

Does Punishment Deter?

The nationwide plunge in crime continues to astound scholars and journalists. “This is a humbling time for all crime analysts,” says John J. DiIulio, celebrated criminologist and professor at Princeton University.¹

The FBI’s crime index has declined for six straight years, as Figure I shows. Every category of crime is lower than in 1991.² The murder rate is only two-thirds of the 1991 rate, and violent crime declined 20 percent nationally between 1993 and 1997. Murders and robberies each dropped 9 percent last year alone. Overall, last year’s 5 percent decline in violent crime represents a one-year benefit of \$20 billion, based on the Department of Justice’s estimate that the annual national cost of violent crime (plus drunk driving and arson) is \$426 billion.

What explains the sudden decline in crime after a long rise? Better economic conditions? Cultural changes? A more convincing explanation is at hand: Courts have been handing out tougher punishment for crime, and potential criminals know and fear it.

Time was — and not so long ago — when many American courts endorsed the sociological proposition that democratic societies should stress rehabilitation of the offender. Punishment for punishment’s sake was deemed a cruel and outmoded approach to crime prevention.

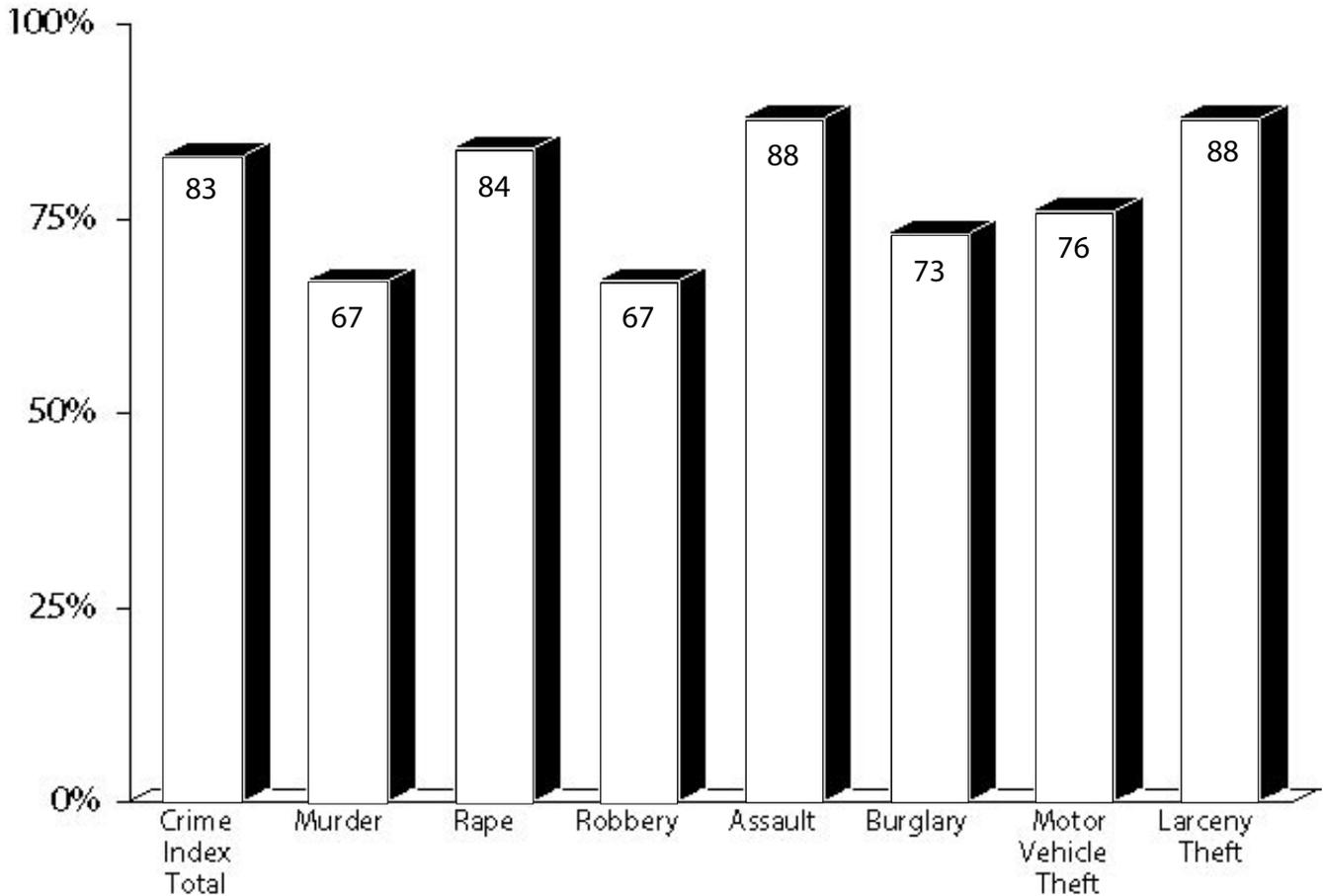
Even today some Americans fail to see the connection between new get-tough policies and recent improvements in the crime rate. “Crime keeps on falling, but prisons keep on filling,” a recent *New York Times* headline declared.³ The headline writer’s attempt at paradox is unwarranted. Crime is falling because prisons are filling.

The new get-tough attitude has brought about significant policy changes.

“Courts have been handing out tougher punishment, and criminals know it.”

FIGURE I

1997 Crime Rates as a Percentage of 1991 Rates



Source: FBI.

“Every category of crime is lower than in 1991.”

- More lawbreakers (1.8 million) are behind bars today than ever before.
- New laws have lengthened sentences and imposed tougher restrictions on parole.

The lawbreaker of the 1990s cannot expect the comparatively gentle treatment the courts would have meted out a few years ago. Today, seeing that the law means business, many potential criminals decide to keep out of the law’s way. In other words, they decide not to rape, steal, rob or kill.

That punishment deters crime is common sense. Observations of human behavior, the opinions of criminals themselves, simple facts about crime and punishment and sophisticated statistical studies all indicate that what matters most to prospective criminals is the certainty and severity of punishment. In other words, negative incentives matter in the business of crime.

This is not to diminish the fundamental and continuing importance

of internal restraints: character, morality, virtuous habits.⁴ Though hardly a perfect substitute for these brakes on criminal behavior, punishment meted out by the justice system remains a vital complement to minimal morality.⁵ For years the U.S. criminal justice system lacked the will or the teeth to punish, especially in dealing with juveniles. But in the past few years deterrence has reasserted itself and has driven crime down.

Crime as a Rational Act

Evidence abounds that law-abiding citizens respond to incentives. Why would criminals be different? We know that criminals avoid knowingly committing crimes in front of the police, which explains why the police interrupt so few crimes in progress. We also know that prison and jail officials manage 1.8 million inmates daily, some of them bad or vicious, with almost no incidents. How do they maintain such order? Through disciplinary measures that inmates heed and respect.

