deterrence (Apel and Nagin, 2011) and on the effects of imprisonment on released inmates' subsequent offending (Nagin, Cullen, and Jonson, 2009). Durlauf and Nagin (2010) again surveyed the deterrence literature as well as the literatures on the effects of variations in police numbers, per capita spending, and crackdowns on crime. Durlauf and Nagin (2011) pull all that work together and add to it. The deterrence surveys conclude that credible evidence indicates that changes in sentencing laws sometimes produce deterrent effects but that the effects are highly contingent, depending on threat communication and patterns of implementation; are not easily replicable; and provide an insufficient basis on which to build sentencing policies. The prison effects survey concludes that no credible evidence suggests that imprisonment reduces reoffending by released offenders. To the contrary, tentative but not yet conclusive

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evidence indicates that imprisonment is criminogenic and increases released inmates' rates of reoffending. The police effectiveness survey presents evidence that increases in police numbers and per capita spending reduce crime rates and that police crackdowns reduce crime rates net of displacement effects.

Drawing on classic works by Cesare Beccaria and Jeremy Bentham, Durlauf and Nagin propose a theoretical framework that links their conclusions. Beccaria famously distinguished among the severity, certainty, and celerity (speed) of sanctions and argued that severity was the least important. Certainty and celerity are what matters. Court and prosecution systems are notoriously uncertain and slow and always will be. Police, however, by means of their increased presence and changing tactics, can deter crime by increasing the certainty of observation and the speed of apprehension. If certainty and celerity are what matters, then investments in police are much likelier than investments in prisons to affect crime rates.

This commentary offers three sets of observations concerning Durlauf and Nagin's proposals. The first section discusses their policy implications, the second focuses on the solidity of the underlying research, and the third centers on the theoretical framework. In a nutshell, my conclusions are that the proposals to deemphasize use of imprisonment are sound for the reasons Durlauf and Nagin give as well as for humanitarian reasons but that the proposals to increase investment in policing carry with them heavy risks to civil liberties and racial justice. "Racial profiling" sums the dangers up—increased use of pretextual police stops, sanctioned by the courts, and grossly higher rates of stops of Blacks than of Whites (Alexander, 2010; Johnson, 2010). Overall, the proposals and logic are likelier to resonate in relation to policing than to imprisonment. Politicians probably care about police effectiveness; with punishment, effectiveness is seldom a matter of significant concern. Durlauf and Nagin's research summaries seem reasonable to me, although I believe the evidence in favor of general and marginal deterrence is weaker than they suggest and the evidence concerning police effectiveness is less convincing than they suggest. Their theoretical framework is plausible and useful.

Policy

The inelegantly named "research utilization" literature instructs that evidence sometimes on some subjects in some places influences policy choices.¹ For a positive example, findings from developmental research have formed the basis for greatly increased public investment in early childhood prevention programs. The critical question confronting Durlauf and Nagin's proposals is whether in the United States in the second decade of the 21st century, policy makers are likely to be influenced by research findings concerning the severity of

1. I do not discuss that literature in any detail here. I discuss it at some length in Tonry (2010a). David Green and I discussed it exhaustively in Tonry and Green (2003).

sanctions, adverse effects of imprisonment on offenders, and police effectiveness. My best guesses are no, no, and yes, respectively. Legislators like and trust police and prosecutors and seldom worry that they are unduly lenient or that they coddle criminals. Proposals to increase public investment in the police to enhance their crime-fighting effectiveness are likely to be well received. Sentencing and punishment policies have in the past 30 years been largely impermeable to influence by evidence. No significant signs indicate that things will be different any time soon.

Durlauf and Nagin acknowledge that the novelty of their overall policy proposals lie in the blending of the findings on which they are based and not in the findings themselves. Two of the main findings are not new. Many reviews of deterrence research during the past 35 years, several by Nagin (e.g., Apel and Nagin, 2011; Nagin, 1998), have reached similar or more skeptical conclusions. The criminogenic effects of imprisonment have been widely recognized in many countries for many years; only in the United States could policy makers with straight faces claim to be surprised by that finding. The findings on police effectiveness can be described plausibly as new, at least compared with 20 or 30 years ago.

