

THINKING ABOUT REPRESSION AND CRIME CONTROL

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This is a rough draft of a think piece.

The starting point of this project was seeing the racial trends in incarceration and “seeing” it as repression. My response was not unusual: many people have had the same response [[CITATIONS]]. But what does this mean in theoretical terms? Who is repressing whom? And how should we understand this “repression” in relation to crime control? Are we simply using the more loaded term “repression” analytically to refer to any coercive action by a regime to control undesirable behavior? If so, do we gain any understanding of the problem by changing words? Are we using it to refer to the intentional suppression of Black Americans by White Americans? And what shall we make of the overall rise in punitiveness that also encompasses White Americans, albeit at lower levels? Is “the government” intentionally repressing “the people”? Are ruling elites in the service of the wealthy repressing lower-income people more generally to maintain domination by the wealthy?

Although I admit that my first “repression” response was in the vein of a simple normative “It’s White supremacy” reaction, I quickly brought in other theoretical tools and perspectives. As a political sociologist, I was aware of ongoing debates about repression and backlash. It is well recognized in political sociology and political science that acts of repression can provoke more resistance, rather than suppress it. This is because repression itself increases grievance and reduces regime legitimacy. This immediately suggested the possibility that excessive punitiveness could increase crime by reducing legitimacy. As a scholar of collective action and social movements, I bring to the table an assumption that social policies are shaped by political processes as different groups seek to advance their own interests and visions of a moral or just society. Neither “the society” nor “the regime” is a unitary actor pursuing single-minded goals. I was also aware of the substantial literature on ethnic/racial conflict. As I began reading criminology, I learned about the ongoing debates in that field about the most effective way to prevent crime and the politics of crime control. I learned that criminologists also had many explanations for how excessive coercion could paradoxically increase rather than reduce crime.

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This paper is my attempt to pull these different lines of work together into a relatively-coherent way of looking at repression and crime control that puts inter-group conflicts at the core of the analysis and provides tools for thinking about the messy empirical patterns that we encounter in real data. I develop my ideas in several distinct sections that are initially unconnected but come together at the end.

The central questions it seeks to address are:

- (1) How does crime control relate to the maintenance of economic or political inequality?
- (2) What affects the level of punitiveness or coerciveness in a system?
- (3) Why does crime control or repression often follow ethnic lines?
- (4) What factors affect the extent of ethnic disparity in crime control or repression?
- (5) What factors affect popular support for crime control or repression policies?
- (6) When and how can crime control have repressive effect?
- (7) How can ethnically-targeted crime control or repression increase group polarization?
- (8) When and how can crime control have the effect of increasing crime?

A framework for addressing these questions is developed by integrating a broad theory of voluntary compliance and system legitimacy an analysis of the mechanisms of coercive social control in the context of social inequality and inter-group conflict. Whether ordinary people think crime control is repressive or not is precisely what is at stake in this analysis. Crime control cannot be extracted from the larger economic and political system and cannot be extracted from social policies that affect wages or redistribute wealth. Criminal codes in unequal societies often enforce inequality. Criminal codes in unequal societies often attach severe penalties to crimes of the disadvantaged against the wealthy, while attaching weak or no penalties to actions by the wealthy that harm others. Voluntary compliance by the disadvantaged with such codes depends upon system legitimacy in which disadvantaged people view the social order – including its inequalities – as proper and just. Crime control is legitimated when it reinforces a moral order and protects the weak against predation by the strong. Crime control has a repressive character when it is systematically directed against subordinated or oppositional groups, when its effects maintain group subordination, and when it is viewed by its targets as unjust. In a divided or unequal

society, the crime control system may be viewed as legitimate by a dominant group and repressive by a subordinate group. When there is political conflict, people may debate whether the system is legitimate or repressive and seek to persuade others of their views.

OVERVIEW OF THE ARGUMENT

We begin with the general problem of social control and the importance of voluntary compliance arising from system legitimacy. People voluntarily comply because they want to, because they have been socialized to believe it is right and because compliance brings rewards and social approval. Rehabilitative responses to deviance seek to restore voluntary compliance. Coercive punishment is a much weaker basis of social control than system legitimacy and internalized norms. Coercive punishment that is not socially legitimated can lead to backlash and a reduction in system legitimacy and voluntary compliance. Regimes that govern by force are unstable, because the repression itself increases grievance and reduces support for the regime. System legitimacy is always problematic in the fact of inequality as it requires that people accept the stratification system as just.

Legal systems are intertwined with stratification systems and there is inevitable overlap between crime control and dissent control. The laws and customs governing property rights, market practices, taxation and redistribution are intertwined with the laws and customs regarding political rights and acceptable forms of action. Legal systems vary in the extent to which they reinforce or limit the power and privilege of dominant groups. Actions which benefit one group at the expense of another may be criminalized, tolerated or lauded, depending on who makes the laws. Challenges to the stratification system are often criminalized. Modern police forces were developed to deal with the dual problems of controlling urban riots and protecting the affluent from theft.

Consideration of the costs and benefits of various types of social control policies reveal contradictions and paradoxes that show the links between stratification and crime control. A review of some of the issues in the logics of rehabilitation, deterrence, incapacitation and surveillance shows how the shift toward highly punitive crime control creates a system that is, in practice, largely indistinguishable from coercive political repression. In theory, criminals weigh the gains from crime versus the risk of punishment and social control agents weigh the cost of crime against the cost of social control. But the monetary fines that make cost-benefit calculations straightforward

do not work in the face of high inequality. In practice, coercive social control relies on the more expensive strategies of incarceration and surveillance. The logic of surveillance and incapacitation is to prevent crime by identifying potential deviants before they deviate. This logic implies that relatively minor offenses should be used as pretexts for incarceration and that categories of people should be identified as high-risk. Both incapacitation and surveillance are inherently repressive in their consequences if they are disproportionately targeted on some groups. Regardless of motivation, their consequences are to reduce the capacity of the targeted group for political mobilization. Further, the indirect consequences of incapacitation and surveillance on the targeted community are likely to increase economic hardship and reduce the extent to which the community accords legitimacy to the dominant regime, thus increasing crime and ethnic polarization.

These discussions lead to the next point. Attempts to compare the costs and benefits to society as a whole of crime versus social control are illogical because crime is not a "cost" to society as a whole but rather a within-society transfer. Instead, the only way to achieve logical traction is to examine subgroups within society who benefit from particular forms of crime or crime control. In particular, this approach allows us to consider which social groups benefit from particular classes of crime, and which groups benefit from crime control efforts or mass incarceration. As the book developed, we consider political interests in winning votes; economic interests in running prisons and law enforcement agencies; ethnic group cultural and economic interests in maintaining ethnic/racial segregation patterns; and the perverse consequences and incentives in the "drug war." These patterns of interest vary across time and place and contribute to the observed variability in incarceration patterns. They also provide some tools for understanding what seems like irrational actions around crime control, including the seeming indifference of policy makers to the high costs of incarceration and the ineffectiveness of extraordinarily high penalties for reducing illegal drug dealing.

Treating repression or crime control as an inter-group conflict leads to a consideration of the way in which the politics of coercive social control is shaped by social cleavages in network ties, that is, in the extent to which those at the top of the stratification system are socially tied to and in interaction with those at the bottom of the system. When perpetrators and victims are from the same social networks, the impact of the crime and the

punishment affect the same people and there are mixed pressures for punitiveness and rehabilitation. People are more likely to have purely punitive responses to offenders to whom they have no social ties, whom they are likely to view as members of a threatening outside group. High cleavage is especially likely when ethnic or subculture differences correlate highly with class and power.

Having worked through these ideas, the conclusion argues that we can get purchase on the racial patterns of mass incarceration by tying inter-group differences and conflict to stratification and the links between crime control and maintenance of stratification and link these ideas back to positive social control and system legitimacy. We expect to see coercive crime control associated with inequality and group divisions. We expect to see coercive crime control associated with political conditions that create positive incentives or side payments for social control itself, over and above and crime reduction. We expect to see higher levels of coercive crime control where its targets are weaker and less well connected with dominant groups, and expect that high levels of coercive crime control will tend to reduce the political power of its targets.

SOCIAL CONTROL, NORMATIVE SYSTEMS AND LEGITIMACY

Why do many people refrain from stealing other people's possessions, or murdering or raping them? Why do people refrain from fomenting revolution or bombing national government buildings? Why do people ever act in self-sacrificing ways that promote the social good? These are questions that have long been at the core of social and political theory and there is much more worth saying about how social control works than we have space for here, but it is important to stress the main ideas. Although many people often think of fear of punishment is central, theorists of social control have long argued that the most important reasons people refrain from anti-social activities are system legitimacy and normative compliance (e.g. Black 1984; Garland 1985; Garland *The culture of control : crime and social order in contemporary society* 2001; Garland *Mass Imprisonment : Social Causes and Consequences* 2001; LaFree 1998). No threats of punishment are needed to keep most people from murdering or raping their neighbors, stealing their neighbors' cars, or protesting against the government. They refrain either because they have no impulse to do the thing at all – they have no discontent that would be

alleviated by murder or protest – or they have strong internalized social standards of right and wrong that they will not violate.

System legitimacy is the perception that the social order is proper and just. A great deal has been written about what makes a system legitimate.¹ System legitimacy is not just conscious opinions about the society or political system, but to the everyday habits, routines and customs of life that lead some ways of acting and thinking to happen without conscious effort and to be just taken for granted as a normal unconscious part of existence. The rules of the road are an example. Most people have no motivation to drive on the wrong side of the road. They take the organization of traffic for granted and, if they think about it at all, realize that their own life as well as everyone else's is better and safer if traffic is organized by the direction it is moving. It is a crime to drive on the wrong side, but infractions are rare and generally occur because the driver is confused or incapacitated by alcohol.

Scholars of crime control generally assume that people ought to want to obey the laws and conform to society's customs, i.e. that the system deserves legitimacy. But they also often recognize that people at the bottom of an economic system who cannot build a satisfying life within the framework of the dominant system are less likely to see the system as legitimate.² Some argue that such people should be re-socialized to accept system legitimacy³ while others view this as a critique of society. Scholars of politics and social movements do not necessarily assume that the system deserves legitimacy: they take legitimacy itself as problematic, as something a regime has to earn, and see some regimes as illegitimate and deserving of rebellion.