The reality is that the threat of bad consequences, including retribution posed by the legal system, protects life and property against predation. If men were angels, as James Madison said, we'd have no need of government.

Interviews with Criminals. Human action, including criminality, is purposeful behavior. The testimony of criminals provides our strongest evidence that, in the vast majority of cases, lawbreakers are rational. They reason and act like other human beings. Perhaps the best study on this issue among the relatively few available is by criminologists Richard Wright and Scott Decker, who during 1989-90 interviewed 105 active, nonincarcerated residential burglars in St. Louis, Mo.⁶

For example, burglar "Charlie" remarked, "I can go back to selling drugs, [for] which I could lose my ass. If I get caught on burglary, I know I'm guaranteed four years [imprisonment]. I get caught with drugs, I'm a do 30 [years]. So see, I got away from drugs and fell with the number one [offense, burglary]."⁷

Other offenders regard robbery, especially armed robbery, as too risky. Burglar No. 013 said, "After my eight years for robbery, I told myself then I'll never do another robbery because I was locked up with so many guys that was doin' 25 to 30 years for robbery and I think that's what made me stick to burglaries, because I had learned that a crime committed with a weapon will get you a lot of time."

Prospective criminals also choose their targets by considering both risks and rewards. For example:

- Burglars avoid neighborhoods that are heavily patrolled or aggressively policed: "You got to stay away from where the police ride

"Evidence abounds that law-abiding citizens respond to incentives — and so do criminals."

real tough.”⁸

- Nine out of 10 burglars say they always avoid breaking into an occupied residence: “I rather for the police to catch me vs. a person catching me breaking in their house because the person will kill you... Sometimes the police will tell you, ‘You lucky we came before they did.’”⁹

In addition, most burglars have to consciously suppress the fear of capture or work with an accomplice to bolster their confidence.¹⁰ And realistically enough, offenders perceive the chance of being apprehended for a given break-in as extremely slim, partly because they efficiently search the master bedroom first (cash, jewelry, guns) and do not linger inside the target.¹¹

Scholarly Opinion. In the criminology literature, “rational choice theorists believe that the decision to offend is the outcome of a deliberate weighing, however rudimentary, of potential costs and rewards.”¹² While criminals sometimes make “hurried, almost haphazard, decisions to offend while in a state of emotional turmoil,”¹³ most of the burglars mentioned above, for example, had a consistent, workable scheme for assessing risk-and-reward signals emitted by potential targets, knew numerous ways to gain illicit entry to dwellings, had a general plan for searching targets quickly and efficiently and understood how to convert the stolen goods into cash.¹⁴

Brian Forst, an American University criminologist, wrote, “While the theory of general deterrence has received empirical support for many categories of offenses, such support in crimes of passion and in violent crimes committed by juveniles has been notably absent.”¹⁵ Is he wrong? Do murder and rape fit the model? Yes, because even people in a state of rage choose when, where and how often to yield to their emotions and impulses. At a minimum, murderers and rapists indulge in more criminal acts at lower anticipated cost (risk of apprehension and punishment).¹⁶ Stanton Samenow, a well-known clinical psychologist and interviewer of thousands of criminals, insists, “The criminal is rational, calculating and deliberate in his actions. Criminals know right from wrong... A habit is not a compulsion. On any occasion, the thief can refrain from stealing if he is in danger of getting caught.”¹⁷

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The Impact of Punishment

Only after World War II did scholars begin to study the effects of deterrence. Today a large body of scholarly literature generally confirms the value of punishment in the prevention of crime.¹⁸ Students of the question have come at it from difference angles. Some simply ask if punishment deters. Others want to know which deterrent is more effective — certainty of punishment or severity of punishment.

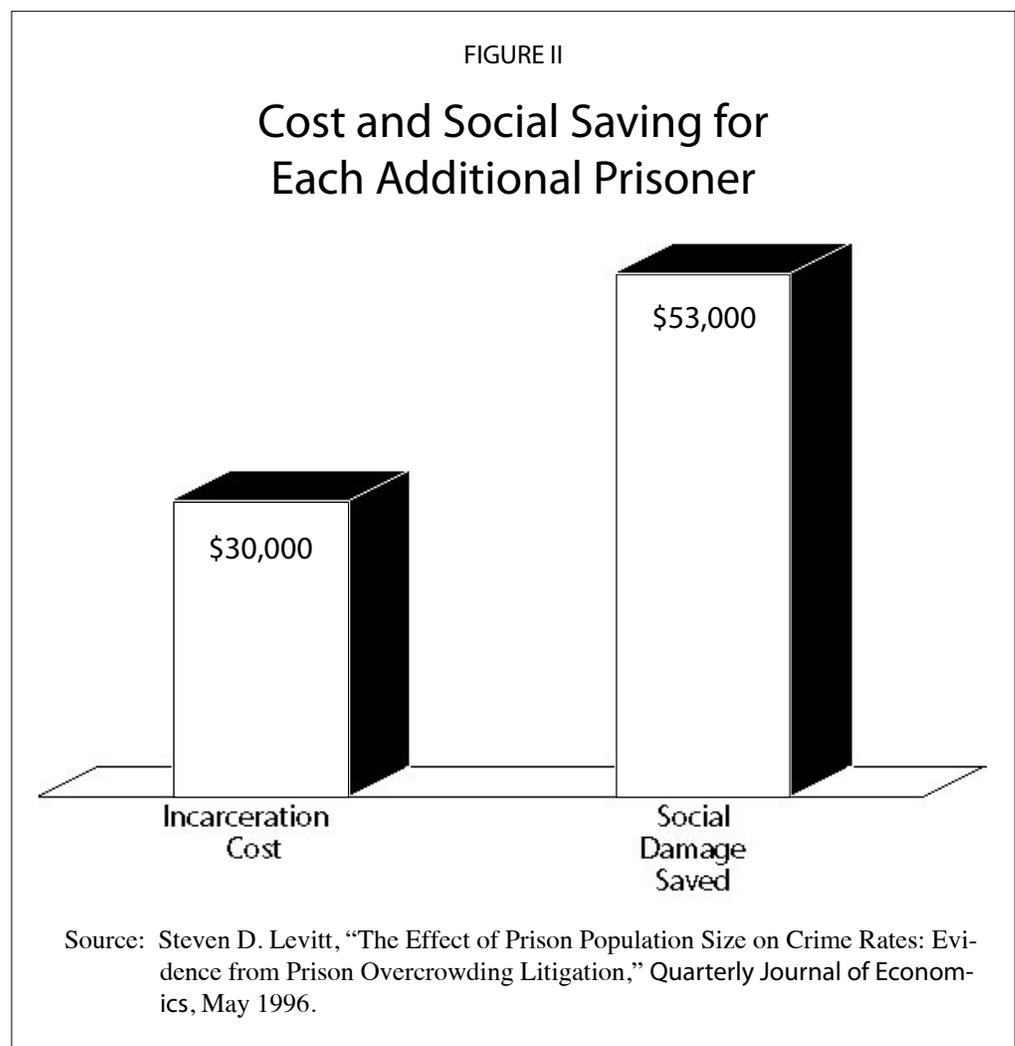
General Evidence that Punishment Deters. Isaac Ehrlich’s 1973 study of punishment and deterrence is perhaps the most widely cited in the field.¹⁹ Using state data for 1940, 1950 and 1960, Ehrlich found that crime varied

inversely with the probability of prison and the average time served.