Sentencing

The core difficulty for Durlauf and Nagin's proposals is that policy makers are moved by many considerations other than evidence of effectiveness and cost. Many sentencing and corrections policies that would be suspect if their proposals were taken seriously have been known to be ineffective for a long time. Practitioners, for example, have known for 200 years that mandatory penalties seldom operate as their proponents claim to expect and, partly as a result, that they are not effective deterrents. Successive cycles of empirical research in the United States in the 1950s, 1970s, 1980s, and 1990s confirmed what practitioners have long known.² Or, another example, no one claims that the federal 100-to-1 law for crack and powder cocaine sentencing (since August 2010, 18-to-1) deters sales of crack cocaine. It has been widely recognized for 20 years that it is unjust, a primary cause of racial disparities in federal prisons, and based on drastic distinctions between two substances that are pharmacologically indistinguishable. Former President Bill Clinton in 2008 referred to it as a "cancer," but when he was President, he signed legislation overruling a U.S. Sentencing Commission proposal to modify it (Wickham, 2008).

Clinton stalemated Republicans in the game of law-and-order politics by announcing he would never let them get to his right on crime issues. He stuck to it. As a result, federal law contains a three-strikes law and 50-plus more crimes punishable by death than before he became President. Crime has not been a major issue in an American presidential election since 1988 (remember Willie Horton?) and is seldom an issue in state or local elections.

However, the stalemate continues. Neither party, probably especially the Democrats, seems willing to break out of it for fear of being tarred as soft on crime. Despite 20 years

2. I recently surveyed the historical and modern literatures on mandatory penalties (Tonry, 2009).

of declining crime rates and increasing imprisonment rates, neither the federal government nor any state has enacted legislation substantially amending or repealing harsh sentencing laws or creating mechanisms substantially reducing prison populations. A few states have altered mandatory minimum sentence laws slightly, released a few thousand inmates under new release programs, or tweaked their sentencing guidelines, but those changes have only nibbled at the outermost edges of modern American prison populations and sentencing policies. Research can influence policy when “windows of opportunity” open through which evidence can pass. Concerning imprisonment and sentencing, the windows remain almost completely closed.

Criminogenic Prisons

That prisons make people worse has been a commonplace observation for 200 years. As long as prisons have been in existence people have known they are criminogenic. More than 200 years ago, the English prison reformer John Howard called prisons “schools for crime.” More than 40 years ago, the German parliament for that reason enacted the most effective sentencing law change in a Western country in the last 100 years (Weigend, 2001). The law created a strong legal presumption against the imposition of prison sentences of 6 months or less.³ Short prison sentences fell by 80%, from an average 120,000 such sentences per year in the 1960s to less than 20,000 per year thereafter, a level at which they continue to be imposed to this day.

The underlying logic was that 6 months is too short a time for a prison sentence to do an offender any good as, for example, through participation in treatment programs. Six months, however, is plenty of time to cause an offender to lose a job, a family, and a home, and to damage his or her children. In addition, the stigma associated with being an ex-prisoner is greater than that associated with a conviction and might diminish an offender’s prospects for the rest of his or her life. Those are among the reasons why most continental European countries worked hard to restrain the growth of their prison populations from the 1960s to the 1990s in the face of doubling and trebling crime rates. It is also a reason why successive Finnish governments worked for 30 years to drive the prison population down even though crime rates trebled between 1965 and 1990. They succeeded in lowering the imprisonment rate by 60%, from 165 per 100,000 in 1965 to 60 in 1990 (Lappi-Seppälä, 2001).

The one major exception in continental Europe was England and Wales from 1993 to the present. New Labour patterned its approach to crime on Bill Clinton’s. In my view, Labour’s criminal justice policies were the most repressive of any Western country’s since World War II. The only competitor for that distinction, the United States, enacted harsher policies and retained capital punishment. Even right-wing Republican governments, however, did not enact antisocial behavior order laws, threaten parents of wayward children

3. German law then and now provides in most cases for remission of one third of a prison term. The law thus discouraged the imposition of nominal sentences of 9 months or fewer.

with criminal convictions, maintain DNA from innocent people in police databases, or carry out routine surveillance of people not suspected of being criminals (or terrorists). Nor did any attempt occur to eliminate the double jeopardy rule, restrict jury rights, or weaken rules of evidence to make convictions easier to obtain. Nor have conservative American governments made powerful rhetorical arguments impugning defense counsel who represent their clients' interests as best they can or systematically urged that the policy interests of victims and offenders are irreconcilably opposed (Tonry, 2010b). Even in the United States, such arguments and proposals are made by cranks and crackpots, not by government ministers speaking in their official capacities.