Normative compliance is a result of the social pressure people feel to do the things approved of by those close to them.⁴ The content of the normative structure obviously varies: retail theft, failing to stop for a pedestrian in a crosswalk, driving more than 10 m.p.h. over the speed limit, and using vulgar or insulting language when complaining about government officials are behaviors that are approved by some members of our society but considered unacceptable by others.⁵ System legitimacy and normative pressures reinforce each other as people are more likely to use peer pressure to enforce compliance with the law when they accord legitimacy to the political and social system. Moreover, people often internalize these norms⁶ so they avoid doing things others

would disapprove of, even if nobody would ever know they did it. People like to think of themselves as good people, as the kinds of people who do not do bad things, and most people most of the time try to act like good people.

Although all societies have laws regulating property and violence, they differ in the types of other behaviors they regulate through laws, including regulation of acceptable attire, restrictions on the use of mind-altering substances, sexual relations, business practices (e.g. non-discrimination or full disclosure laws), treatment of other people (e.g. sexual harassment laws), littering, recycling, noise-making, and much more. Laws on such matters typically change across time and may be the objects of cultural or political conflict. They are often seen as either holdovers from a more traditional or immoral past or as efforts to promote a more progressive or moral future. People may disagree about whether the law should exist and about how bad it is to break it.

Social groups who are basically satisfied with their lives tend to create and internalize norms of cooperation with the government and avoidance of theft and violence. This means that a society with high system legitimacy will generally have low levels of crime and rebellion, making punishment almost irrelevant as a source of normative compliance. Nevertheless, social theorists have long argued [since Durkheim] that defining and punishing deviance is how societies define their boundaries and their standards for proper behavior. In this view, some deviance (and its punishment) is functionally necessary for social order to exist, and if there is no serious crime (as we usually understand the term), even what might seem otherwise to be very small infractions may meet with social punishment. However, this punishment can take the relatively mild form of social disapproval and the overall level of both serious crime and coercive punishment can be very low when the populace is basically satisfied.

This does not mean that there are perfect societies that never have to deal with violence or theft. Some people have emotional or mental problems that make them unable to follow social rules. There is always some individual incentive to take property that belongs to someone else, and all societies encounter disputes about property rights and sexual relations. But the level and intensity of these conflicts varies greatly. At one extreme, roving brigands may murder people to get their possessions, while at the other extreme disputants may bring their

case to a mediator for resolution. Strong and legitimate political systems create routine ways for adjudicating disputes and limiting the impact of violence and brute force.

Cultural and economic factors affect the level of violence and theft in a society. Murder is especially common in societies that have honor codes that foster retaliatory violence, either between individuals or, even more perniciously, that spread through networks as groups avenge slights or violence to their members.⁷ Financial crimes are more common in societies that accord honor to people who accumulate wealth through sharp business practices that skirt the boundary between legal and illegal. Conflicts are often worse when resources are scarce and hunger is a problem. High levels of inequality or social divisions between groups can weaken the social norms against theft and the norms against using violence to accomplish theft. Social or political change may lead to changes in expectations that lead people to become dissatisfied with situations they previously found satisfactory.

STRATIFICATION AND THE CONTROL OF CRIME AND DISSENT

Most social scientists as well as the general public make a sharp distinction between crime and crime control on the one hand and dissent and repression (dissent control) on the other. Certainly mugging a grandmother and raping a neighbor are very different from a peace march or a strike. But there are many reasons why crime and dissent – and crime control and repression – sometimes overlap and need to be considered in tandem. Radical or critical scholars of social control have long argued that decisions about which economic activities or personal vices to criminalize are inevitably political and contested (Reasons 1973). Gurr ("Part I. Problems and Policies of Urban Public Order" 1977) argues that the boundary between crime and civil strife has always been blurred. Critical observers have often claimed that there is a link between dissent control and crime control for Black Americans.⁸

Laws about property and the regulation of economic exchanges are always intertwined with the stratification system. Laws both protect the property of the affluent and regulate economic predation by the rich against the poor. This can be most readily seen when the laws themselves are contested. Were the British Inclosure Acts of the 18th and 19th Centuries a legitimate consolidation of landowners' property rights or an illegitimate abrogation of peasants' land use rights? Should employers be required to pay a minimum wage?

Should the wealthy of a country be legally obligated to be sure that no one in the country is hungry or starving? Are redistributive taxes a moral necessity or a form of theft? Should begging be illegal? Should the people who do the physical labor of farming the land have a right to some kind of title to the land? Should there be a limit on the legal interest rate for a loan? Should unemployed people be required to take any job that is offered, no matter how low the wage? Are restrictive covenants in land contracts legitimate preservers of collective land values in an area or illegitimate restrictions on free trade or human rights?

There have been intense disputes about what kinds of laws should regulate economic relations and about who should make those regulations. What kinds of contracts ought to be legal and how should they be enforced? Should laws exist to permit business corporations to exist as "persons" and, if so, what kinds of rights should corporations have and what limits should be imposed on them? Should the right to govern be inherited or be determined by voters? And if voters, who should vote?

When the 19th century opened, voting was restricted to men who owned substantial amounts of property; by its end, most European countries and the US had moved toward universal male suffrage and toward universal person suffrage during the 20th century. There was enormous debate in the 19th century about whether workers' unions and workers' strikes were legitimate tools for raising workers' wages, or an illegitimate restraint of trade and attack on the rights of employers, and there is enormous debate in the 21st century in the US about whether unions are legitimate tools for raising the wages of government workers. Many European governments banned public gatherings and made it illegal for people to meet in groups to complain about their government or economic conditions. US courts first approved and then later disapproved of restrictive covenants in land deeds that preserved residential segregation by race, but still permit covenants that preserve residential segregation by economic level.

Affluent classes are always concerned about both individualized theft of their property and collective challenges to their property. Europe and the United States experienced tremendous collective turmoil over economic inequality and the laws that maintained it. European peasants often banded together in times of famine to burn a manor house and appropriate stored food. Urban Europeans often rioted in the 18th and 19th centuries

(see, for example, the detailed case histories compiled by Gurr, Grabosky and Hula 1977), and this collective strife fed into the revolutionary movements of Europe in the 19th and 20th centuries. Police forces were initially private militia employed by the affluent to protect their property. Modern public police forces were developed in 19th century Europe as a confluence of the desires of the rising middle class to protect their property and elite desires to control social disorder (Gurr "Part VI. The Comparative Analysis of Public Order" 1977). Urban collective violence declined in Europe as non-violent protest was legalized and redistributive policies reduced grievance levels.⁹

Not all dissent is criminal and not all crime is dissent, but they inevitably overlap in practice. Dominant groups frequently pass laws to enforce their domination and to criminalize both individualized rejection of the laws of domination and acts of dissent about the laws. It was a crime to violate the segregation laws of the Old South. It was a crime in 18th Century England to refuse an offer of employment. It is often a crime to criticize the government or to advocate its overthrow. Successful protest forms are often criminalized. Unions were ruled to be restraint of trade. It is a violation of US labor law to organize a "secondary boycott." The Montgomery city council made it a crime to organize a carpool during the famous bus boycott. After Chicano high school students walked out in Los Angeles in the late 1960s, felony conspiracy charges were brought against adults accused of organizing the walkout. After a series of disruptive protests at abortion clinics, many communities passed laws prohibiting collective assembly within several hundred yards of a medical clinic, often making violation a felony subject to a large fine or a jail term.

It can also sometimes be difficult to disentangle ordinary crime from dissent. Some groups whose purposes are clearly political that support themselves through property crime or drug dealing, or that assassinate people as part of their strategy. Some groups that begin as criminal enterprises may develop political goals, as in claims about street gangs who have gained political consciousness and shift activities towards community betterment. There are quite a few examples of US urban gangs and gang members that articulate political agendas alongside their criminal activities.¹⁰ Social banditry is particularly problematic—like Robin Hood, steal from the rich and give to the poor. Thieves who victimize the wealthy and redistribute some or all of their loot to poor relatives

or neighbors may see themselves as a species of social bandit. Researchers find that many "ordinary" criminals say they make moral or political judgments about who should and should not be victimized and offer political or quasi-political accounts or justifications for their crimes in structures of inequality, often drawing on larger social movement rhetoric in making these justifications. Regardless of motive, any crime that transfers assets from wealthier areas to poorer areas can benefit the poorer area. When people feel a sense of injustice about their circumstances, they often feel less constrained to avoid criminal activity to satisfy their needs or desires.

Whether crime rates and collective unrest are correlated has been the topic of scholarly dispute. Gurr ("Part VI. The Comparative Analysis of Public Order" 1977) concludes that the relation was positive, based on studies of patterns of collective protest, urban violence, and crime in several cities in the 18th, 19th, and 20th centuries (Gurr 1976; Gurr, Grabosky and Hula 1977): a high proportion but not all periods of rising crime were associated with collective strife. He also concludes that both crime and strife declined after the late 1700s. Lodhi and Tilly (e.g. 1973) found little correlation (positive or negative) between the crime and protest across time or locale in France 1830-1930 and concluded that they had different causes. Rudé (1988) examined patterns of crime and rioting in London and Paris in the 18th century and argued that riots tended to occur in areas dominated by working class people with occupations and stable abodes, not in the high-crime highly-transient areas of the urban underclass, specifically criticizing Chevalier for confusing "individual anti-social behaviour with the collective action of social groups" (p. 237) and says: "The two may occur together, as they often did in nineteenth-century Paris . . . but they arise from different causes, have their own distinctive histories, and there is no necessary connection between the two" (p. 237). Eisinger (1973) argued from data on US cities that collective protest and crime are substitutable, that people who could air their grievances politically had less need or motivation to commit crime. Jackson and Carroll (1981) provided evidence that crime in the 1970s was higher in cities that had strong civil rights movements and (Carroll and Jackson 1982) showed that police funding in the 1970s was increased more in cities with larger black populations and that had strong civil rights movements. LaFree (1998) argues that the Civil Rights Movement (and other political movements) fed into higher crime rates by way of reducing system legitimacy.

LaFree and Drass (1997) show that Black arrests for robbery and burglary rose with Black collective action in the 1950s and 1960s, then continued to rise after the Black riots subsided in the 1970s.