For each 10 percent rise in a state's prison population, University of Chicago economist Steven Levitt estimated, robberies fall 7 percent, assault and burglary shrink 4 percent each, auto theft and larceny decline 3 percent each, rape falls 2 1/2 percent and murder drops 1 1/2 percent.²⁰ On average, about 15 crimes are eliminated for each additional prisoner locked up, saving social costs estimated at \$53,900 — well in excess of the \$30,000 it costs annually to incarcerate a prisoner. [See Figure II.] Another study, by Llad Phillips, found that each year of prison prevented 187 crimes per year.²¹

Certainty of Punishment vs. Severity of Punishment. Scholars regularly consider which provides the greater deterrent. One provocative study involved prisoners and college students. When tested, both groups responded in virtually identical terms. Prisoners could identify their financial self-interest in an experimental setting as well as students could.²² However, in their decision making, prisoners are much more sensitive to changes in certainty than in severity of punishment. In terms of real-world application, the authors of the study speculate that “long prison terms are likely to be more impressive to lawmakers than lawbreakers.”²³

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Supporting evidence for this viewpoint comes from a National Academy of Sciences panel which estimated that a 50 percent increase in the probability of incarceration prevents about twice as much violent crime as a 50 percent increase in the average term of incarceration.²⁴

Likelihood of punishment often tends to affect property crimes more than violent and sexual offenses. This point is borne out in a study by Itzhak Goldberg and Frederick Nold showing that in communities where more people report burglaries to the police, fewer burglaries take place.²⁵ A tendency to report crimes has an aggregate deterrent effect on criminals because it raises expectations of punishment.

Nonetheless, severity of punishment remains crucial for deterrence. “A prompt and certain slap on the wrist,” criminologist Ernest van den Haag wrote, “helps little.”²⁶ Or, as Milwaukee Judge Ralph Adam Fine wrote, “We keep our hands out of a flame because it hurt the very first time (not the second, fifth or 10th time) we touched the fire.”²⁷

To a degree, the certainty vs. severity argument is academic. As Donald Lewis wrote in 1986 after surveying the economic literature on crime, “The bulk of evidence resulting from the competent use of theory and statistics supported the existence of a deterrent effect of both imprisonment risk and longer sentences.” Lewis emphasized that a substantial body of evidence is consistent with “the existence of a deterrent effect from longer sentences.”²⁸ V. K. Mathur reached similar conclusions after studying 1960 and 1970 data for U.S. cities of over 100,000 population.²⁹

If Punishment Deters, Why Are So Many People in Prison?

If the United States, with so many people in prison, has one of the world’s highest crime rates, does this imply that prison does not work? Scholar Charles Murray has examined this question and concluded that the answer is no.³⁰ Instead, the nation has had to imprison more people in recent years because it failed to do so earlier. Murray compared the record of the risk of imprisonment in England to that in the United States.

- In England the risk of going to prison for committing a crime fell by about 80 percent over a period of 40 years — and the English crime rate rose gradually.
- By contrast, the risk of going to prison in the U.S. fell by 64 percent in just 10 years starting in 1961 — and the U.S. crime rate shot up.

In the United States, it was not a matter of crime’s increasing so fast that the rate of imprisonment could not keep up. Rather, the rate of imprisonment began to fall first. By the time the U.S. began incarcerating more criminals in the mid-1970s, huge increases were required to bring the risk of impris-

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onment up to the crime rate. It is more difficult to reestablish a high rate of imprisonment after the crime rate has escalated than to maintain a high risk of imprisonment from the outset, Murray concluded.

However, the American experience showed that it is possible for imprisonment to stop a rising crime rate and then gradually begin to push it down. The American crime rate peaked in 1980, a few years after the risk of imprisonment reached its nadir. Since then, as the risk of imprisonment has increased, with few exceptions the rates of serious crimes have retreated in fits and starts to levels of 20 or more years ago.

“Expected punishment” is a measure for comparing the risk of prison in one year with that in another.³¹ Expected punishment calculates the prison time a criminal can expect for committing a serious crime, given the likelihood of being apprehended, of being prosecuted if apprehended, of being convicted if prosecuted and of going to prison if convicted when the median prison sentence for that crime is taken into account. Figure III shows the inverse correlation between expected punishment and the crime rate since the 1950s.

Does Punishment Deter Juvenile Crime?

Juvenile offenders, due to their youth and immaturity, pose a special challenge to the criminal justice system. In the past, many judges and social workers have argued for less stringent treatment of such offenders, with “prevention” taking precedence over detention. Thus the emphasis tends to be on so-called root causes and nonpunitive interventions. The results fail to bear out the hopes invested in such an approach. Researchers note a close connection between lack of punishment and the forming of criminal habits. They also note the effectiveness of punishment, especially for juveniles.