That period in English history seems to have ended with the 2010 election of a Conservative–Liberal Democrat coalition government. Kenneth Clarke, the new English Minister of Justice, in a July 1, 2010 speech at King's College London signaled a change of direction (Travis and Sparrow, 2010). Clarke attacked the “Victorian bang ‘em up” prison culture of the preceding 20 years. He warned that simply “banging up more and more people for longer” makes some criminals worse without protecting the public. “In our worst prisons,” he said, “it produces tougher criminals. Many a man has gone into prison without a drug problem and come out drug dependent. And petty prisoners can meet up with some new hardened criminal friends.”

Clarke previously was in charge of prisons as Home Secretary in 1992–1993, when the prison population in England and Wales stood at 44,628. He observed that the June 2010 population of 85,000 is “an astonishing number which I would have dismissed as an impossible and ridiculous prediction if it had been put to me in a forecast in 1992” (Travis and Sparrow, 2010). He said that “for as long as I can remember” the political debate on law and order has been reduced to a competition over whether a government has spent more public money and locked up more people for longer than its predecessor.

He also said that “the consequence is that more and more offenders have been warehoused in outdated facilities and we spend vast amounts of public money on prison. But no proper thought has been given to whether this is really the best and most effective way of protecting the public against crime” (Travis and Sparrow, 2010).

Finally, he noted that reoffending rates among prisoners given short sentences had reached 60% but observed that “this does not surprise me. It is virtually impossible to do anything productive with offenders on short sentences. And many of them end up losing their jobs, their homes and their families during their short time inside” (Travis and Sparrow, 2010).

Such a transformation is unlikely to occur any time soon in the United States, no matter what the research evidence shows.

Police

Proposals to spend money to improve police effectiveness are an entirely different matter. Under the current economic conditions, police might not win budget increases. They

might suffer cuts. In neither case will that be because legislators are hostile to the police.

It is not entirely obvious to me, however, that increased expenditure to enable more intensive policing would be a good thing. Zero-tolerance, public-order, and misdemeanor policing have notoriously in their wake increased the extent of racial profiling and have compromised traditional civil liberties restraints on police interactions with citizens. In principle, police should stop citizens only when individualized bases exist—that satisfy legal requirements of proof—to believe they have been involved in a crime. In practice, especially in minority areas of cities, those restraints are honored only in the breach.

No one doubts that racial profiling by the police takes place or that it results in many more arrests of Black people than would occur otherwise. The fundamental questions are whether police stop Blacks at higher rates than they do Whites (yes, they do) and whether police have valid bases for stopping Blacks much more often than Whites (no, they do not). Answers to the second question usually are sought in evidence about the outcomes of the stops. If Blacks are stopped at twice the rate of Whites but drugs, guns, and other contraband are found in the same or in a higher percentage of cases, then that result implicitly demonstrates that police had valid reasons to be suspicious of Blacks more often. However, the reverse is true. Research on profiling generally concludes that police stop Blacks disproportionately often on sidewalks and streets and generally do not achieve higher hit rates for Blacks than for Whites (e.g., Engel and Calnon, 2004).

An especially comprehensive analysis of police stop-and-frisk practices documenting these patterns was released early in 2009. The data, on police practices in New York City for 42 months ending in mid-2008, were compiled by the New York City Police Department under a federal district court order relating to a lawsuit on racial profiling. Also under court order, the data were turned over to the Center for Constitutional Rights, which released an early analysis. Nearly 1,600,000 police stops of citizens occurred in those 42 months. Ten percent of those stopped were non-Hispanic Whites, although they made up 44% of the population. Half of those stopped were non-Hispanic Blacks, although they made up only a quarter of the population. Hispanics constituted 28% of the population and 30% of those stopped.

