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Is Incarceration Too Expensive?: Fiscal Austerity and Public Safety

By
Jeffrey Leigh Sedgwick, Ph.D.
Managing Partner & Co-founder
Keswick Advisors, LLC
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Just last month, in an address to the National District Attorneys Association Summer Conference, Assistant Attorney General Lanny A. Breuer called attention to an unpleasant reality facing all of us, including members of the criminal justice community: we are living in an austere fiscal environment that shows no sign of lifting in the near future. As a result, he said, the criminal justice community is at a crossroads where it must make public safety expenditures more intelligently and more productively or else see the dramatic progress in reducing crime rates over the past twenty years eroded. I couldn't agree with him more on the problem; however, I believe he has oversimplified the tradeoffs in public safety that we need to consider in order to make good decisions.

According to Breuer, "we must… recognize that a criminal justice system that spends disproportionately on prisons – at the expense of policing, prosecutions and recidivism-reducing programs – is unlikely to be maximizing public safety." This suggests quite strongly that maximizing public safety is the result of proportionate sharing of public safety spending among components of the criminal justice system; but proportionate to what? This framing of the tradeoffs strikes me as a very incomplete view of the problem, for it casts the components of the criminal justice system as rivals for shares of a fixed or, even worse, diminishing budget. A more comprehensive view of the problem would cast the issue somewhat differently: as a first step, the budget of the criminal justice system should be large enough, and no larger, that it minimizes the total *social costs of crime* including not only public expenditures on public safety, but also the costs of victimization, tangible and intangible, to the public. As a second step, the allocation of funds among components of the criminal justice system should be guided by their demonstrated effectiveness in reducing crime.

JEFFREY LEIGH SEDGWICK, PH.D.
MANAGING PARTNER & CO-FOUNDER
E JEFFREY.SEDGWICK@KESWICKADVISORS.COM
P (804) 560-6816 C (413) 627-5785

ALEXANDER YOUNG SEDGWICK
MANAGING PARTNER & CO-FOUNDER
E ALEXANDER.SEDGWICK@KESWICKADVISORS.COM
C (413) 627-5785

A 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W KESWICKADVISORS.COM

It is all too tempting to look first to the correctional system as a source of savings in a period of austerity. For many years, we have heard it said that the United States is, along with the former Soviet Union and South Africa, the most punitive country in terms of use of incarceration or prison. But this characterization is largely wrong-headed. For example, the probability of conviction per offense is lower in the United States than for most industrialized nations; one reason for this may be the relatively high rate of plea bargaining and charge reduction that occurs in our criminal justice system. Also, the probability of being sentenced to incarceration given conviction is not noticeably higher for the United States than for other industrialized countries. Thus, a more nuanced view is that the United States is no more likely than other industrialized democracies to resort to imprisonment for violent offenses. Rather, our high incarceration rate is the result of our comparatively high violent crime rate. Indeed, the United States reacts to violent crime in roughly the same manner as other industrialized democracies; it just has more of it.[1]

In April of this year, CBS aired a segment on its weekly news program, *Sunday Morning*, entitled, *The Cost of a Nation of Incarceration* (April 22, 2012). The unmistakable implication was that the United States incarcerates too many at too high a cost. But just how large and costly is the prison population? According to the U.S. Bureau of Justice Statistics (BJS), 2,266,832 adults were incarcerated in U.S. federal and state prisons and county jails at year-end 2010 — about 0.96% of adults in the U.S. resident population.[2] In total, 7,076,200 adults were under correctional supervision (probation, parole, jail, or prison) in 2010 — about 3% of adults in the U.S. resident population. A recent report of the Vera Institute calculated the average per inmate cost of incarceration for a sample of forty States: $31,286.[3] Hence, one could estimate the total cost of incarceration nationwide in 2010 as $70.9 billion. This is surely a significant sum, but is it either disproportionate in relative terms or too large in absolute terms?

Another way to look at correctional spending in context is to examine per capita state and local government expenditures on criminal justice. Examining figures from 2007 (the most recent figures in the 2012 *Statistical Abstract of the United States*), total per capita state and local government expenditures on criminal justice were $633 per resident of the United States. Of that total, $279 per resident was spent on police protection, $129 on courts, prosecution and public

[1] For a useful discussion of this, see James P. Lynch and William Alex Pridemore, "Crime in International Perspective," in *Crime and Public Policy*, ed. James Q. Wilson and Joan Petersilia (New York: Oxford University Press, 2011), pp. 6-7.
[2] Department of Justice, *Correctional Population in the United States, 2010.* (Washington, DC: Bureau of Justice Statistics, 2011), Appendix Table 2.
[3] Christian Henrichson and Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers.* (New York: Vera Institute of Justice, 2012), 9.