The intermingling of crime and dissent was central in the rise of mass incarceration in the US in the wake of the Civil Rights Movement and the Black riots of the 1960s. A Harris poll in 1968 found that 81% of the population said that "law and order has broken down" and 53% reported "fear of racial violence" (Louis Harris and Associates Inc. 1968; Urban America and Urban Coalition 1969). Although nearly half (48.5%) of Blacks surveyed in 1968 saw "discrimination and unfair treatment" as the main cause of urban disorders, Whites said the main causes were "looters and other undesirables" (34%) and "Black power or other radicals" (23.5%) (Urban America and Urban Coalition 1969 pp 103-104).¹¹ Chambliss (1995) cites a Gallup poll in 1968 that blurred crime and dissent in asking about "crime, lawlessness, looting and rioting" as the most important issue. The phrases "law and order" and "crime in the streets" referred simultaneously to Black riots and fear of ordinary street crime. Dello Buono (1992) argues that Black nationalist political activity was often treated as crime and coercively repressed. Ordinary crime was also at historically high levels in the late 1960s and early 1970s. LaFree (1998) argues the Civil Rights Movement (along with other movements) caused an increase in ordinary crime through reducing system legitimacy. On the social control side, Gary Marx studied the overt and covert repression of Black political movements in the 1960s and early 1970s (Marx 1970; Marx 1974) and later wrote about how these same techniques were being used by the late 1970s in Black communities in anti-crime efforts such as undercover fencing operations and infiltration of criminal gangs (Marx 1980; Marx 1981; Marx 1982). In the 1980s and 1990s, these same surveillance operations were put in the service of the drug war, the most important factor in the rise in the mass incarceration of Black people after the mid-1980s. Many critical observers called the 1980s drug war politically motivated and racially targeted and suggested that it was or bordered on repression (Chambliss 1995; Gordon 1994; Mauer 1999; Tonry 1994).

THE LOGIC OF SOCIAL CONTROL: DETERRENCE, INCAPACITATION AND SURVEILLANCE

In this section, we examine the logic of various crime control strategies. A review of these logical issues reveals anomalies and puzzles in the rhetoric of crime control that belie the idea that criminal justice systems are

simply responses to the problems of controlling crime. The logic of positive social control is to reduce the motivation to commit crime in the first place through socialization into normative compliance and providing legitimate means to making a living and achieving social standing. The logic of rehabilitation is to address the failures of socialization or problems (like addiction, mental illness, joblessness) that prevent normative compliance. The logic of negative social control accepts that people are motivated to commit crime and seeks to block the exercise of this motivation through coercion. Maintaining control negatively through repression and punishment involves at least three distinct mechanisms, each with a different logic: deterrence, incapacitation, and surveillance. The logic of deterrence is to prevent crime by using punishment to counter-balance the expected gains from crime over legitimate activities. The logic of incapacitation is to prevent crime directly by making it impossible for potential offenders to offend by killing, maiming, or incarcerating them. The logic of surveillance is a precondition for the use of either deterrence or incapacitation and entails being able to identify the perpetrators or potential perpetrators of crimes so that they can be punished. An emphasis on coercive social control requires surveillance and targeting of potential criminals before they deviate, and thus has an inherent tendency toward the structure of repressiveness. As we work through the specifics of these logics, we should pay special attention to the implications for recent US policy debates about crime control.

POSITIVE SOCIAL CONTROL AND SOCIALIZATION

Positive social control mostly happens unthinkingly, as adults socialize children into the ways of society. But explicit programs of positive social control are offered by reformers who see social problems as arising from inadequate positive institutions. The logic of a policy of positive social control is to focus on removing the economic necessity for property crime through social provision or on generating positive motivations for voluntary compliance through childhood socialization and the informal enforcement of group norms. In this logic, crime control is not separated out from the rest of society, but is embedded in the construction of the common good. Social institutions are expected to create a good life for all, and individuals are expected to behave in ways that contribute to the common good. Schools explicitly teach young people the norms and values of their society. Young people who are deemed to be “at risk” may be the focus of more targeted socialization. The justification for these approaches is typically normative rather than utilitarian. However, a kind of cost-benefit logic may compare

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the costs of education, redistribution and social provision to the psychic, moral or other costs of living in an unequal or unjust society. Heightened crime and fear of crime may be treated as a cost of living in a system with low system legitimacy. Although the correlations are by no means perfect, there is a broad general tendency for crime rates to be lower where inequality is lower, and for there to be tradeoffs between social welfare spending and crime control spending.¹² In the US, in the face of growing inequality and steep cuts in education and social welfare budgets, advocates of more public spending for education and social welfare often advocate these policies as long-term cost-cutting measures that will reduce crime and crime control expenditures.¹³

REHABILITATION

The logic of rehabilitation is to persuade someone who has committed past crimes to choose not to commit crimes in the future, i.e. to bring them back into voluntary compliance. The 19th Century idea of the penitentiary was that the wrongdoer would be incarcerated while contemplating his or her sins, become penitent and then return to society. Rehabilitation involves diagnosing the source of the problem and developing a treatment to address it. Rehabilitation programs may involve treatment for mental illness or alcohol or drug addiction, lessons in anger management or positive relations, therapy for addressing problems of childhood abuse, education and job training, treatment for pedophilia, religious instruction, or any of many other interventions designed to address the underlying sources of problems. Through the 1960s, rehabilitation was the dominant ideology of corrections. Offenders were given indeterminate sentences and assessed for their readiness to return to society.

The central question for rehabilitation is whether it works: does rehabilitation make a difference in the likelihood that an offender will re-offend? This is actually a hard question to answer. Many—quite probably most—offenders will desist from future crime without any intervention at all. Certain kinds of low-level crime are very common and almost normative among many young people who "age out" of crime as they enter full time employment, get married and start families.¹⁴ Even more persistent professional criminals often voluntarily abandon criminality as they mature, are able to obtain legitimate employment, and seek a stable family life.¹⁵ Unfortunately, there is, by definition, relatively little information on the re-offending and desistance patterns of

those who do not get caught or punished for their crimes, but it is often argued by criminologists that desistance is ultimately nearly universal, if offending is incompatible with normal adult roles and normal adult roles are accessible to the offender. Measures of the effectiveness of rehabilitation programs focus only on those who have actually been caught for their crimes and compare the re-offending rates of those who have been caught to some comparison group or standard. The vast majority of people who are convicted of one crime are never re-arrested. No matter what the “treatment” is, there will be some offenders who re-offend and others who do not. Assessments of rehabilitation rarely consider the full range of “treatments” from doing nothing to punitive incarceration and rarely involve valid comparisons. Instead, proponents of a given treatment emphasize its successes and opponents its failures. Typically only one “treatment” is offered in a given jurisdiction for a given offense; even if there are alternative programs, assignment to them is almost never random. The choice of comparison group itself is political. Should a given rehabilitation program be compared to doing nothing? To punitive incarceration without treatment? To other rehabilitation programs? Another central problem is in defining the outcome, which usually treats someone as a re-offender if they are arrested or incarcerated again. But rates of re-arrest or re-incarceration depend just as much on the behavior of the criminal justice system as they do on the behavior of the offender.

A series of studies published in the early 1970s came to be called the "nothing works" research, which generally concluded that rehabilitation programs made no difference in the likelihood that someone would reoffend and were, therefore, a waste of money and time. The most prominent of these was Robert Martinson who wrote a series of highly-visible and still widely-cited articles in *Public Interest* (Martinson 1974) based on a review of over 200 research studies evaluating various rehabilitation programs (Lipton, Martinson and Wilks 1975).¹⁶ Martinson argued that none of them made any significant difference in the likelihood of reoffending. Many studies that purported to have positive effects were measuring their own behavior (i.e. non-revocations or non-sanctioning) rather than offender behavior.

Martinson's work is widely cited as justifying punitive custodial incarceration-centric policies grounded in the theory of incapacitation (discussed below). But this is not the conclusion Martinson himself drew, which was much more in line with the logic of positive social control:

"Our present treatment programs are based on a theory of crime as a "disease"—that is to say, as something foreign and abnormal in the individual which can presumably be cured. This theory may well be flawed, in that it overlooks—indeed, denies—both the normality of crime in society and the personal normality of a very large proportion of offenders, criminals who are merely responding to the facts and conditions of our society. This opposing theory of 'crime as a social phenomenon' directs our attention away from a 'rehabilitative' strategy, away from the notion that we may best insure public safety through a series of 'treatments' to be imposed forcibly on convicted offenders. These treatments have on occasion become, and have the potential for becoming, so draconian as to offend the moral order of a democratic society; and the theory of crime as a social phenomenon suggests that such treatments may be not only offensive but ineffective as well. This theory points, instead, to decarceration for low-risk offenders—and presumably, to keeping high-risk offenders in prisons which are nothing more (and aim to be nothing more) than custodial institutions." (p. 49)

In an earlier article in the *New Republic* (1972), Martinson argued that long periods of incarceration inherently hampered desistance from crime by disrupting the normal pathways into employment and marriage and argued for decarceration and in-community programs or supervision where possible.¹⁷

All this gives us a new puzzle. How did a series of articles that explicitly argued that incarceration was ineffective and counter-productive for most offenders come to be used to provide the ideological underpinnings for expanded programs of incarceration? How could research that said that overt coercive rehabilitation programs made no significant difference in the likelihood of re-offending versus desistance be turned into the service of an ideology that denied that desistance was possible? A full answer to this question involves a study of the history and sociology of knowledge, but it seems obvious that the shift towards punitiveness arose not from the content

of this article itself, but from a broader punitive political movement or climate that picked up the "nothing works" slogan and used it in ways not intended by Martinson.

DETERRENCE

The theory of the deterrent effect of punishment is that the threat of punishment deters crime by changing people's calculations of the expected costs and benefits of actions.¹⁸ Potential criminals (or dissenters) are thought to calculate the benefits they can expect to gain through compliance and compare them to the benefits they can expect to gain from crime (or dissent) minus the expected punishment. On the crime side, the benefit is the expected value of crime minus the expected value of non-crime options; the payoff of being a criminal is not how much crime pays, but how much better crime pays than its alternatives. This is why (it is argued) the poor commit more economic crime: their non-crime alternatives do not pay well, so their opportunity costs of pursuing a criminal career are lower. In theory, deterrence works not only on the person punished, but on everyone else, as the use of punishment on one person signals the risk of punishment to others.¹⁹

Exploration of the logic of deterrence reveals some important problems. First, the cost-benefit model of deterrence breaks down entirely for non-economic crimes or motivations to crime such as thrill-seeking, addiction, or mental disorder, and criminological research frequently finds that these non-economic motives or causes are important for a large fraction, even a majority, of offenders. For such crimes, a cost-benefit calculus is meaningless. Deterrence may operate in such cases, but if it does, it works through symbolic stigma and normative pressure, putting us back into the realm of normative compliance, not cost-benefit analysis.