Arrest rates were approximately the same for the three groups, but for every other measure, arrests of Blacks were more intrusive and less productive. Once stopped, Blacks were much more likely than Whites to be frisked (28% of Whites in 2006 and 41% in 2008, compared with 46% of Blacks in 2006 and 56% in 2008). Only in 1% of cases were weapons found but at higher rates among Whites than among Blacks and Hispanics. Overall and in each year separately, Whites were more likely than Blacks and Hispanics to be in possession of drugs or other contraband. Finally, police used force against the people they stopped in nearly a quarter of cases. During the 4 years, police used force against 15–18% of Whites stopped. Among Blacks and Hispanics stopped, 21–26% were victims of police force.

This massive data set strongly corroborates the findings of scholarly research. Blacks are stopped much more often than Whites, relative to the composition of New York City's population, and are much more likely when stopped to be frisked and to have force used against them. They are, however, less likely to be in possession of guns or other contraband and are no more likely to be arrested. This last point warrants elaboration lest an important reality be ignored. Because so many more Blacks than Whites are stopped, the same or a somewhat lower arrest rate produces much larger absolute numbers of Black than White people taken into police custody (Center for Constitutional Rights, 2009).

Stops of Blacks often result in more arrests, however, partly because Blacks are more likely to resent the stop and to resist or act disrespectfully, partly because Blacks are more likely to have outstanding arrest warrants or to be in violation of parole or probation conditions, and partly because some police are racially biased. Police profiling practices thus often lead to higher levels of Black arrests and, therefore, convictions and prisoners than would happen otherwise. These practices are particularly likely to worsen racial disparities for drug and firearms offenses, as those are the two kinds of illegal contraband police stops are most likely to yield.

I have similar concerns about police crackdowns. As a legal matter, police should make arrests only when they believe individualized bases exist to hold and prosecute each person arrested. In many crackdowns, most prominently concerning political demonstrations at controversial events, such as World Trade Organization or Group of 8 meetings or recent Republican National Conventions in New York City and St Paul, Minnesota, police have routinely apprehended, or restricted the movement of, large numbers of people as to whom individualized bases for the actions could not be shown. As a result, huge numbers of arrests resulted in almost-inevitable dismissals at probable cause hearings.

Drug market crackdowns raise similar issues but with a pernicious racial twist. Street-level drug markets often are located in minority neighborhoods of large cities. It is possible in police sweeps to arrest many people in the environs of large open-air drug markets. The most extensive and fine-grained studies of street-level drug markets and police arrest policies were carried out in Seattle. Overall, only 8.4% of Seattle's residents in 2000 were Black, but in a 28-month period during 1999–2001, 51.1% of those arrested for drug offenses were Black (Beckett, Nyrop, Pflingst, and Howell, 2005: 424). Most people who shared, sold, or transferred drugs were White, but nearly two thirds of those arrested for trafficking offenses were Black. Among outdoor drug transactions, a third involved crack, a third involved heroin, and a fourth involved powder cocaine. Among arrests for outdoor drug dealing, 79% were for crack, 17% involved heroin, and 3% involved powder cocaine (Beckett, Nyrop, and Pflingst, 2006: Figure 1).

Making large numbers of near-simultaneous arrests almost inevitably means that many will not satisfy individualized basis requirements of proof. Most of those arrested will be Black or Hispanic. It is, to me, not an obviously good idea to encourage police to increase their use of crackdowns.

Research

Others more qualified than I am no doubt will express their disagreements, if any, with Durlauf and Nagin concerning their analyses of the three literatures. I do no more than explain why I think their conclusions concerning deterrence are a mite strong and why I am more skeptical than they are about the research on police effectiveness. I have little to say about criminogenic prisons, so I will start with them.

Criminogenic Prisons

My observations about John Howard, Kenneth Clarke, and German sentencing reform probably say all that needs to be said. Especially in the United States (and the United Kingdom), it would be remarkable if prisons were not criminogenic. Most people sent to prison are socially and economically disadvantaged, most are or have been alcohol or drug dependent, and most lack strong private systems of familial or social support. Most after their release are stigmatized and often are explicitly handicapped by laws precluding many kinds of employment. Neither in the United States nor in the United Kingdom are strong systems of state support in place to provide adequate housing or income to ex-prisoners. In lawyer talk, a judge could take “judicial notice” (i.e., form a conclusion without needing to hear evidence) that already disadvantaged ex-prisoners facing additional handicaps and lacking systems of support are more likely than other people to engage in crime. Duh!