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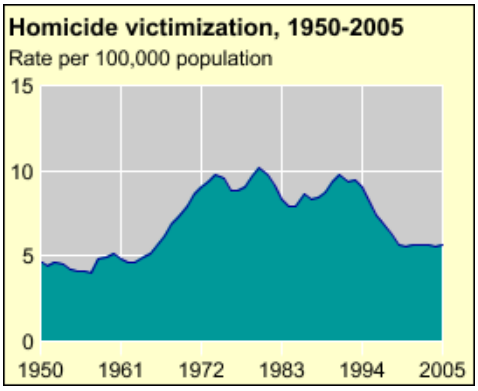
C (413) 627-5785

A 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W KESWICKADVISORS.COM

defenders, and $225 on corrections (including prisons, jails, probation and parole).[4] Whether $633 per resident is too great a public expenditure, and whether $225 per resident for corrections is a disproportionate share of the total, cannot be determined from these numbers alone. Rather, we would need to know the benefit of these expenditures both in sum and relative to one another.

Over the past sixty years, the United States has witnessed two trendless periods in homicide victimization between 1950-64 and 1974-92 when crime rates fluctuated but showed no clear sustained pattern.[5]



But as the above graph shows, there were also two distinct trends: 1964 – 1974 when homicide rates more than doubled; and 1991 – 2000 when homicide rates dropped consistently, falling approximately 70%. According to the FBI's *Uniform Crime Report*, between 1960 and 1992, the number of violent crimes in the United States increased nearly sevenfold, from approximately 288,000 to more than 1.9 million, and the violent crime rate increased nearly fivefold from 160.9 to 757.7 per 100,000 population. Thus, the increase in homicides between 1964 and 1974 was not an isolated phenomenon; rather, it was emblematic of a broad-based increase in violent crime in the United States.

Similarly, the abrupt decline in homicide between 1991 and 2000 was emblematic of a broad-based decrease in crime, both property and violent, in the United States. According to FBI *Uniform Crime Report* data, the rate of all seven index offenses (homicide, rape, robbery, aggravated assault, burglary, larceny and auto theft) declined significantly over the 1990s, with the aggregate declines ranging from 23% to 44%. For five of the seven offenses (homicide, rape, robbery, burglary and auto theft), the declines are of a similar magnitude: about 40%. Two crimes (aggravated assault and larceny) dropped by a lesser amount: about 23% to 24%.

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[4] Department of Commerce, *Statistical Abstract of the United States, 2012*. (Washington, DC: Census Bureau, 2012), p. 216.
[5] Much of the following discussion comes from Franklin E. Zimring, *The Great American Crime Decline.* (New York: Oxford University Press, 2007).

JEFFREY LEIGH SEDGWICK, PH.D.
MANAGING PARTNER & CO-FOUNDER
E JEFFREY.SEDGWICK@KESWICKADVISORS.COM
P (804) 560-6816 C (413) 627-5785

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C (413) 627-5785

A 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W KESWICKADVISORS.COM

If we look at *National Crime Victimization Survey* (NCVS) data, the crime declines estimated from the household survey are equal to or greater than the FBI/police statistics in all six crime categories (the NCVS does not measure homicide), with the survey showing much larger declines in larceny, assault and rape. The victim survey not only confirms the trends found in the police data, but also moves the larceny and assault declines much closer to the average declines for the other index crimes than do the police statistics. The violent victimization rate in the United States has fallen 67% since its peak in 1994 and now equals the lowest rate measured in the thirty-six year history of the NCVS.

The distinguished criminologist Franklin Zimring has characterized this sustained and broadly based crime decrease during the 1990s as the most important sociological and socioeconomic development of the second half of the twentieth century. This a remarkable statement about a time period that included three assassinations, the Civil Rights revolution, the Great Society, the Vietnam War and the anti-war movement, the feminist movement and the end of the Cold War to mention just a few. Equally important is who benefitted from what has been called, "The Great American Crime Decline."

If we examine the trends in homicide, we find that the benefits of lower crime rates have been spread widely across the social and demographic categories of the American nation. With the exception of children under the age of 14, the homicide rate decline was remarkably similar for all age groups, ranging between 36 and 44%. In terms of gender, the homicide decrease for men was 42%, one-third more than for women. Among races, the homicide decrease for nonwhites was 46%, again one-third more than for whites. In terms of geography, the homicide decrease in big cities was 49%, much more than the drop in other cities, suburbs, or in rural areas. (It is worth noting that New York City, the nation's largest city, experienced crime declines nearly twice the national average. And this steep decline was not characteristic of the region surrounding New York City; it was confined to the city limits.) These data suggest that the benefits of the crime decline of the 1990s were concentrated in those groups with the highest exposure to crime – urban minority males. Indeed, Zimring eloquently notes that "[t]he crime decline was the only public benefit of the 1990s whereby the poor and disadvantaged received more direct benefits than those with wealth. Because violent crime is a tax of which the poor pay much more, general crime declines also benefit the poor, as likely victims, most intensely."[6]

But what explains the decline? We should begin by acknowledging that, like any other complex social problem, variations in crime rates cannot be explained adequately by any single cause. Broadly speaking, the most commonly researched variables affecting crime rates are the economy, demography and criminal justice policies. Among the last, the

[6] Zimring, p. vi.