But deterrence is also logically problematic even for economic crimes. In this logic, there are two ways to reduce crime. One is to increase the expected payoffs from legal activities through social programs such as raising wages and employment levels, welfare transfer payments, or education and retraining programs that increase people's legal options—the carrot. The other is to increase the expected level of punishment for crime—the stick. Social control agents who want to reduce crime are expected to weigh the relative cost and efficacy of the carrot and the stick. In the imprisonment boom, the "carrot" was essentially taken off the political table for ideological reasons, and attention focused only on the stick, but academic studies of crime and crime control have generally

considered both. There are two major logical problems with the cost-benefit approach to deterrence: the problem with fines, and the problem of the cost of incarceration. We will consider each in turn.

THE PROBLEM WITH FINES

Economic models of crime control tend to focus on fines and property crimes, as the dollar cost of the fine can most easily be compared to the dollar value of stolen property or illicit market activities. Monetary fines are, in principle, self-funding: money is collected which can be used to pay for the costs of the system of collecting them. But the maximum fines for most serious crimes are extremely low and are rarely treated as a serious component of crime control. For example, the schedule of maximum fines in Wisconsin as of 1999 had not been updated since 1977, and the maximum fine for any felony was \$10,000 – even one carrying a maximum penalty of a 25 year prison sentence. The commission recommending new sentence schedules²⁰ acknowledged that fines are rarely used for felonies but suggested that the maximums should be raised for at least symbolic reasons. Their suggested maximum fines ranged from \$10,000 for lesser felonies with 18 to 36 month maximum confinement to \$100,000 for felonies carrying a maximum 25 year sentence. The schedule of suggested fines and periods of confinement appeared to value confinement at \$3336 to \$6660 a year, or substantially less than the \$10,712 a person could earn working a then-minimum-wage job at \$5.15 an hour for 260 8-hour days in a year. It is hard to imagine how the fine could have any more deterrent value than incarceration. In fact, the severity class of the felony is tied more to the degree of violence and physical harm or threat of physical harm in an action than the monetary value of a theft.

Fines are problematic as deterrents at both the high and low end of the income scale. Low income people cannot afford to pay the fines and end up incarcerated for even trivial crimes. In many jurisdictions, incarceration for periods of up to several months can be a consequence of relatively small fines, such as \$50-\$500 tickets for violating traffic laws or noise ordinances, if the fines are not paid. Wealthy individuals can easily pay such fines and experience them as inconvenient at most. At the high end, the fines for corporate crimes are so low relative to the value of the crime that they are reasonably factored in as the cost of doing business.²¹ [[Add details?]] Only if fines are pegged as a proportion of a person's (or company's) income or resources would it be possible to create a

system of fines that actually works as theorized. Switzerland's law permitting extremely high fines for rich offenders made international news in 2010 when a wealthy repeat-offender speeder was fined \$290,000 (Jordans 2010), but few jurisdictions emulate this.

Fines are operative as deterrence in a few situations. The most common is traffic or parking tickets. The possibility of receiving a traffic ticket probably deters speeding among lower- to middle-income people who would find the fine onerous. Even for this population, the "points" which lead to revocation of a driver's license are the most important part of the deterrent, not the monetary fine. But the risk of being caught and fined varies with surveillance, and there is a cost associated with surveillance. The balance between deterrence and fines as revenue produces issues that are generally well-known. Police are looking for ways to maintain deterrence and minimum net cost and, at times, have quotas for traffic tickets to provide a revenue stream to pay for the surveillance system. Traffic tickets are sometimes a profit center for municipalities. In the past, some towns issued tickets to everyone who passed through them until the courts ruled that people actually had to be breaking the law to be ticketed. The most cost-effective way to accomplish both deterrence and revenue generation is the speed trap, in which traffic officers hide in a location where terrain (e.g. a hill) makes speeding likely, especially if the legal speed is sharply reduced at that point.

Traffic and parking violations are not classified as or generally understood as crime. In general, fines play almost no role in deterring crime in the sense of violations of the criminal code. Incarceration, not monetary fines, is the punishment that is actually relevant in criminal justice. There are debates about the extent to which the threat of incarceration is experienced as a cost in different communities. Its deterrent value surely is higher for people who have more to lose from incarceration in terms of social stigma or job prospects, but this is very hard to quantify. In addition, incarceration is extremely expensive. This leads us to the second problem with cost-benefit analyses of deterrence: the costs of surveillance and punishment and the calculation of expected values.

PROBABILITY, EXPECTED VALUE, AND COST OF DETECTION AND PUNISHMENT

The deterrent effect of coercion is theorized to work through increasing the expected cost of crime or dissent by threatening punishment. By the logic of deterrence of crime for economic gain, what is needed is an

expected level of punishment that exceeds the expected gain from crime. To deter a theft of \$10,000, for example, what is needed is an expected punishment worth \$10,000. The expected punishment is the value of the punishment times the probability of receiving it. So, for example, a 10% chance of paying a \$100,000 fine and a 1% chance of paying a \$1,000,000 fine have the same expected value of \$10,000. Similarly, a 10% chance of serving 1 year in prison and a 1% chance of serving 10 years in prison have the same expected value of a tenth of a year in prison. In this view, death, maiming, and incarceration are viewed as entailing some high but difficult-to-quantity cost to compare to the value of crime.²²

Criminologists have long generated models and debated the relative merits of increasing the certainty of punishment (through higher levels of policing, arrest, and conviction) versus the magnitude of the punishment. The bulk of the evidence suggests that greater certainty of detection is more important than the magnitude of the punishment for deterrence, as long as the punishment is high enough to seem like a punishment to the perpetrator.²³ On the cost side, however, detection is expensive, and a given expected value of punishment is almost always cheaper to produce through a higher magnitude of punishment and a lower probability of detection. Additionally, unlike fines which can be self-funding as a punishment, incarceration is expensive for the punisher. The cost of incarceration as a punishment only arises when a sentence is actually given. Thus, the cost of using a punishment system to the punishers is lowest for extremely high punishments with very low probabilities of detection and use (Becker 1968). Because of these problems, among others, many criminologists argue that the most important deterrent effect has to come from shame and disapproval of others, not from the actual magnitude of the punishment.²⁴

DETERRENCE AND PUNISHMENT USE

The central element of the logic of deterrence is often overlooked: it is the *threat* of punishment that does the deterrent job. Punishment itself is only needed to make the threat credible. That is, the more deterrence works, the less actual punishment is needed. This was, for example, the logic of the deterrent effect in the "mutually assured destruction" during the Cold War: if you were assured that your use of nuclear weapons would result in certain retaliation and the destruction of the entire planet, you would refrain from using nuclear

weapons. At a personal level, people who are convinced that committing a crime will result in a punishment that is far worse than any possible benefit to them of committing the crime will not commit that crime, or at least not intentionally if they are sane. People living in highly repressive regimes expect that protest will result in arrest, and so they rarely protest.

This means that there is an inherent *negative* correlation between the level of deterrence and the amount of observed punishment. There are more arrests for protesting when and where there is more protest (Oliver 2008), even though the repressiveness (the ratio of arrests to protesters) is generally much higher when and where protest is illegal. There is typically more protest in less-repressive regimes where protest is legal than where it is illegal, even though there is typically more actual grievance in repressive regimes.

Logically, systems with high-enough levels of deterrence should need only the occasional punishment to remind everyone that the system is still there. In fact, if you can persuade people that there is a punishment system in place, in principle you do not ever have to actually punish anyone. To repeat: a threat of punishment that really works as deterrence is a punishment that never has to be used. This kind of nuclear deterrent was presumably the logic of attaching extraordinarily high penalties to illegal drug possession in the so-called Rockefeller drug laws in New York (and later Michigan): We don't want people to use addictive substances, so we will threaten to sentence them to prison for life for selling two ounces or possessing four ounces of illegal drugs—a penalty that far outweighs any conceivable value to be obtained from using illegal drugs, much less the harm to society from a person being a drug user. Unfortunately, it did not work. People still used illegal drugs and got sent to prison, creating extraordinary costs both for the offenders and their families and for the correctional system, which undertook to house and feed them for the rest of their lives. Understanding why this nuclear deterrence did not work is essential for understanding the dynamics of crime and punishment in the US.

Logically, if we see a system with high levels of actual punishment use, we can be theoretically certain that the deterrence is not the dominant factor operating in that system. Either the threat of punishment has little deterrent effect, or there must be some other factor pushing crime or dissent up to counter the deterrent effect. High levels of punishment ought to deter crime and thus ought to bring crime—and thus the the use of

punishment—back down to low levels. If we see high levels of punishment in a system, we should immediately ask why deterrence is not working and what else is going on. Thus, the steep rise in incarceration in the US between 1980 and the mid-2000s is a profound puzzle for any deterrence model of social control.

INCAPACITATION

The theoretical foundation of escalating incarceration was not deterrence, but incapacitation, which focuses on reducing crime directly through incarcerating people with a high propensity to commit crimes. Those who are incarcerated are directly "incapacitated" from further dissent or crime, because they cannot commit crimes out on the street if they are locked in prison. Coercive regimes also rely on incapacitation when they kill their opponents. Amory Starr²⁵ argues that there is also a longer-term incapacitation effect of torture and other kinds of coercive punishment in creating debilitating long-term psychological problems, and [[New Yorker article]] makes a similar argument about the effects of solitary confinement.

Incapacitation theory in crime control was undergirded ideologically by the phrase "nothing works" in rehabilitation, which was understood to imply that offenders needed to be permanently removed from society.²⁶ As noted above, the originator of this phrase, Robert Martinson, argued against long periods of incarceration. But the phrase "nothing works" was picked up by hard-liners who misconstrued it. Instead of the claims Martinson actually made, that rehabilitation programs made no difference in the rate of re-offending relative to desistance and that social context was more important than therapy for predicting desistance, the phrase was understood as saying that desistance was impossible, that anyone who was once an offender was going to stay an offender forever, or at least until age 35.²⁷

A cost-benefit logic of incapacitation compares the cost of killing or imprisoning someone against the cost of the crime the person would commit if free. Killing offenders is relatively inexpensive and death was the punishment for a wide variety of property crimes through the 19th Century, but killing offenders for property crimes and violent crimes short of murder has come to be seen as morally unacceptable in most of the world.²⁸ Thus the cost-benefit logic of incapacitation centers on the cost of crime versus the cost of imprisonment. The major line of empirical research in support of the incapacitation logic for imprisonment has been research based

on self-reports of arrestees about their high levels of undetected past crime, which are then projected into the future. The estimated benefit of eliminating the crime they would otherwise commit is balanced against the cost of incarceration: anyone whose expected criminal gains exceed the cost of incarcerating them should, by this logic, be incarcerated (i.e. Shavell 1987). Such analysts may also calculate the crime that would have been avoided had the criminal been incarcerated earlier in his career. The validity of this kind of methodology and the larger question of whether mass imprisonment reduces crime has been the subject of a great deal of debate.²⁹

The calculation ignores the possibility that less expensive social control actions might reduce crime and also excludes the negative side effects of incarceration. In 2001, the Bureau of Justice Statistics estimated that the average annual cost of incarceration per inmate was \$22,650, varying across states from a low of \$8128 in Alabama to a high of \$44,379 in Maine (Stephan 2004). For comparison, the annual gross income of a worker making the 2001 minimum wage of \$5.15 an hour would be \$10,712. The average annual income of a non-Hispanic White high school graduate who was employed full-time that year was about \$26,000; for a Black high school graduate it was about \$22,000. For those who had not graduated high school, the average annual earnings were about \$6000 less, or about \$20,000 and \$16,000, respectively.³⁰ In short, if a full-time job would keep a person from committing crime, in many states it would be less expensive to pay them to work full time than to incarcerate them. Whether a job would prevent crime and what wage would be sufficient to have the effect are important issues that some scholars tried to address,³¹ but the proponents of incapacitation rarely even considered such possibilities.