Deterrence

Durlauf and Nagin note that many economists claim to find general deterrent effects from penalty increases or from severe punishments but that other social scientists almost always reach the opposite conclusion. They mention a couple of economists’ studies they find particularly persuasive, but they conclude that the findings are not generalizable and, accordingly, that the best conclusion is that available evidence does not justify assumptions that severe punishments or punishment increases are effective general deterrents.

Fair enough, but I dissent. I agree with the policy inferences Durlauf and Nagin (2011) draw but believe they give the economists’ findings too much credit. To show why, I rehearse the findings of several other surveys of the deterrence literature that reach stronger negative conclusions about deterrence effects and then explain why the economists’ occasional contrary findings generally should be disregarded.⁴

Social Scientists. A continuous series of reviews of deterrence research by social scientists other than economists (and a few by economists) for more than 30 years has concluded that general deterrent effects of severe punishments or of increases in punishment cannot be shown, setting aside the fundamentally different situations of parking and traffic law

4. I recently surveyed the several deterrence literatures (Tonry, 2008) but in this essay rely on other peoples’ work.

enforcement, tax laws, and penalties for administrative offenses. Here is a sampling of the more recent and widely cited reviews.

Nagin (1998: 4) himself observed that he “was convinced that a number of studies have credibly demonstrated marginal deterrent effects” but concluded that it was “difficult to generalize from the findings of a specific study because knowledge about the factors that affect the efficacy of policy is so limited.” He highlighted the following major factors: the relation between short- and long-term effects, the relation between risk perceptions and sanctions policies, the methods of implementation, and the extent of implementation.

von Hirsch, Bottoms, Burney, and Wikstrom (1999: 52), in a report commissioned by the English Home Office, concluded that “there is as yet no firm evidence regarding the extent to which raising the severity of punishment would enhance deterrence of crime.”

Doob and Webster (2003: 146) noted some inconclusive or weak evidence of marginal deterrence but concluded that “there is no plausible body of evidence that supports policies based on this premise [that increased penalties reduce crime]. On the contrary, standard social scientific norms governing the acceptance of the null hypothesis justify the present (always rebuttable) conclusion that sentence severity does not affect levels of crime.”

All of these reviews discuss works of economists and noneconomists. A meta-analysis by Pratt, Cullen, Blevins, Daigle, and Madensen (2006), by contrast, citing no economists produced a main finding, one “noted by previous narrative reviews of the deterrence literature,” that “the effects of severity estimates and deterrence/sanctions composites, even when statistically significant, are too weak to be of substantive significance (consistently below—.1)” (Pratt et al., 2006: 379).

Durlauf and Nagin’s conclusions are not vastly different but nonetheless are more positive about deterrence effects than the earlier reviews. Mostly, it seems, this is because of a couple of recent articles they hold in high regard (e.g., Helland and Tabarrok, 2007).

Economists. Economists discussing deterrence research tend to write only about the work of other economists.⁵ Three major literature surveys by economists, summarizing work principally by economists, find that increases in punishment achieve general or marginal deterrent effects. Lewis (1986: 60) described “a substantial body of evidence which is largely consistent with the existence of a deterrent effect from longer sentences.” Levitt (2002: 445), relying principally on data from two of his own analyses, described them as evidence “for a deterrent effect of increases in expected punishment.”

Levitt and Miles (2007: 456) concluded that “the new empirical evidence [produced exclusively by economists] generally supports the deterrence model . . . Evidence of the

5. In a classic instance, Joanna Shepherd (2004: 10–11), author of several economic studies finding a deterrent effect of capital punishment, testified before the U.S. Congress that a “strong consensus [persisted] among economists that capital punishment deters crime” and that “the studies are unanimous,” without mentioning the equally strong consensus among noneconomists (with agreement of many economists: Donohue, 2006; Donohue and Wolfers, 2005) that capital punishment cannot be shown to deter homicide.

crime reducing effects of the scale of policing and incarceration is consistent across different methodological approaches.” Much of their discussion focuses on whether capital punishment, recent increases in the scale of imprisonment, and changes in the use of police manpower have reduced crime rates; the marginal deterrence hypothesis receives little attention except concerning a study by Kessler and Levitt (1999) of the effects of a change in California law.

There are two reasons why the economists’ conclusions are so strong. First, they ignore work by other social scientists and accordingly make no effort to explain why others’ conclusions are wrong. Second, notwithstanding the increased influence of behavioral economics, the economists who write on this subject mostly seem wedded to the price model.