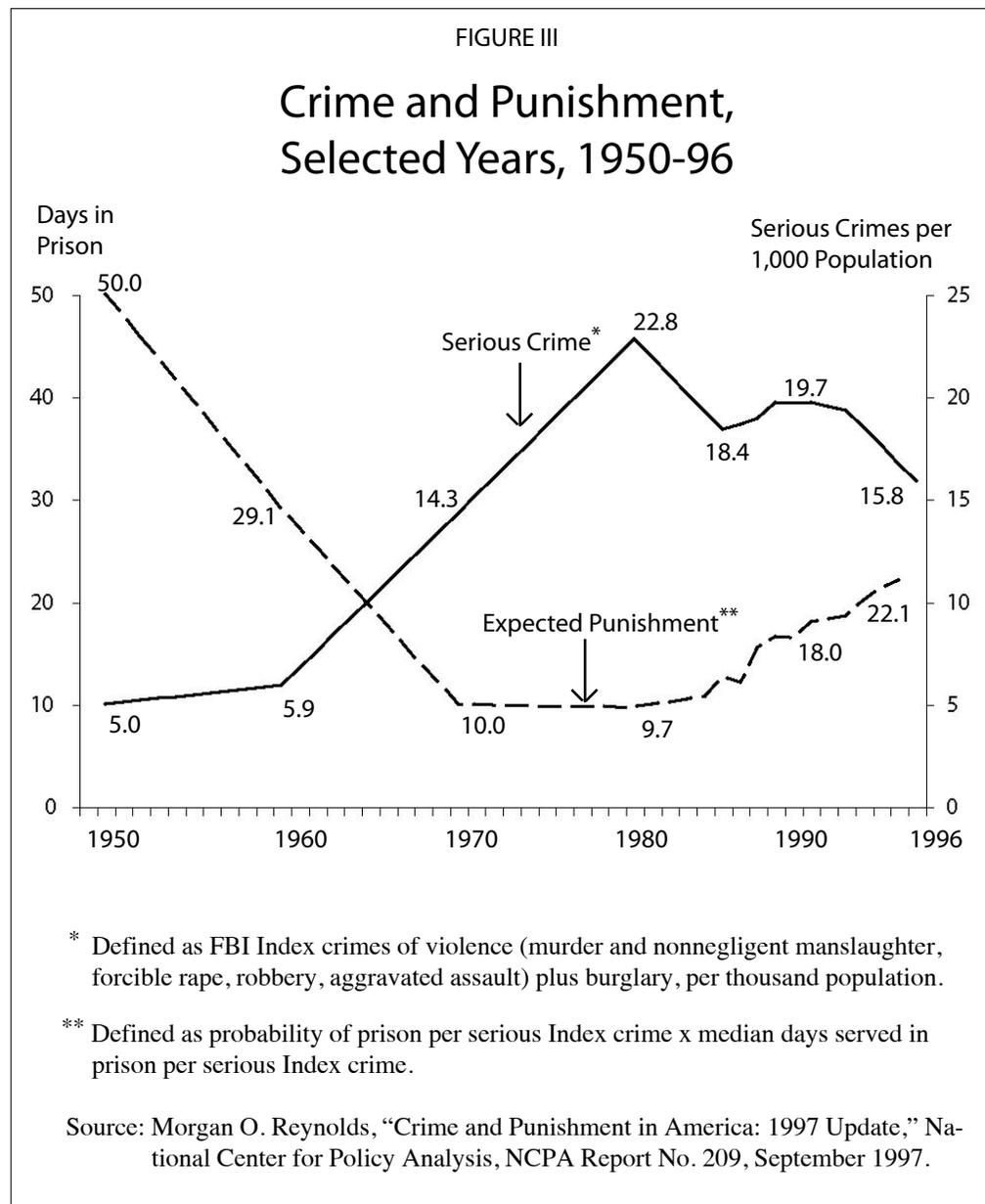
Crime as a Habit. In one of the most comprehensive studies following offenders and the criminal justice system over time, University of Pennsylvania criminologist Marvin Wolfgang and his colleagues found that hard-core predators were a relatively small group of repeaters who rarely were punished.³²

The Wolfgang group compiled arrest records up to the 30th birthday for two groups consisting of every male born and reared in Philadelphia in 1945 and in 1958. Their study, published in 1990, found that in both groups about 35 percent were arrested at least once for a nontraffic offense and nearly half of these never tangled with the law again. The group that turned 30 years old in 1988, however, was guilty of much more serious crime than the one that turned 30 in 1975. The two groups had two things in common: the hard-core predators were few in number and were rarely punished:

- Just 7 percent in each cohort (the top 20 percent of those arrested at least once) committed two-thirds of all violent crimes, including

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three out of four rapes and robberies.

- Members of this hard-core group in each cohort not only had five or more criminal arrests before age 18 but also continued committing felonies and got away with a dozen crimes for every arrest made.
- In 85 percent of the arrests for the 1958 group and 83 percent for the 1945 group, no charges were brought.

Many other studies of individuals have reached two major conclusions: (1) a majority of serious crime is committed by habitual criminals and (2) punishment works, especially for juveniles.³³

The situation in Denmark presents a contrast. Psychologist Sarnoff Mednick of the University of Southern California compared the records of thousands of Danish criminals with those in the Philadelphia study to confirm the effectiveness of punishment. He found that only 14 percent of those ar-

rested four and five times in Philadelphia were punished, compared with 60 percent of those in Denmark.³⁴

The Effectiveness of Punishing Juveniles. The Wolfgang-Mednick research does more than point to a problem. It suggests the solution. Wolfgang's study found that, where court penalties were meted out in Philadelphia, they worked. For the group born in 1958, there was a .52 probability of rearrest if a court penalty was imposed. If the offender was handled more leniently, the arrest probability was .62.

"The big problem with our handling of criminals in America is that they're not punished," wrote Mednick. "People are usually surprised to hear that, because of all our prisons. But the fact is, by the time a guy makes his way to jail, that's very often his first punishment. And he usually has committed 15 offenses by then. He might have been arrested 10 times. In Philadelphia, the kids committed large numbers of offenses, and serious ones, and nothing happened. They just laughed. Our laws provide severe punishments, but...they deter not the criminals but the judges. They [the judges] don't want to throw a kid who's done some little thing in jail, so they just let him go."³⁵

As Eugene Methvin wrote, "...a troublesome youngster typically has 10 or 12 contacts with the criminal justice system and many more undiscovered offenses before he ever receives any formal 'adjudication,' or finding of guilt, from a judge."³⁶

Charles Murray and Louis Cox studied 317 young criminals in Chicago during the mid-1970s.³⁷ The typical member of the sample was arrested at age 12 and then arrested another 13 times over the next three-and-a-half years before being committed to the Illinois Department of Corrections. The evaluation experiments revealed a strong "suppression effect"; that is, delinquents sentenced to jail and stronger interventions subsequently committed less crime than their counterparts who received softer, alternative treatment.

Economist Ann Dryden Witte pointed out that the police now routinely enforce laws against drunk driving, and courts usually punish offenders. As a result, drunk driving and the resources needed to enforce these laws have declined.³⁸ The same principles, she concluded, apply to predatory offenses: "Generally, criminals do respond to incentives, and altering these incentives can affect the level of crime and delinquency." Witte reexamined Wolfgang's Philadelphia cohort data for 19-to-26-year-olds in the 1945 cohort and found "robust evidence for a general deterrent effect flowing from criminal justice, especially police, resources." The results also suggested that "general deterrence may be strongest for individuals with limited previous contact with the criminal justice system."³⁹

Does Early Punishment Hurt or Help? Some sociologists believe that punishment has a "labeling" effect that outweighs the unpleasantness of

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incarceration and that this effect increases rather than decreases future criminal activity. Supposedly a convicted person says, “Well, they’ve labeled me a criminal, so I might as well commit more crime.” Yet little evidence supports this theory. University of Maryland researchers Douglas Smith and Patrick Gartin studied the 325 males who were born in Racine, Wis., in 1949, lived there continuously until age 25 and had at least one police contact on criminal suspicion. They found evidence much more consistent with “specific deterrence” than with labeling. “Specific deterrence” means that an initial contact with the criminal justice system caused most young people to desist from criminal acts. Smith and Gartin also found that 68 of the group, or 20 percent, had six or more arrests, an indication that the worst of the worst commit most of the crimes.⁴⁰