This connects to the problem of the negative side effects of incapacitation. The person who is incapacitated cannot commit crime or dissent, but also cannot do anything else: he or she cannot earn a living or contribute financially to a family, cannot buy goods and services, cannot participate in voluntary associations or mutual aid, cannot vote or mobilize politically. Thus incapacitation of one person almost inevitably has indirect harmful consequences for the family and community from which he comes. If he has been predatory or violent towards his intimates, they may, on balance, be better off without him despite the costs of his absence, but they may still suffer economically. If his criminality has taken the form of property crime, particularly theft from other

communities, or illicit market activities, his family and community may have been benefitting from his crime and suffer only losses and no gains from his incapacitation.³² A number of scholars have pointed out that illicit activities are a way of capitalizing resource-poor communities (e.g. Hagan 1997). The lost income to the community from incapacitating someone capable of working (either legally or illegally) must have averaged at least \$10,000-\$20,000 a year in 2001. We will return to these issues later.

There is another even deeper point to stress about incapacitation as crime control: if it is to reduce crime, it must focus on identifying people who have a high probability of engaging in crime or dissent *in the future*. It leads logically to an emphasis on identifying people on the basis of minor infractions on the theory that if they are not incapacitated, they will do worse things in the future. The logic of incapacitation also justifies targeting for incarceration people who have a high demographic probability of committing future crime, in this case young men from poor or working class backgrounds, particularly Black or Hispanic men. Not even the most aggressive proponents of incapacitation theory have ever argued for incarcerating people *before* they commit a crime, but there has often been tacit ideological support for focusing surveillance on such populations and for punitive responses to the first instance of criminality of any kind. This is ALSO the logic of political repression, with its emphasis on preventing rebellion through monitoring for the smallest signs of dissent. There is some evidence that this kind of "prevention" has been the logic of much of the policing of the drug war.³³ Zinger (2004) argues that actuarial risk assessment evokes human rights concerns.³⁴

SURVEILLANCE, CRIME DETECTION, AND REPRESSION

Surveillance is central to any coercive social control scheme. The likelihood of being caught is a major factor in any cost-benefit account of criminal or dissident behavior, and quite a bit of research suggests that the chance of being caught is more important than the magnitude of punishment in deterring crime³⁵ and that the number of police on the street is a more important factor in reducing crime than the level of incarceration.³⁶ "White collar" crimes such as falsifying tax returns, pilfering from employers, and fraudulent business dealings are quite common³⁷ and the low probability that this kind of crime will be detected and, if detected, will be prosecuted as a crime, seems likely to be one factor in its prevalence.

Intelligence gathering is particularly important for criminal or dissident activities that involve the coordinated actions of many people, such as underground resistance, protest organization, or criminal enterprises. Intelligence-gathering, infiltration, and surveillance can themselves disrupt crime and dissent or the planning for crime or dissent, and they also act as a deterrent by increased the perceived probability of detection and providing a reminder of the likelihood of punishment. For both political dissent and criminal activity, there are many documented cases of *agents provocateurs* and entrapment, in which police or their agents encourage and sometimes even initiate the commission of crimes and then arrest and prosecute those whose crimes they have encouraged.³⁸ There are also many documented cases of arrests and convictions based on outright falsehoods by informants who were either paid or threatened with punishment for their own offenses.³⁹

Surveillance and related activities also directly prevent dissent by making people unable or unwilling to speak out against the regime and coordinate resistance. Communication channels may be blocked or infiltrated to prevent collective action. Written works may be censored, public expressions of dissent made illegal and public gatherings banned. Disinformation may be spread. Networks of spies willing to identify hidden dissenters disrupt organizations as potential dissenters do not know whom to trust. Gary Marx argued that the infiltration, entrapment and disinformation tactics developed in the late 1960s against radical groups were turned to crime control in Black areas in the 1970s (Marx 1970; Marx 1980). These same tactics were turned to the drug war in the 1980s and 1990s.⁴⁰

Disruption and control of gangs is a particular emphasis of coercive policing and undercover intelligence-gathering and subversion that is particularly open to interpretation as a form of repression.⁴¹ Many gangs have become organized criminal enterprises and are especially seen as central to illegal drug trafficking.⁴² But the formation of ethnic gangs has also frequently been seen by social scientists as a form of ethnic conflict, and accounts of gangs adopting political or community betterment goals are relatively common (see Coughlin and Venkatesh 2003 for a review). There are quite a few examples of US urban gangs and gang members that articulate political agendas alongside their criminal activities.⁴³ There are periodic claims that police repression of gangs has had political motivation, most strongly for the COINTELPRO involvement in the late 1960s in Los Angeles, where it

sought to foment conflict between the left-leaning Black Panthers and the Black Nationalist US Organization (Alonso 2005?). One gang leader claims gangs are the "residue of the freedom struggles of the 20th century in the African American community" (Nehemiah Russell of the Gangster Disciples, quoted in DiChiara and Chabot 2003).

There is an intense level of surveillance in many African American communities. People who are on supervision for probation or parole are under additional surveillance and are subject to terms of supervision that entail restrictions on conduct that are stricter than those applied to the general population.⁴⁴ People under supervision must report periodically to their probation/parole officers. They can be incarcerated for days or weeks in jail and revoked to prison for months or years for violating the terms of their supervision even when their conduct is not criminal under ordinary law. These restrictions can and often do include rules against being involved in politics or gathering in groups. The Bureau of Justice Statistics did not start reporting rates of being on probation or parole by race until the past few years, not all states break out probation and parole by race, and states differ in their reporting practices, so it is possible to provide only approximate estimates of the magnitude of this factor. With these caveats, we may estimate that about 4.5% of all non-Hispanic Blacks over 14 (of both sexes and including old people) were on probation or parole in the late 2000s, compared with 2.4% of Hispanics and 1.5% of non-Hispanic Whites.⁴⁵ (When added to the estimated proportion in prison, 6.5% of Black adults were under correctional control in 2007, compared with 3.2% of Hispanics and 1.8% of Whites.) As with imprisonment, the supervision rates and the racial disparity in supervision varies greatly from state to state. At the high end, more than 10% of the Black adult population of Minnesota and Rhode Island was on supervision; the figure was 8% for Pennsylvania, 7% for Oregon and Wisconsin, and 5-6% for Arkansas, Colorado, Delaware, Iowa, Kentucky, New Jersey, Texas and Vermont.

The proportions are even higher for men. I have more detailed data for Wisconsin, where 11.6% of Black men were in prison at the peak in 1999 and 10.7% in 2006 (where White male imprisonment was still rising to its peak of .7% in 2006), the Black rate of being on supervision was rising in the late 2000s, despite a decline after 1996, due to a steep rise in probation, with 16.8% of Black men on supervision in 2006 (in addition to the 9.7% in prison, for a total of 27.5%); White men's supervision rate climbed steadily to 2.7% by 2006, for a rate of

supervision plus prison of 3.4%.⁴⁶ For California, one study estimated that 39% of Black men ages 20-29 in California in 1994 were under correctional control, including prison, jails, probation, parole, and the youth authority, compared with with 5% of Whites, 11% of Latinos, 5% of "other" (Schiraldi, Kuyper and Hewitt 1996).

There is also substantial surveillance of Black people who are not [yet] under correctional supervision. A 2006 national telephone survey found that 47% of young Black men reported having been arrested and 51% reported having been "wrongfully stopped" by police (Washington Post and Kaiser Family Foundation 2006). This telephone survey did NOT include the 10% of men in this age group who were incarcerated, which would presumably bring the estimated total of young Black men who had experienced arrest up to 57%. In this same survey, 74% of young Black men reported having a friend or relative in prison (this number includes those who themselves have been in prison).

For the late 1980s through the late 1990s, I have calculated from Uniform Crime Reports data that the total average annual arrest rate for Black people over age 17 living in metropolitan areas was about 20 per 100, the equivalent of one in five Black people arrested a year. This estimate includes women and children and old people. In twenty metro areas, the total arrest rate (both sexes, everyone over 17) exceeded 50 per 100 for at least some years between 1985 and 2003. These numbers do not count the people stopped and questioned without arrest or citation for "driving while Black" or "walking while Black." Offenses that are ordinarily punished with monetary fines also become sources of arrest and incarceration if the offender fails to appear in court or fails to pay the fine – a situation that often arises among people who do not have much money. Courts are also increasingly imposing high "court costs" on offenders that may add up to the equivalent of a year's income for a low-wage worker (Harris, Evans and Beckett 2010; Harris, Evans and Beckett 2011) ; falling behind on these payments can also lead to incarceration. Goffman (2009) describes the ways in which the lives of lower income Black men and their families are disrupted by the need avoid arrest on outstanding warrants.

One question we will ask as this work proceeds – without being able to give a fully satisfactory answer – is whether the intense police surveillance of Black neighborhoods around the "drug war" and the "community corrections" supervision of people on probation and parole ought to be understood as the functional equivalent of

a kind of political repression. It is especially important to recognize that such policing can have repressive consequences even if the intent of the police actors is entirely on crime suppression.

THE COSTS AND BENEFITS OF SOCIAL CONTROL – FOR WHOM?

The previous section has considered the logic of various strategies of social control from the point of view of their impact on their targets, i.e. their impacts on potential criminals or dissidents. This section considers the decisions of the social control agents to use one strategy or another. After a brief review of some of the puzzles that arise in trying to model the costs and benefits of social control programs, we focus on the interests people might have in punitive policies. The starting point for this discussion is the apparent failure of an equilibrium model of deterrence and crime control. Incarceration is extraordinarily expensive when applied on a mass scale. Why did so many state actors continue to increase incarceration rates even in the face of falling crime?