Ronald Coase (1960: 7), one of the law-and-economics movement’s founders, observed long ago that many economists “rarely shrink from applying in every context the model of rational, self-interested, human behavior that they borrow from economics proper.” Elsewhere, concerning deterrent effects, he wrote that “punishment, for example, can be regarded as the price of crime. *An economist will not debate whether increased punishment will reduce crime*; he will merely try to answer the question, by how much?” (Coase, 1978: 210, emphasis added). This statement might explain why economists, especially politically conservative ones, tend to conclude that increased penalties in the nature of things must have marginal deterrent effects and that capital punishment must deter homicide better than other penalties do. Economists assume that penalties deter and begin with that prediction, which is why Doob and Webster (2003) proposed that future deterrence research start from the tougher null hypothesis that penalty severity or increased severity has no deterrent effects.

Here is an example. Shawn D. Bushway and Peter Reuter, celebrating the contributions of economists to studies of sentencing, discuss an “important” article by William Landes (1971). Landes, in modeling sentencing and bail decisions, assumed that prosecutors behave rationally in pursuit of the goal of maximizing aggregate punishment: “The prosecutor’s objective function is such that he attempts to maximize the expected number of convictions weighted by the expected sentence given at trial, subject to a budget constraint on his resources” (Bushway and Reuter, 2008: 408). Put more simply, Landes assumed that prosecutors seek to maximize sentencing severity. Anyone who works with courts or prosecutors knows that this is nonsense. Prosecutors generally do not seek the harshest possible sentence but seek one that they consider just or appropriate in the individual case. Numerous studies, and the conventional wisdom of courts, demonstrate that prosecutors are central figures in circumventing three-strikes laws, mandatory minimum sentence laws, and rigid sentencing guidelines in cases in which they believe the prescribed sentence would be unjustly severe (Tonry, 2009).

Two influential and widely cited articles by economists illustrate the difficulties. Kessler and Levitt (1999) sought to identify deterrent effects from passage in 1982 of a California

referendum that increased penalties for certain crimes.⁶ They examined crime data at 2-year intervals and thereby missed a downward trend that began in 1980 and continued after the passage of the referendum. This made the post-1982 decline likely to be an extension of a preexisting trend rather than as a deterrent effect (Webster, Doob, and Zimring, 2006). Findings like this recur throughout the noneconomic social science literature on the effects of sentencing law changes. The initial evaluations of California's 1976 Uniform Determinate Sentencing Law, using 1-year pre–post comparisons, concluded that it caused prison admission rates to increase and average sentence lengths to decrease. Subsequent analyses showed that both changes began several years before the passage of the 1976 law and that the best explanation of the postimplementation changes is that they extended preexisting trends (Blumstein, Cohen, Martin, and Tonry, 1983). Even an economist as celebrated as Steve Levitt missed this sentencing evaluation 101 point.

Drago, Galbiati, and Vertova (2009) analyzed the deterrent effects of a broad Italian prison amnesty program in 2006 that reduced the prison population by 40%. One amnesty condition was that people who reoffended would be sentenced for the new crime plus an additional amount equal to the period by which the amnesty reduced the previous sentence. Recidivism rates were compared with those of offenders released in an earlier year, and the analysis found a deterrence effect for 2006 releasees serving short sentences but not for those serving long sentences. Lots of data quality issues can be raised concerning Italy's chaotic systems of official statistics, but a bigger problem persists: People who work in or study the Italian court system find the findings unbelievable. Italian courts are famously slow and inefficient, cases often are not concluded for years (appealed cases are completely retried), convictions are not final until the final appeal dates have expired (sometime 3 to 5 years after a conviction), and Italian magistrates are famously independent. Even if it were realistic to impute knowledge of the amnesty penalty increment to people released from prison, it is completely unrealistic to assume that they believe it would be imposed (or that it would be imposed consistently).⁷

6. I do not discuss Helland and Tabarrok (2007), who found deterrent effects of California's three-strikes laws, other than to point out that, of 18 quantitative analyses of the deterrent effects of California's three-strikes laws, 15 (many by economists) find no deterrent effects. The three that find effects are all by economists. Just about every imaginable basis for comparison has been used (minors compared with adults; people meeting two-strikes criteria compared with those meeting three-strikes criteria; crime rates in counties in which the three-strikes law was aggressively enforced compared with counties in which it was barely enforced at all; crime trends in California compared with those in other populous states without three-strikes laws; crime trends in large California cities compared with those in large cities in states without three-strikes laws) (Tonry 2011: Table 6.3; Zimring, Hawkins, and Kamin, 2001).

