Chapter 2 Case Study

Fighting Crime: The Case for Emptier Prisons

America now imprisons more people than Russia. According to Walmsley (2005, cited in Rushefsky 2008, 260), 714 out of every 100,000 Americans are behind bars. And although blacks comprise only 13% of the population, they account for 40.7% of the country’s 2.1 million inmates (Harrison and Beck 2005). That is an increase in incarceration of 130% from 1980 to 1990 and 60% from 1990 to 2004 (Walmsley 2005).

It is true that the United States has more crime than other countries, and that black Americans commit too much of it. But these two factors do not explain everything. Black Americans commit about the same share of violent crime as they did in 1976, and the total crime rate has actually fallen since 1973. Total violent crimes and total victimizations in 2004 were lower than in 1973. The total number of violent crimes in 2004 was only about 45% of the 1973 number. Since the population of the United States increased in the same period, the crime rate has declined even faster (Rushefsky 2008, 260). Nevertheless, over this period, the number of inmates has tripled, and the proportion of black prisoners has increased.

Why, then, do Americans continue to vote for those who vow to lock yet more people away? One reason is that fear of crime does not diminish even when the incidence of crime falls. If one selects different base years, the violent crime rate has increased (14.3% from 1973 to 1981) and increased again (6.7% from 1982 to 1993). But this would be misleading for present policy analysis, in that the overall violent crime rate actually dropped 54% (1973–2004) (Rushefsky 2008, 253, citing US Department of Justice Statistics [BJS] 2005). The rate may have dropped from the deterrent effect of an increase in the rate of arrests compared to total victimizations and reported crimes (Rushefsky 2008, 252). Regardless of the explanation, the overall rate has dropped significantly. Law-abiding people naturally want murderers, rapists, and muggers caged. But this does not explain why the prison population has risen almost ten times faster than the rate of violent crime.

It is not crime that has changed, but punishment. A study of why the prison population has grown attributed about a third of the growth to demographics, the increase in violent crime, more arrests, and longer sentences (cited in The Economist 2009a, 71). The other two-thirds came from jailing people for offenses that would not have required prison sentences in the past. In particular, the war on drugs has crammed America’s prisons with nonviolent petty criminals. The
US government spends $40 billion a year trying to eliminate the supply of drugs. Each year, all levels of American government together arrest 1.5 million drug offenders, of whom 500,000 are incarcerated. Tougher drug laws are the main reason why one in five black men will spend time in jail (The Economist 2009b, 15). In all, the number of people imprisoned for drug offenses tripled between 1986 and 1991, and has continued to grow since; in Washington state, the number of prisoners in for drug crimes has risen almost 1,000% since 1980. California has 170,000 inmates, of whom about 20% are serving time for drug-related crimes (The Economist 2009a, 71). One in one hundred Americans is in jail; one in thirty-one is in prison, on parole, or on probation. Michigan spends 22% of its general fund budget on corrections. The program is growing faster than any other except Medicare (which is the fastest growing component of overall state and local spending) (The Economist 2009c, 36). Rushefsky asserts that “It would be harder to think of an area of US social policy that has failed more completely than the war on drugs” (2008, 280).

As a result of tough laws incarcerating drug offenders, violent criminals are a decreasing share of the prison population. In 1991, according to the Cato Institute, only one out of five drug offenders in state prisons, and one out of three in federal ones, had a violent history. And the increasing number of drug offenders in prison comes at a time when the use of all illegal drugs is lower than it has been for years, although it remains high in the inner cities.

Black Americans have been disproportionately hit by the war on drugs because they tend to commit the wrong kinds of drug crimes. For example, under federal law the possession of five grams of cocaine powder is a misdemeanor that carries a maximum prison sentence of one year. Possession of five grams of crack cocaine, though, is a felony that carries a mandatory five-year sentence. Blacks are much more likely to smoke crack. In percentage of estimated use, blacks use more than three times the percentage of crack than whites (1.6% to 0.5%) (Rushefsky 2008, 283). The result is a large increase in the number of blacks in prison.