Since Becker's (1968) influential paper on an economic approach to crime and punishment, many analysts have sought to compare the cost of crime to the cost of controlling crime through some particular program. On the criminal side, payoffs to crime have been compared to the payoffs of legal activities and the expected cost of punishment if caught. On the crime control side, the costs and potential effectiveness of various interventions have been compared to the "cost of crime to society." Advocates of mass incarceration often argue that the cost of crime to "society" is very high. They add up the value of all stolen property and may even attach some monetary value to being a victim of violence and add that into the total.⁴⁷ But from Becker on, economists have always recognized the core problem in such schemes: criminals are part of the "society" making the social control decision. Criminals' illegal earnings do not flow out of the system. Criminals often support their families. Even if they are selfish hedonists, they use their illegal earnings to purchase goods and services, and thus contribute to the economic well-being of those they do business with. In fact, successful criminals often invest their illegal earnings in legitimate businesses and use their earnings to finance legitimate lifestyles for themselves and their heirs. Criminal enterprises have negative side effects – what economists call externalities – but so do many legal businesses such as oil refineries, paper mills, tobacco and alcohol producers, and state-run lotteries. Criminal activities have opportunity costs – what people would be doing if they were not busy committing crimes – but so

do all other activities. It cannot be assumed that property crime costs society *as a whole* anything at all. At the level of the society as a whole, and ignoring issues of morality or justice, crime is fundamentally a transfer of resources from one person or group to another. It is a redistributive mechanism which, at the most abstract level, is no different from imposing taxes, making transfer payments, setting wages and salaries, or extracting profits from a business.

In his original article, Becker (1968) says that, strictly speaking, crime entails no direct cost to society but is simply a transfer of welfare among social members. However, he still tries to consider social control costs and benefits at the level of a whole society. He defines the social cost of crime as the loss to the victims minus the gain to the criminals and *assumes* that there is a net social cost of crime, i.e. that the loss to the victims exceeds the gain to the criminals. But there is really no way to defend this assumption without making inter-subjective assessments of utilities any more than it is possible to decide whether it is better for "society" to raise taxes on wealthy people to provide health insurance or income subsidies to low income people. Those committing property crimes often believe that they need or deserve the property more than the victims do. The marginal utility of a small amount of money is much higher for a poor person than a wealthy person. Further, the gains from property crime may be used to fund productive enterprises or productive activities such as education. Even violent crime cannot be assumed a priori to be a net social cost, unless it is unintentional. Purposeful violent crime most often aids the transfer of property, often to recipients who may believe that the victim's death or injury was worth the price. Punishment also is not straightforward: not only does its value to the criminal vary depending on the criminal's tastes and circumstances, but punishment itself creates side effects and social costs for people besides the offender.

Assessing the cost of crime to society as a whole entails determining the value of criminal versus alternate non-criminal activities, the impacts of various criminal and non-criminal activities on the productivity of society as a whole, and intangibles such as a sense of safety or belief in system legitimacy. Another issue is the "elasticity" of crime, i.e. the effect of incarcerating some people on the amount of crime committed by those not incarcerated. If incarcerated criminals are replaced by new criminals, incarceration may have zero effect on the amount of crime.

Finally, bystanders to crime often have strong feelings about crime or crime control but what these feelings are cannot be known a priori. In short, it all comes down to the subjective and normative matter of what kinds of costs and benefits and whose costs and benefits are to be factored into the equations, along with varied psychological predictions about the effects of punishment on crime. Careful reviews of such calculations to assess the cost of crime to society as a whole conclude that the answer varies tremendously from analyst to analyst, depends on the assumptions taken into the study, and can yield a conclusion consistent with virtually any policy recommendation from the most liberal to the most conservative, from the most restorative to the most punitive.⁴⁸

EQUILIBRIUM FAILURES AND OTHER PUZZLES

It is theoretically surprising that imprisonment kept rising as crime fell in the 1990s. Following Becker (1968), economic models of crime control assume that rational social control agents calculate the costs of social control of all types versus the cost of tolerating crime, taking account of estimates of the effect of the social control expenditures will on the amount of crime. These models tend toward equilibria where the costs and benefits of crime and crime control are balanced. That is, people pay for enough crime control to keep the cost of crime lower than the cost of more crime control and stop paying for more crime control when the cost of crime is lower than the cost of crime control. By this logic, expenditures on crime control should go down when crime goes down. Incarceration is very expensive. In 2001, the average annual direct cost to house a prison inmate was \$22,650 to \$62.50 a day.⁴⁹ This does not include such indirect costs as care for the inmate's children or the loss of the inmate as a worker or consumer in the community. But imprisonment kept rising in the 1990s even as crime declined steeply.⁵⁰ State governments in the 1990s seemed to act as if they had a taste for spending money on corrections, rather than a goal of optimizing social welfare by balancing the costs of crime and crime control. Why would they have such a taste? Two broad answers emerge. One lies in the dynamics of partisan politics: being "tough on crime" is politically popular and being successfully characterized as "soft on crime" is politically dangerous. Politicians supported mass imprisonment because it helped them win elections. The second lies in what some are calling the "prison industrial complex." That is, there are people, unions and businesses who make their money running prisons and providing services to prisons, and these actors lobby for legislation that will generate more prisoners. We will explore the evidence for and patterns of these factors in later chapters.

Some preliminary information will help us to further specify the dimensions of this puzzle. Bureau of Justice Statistics calculations were that most of the increase in incarceration arose from individuals spending more time in prison for any given crime.⁵¹ As figures [natprisadmits_alltypes.wmf and natprisadmist_offensesnew.wmf] indicate, most of the increase in prison admissions after 1990 was from revocations, not new prison sentences. If we look at the offense breakouts, new sentences for property crimes (theft and robbery/burglary) showed declining rates, while new sentences for violence and "other" crimes showed increasing rates; drug sentences oscillated around a new equilibrium after the steep rise of the late 1980s. Violent crime was declining as sentences for violent crime rose; no official data are kept on drug crimes or "other" (which is primarily drunk driving). So we can re-specify the social control puzzles: why were state governments willing to spend large amounts of money on lower release rates and higher revocation rates in the face of declining crime rates? Why did we see rises in sentencing rates for violent crimes in the face of declining violent crime rates? Why was there a steep rise in prison sentences for "other" offenses? Finally, why did drug sentences stay high in the face of the enormous social control efforts directed against the drug war? Why were governments willing to spend so much money in a social control effort that seemed to have zero impact on the availability of illegal drugs? And why did the "drug war" have zero impact on the availability of illegal drugs?

On the inmate production side, one has to ask: how could there have been more people to incarcerate if fewer people were committing crimes? Although there is substantial dispute in the academic literature about the size of the effect, most analysts conclude that high levels of incarceration played some role in the decline of crime in the 1990s via an incapacitation effect (e.g. Bushway and Paternoster 2009). But the continued availability of people committing crimes to be captured and incarcerated implies a seeming failure of deterrence. The crime-side anomaly seems particularly acute for young Black who men seemed irrationally willing to commit drug crimes even in the face of an extremely high expected level of detection and punishment. In many Black urban areas, the extraordinarily high rates of policing led to as many as half of all young men being sent to prison and nearly all experiencing arrest, so that any reasonable assessment had to lead to the conclusion that a young Black man's chances of being caught and punished was extremely high if he regularly committed crimes, and certainly non-

trivial for any given crime. In fact, young Black men who had not committed crimes were also very likely to be stopped and questioned and, in some cases, arrested and charged with crimes. Despite what should have been an extremely high level of deterrence, young Black people continued to commit crimes and be caught and punished for them. If there is any value at all to cost-benefit models of crime deterrence, there must have been some other forces increasing the relative attractiveness of crime versus its alternatives that ran counter to the deterrence effect. Freeman (1994; 1996) argues that the explanation is declining wages and employment opportunities for low income men that is a counter-incentive to the deterrent effect of imprisonment. Other likely candidates are the profits to be made in the illegal drug market and the feedback of the punishment itself into reducing the social basis of system legitimacy.

SOCIAL CONFLICT AND SOCIAL CONTROL

These apparent failures of the cost-benefit logic of deterrence and social control at the level of the whole society are less anomalous if we accept the reality of stratification and subgroup interests within society. Both crime and social control have externalities, side effects that provide benefits or create costs for people other than the criminal or social control agent.

Property crime benefits not only the criminal, but anyone the criminal shares income with. "White collar" and business crimes can create substantial benefits for the families and businesses of the criminals. Successful drug dealers buy homes for themselves and their relatives and pay for their own and their children's college educations. Even selfish hedonists benefit the community where they spend their illegal earnings through the same kind of economic multiplier effect as any other earnings. A number of social scientists have argued that crime in general and the drug trade in particular function to capitalize low income communities with few other economic resources (e.g., Hagan 1994). Of course, there are negative side effects as well. All crime but especially violent crime hurts not only direct victims but the people near them, through increasing their sense of fear and insecurity. The economy or tax base of whole areas can be harmed or misaligned due to white collar and business crimes, or due to the fear of street crime.

Social control similarly benefits not only those who earn a living in the criminal justice system, but also the larger community within which these workers and businesses are embedded. Incarcerating offenders provide jobs for those who build, work in, and supply services to prisons and jails. The implication of inter-group conflict as an underlying mechanism is staring us in the face if we are willing to look. Prisons were explicitly touted in the 1990s and 2000s as economic development strategies for rural White areas.⁵² Saying this more baldly, incarcerating Black people from big cities and sending them as prisoners to rural White areas was many states' program of rural development, a pattern some Black activists have tried to criticize (so far largely unsuccessfully) with the label "reverse reparations."⁵³ One of the important clues for recognizing the dynamics of social control is to recognize that money not spent on prisons could be spent on some other form of activity that might also provide jobs, although for different people.

There are also indirect costs of incarceration. A transfer of tax dollar expenditures from social welfare programs to prison systems can be understood as a transfer of benefits from those targeted for crime control to those making money from the criminal justice system. Incarceration also imposes substantial costs on the inmate and his/her family and community due to lost income and social participation. These costs obviously vary depending on the characteristics of the inmate, but it would seem that the average must at least be the equivalent of an annual minimum wage, which is about \$10,000. Recent studies argue that social service budgets end up paying to support children of incarcerated parents.⁵⁴ Families who want to retain ties to their incarcerated family members have additional expenses. Long bus rides from Black urban areas to remote White rural areas are expensive, time-consuming, and stressful.⁵⁵ Most prisons require that inmates make collect calls only and contract their telephone services to private firms that charge rates for these calls that are several times higher than the already-high rate non-prisoners pay for collect calls.⁵⁶ Low income families may easily run up hundreds of dollars a month in telephone bills.