Likewise, in his study of criminal justice in England, Charles Murray found that in 1954 the system operated on the assumption that the best way to keep crime down was to intervene early and sternly. Crime was very low, and the number of youths picked up by the police went down by about half as children matured from their early to their late teens. Today, however, a widespread assumption in England (as in the United States) is that youthful offenders need patience more than punishment. England’s traditionally low crime rate is now very high, and in 1994 the number of youths picked up by the police roughly tripled from the early to the late teens.⁴¹

Alternatives to Incarceration. The need to hold the individual juvenile criminal responsible for his actions does not make incarceration the sole option. For example, Anne L. Schneider found in six random-assignment experiments involving 876 adjudicated (convicted) delinquents in six American cities that victim restitution and incarceration both lowered reoffending while probation did not.⁴² Victim restitution meant monetary restitution, community service or work to repay the victims. At some level of intensity and duration, inmates view intensive probation — much closer surveillance than the usual probation — as no less severe than prison time.⁴³

Rehabilitation: Preferable to Punishment?

Large, influential segments of the academic and legal communities advocate dealing with crime through rehabilitation of the offenders — a process culminating in his restoration to normal life. Believers in rehabilitation regard punishment as primitive or counterproductive. For example, Alvin Bronstein, former executive director of the American Civil Liberties Union’s National Prison Project, contended that releasing half the nation’s prisoners would have little or no effect on the U.S. crime rate.⁴⁴

This school of thought abandons the philosophy of “Let the punishment fit the crime” for “Let the treatment fit the criminal.” As Robert Bidinotto

wrote, “The ordinary citizen believes individuals are responsible for what they do and thus should be held accountable for harm they do to others.” By contrast, those who promote rehabilitation start with the premise that the criminal has little personal responsibility because he is “shaped by a wide variety of forces — biological, psychological, or social — over which he has little volitional control.”⁴⁵ Rehabilitation contemplates that psychiatrists, psychologists, social workers and other trained professionals can remold a criminal’s thinking and outlook on life so that he will prefer legal behavior to criminal acts. This process takes a variety of forms, including counseling, psychiatric care and education.

Yet there is little evidence that rehabilitation works.⁴⁶ Soon after rehabilitation had become a principal theory of American corrections in the 1950s, criminal activity began to increase sharply. By the late 1960s, the theory was even more suspect because crime had risen to unprecedented levels and rehabilitation was not reducing recidivism.⁴⁷

Studies Question the Value of Rehabilitation. The most devastating blow to the theory was Robert Martinson’s exhaustive study. Martinson examined every available report on rehabilitation techniques published in English from 1945 to 1967, drawing on 231 studies. He found that “with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.”⁴⁸ Relatively little comparable research has materialized to refute Martinson’s analysis, although this has not been from want of effort.⁴⁹ A possible exception may be a modest superiority for the better-designed interventions in the outcomes of juveniles, and some researchers still believe that “appropriate correctional service” and treatment can cut recidivism sharply for other criminals, too.⁵⁰

The Criminal Personality. A major obstacle to the success of rehabilitation is the existence of what could be called the criminal personality. Perhaps the most important work on this subject is the three-volume study by the late Samuel Yochelson, a physician, and Stanton Samenow, a practicing psychologist.⁵¹ After interviewing hundreds of criminals and their relatives and acquaintances, the two researchers concluded that criminals (1) have control over what they do, freely choosing evil over good, (2) have distinct personalities, described in detail as deceitful, egotistical, myopic and violent and (3) make specific errors in thinking (52 such errors are identified).

On salvaging and reforming criminals, Yochelson and Samenow assert that the criminal must resolve to change and accept responsibility for his own behavior. Their cure stresses an analogy with Alcoholics Anonymous: “Once a criminal, always a criminal.” Hardened criminals can reform themselves, but Samenow estimates that only 10 percent would choose to do so. He avoids the word “rehabilitation” when describing chronic criminals: “When you think of how these people react, how their patterns go back to age 3 or 4, there isn’t anything to rehabilitate.”⁵²

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Problems with Rehabilitation. Careful studies of criminal rehabilitation continue to find little payoff. Peter Greenwood and Susan Turner of RAND, for example, studied an experimental program that delivered significantly more than the usual treatment services to juvenile delinquents. The controlled experiment showed in a one-year followup that (1) increasing supervision of offenders did not reduce recidivism and (2) there was no significant difference in the arrests or self-reported criminal activities of the experimental and the conventionally treated groups.⁵³

In Cincinnati, a well-publicized Community Corrections Partnership (CCP) program concentrated on improving the self-esteem and “sense of community” of black juvenile felons. A follow-up evaluation showed that the rearrest rate of this group was no better than that of a comparison group on regular probation.⁵⁴

In the case of street gang crime, Professor Malcolm Klein found that “typical liberal-based gang interventions have failed to manifest much utility. They appeal to our best instincts, but are too indirect, too narrow or else produce boomerang effects by producing increased gang cohesiveness.”⁵⁵ Professor Klein also worried that “suppression approaches can produce precisely the same effect as earlier liberal approaches — namely, increased gang cohesion.”⁵⁶

The truth is that changing criminal behavior by means other than deterrence is always problematical — so much so, perhaps, that prison authorities in Texas and elsewhere have initiated experimental “faith-based” programs for small groups of offenders. The idea is that religious transformation will make some impact — possibly a decisive one — on criminal behavior. The programs are too recent to evaluate.

A comprehensive scientific evaluation of hundreds of previous studies and prevention programs funded by the Justice Department found that “some programs work, some don’t, and some may even increase crime.”⁵⁷ The report was prepared by the University of Maryland’s Department of Criminology and Criminal Justice for the Justice Department and mandated by Congress.⁵⁸ Among the programs that seemed to work were home visits in early infancy by nurses to reduce child abuse — a risk factor for later delinquency — and Head Start programs with home visits by teachers to impart parenting skills. Still, far too little is known and the report calls for 10 percent of all federal funding for these programs to be spent on independent evaluations of the impact of prevention programs.