7. Durlauf and Nagin (2011) do not rely on the Drago et al. (2009) study but do discuss it in Durlauf and Nagin (2010). There, they note that the failure to find a deterrent effect for prisoners serving longer sentences might reflect the criminogenic effects of imprisonment on people exposed to them for a long time. They do, however, despite massive data quality problems, seem to accept the finding of a deterrent effect on prisoners serving shorter terms.

Many people, not all of them economists, believe it is in the nature of things that penalties deter and that harsher penalties deter more effectively than less harsh ones. Such people—I do not count Durlauf and Nagin (2011) among them—will believe in general deterrence whatever the evidence shows. This belief, however, is better characterized as ideological rather than as evidence-based.

Police. Here I have less to say except to offer two cautionary notes. First, since 1991 in the United States, everything works. After California enacted its three-strikes law in 1994 and after New York City implemented zero-tolerance policing, crime rates and violent crime rates fell in both places. However, we also know that crime rates in both places began to fall before the policy changes were adopted and that they fell in every other populous state and every other large American city. Mayor Giuliani and Governor Wilson both benefited from the happy timing and could claim that their policies worked. Fifteen years later, the clear weight of opinion concerning those policies is that they do not deserve major credit for the crime rate declines in those places (see, e.g., Zimring, Hawkins, and Kamin, 2001 [California]; Harcourt and Ludwig, 2006 [New York]; Tonry, 2004 [both]).

Most research showing that increases in police numbers of expenditure have crime-reductive effects has been carried out and published during the 20 years of crime rate declines. It is striking, and should make us think a bit, that during the 25 years of crime rate increases, most research on police numbers and expenditure concluded that no crime-reductive effect could be shown. I sat in many meetings in the 1980s in which senior police officials cautioned that the police could not be expected to overcome the influence of deep social and economic forces that cause crime rates to rise and fall.

Second, I am skeptical about the generalizability of the findings of research on drug market and hot-spots crackdowns. Of course, it is a good thing that drug markets occasionally are shaken up and that for a time other related forms of crime (e.g., market-related robberies or muggings) occur less often, net of displacement effects (Sherman, 1990). From a crime-prevention perspective, the important questions, though, are whether drug use, sales, or prices fall other than in the short term; whether dealers are driven out of the market and not replaced; and whether the crackdown is a viable strategy for addressing other crimes. If crackdowns have no aggregate long-term effects, then they are little different from castles of sand built on ocean beaches; the waves will wash them away as if they never existed. From race relations and human rights perspectives, the important questions are whether crackdowns and other forms of more intensified policing can be carried out in ways that respect fundamental civil liberty concerns and do not place unfairly disparate burdens on minority citizens. The evidence to date provides few grounds for confidence concerning either form of injustice.

Theory

Durlauf, Nagin, Beccaria, and Bentham are surely right about severity, certainty, and celerity. Formal criminal sanctions are so uncertain and variable in their severity that no good reasons

can be found to believe that they do much, if anything, to influence crime rates and trends. Increased police presence and visibility can make some response to criminal and antisocial behavior more likely, so it is not implausible to hypothesize that shifting emphasis and money from prisons to police might have some crime-reductive effects. However, it is not unlikely that such a shift will generate levels of racial profiling, police misconduct, and injustice that will more than offset any crime-prevention gains.

Durlauf and Nagin's (2011) article is an ingenious effort to combine the findings of diverse research literatures to draw general strategic conclusions about criminal justice policy. If they were to write their article, or act as advisors to governments, in Finland, Germany, or most continental European countries, the effects could be salutary. By confirming that little can be gained and much harm caused by means of repressive sentencing policies and heavy use of imprisonment, they would confirm existing policy preferences for the limited use of imprisonment.

The United States is another matter. The inferences they draw about general deterrence and criminogenic prisons are solidly based in evidence but do not support the prevailing political conventional wisdom. The police findings do. My prediction is that policy makers will heed only those findings that they find congenial.

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