In short, there are a complex set of benefits and costs of both crime and crime control. Conceptions of "society" and "criminals" as two actors in a social control model are too simplistic. Instead we need to consider the

different subgroups of society with different configurations of interests with respect to both crime and crime control, and then examine the factors that affect how these interests do or do not get translated into policy.

SOCIAL NETWORKS, SOCIAL CLEAVAGE, AND SYSTEM LEGITIMACY

It is impossible to get theoretical traction on the patterns of social control if we think of “society” in an undifferentiated way, but quite straightforward if we recognize the central importance of social cleavage. Both political sociologists and social control theorists emphasize that societies that rely heavily on surveillance and punishment have a hard time maintaining the legitimacy of the social order. Repressive regimes can survive for a long time, but they are ripe for overthrow if the power to maintain coercion is lost. Regimes rely on coercion and punishment of the majority to stay in power when they lack popular legitimacy, and the use of coercion against the populace further erodes regime legitimacy. This implies that democracies would not generally rely on high levels of coercion. However, very different dynamics occur if the repression is focused on a minority. In this case, the majority may actively support the repression and believe that they benefit from it. Majorities may well actively support and accord more system legitimacy to regimes that repress minorities. Furthermore, the repression itself can increase the sense in the majority that the minority is different and dangerous.

For their part, repressed minorities typically become more alienated from and discontented with the dominant regime. The negative side effects of punishment of a minority are concentrated among other members of the minority community and can fuel opposition and an “us versus them” mentality. As the system seems more and more illegitimate within the minority community, there can be less and less normative pressure against crime targeting the majority. Coercive repression against a minority can readily increase social cleavage and inter-group hostility.

If a group is disproportionately targeted for crime control, these same theoretical principles lead to certain expectations. The more a group is economically disadvantaged, segregated from the majority, and the subject of symbolic attacks, the less likely the group is to see economic inequality as acceptable or fair, and the more likely the group is to see policing as unfairly targeting them. Just as repression of a whole society weakens people's positive support for a regime, intense repressive policing of a segregated racial-ethnic minority is likely to

reduce satisfaction with government and reduce perceptions that the regime is legitimate. People who believe inequality is unfair and the regime is illegitimate are less likely to internalize norms eschewing illegal ways of earning a living, and these effects are expected to be exacerbated by economic privation. In short, high levels of repressive social control targeted on a minority can easily generate backlash effects that weaken the social basis of social order within that minority.⁵⁷

We can see the political consequences of this by thinking of it as a problem of networks and network cliquing of people of different social locations. I use the term *social location* very generally and abstractly to refer to the socially-important positions of people such as their economic standing, education, occupation, sub-group membership, or place of residence. Social policies always affect people differently depending on their social location, and which aspect of social location matters varies with the policy. To over-simplify for analytic purposes, let's imagine a society with only two social locations, the relatively-affluent Alphas and the relatively-disadvantaged Betas. A *social network* refers to the pattern of connections among people. Although there are many important technical distinctions in the study of social networks concerning the nature and structure of network ties, my theoretical arguments depend on a relatively loose use of these ideas. Individuals have network ties to each other to the extent that they are in direct communication, and the strength of the network tie is the frequency or intensity of their communication. We may also think about the network ties of exchanging resources, or economic transactions. Groups or aggregates of people are described by the patterns of ties among the people in the groups. When people are in social relationships with each other or in physical proximity to each other, they tend to share common fate. This is easiest to see with residence. People who live in the same neighborhood are similarly affected by local pollution, school quality, the availability of grocery stores or crime rates, even if their individual characteristics are different. In a neighborhood, everyone's life is affected at least indirectly by other people's finances or behavior. Similarly, people who are in the same family or church or friendship group will tend to be affected by the well-being and behavior of others in their circle. What is most important to the argument is whether people who have differences of interest due to their economic levels or occupations or other characteristics live near each other and have social interaction, or whether they are physically and socially

segregated. People of different economic levels or occupations have different interests. At one extreme, people with different economic or political interests live side by side and have regular social contact with each other, as in a traditional small town. At the other extreme, people with different economic or political interests live in different places and have virtually no contact. The general argument is that if people with different interests have social connections to each other, they are more likely to be affected by and attend to each other's interests than if they are disconnected.⁵⁸ [[SHOULD I PUT BACK IN THE FIGURES TO ILLUSTRATE NETWORK SEGREGATION?]]

Residential segregation versus integration is important, because people are unlikely to much less likely to be in social interaction if they are highly segregated in where they live. However, it is possible to have residential proximity and still be socially segregated if there are strong social or cultural barriers between groups. Overt ethnic or racial hostility is often highest when groups share a space but have strong social cleavages. Network segregation or cliquing is important to the politics of crime and repression in two ways. First, when groups are socially segregated, their interests are more likely to be different rather than overlapping. Social segregation is typically associated with marked differences individuals' social locations. That is, groups that are socially segregated from each other tend to differ in economic position and education as well as in culture. On average, then, social segregation is likely to mean that segregated groups differ in their distributions of individual interests.

The second effect is indirect. The degree of segregation of networks leads to differences in the extent to which people have social ties to and awareness of the people directly benefitted or harmed by actions. There are many ways in which people are indirectly affected by the benefit or harm to people they are connected with. Some of these connections are material: they may share incomes or common experiences in a neighborhood. For example, when a major employer in an area shuts down and dismisses a large number of workers, there are chains of effects throughout the area. The workers who lost their jobs cannot buy goods and services, so the businesses that serve them have to cut back and lay off some or all of their workers. As the pool of the unemployed grows, more businesses are impacted, and the misery spreads. People who cannot afford the necessities of life may begin stealing from their neighbors. Others are affective: people care about and identify with the joys and sorrows of

people they know. They worry and feel concern when others are in trouble; they feel afraid when unemployment or crime hits their neighbors or family members.

Combining the effects of differences of interest and the degree of network segregation gives us a way of thinking about the political consequences of repression or crime control. Expectations for the extreme cases are obvious. If the dissidents or criminals are socially linked to the majority and engage in actions of possible benefit to the majority while the harm is targeted on a minority, we can expect tolerance or sympathy that repression of the dissidents/criminals will be politically unpopular. On the other hand, if the dissidents or criminals are a small number of people causing harm to a large number of people and if the dissidents or criminals have few social ties to the majority, we can predict that the repression of the dissidents/criminals will be politically popular with the majority.

More generally, if it is the case that the dissent/crime benefits a particular network and the repression is targeted only on the dissenters/criminals, we can predict that there will be two opposing networks. One network supports government policies (opposes crime) and supports repression of dissent (crime control). The other network opposes government policies and supports dissent (crime) while opposing repression (crime control). To predict the policy outcome, we examine the relative size and resources of the two networks. Of course, politics is never a simple product of weighing up support and resources. Strategy, rhetoric, principles of fairness and justice, and pure luck always matter. But examining the relative size and strength of the opposing networks will give a good first approximation.

In the more complex cases, social networks are such that the same group of people experiences both benefit and harm from the dissidents/criminals. Criminals may both add resources to a poor neighborhood from crime outside the neighborhood and victimize local residents. If the wealthy and the poor are in the same social networks (i.e. live in the same communities, are members of the same extended families), redistributive policies advocated by dissenters may directly harm the wealthy but benefit their relatives, friends and acquaintances. We may expect that when the beneficiaries and victims of policies are in the same social networks, popular political opinion may express contradictory tendencies or offer support for more muted responses or compromises. Close

social ties between the affluent and the less affluent may increase both support for policies of economic redistribution and acceptance of inequality by the less affluent. Close social ties between criminals and non-criminals tends to mute the punitiveness of the response. When a friend family member commits a crime, most people's response is to continue to see the perpetrator as a whole person who made a mistake and to view an appropriate response as a combination of punishment and making the person "take responsibility" with a desire for rehabilitation and reintegration of the person back into the community. The "lock them up and throw away the key" response to property crime tends to be the response of someone who feels no personal connection to the perpetrator. At the same time, close proximity to criminals makes people more vulnerable to crime, which can increase support for punitive policies. People may be quite indifferent to violent crime waves that occur far enough away that to pose no threat to them.⁵⁹ Working out the detailed predictions for particular policies in particular contexts involves detailed knowledge of the impacts of policies and the underlying structure of social networks. But these underlying principles provide us some basis for understanding the trajectory of political support for crime control under conditions of ethnic-racial conflict. We will argue that the situation in the US in the 1980s can be heuristically understood [[with figure 2-C]] as this: Whites saw their group as the potential victims but not perpetrators of crimes, while Blacks saw their group as encompassing both victims and perpetrators.

An additional point about social networks and public responses to the actions of government, dissidents, and criminals should be noted. People respond to their *perceptions* of the harm or benefit of actions. In many cases, the harm or benefit is directly observable to the beneficiaries or victims, and to those socially connected to them. In other cases, the perceived harm or benefit is constructed not from immediate experience but from mass media discourse. The impact of mass media surely varies depending upon the social network structure and the extent to which harms and benefits are directly observed. The relative importance of the mass media should be greater for people who are more segregated from the direct victims or beneficiaries. Media analysts have shown that local news coverage of crime increased markedly between the 1970s and the 1990s while crime itself declined substantially. [[ADD CITATIONS]]

This leads us to consider the further matter of political power. Again, consider the affluent Alphas and the disadvantaged Betas. Their political power varies with their relative sizes and the structure of the regime. If the Alphas are a majority and the Betas a small minority, the Alphas will dominate even in a democracy, and social policies will tend to favor Alphas at the expense of Betas. Alphas will also dominate if Betas are excluded from power, as were Blacks in South Africa and the southern US or as illegal immigrants are. Conversely, if the Betas are a numerical majority in a democracy, we would expect to see at least some redistributive policies favoring Betas and a less punitive approach to crime by Betas. More generally, in a democracy, we would expect the punitiveness toward a particular group to be at least in part a function of their political power. Autocrats seeking to shore up their support and candidates in democracies seeking votes both sometimes seek to strengthen their political legitimacy with a majority through symbolic attacks on and policies aimed at “controlling” a minority that is characterized as dangerous.⁶⁰

As the incarceration boom continued through the 1990s, a different configuration of actors came into play, those who incurred benefits from incarceration. In usual models, social control has costs, which are weighted against the costs of crime. But the people who are employed by or provide services to the social control system experience benefits rather than costs of social control. These actors have a positive interest in there being more policing or more incarceration or more rehabilitation centers. They have a stake in social policies that pay them more for their services. Again, we may ask what the network relationships are between these people and the Alphas and Betas. They will generate positive multiplier effects in the communities where they spend their earnings that also factor into the costs and benefits of social control for different communities.