Work as Rehabilitation. Voluntary self-help, in the form of work by prisoners, seems to have more of a chance of being productive. Work enables prisoners to earn wages and acquire marketable skills while learning individual responsibility and the value of productive labor. It also ensures that they are

able to contribute to victim compensation and to their own and their families' support while they are in prison. A 1991 study by the U.S. Bureau of Prisons found that only 6.6 percent of federal inmates employed in prison industries violated their parole or were rearrested within a year of their release vs. 20 percent of nonemployed prisoners.⁵⁹

Public Opinion

Public opinion strongly supports the increased use of prisons to give criminals their just desserts. The endorsement of punishment is relatively uniform across all groups.⁶⁰ More than three-quarters of the public see punishment as the primary justification for sentencing. More than 70 percent believe that incapacitation is the only sure way to prevent future crimes, and more than three-quarters believe that the courts are too easy on criminals.⁶¹ Three-quarters favor the death penalty for murder.⁶²

Still, the public holds out some hope for rehabilitation, too. About 60 percent express hope that rehabilitative services like psychological counseling, training and education inside prison will correct personal shortcomings. Such sentiments are more likely to be expressed on behalf of young offenders than adults, and by nonwhite respondents. In a national poll, the Los Angeles Times asked, "Where does government need to make a greater effort these days: in trying to rehabilitate criminals who commit violent crimes or in trying to punish and put away criminals who commit violent crimes?"⁶³ The largest group, 49 percent, answered punish, 32 percent said rehabilitate, 8 percent said "both, equally," and the remaining 11 percent said they didn't know or offered another solution.

The public's soft spot for rehabilitation cannot be dismissed out of hand. Each of us is a member of society, and we obviously owe much of what we are to others who have influenced, helped, guided and civilized us. But there is reason to be skeptical of any proposals for defeating crime and criminals that do not take into account individual will and the motivations of a criminal or potential criminal.⁶⁴ A criminal must become dissatisfied with his or her life and desire change. A criminal must in the end accept full responsibility for his or her actions.

Conclusion

Despite continuing calls for a "better way,"⁶⁵ what criminals need most is evidence that their crimes do not pay. As Robert Bidinotto says, neither criminals nor the rest of us "drive a car 100 miles an hour toward a brick wall, because we know what the consequences will be."⁶⁶ Punishment works. Among other virtues, it gives the convicted a major incentive to reform. Even career criminals often give up crime because they don't want to go back to

"Public opinion strongly supports punishment, but still holds out some hope for rehabilitation."

prison. The most successful remedy, if it were economical, would impose unpleasantness on offenders every time they harmed others; predatory action invariably would produce bad consequences.

How can criminals respect others' rights if those rights go unprotected? Criminals are rational, broadly speaking, though more impulsive, myopic and perverted in their goals than the general population. It is rare that the courts find a perpetrator "criminally insane." Strong evidence suggests that criminals respond predictably to incentives, whether it be coddling or harshness. The old prescription that punishment be swift, certain and severe is affirmed by modern social science.

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When expected punishment plunged during the 1960s and 1970s, crime rose astronomically. When expected punishment began rising in the 1980s and 1990s, crime leveled off and began falling. With the well-publicized success of no-nonsense police tactics in New York City, fewer observers today doubt that the criminal justice system can have a major impact on crime.⁶⁷

Commonsense citizens, if not academics, will continue to support punishment as deterrence. And they will oppose the criminal justice experts who deny the individual criminal's responsibility for his actions and maintain that the criminal justice "system itself has a limited role in crime control and crime prevention."⁶⁸

Economist Gordon Tullock's stark conclusion in his 1974 survey remains valid today: "We have an unpleasant method — deterrence — that works, and a pleasant method — rehabilitation — that (at least so far) never has worked. Under the circumstances, we have to opt either for the deterrence method or for a higher crime rate."⁶⁹

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¹ Quoted in Fox Butterfield, "Crime Fighting's About-face," *New York Times*, January 19, 1997, p. 1E; also see Fox Butterfield, "Reason for Dramatic Drop in Crime Puzzles the Experts," *New York Times*, March 29, 1998, p. 14Y.

² Federal Bureau of Investigation, *Crime in the United States, 1996* (Washington, D.C.: U.S. Government Printing Office, 1997); FBI, *Uniform Crime Reports 1997 Preliminary Annual Release*, May 17, 1998.

NOTE: Nothing written here should be construed as necessarily reflecting the views of the National Center for Policy Analysis or as an attempt to aid or hinder the passage of any bill before Congress.

Notes

- ³ *New York Times*, September 28, 1997, Section 4, p. 1. Ironically, many criminologists fail to credit the role of the criminal justice system in the increase or decline in crime. For example, see Geoffrey A. Campbell, "Putting a Crimp in Crime: Experts Differ Over Reasons for Falling Rates of Serious Offenses," *ABA Journal*, May 1997, p. 24; and "Crime Is Down All Over," *New York Times*, October 14, 1997.
- ⁴ While external restraints are necessary complements to internal restraints, they also are, to some extent, substitutes for each other. As Edmund Burke wrote, "Society cannot exist unless a controlling power upon will and appetite be placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things, that men of intemperate minds cannot be free. Their passions forge their fetters," cited in Morgan O. Reynolds, *Crime By Choice: An Economic Analysis* (Dallas: Fisher Institute, 1985), p. 197.
- ⁵ As Mr. Dooley (Finley Peter Dunne) wrote, "A man that'd expect to thrain lobsters to fly in a year is called a loonytic; but a man that thinks men can be tu-rned into angels be an iliction is called a rayformer an' remains at large." *Bartlett's Familiar Quotations*, 16th edition (Boston: Little, Brown and Company, 1992), p. 603.
- ⁶ Richard T. Wright and Scott H. Decker, *Burglars on the Job* (Boston: Northeastern University Press, 1994), p. 8; also see Eugene H. Methvin, "Mugged by Reality," *Policy Review*, July/August 1997, pp. 32-38, especially p. 34 describing sociologist James A. Inciardi's study of 611 high-crime youngsters in Miami.
- ⁷ Wright and Decker, p. 54.
- ⁸ *Ibid.*, p. 91.
- ⁹ *Ibid.*, p. 113.
- ¹⁰ *Ibid.*, p. 128.
- ¹¹ *Ibid.*, pp. 131, 142; also see J. Wilson and A. Abrahamse, "Does Crime Pay?" *Justice Quarterly* 9, 1992, pp. 359-77; and Morgan O. Reynolds, "Crime and Punishment in America: 1997 Update," National Center for Policy Analysis, NCPA Policy Report No. 209, September 1997.
- ¹² Wright and Decker, pp. 196-97. Broadly speaking, the rational choice approach to crime assumes that "offenders seek to benefit themselves by their criminal behavior; that this involves the making of decisions and of choices, however rudimentary on occasion these processes might be; and that these processes exhibit a measure of rationality, albeit constrained by limits of time and ability and the availability of relevant information." Derek B. Cornish and Ronald V. Clarke, eds., *The Reasoning Criminal: Rational Choice Perspectives on Offending* (New York: Springer-Verlag, 1986), p. 1. To attribute the power of reason to human beings does not deal with the "ultimate springs and goals of action, but with the means applied for the attainment of an end sought. However unfathomable the depths may be from which an impulse or instinct emerges, the means which man chooses for its satisfaction are determined by a rational consideration of expense and success." Ludwig von Mises, *Human Action*, 3d revised ed. (Chicago: Contemporary Books, 1963), p. 16.
- ¹³ Wright and Decker, p. 211.
- ¹⁴ *Ibid.*, p. 8.
- ¹⁵ Brian Forst, "Prosecution and Sentencing," in James Q. Wilson and Joan Petersilia, eds., *Crime* (San Francisco: Institute for Contemporary Studies, 1995), p. 376.
- ¹⁶ We must distinguish between the criminal way of thinking, which is long-run, and criminal acts, which are short-run and usually involve quick processes. Most criminological theories concentrate on factors disposing individuals to criminal at-