Indeterminate sentencing gives discretion to parole boards, which can reward good behavior and help with overcrowding by reducing inmates’ prison time. In 1976, California switched to determinate sentencing. This reflects a philosophy of deterrence and means that prison time is fixed, regardless of good behavior (The Economist 2009d, 28). Such determinate or mandatory minimum sentences, at both the federal and the state level, are filling up prisons faster than new ones can be built; more than a dozen states also have three-strikes rules that require long prison stretches for a third felony. The 1995 California law
(passed by voter referendum) is the largest and toughest mandatory sentencing law in the United States. Since crime rates were falling before the law was passed, its effect on crime rates is debatable. The law does lengthen the average prison sentence and raise the average age of inmates, costing the state an additional $500 million a year (The Economist 2009e, 38). California has passed around one thousand laws mandating tougher sentencing and spends $49,000 per prisoner each year. Mandatory sentences are crude policy tools. In particular, they do not distinguish between levels of seriousness of different types of crime; the federal minimum sentence for possession of a small amount of LSD is ten years, much more than for kidnapping, rape, or attempted murder. California has the worst recidivism rate in the nation (70% compared to the national average of 40%) (The Economist 2009d, 28).

The basic aim of the war on drugs has been to remove anyone involved in the drug trade from the street to the cells. Yet demand for drugs remains high in the inner cities, and the history of the trade demonstrates that supply always meets demand. Locking up a drug courier does not mean there is one less courier at large: only that an aspiring, often underage, one gets his chance.

Mandatory minimums thus do not inhibit the operations of the drug trade; but they ensure that lots of nonviolent, low-level drug offenders sit in prison for a long time. In 1990, almost 90% of first-time drug offenders in federal courts went to prison, with an average sentence of more than five years. First-time violent offenders went to jail less often and for shorter periods. No wonder the proportion of drug prisoners in federal prisons keeps on rising.

Much of this rampant incarceration is pointless. Drug users do not need to spend five years in jail to know they have offended: Like most petty criminals, most grow out of their bad habits quickly enough. Besides, most give up crime, and hardly anyone starts, after the age of 30. But mandatory sentences mean that more minor villains will stay in prison well past their criminal prime. Spending $40,000 to $50,000 a year for each increasingly creaky inmate is a waste of money that could be better spent on deterring the dangerous young.

The United States is good, and getting better, at locking up the worst and most incorrigible criminals. But it casts too wide a net. The 1995 crime bill, with its proposed $12.2 billion in prison construction and extension of mandatory sentences, was very much in this mold. More recently, 65% of the 2006 Office of National Drug Control Policy budget is allocated to supply-side enforcement, which means increased incarceration rates and more public spending (for often privately operated state prisons) (Maru 2009). There have to be better and more creative ways of dealing with many criminal misfits.
One would be to try to cut the demand for drugs, rather than the supply. The latter has never worked, as the stable or falling street price of drugs makes clear. In 1999, a gram of cocaine cost $142 on the street; in 2006 the price had fallen to only $94 per gram (Maru 2009). Trend analysis of cocaine prices depends often on base years selected and avoidance of interpreting single data spikes. For instance, DEA reports that cocaine prices increased in 2007–08 from $100 to $200 per gram on the street, which may have been due to the Mexican crackdown on drug gangs and consequent interruption of supply (The Economist 2009f, 43). Nevertheless, longer-term price trends are downward, and the argument for alternatives to incarceration is empirically strong. A Rand Corporation study found that $1 of drug treatment lowers consumption as much as $7 worth of law enforcement does. Treatment can lower the volume of drugs consumed; the less consumption, the fewer drug-related crimes.

There is also a case for insisting on prison for violent first-time offenders and tougher treatment for violent juveniles. A study by the National Bureau of Economic Research found that the cost of locking up a violent criminal was much less than the cost of the mayhem he would probably have committed.

And there is also a case for developing forms of punishment that stop short of prison. Technical parole or probation violations, such as being caught drinking or in the wrong district, are the most common reasons why people go to prison. That can be an overly harsh—and hugely expensive—punishment for people considered nonthreatening enough to be on the streets.

It is not just criminals who are paying an exaggerated price for America’s addiction to incarceration. The criminal minority, in effect, consumes an increasingly disproportionate share of the public purse. From 1986 to 2001, state prison expenditures increased 150%, from $11.7 billion to $29.5 billion (BJS 2005). State spending on prisons has increased more than sixfold in real terms since 1979, using money that could have been spent on education, parks, and hospitals. Getting tough on crime is punishing not just the bad guys, but law-abiding citizens as well.

Questions

What is the crime problem? What is the drug problem?

What tools are useful in reaching your definition?

How do different definitions lead to different policy recommendations?