WRAPPING UP

As we dig into the empirical patterns of imprisonment in the US, we will be looking for the interests of different subgroups and their relative power and for the extent of network or social ties between different subgroups. We will expect to see negative feedback effects of coercive punishment and surveillance systems on system legitimacy. We will look for evidence of possible repressive effects. This project began with a central focus on the mass incarceration of Black Americans, and that remains a central focus. But as the project has developed,

the picture has become more complicated and we also need to pay close attention to professional politicians, business interests, economic classes, and the rural-urban divide. It turns out that areas with substantial Black populations have different dynamics from those that are overwhelmingly White. It turns out that White incarceration accelerated in places that did not have a lot of Black people, raising the specter of intra-White politics and repression. We will see that some patterns operated as huge national-level trends tied to the racial polarization of partisan politics at the national level while other patterns were more responsive to within-state political processes and still others were much more localized. We will see that Black and White imprisonment rates trended together in some places (albeit still with a disparity), suggesting some common political trend that affected everyone, while in other places the racial trends were markedly different, suggesting more racially-targeted policies. We will be able to see these patterns and disentangle the threads only if we carefully disaggregate the data and inspect them from different angles.

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Notes

¹ Citations to legitimacy literature needed here.

² Add note re illegitimacy and economic hardship or inequality or discrimination

³ Is this a valid point? Reference?

⁴ include lit review on peer pressure and network lit in SM. Put some citations into this footnote.

⁵ [[review could include the peer pressure literature in criminology as well as the "network" literature in social movements]]

⁶ That is, take it into themselves as a standard of their own behavior. REF

⁷ Gould etc . + new article on Scots Irish

⁸ Public opinion polls of the late 1960s blurred them in asking opinions about "crime, lawlessness, looting and rioting" Chambliss (1995). Dello Buono (1992) argues that Black nationalist political activity was often treated as crime and coercively repressed. Many critical observers called the 1980s drug war politically motivated and racially targeted and suggested that it was or bordered on repression (Chambliss 1995; Gordon 1994; Mauer 1999; Tonry 1994).

⁹ Vande Walle (2002) cites Sutherland's classic work about why white collar criminals are not seen as criminals. Social classifications.

¹⁰ (Alonso 2005?; DiChiara and Chabot 2003; Esteva Martinez 2003; Hagedorn n.d.; Kontos, Brotherton and Barrios 2003; Sloan and Fuqua 2007) and others.

¹¹ I have downloaded some of these polls and can give more specific racial analyses. See 00DataSets\racial attitudes 1968.

¹² Add refs. One is: Shows that spending more on prisons reduces expenditures on welfare. (read to verify details) (Ellwood and Guetzkow 2009)

¹³ Add refs

¹⁴ (REFS)

¹⁵ We may note that this pattern was found for "street crime" with its irregular hours and risk of detection and incarceration that are deemed incompatible with normal adult life. By contrast, certain kinds of white collar crime and especially fraudulent business dealings may become more entrenched over the life cycle, if they are compatible with a respectable life style.

¹⁶ Other critics of prison as rehabilitation, prison had little effect on recidivism (Plattner 1976)

¹⁷ Cite other liberal critics of incarceration and the "some things do work" responses in the rehabilitation literature.

¹⁸ The cost-benefit model of deterrence breaks down for non-economic crimes or motivations to crime such as thrill-seeking, addiction, or mental disorder. This will be discussed further below.

¹⁹ The criminology literature generally distinguishes between "specific deterrence," by which is meant punishing of a particular individual to persuade that individual to commit fewer crimes in the future, and "general deterrence," by which is meant either using the threat of punishment or the actual punishment of some people to persuade other people to eschew crime. [[REFS]]

²⁰ State of Wisconsin, Criminal Penalties Study Committee Final Report. August 31, 1999.

²¹ Add examples and references

²² The issue is actually more complicated, because a great deal of research finds that people do not weigh the probability of a gain the same way as the probability of a loss. A great deal of empirical research on deterrence addresses the question of risk-seeking versus risk-aversion and the relative effectiveness as deterrents of very high penalties with low probabilities of detection and punishment versus more moderate penalties with higher probabilities of detection and punishment. [[ADD CITATIONS & SUMMARIZE]] [[There is a great deal of "decision theory" research that studies how people evaluate these kinds of comparisons that shows that most people have a preference for or against risk that affects their preferences for outcomes that have the same expected value.]]

²³ Add refs

²⁴ Ref?

²⁵ [[ADD REF]]

²⁶ Or incarcerated until they were 30 or 35 and past the crime-prone years. Martinson, whose research was often cited in this regard, actually argued against incarceration: his research showed that rehabilitation programs in prisons provided no benefit in reducing crime, but he specifically argued instead for the lower cost of restraining behavior in the community. (Lipton, Martinson and Wilks 1975; Martinson 1974; Wilks and Martinson 1976)

²⁷ Add refs about aging out and such

²⁸ In Europe, the death penalty is now generally seen as morally unacceptable for any offense, including murder. Public opinion in the US still generally supports the death penalty for murder. There are voices in the US that call for the death penalty for other offenses, particularly drug dealing, but these are minority voices. No one, even in the US, advocates the death penalty for property crime. It is a sign of the rhetoric and passions around the drug war that the death penalty is sometimes advocated for drug dealing.

²⁹ which has focused on the accuracy of projecting the crime histories of career criminals who are ultimately caught and incarcerated back to all first- or second-time offenders and on the elasticity of crime (i.e. the extent to which removing one criminal by incapacitation just increases the profits and thus incentives for crime by others.) Ehrlich (1981) argues that incapacitation per se can have only a very small effect on crime because of the elasticity of supply of offenses (the replacement of incapacitated offenders with others), however he also assumes –writing as he was at the beginning rather than the end of the 1980s – that the probability of being incapacitated is quite low. It is not clear that his arguments would hold for a 10% incarceration rate. Levitt (2004) argues that high incarceration rates are one of the reasons crime fell in the 1990s.

³⁰ Calculated from (Ryan 2005)

³¹ refs

³² A federal study of prisoners in 1991 and 1997 found that a majority were employed in the month before arrest (U. S. General Accounting Office 2000)

³³ This claim needs evidence.

³⁴ Check the details of this argument.

³⁵ Add references.

³⁶ Add references

³⁷ Add references

³⁸ Add refs

³⁹ refs

⁴⁰ refs

⁴¹ refs

⁴² For reviews see (Coughlin and Venkatesh 2003) and . . .

⁴³ (Alonso 2005?; DiChiara and Chabot 2003; Esteva Martinez 2003; Hagedorn n.d.; Kontos, Brotherton and Barrios 2003; Sloan and Fuqua 2007) and others.

⁴⁴ People who have been in prison are subject to community supervision after they leave prison that may be called parole, extended supervision, or some other name. Both the name of this period and the details of how it works vary depending upon a state's laws. I am lumping all these types of supervision under the label "parole" for its brevity, although in truth a sentencing state's word parole does not apply. Probation is a period of supervision imposed

in lieu of a prison sentence: if the offender violates the terms of probation, s/he can be revoked to prison. People may also be given probation for minor offenses for which there is no risk of revocation to prison. Again, I am eliding legal complexities to call attention to the fact of supervision. In many states, including Wisconsin, the same personnel supervise both probation and parole and have the job title "Probation and parole officer" even though most post-prison supervision under Wisconsin's Truth in Sentencing Law (in effect since 2000) is Extended Supervision. The unifying phrase for all these different kinds of supervision of offenders is "community corrections" or "community supervision."

⁴⁵ These are rough estimates due to missing data on the racial break outs and state differences in how probation and parole are counted in reports to BJS. National rates are a range of estimates calculated by the authors based on data in [[ADD CITATIONS TO PROB/PAROLE REPORTS]]. All but two states (Nevada and Hawaii) broke out parole by race; we estimated that the racial breakout of parolees in these states was the same as the racial breakout of the prison population. Probation is much less racially disparate than parole. Seven states (California, Illinois, Indiana, Kansas, Massachusetts, Nevada, South Dakota) did not provide racial information on probationers in any of the three years. For these states, we estimated that the racial admixture of probationers is the same as the racial mix of the population. These states have higher racial disparity in parole than the states that provided racial data on probation, so this is probably a conservative assumption for estimating the supervision rates of minorities in those states. Probation supervision (a substitute for prison) has a much lower estimated Black/White disparity ratio of 2.7 than the 5.1 ratio for parole supervision, which occurs after prison. The correlations between probation rates and both imprisonment and parole rates are close to zero. Some high-incarceration states also have high levels of probation supervision, while others have low probation rates; conversely states with low incarceration rates range from very high to very low in their probation rates. The correlations between imprisonment and parole rates are higher, but still modest in the .35 range.

⁴⁶ These estimates are my calculations from Wisconsin Department of Corrections Records and US Census estimates. Clarify the sentence.

⁴⁷ Is anybody really doing this? Get some examples. (Dilulio 1996; Donohue 2009; Harcourt 2007; Opp 1989; U. S. National Institute of Law Enforcement and Criminal Justice 1976)

⁴⁸ Add studies

⁴⁹Wisconsin Sentencing Commission, "Cost-Effective Criminal Justice: A Survey of National Issues and Trends," Tori Key, citing Stephan, J. J. (2004). State prison expenditures, 2001. (NCJ Publication No. 202949). Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

⁵⁰ Schneider (2006) analyzed state imprisonment trends 1927-2003, identified a "critical juncture" in the late 1960s and early 1970s when virtually all states changed from relatively stable equilibria to steep rises, as if they were all responding to the same national-level mood or force, and concluded that they showed no short-term response to crime or public opinion changes, but were instead more "sticky" institutional changes.

⁵¹ Add refs

⁵² ref

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⁵³ Add reference

⁵⁴ ref

⁵⁵ ref

⁵⁶ Insert note

⁵⁷ References from Bobo and others regarding Black public opinion

⁵⁸ This distinction is very similar to Mills' discussion of cross-cutting social ties. Develop this point?

⁵⁹ There is some research on the impact of viewing crime stories about places far away. I think what it shows is that it increases the perceived dangerousness of "someplace else" and increases the sense of safety "here."

⁶⁰ This is the point where the arguments link to the ethnic conflict literature.