titudes and behavior and ignore the situational variables that even for murders and rapes always display signs of calculation and rationality of means. For more on these issues, see Comish and Clarke; also see Stanton E. Samenow, "The Basic Myths about Criminals," in Robert James Bidinotto, ed., *Criminal Justice? The Legal System vs. Individual Responsibility* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1994), pp. 47-58; David Kelley, "Stalking the Criminal Mind," also in Bidinotto, pp. 34-46; and Morgan O. Reynolds, "Crime-Stoppers' Textbooks," *Reason*, August/September 1995, pp. 58-62.

¹⁷ Samenow, "The Basic Myths about Criminals," p. 48. Some economists, notably Nobel laureate Gary S. Becker, argue that whether behavior is habitual, "irrational" or rational is largely immaterial because the basic incentive propositions of economics like the law of demand (if cost rises, less of the activity is demanded) always hold.

¹⁸ Initially several sociologists investigated the issue of whether the death penalty deterred murder more effectively than life imprisonment. These early studies found no deterrent effect, but they were very crude in technique. They simply separated states into those that had the death penalty on the books and those that did not, without accounting for the chances that it would be imposed. See Gordon Tullock, "Does Punishment Deter Crime?" *The Public Interest* 36, Summer 1974, pp. 103-11. Moreover, the tests were simple two-variable correlations that did not hold constant other differences that might affect murder rates such as age, race, illegitimacy, income and degree of urbanism. This was an era in which computers, large data sets and sophistication in multivariate techniques were uncommon. Perhaps the first econometric test of the deterrence hypothesis was done by University of Columbia economics graduate student Arleen Smigel Leibowitz in her 1965 master's thesis under Gary Becker. See Gary S. Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy* 76, 1968: pp. 169-217. In her single-equation, multiple regression analysis of the FBI's seven Index crimes, she took into account the average length of the prison sentence and the percentage of crimes cleared by prison admissions, as well as a number of sociological and economic differences among the states. She found an unambiguous deterrent effect of prison on each crime. Since then, numerous studies by economists have confirmed her general results, although the data and models have varied enormously. Meanwhile, sociologists who set out to show that *Crime, Punishment and Deterrence* (New York: Elsevier, 1975), Jack Gibbs' empirical work in support of a deterrent effect, was wrong ended up agreeing with him. In the process they expanded and improved on Gibbs' work, independently verifying the initial work of the economists.

¹⁹ Isaac Ehrlich, "Participation in Illegitimate Activities: An Economic Analysis," *Journal of Political Economy* 81, 1973, pp. 521-64, reprinted in William Landes and Gary S. Becker, eds., *Essays in the Economics of Crime and Punishment* (New York: Columbia University Press, 1974). While Ehrlich's single-equation estimates showed lower effects by the justice system on violent crime than on property crime, his multi-equation estimates showed similar effects on both. A single-equation model relates a lefthand-side variable (or dependent variable like crime rates) to a set of righthand-side variables (or independent variables like arrest clearance rates, percent of teen-age males in the population, etc.). A multi-equation model consists of two or more such equations still purported to be an integrated model; for example, a second equation might specify a righthand-side variable in equation one like arrest clearance rate as a lefthand-side variable in equation two with righthand-side variables like number of law enforcement employees per 1,000 population.

²⁰ Steven D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation," *Quarterly Journal of Economics*, May 1996, pp. 319-51; also Steven R. Hanke, "Incarceration Is a Bargain," *Wall Street Journal*, September 23, 1996.

²¹ Llad Phillips, "The Criminal Justice System: Its Technology and Inefficiencies," *Journal of Legal Studies* 10, June 1981, pp. 363-80.

²² Michael K. Block and Vernon E. Gerety, "Some Experimental Evidence on Differences between Student and Prisoner Reactions to Monetary Penalties and Risk," *Journal of Legal Studies* 24, January 1995, pp. 123-38.

²³ *Ibid.*, p. 138.

- ²⁴ Albert J. Reiss Jr., and Jeffrey A. Roth, eds., *Understanding and Preventing Violence* (Washington, D.C.: National Academy of Sciences, 1993), p. 6; also see Jeffrey Grogger, "Certainty vs. Severity of Punishment," *Economic Inquiry*, April 1991, pp. 297-335, and John M. Heineke, "Crime, Deterrence and Choice: Testing the Rational Behavior Hypothesis," *American Sociological Review*, April 1988, pp. 303-05.
- ²⁵ Itzhak Goldberg and Frederick C. Nold, "Does Reporting Deter Burglars? An Empirical Analysis of Risk and Return in Crime," *Review of Economics and Statistics* 62, August 1980, pp. 424-31.
- ²⁶ Ernest van den Haag, "Making Crime Cost and Lawfulness Pay," *Society* 19, July/August 1982, p. 22.
- ²⁷ Ralph Adam Fine, "Plea Bargaining: An Unnecessary Evil," in Bidinotto, *Criminal Justice?* p. 86; also see R. Tarling, "Editorial: The Effect of Imprisonment on Crime," *Journal of the Royal Statistical Society* 157: 2, 1994, pp. 173-76.
- ²⁸ Donald E. Lewis, "The General Deterrent Effect of Longer Sentences," *British Journal of Criminology* 26, January 1986, pp. 47-62; also see the reviews by D. J. Pyle in *The Economics of Crime and Law Enforcement* (London: Macmillan, 1983) and *Cutting the Costs of Crime* (London: Institute of Economic Affairs, 1995).
- ²⁹ Vijay K. Mathur, "Economics of Crime: An Investigation of the Deterrent Hypothesis for Urban Areas," *Review of Economics and Statistics* 60, August 1978, pp. 459-66.
- ³⁰ This section is based on Charles A. Murray, "Does Prison Work?" Institute of Economic Affairs, IEA Health and Welfare Unit, *Choice in Welfare* No. 38, July 1997.
- ³¹ For a discussion of expected punishment, see Reynolds, "Crime and Punishment in America: 1997 Update."
- ³² Paul E. Tracy, Marvin E. Wolfgang and Robert M. Figlio, *Delinquency Careers in Two Birth Cohorts* (New York: Plenum Press, 1990).
- ³³ See, for example, Samuel Yochelson and Stanton E. Samenow, *The Criminal Personality: Vol. I, A Profile for Change* (New York: Jason Aronson, 1976); Steven Klein and Michael Caggiano, *Policy Implications and Recidivism* (Santa Monica, Calif.: RAND Corporation, 1986); Glenn D. Walters, *Criminal Lifestyle: Patterns of Serious Criminal Conduct* (Newbury Park, Calif.: Sage Publications, 1990); and Edward Zamble and Vernon L. Quinsey, *The Criminal Recidivism Process* (Cambridge, England: Cambridge University Press, 1997).
- ³⁴ Methvin, "Mugged by Reality," p.36.
- ³⁵ *Ibid.*, p. 36.
- ³⁶ *Ibid.*, p. 35.
- ³⁷ Charles A. Murray and Louis A. Cox, *Beyond Probation: Juvenile Corrections and the Chronic Delinquent* (Beverly Hills, Calif.: Sage Publications, 1979).
- ³⁸ Ann Dryden Witte, "Some Thoughts on the Future of Research on Crime and Delinquency," *Journal of Research on Crime and Delinquency*, 1994, pp. 513-25; and H. Tauchen, A. D. Witte and H. Griesinger, "Criminal Deterrence: Revisiting the Issue with a Birth Cohort," *Review of Economics and Statistics* 76, August 1994, pp. 399-412.
- ³⁹ Witte also found that either attending school or holding a job was equally effective in decreasing criminal activity. Whether a student graduated appeared to have no independent effect on crime; rather, it was involvement in legitimate activities that mattered. Another study by G. Roger Jarjoura of Northeastern University also found that dropping out of school per se is not criminogenic. *Criminology* 2, 1993, pp. 149-71.
- ⁴⁰ Douglas A. Smith and Patrick R. Gartin, "Specifying Specific Deterrence: The Influence of Arrest on Future Criminal Activ-

ity," *American Sociological Review* 54, February 1989, pp. 94-105.

⁴¹ Murray, "Does Prison Work?" p. 26.

⁴² Anne L. Schneider, *Deterrence and Juvenile Crime: Results from a National Policy Experiment* (New York: Springer-Verlag, 1990).

⁴³ Joan Petersilia and Elizabeth Piper Deschenes, "Perceptions of Punishment: Inmates and Staff Rank the Severity of Prison vs. Intermediate Sanctions," *The Prison Journal* 74, September 1994, pp. 306-28.

⁴⁴ *Firing Line* miniseries on crime, Public Broadcast System, taped October 4, 1994.

⁴⁵ Bidinotto, *Criminal Justice?* p. 15.

⁴⁶ Skeptics should consult Kendall J. Bryant, Michael Windle and Stephen G. West, eds., *The Science of Prevention: Methodological Advances from Alcohol and Substance Abuse Research* (Washington: American Psychological Association, 1997), which "challenges prevention researchers across many fields to develop general principles that integrate an understanding of risk and protective factors with the delivery of preventive interventions" (p. xi) and claims that "a new science of prevention is evolving rapidly" (p. xviii).

⁴⁷ Andrew Peyton Thomas, *Crime and the Sacking of America* (Washington, D.C.: Brassey's, 1995), p. 107.

⁴⁸ Robert Martinson, "What Works? Questions and Answers about Prison Reform," *The Public Interest*, Spring 1974, pp. 22-54; a more extensive version appeared in Douglas Lipton, Robert Martinson and Judith Wilks, *The Effectiveness of Correctional Treatment* (New York: Praeger, 1975).

⁴⁹ See Steven P. Lab and John T. Whitehead, "From Nothing Works to the Appropriate Works: The Latest Stop on the Search for the Secular Grail," *Criminology* 28, August 1990, p. 405.

⁵⁰ Mark W. Lipsey, "Juvenile Delinquency Intervention," pp. 63-84 in H. S. Bloom, D. S. Cordray, and R. J. Light, eds., *Lessons from Selected Program and Policy Areas* (San Francisco: Jossey-Bass, 1988); D. A. Andrews et al., "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis," *Criminology* 28: 3, 1990, pp. 369-97; Patricia Van Voorhis et al., "Evaluating Interventions with Violent Offenders: A Guide for Practitioners and Policymakers," *Federal Probation* 50: 2, 1995, pp. 17-27; and U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Delinquency Prevention Works: OJJDP Program Summary*, November 1995.

⁵¹ Samuel Yochelson and Stanton E. Samenow, *The Criminal Personality*, Vols. I, II, III (New York: Jason Aronson, 1976, 1977, 1986). Also see Stanton E. Samenow, *Inside the Criminal Mind* (New York: Times Books, 1984).

⁵² Quoted in Reynolds, *Crime By Choice*, p. 67.

⁵³ Peter W. Greenwood and Susan Turner, "Evaluation of the Paint Creek Youth Center: A Residential Program for Serious Delinquents," *Criminology* 31, May 1993, pp. 263-79; and Joan Petersilia and Susan Turner in *Evaluating Intensive Supervision in Probation/Parole: Results of a Nationwide Experiment*, May 1993, National Institute of Justice.

⁵⁴ John Wooldredge, Jennifer Hartman, Edward Latessa and Stephen Holmes, "Effectiveness of Culturally Specific Community Treatment for African American Juvenile Felons," *Crime and Delinquency* 40, October 1994, pp. 589-98.

⁵⁵ Malcolm W. Klein, "Street Gang Cycles," in James Q. Wilson and Joan Petersilia, eds., *Crime* (San Francisco: ICS, 1995), pp. 234, 235.

⁵⁶ Even worse, "a University of Southern California evaluation of a gang prevention program found that the program was holding the gang together and sustaining its violent crimes. When the program lost funding, the gang broke up and its crime rate declined." Lawrence W. Sherman, "Crime Prevention's Bottom Line," *Wall Street Journal*, August 6, 1997, p. A15.

⁵⁷ *Ibid.*

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The National Center for Policy Analysis is a nonprofit, nonpartisan research institute funded exclusively by private contributions. The NCPA developed the concept of Medical Savings Accounts, which were part of the 1996 health care bill passed by Congress and have been adopted by a growing number of states. Many credit NCPA studies of the Medicare surtax as the main factor leading to the 1989 repeal of the Medicare Catastrophic Coverage Act.

NCPA forecasts show that repeal of the Social Security earnings test would cause no loss of federal revenue, that a capital gains tax cut will increase federal revenue and that the federal government gets virtually all the money back from the current child care tax credit. Its forecasts are an alternative to the forecasts of the Congressional Budget Office and the Joint Committee on Taxation and are frequently used by Republicans and Democrats in Congress. The Republican Contract with America included the pro-growth tax changes recommended by the NCPA and the U.S. Chamber of Commerce as early as 1990. The NCPA also has produced a first-of-its-kind, pro-free enterprise health care task force report, written by 40 representatives of think tanks and research institutes, and a first-of-its-kind, pro-free enterprise environmental task force report, written by 76 representatives of think tanks and research institutes.

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