JEFFREY LEIGH SEDGWICK, PH.D.
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E JEFFREY.SEDGWICK@KESWICKADVISORS.COM
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A 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W KESWICKADVISORS.COM

most obvious candidate for explaining the crime decline in the 1990s is incarceration; this is because no other change in the operation and output of the American criminal justice system in the generation after 1970 begins to approach the scale of the expansion of incarceration. After small and trendless variation for several decades, the rate of imprisonment in the United States expanded after 1973 more than threefold. However, estimates of how much of the crime decline of the 1990s can be attributed to increased incarceration vary widely, from 10%[7] to 27%[8] of the overall decline.

Before dismissing this contribution as insignificant, we should heed one of Zimring's lessons from the 1990s: "The crime decline of the 1990s was a classic example of multiple causation, with none of the contributing causes playing a dominant role."[9] Such a conclusion is eminently sensible when we consider that the economy and demography also play significant roles in explaining crime rates. But what if we consider just alternative criminal justice policies such as more spending on police or prevention and intervention programs?

Professors John Eck and Edward Maguire summarized research on qualitative and quantitative changes in policing, examined forty-one different statistical studies of the relationship of quantity of police and crime rates, and arrived at the following conclusion: "Even when we examined the most rigorous studies, we could not find consistent evidence that increases in police strength produce decreases in violent crime. Overall, the research suggests that hiring more police officers did not play an independent and consistent role in reducing violent crime in the United States."[10] However, using different research methods, Steven Levitt concluded that increases in police manpower accounted for 5-6% of the observed decrease in crime during the 1990s.[11] Thus changes in police manpower level contributed, at most, one half as much to the crime decline of the 1990s as changes in incarceration rates.

And we should note that Zimring explicitly dismisses correctional or crime prevention programs from having played any plausible role: "Nor were there any indications that correctional or crime prevention programs had national level impact on crime."[12] In a telling portion of his book, Zimring discusses Robert Martinson's 1974 *Public Interest* article entitled, "What Works? Questions and Answers about Prison Reform." Martinson had concluded that "with few isolated exceptions,

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[7] William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000), pp. 97-129.
[8] John J. Donohue III and Peter Siegelman, "Allocating Resources Among Prisons and Social Programs in the Battle Against Crime," *Journal of Legal Studies* 27 (January 1998): 1-43.
[9] Zimring, p. 197.
[10] John Eck and Richard Maguire, "Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence," in *The Crime Drop in America*, ed. Alfred Blumstein and Joel Wallman (New York: Cambridge University Press, 2000), p. 217.
[11] Steven Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effects of Police on Crime: A Reply," *American Economic Review* 92 (September 2002), 1244-50.
[12] Ibid., p. 69.

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A 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W KESWICKADVISORS.COM

the rehabilitative effects that have been reported so far have had no appreciable effect on recidivism."[13] Zimring then quotes Francis Allen's reflection on Martinson's conclusion: "there was, in fact, little new about the skepticism expressed in the Martinson study of the rehabilitative capabilities of correctional programs or the existence of validated knowledge relevant to the avoidance of criminal recidivism. At least since World War II expressions of such skepticism have abounded in penological literature, as have criticisms of correctional entrepreneurs whose claims of significant reformative achievements were unsupported by scientific demonstration."[14]

To summarize the lessons from the crime decline of the 1990s (which has continued, though at a much slower rate, to the present day), one would fairly say that, among the criminal justice policies proffered as causes, the case for effectiveness is stronger for incarceration than for increased police manpower or crime prevention or intervention programs. And yet there are those who still earnestly advocate a redistribution of criminal justice funds in order to achieve "proportionality."

But there are risks to such a program that should be carefully weighed before acting. Consider the following well-known statistics: according to U.S. Department of Justice surveys and studies, over 60% of prison inmates had been incarcerated previously[15] ; and a 2002 Department of Justice study of 272,111 inmates released from prison in 1994 found that they had accumulated 4.1 million arrest charges *before* their most recent imprisonment and another 744,000 charges within 3 years of release.[16] This is an average of 17.9 charges each. The same study found that 67.5% of inmates released were rearrested for a new offense, almost exclusively a felony or serious misdemeanor, within three years of their release. These data suggest that the criminal justice system is hardly incarcerating trivial or non-serious offenders and that the threat of recidivism is quite real. And since most crime in the United States is intra-communal, it should also be pointed out that declining to incarcerate or prematurely releasing individuals with a demonstrated propensity to commit crimes unless incapacitated imposes costs on already distressed inner city, minority communities, thereby adding to their disadvantage.

What is the magnitude of those costs? Estimates vary widely because of the difficulty of placing a value on intangibles such as victims' lost quality of life, general fear, lost use of community spaces, and psychological effects. Added to these are more easily measured tangible victim costs such as lost property, lost productivity and medical treatment. A

[13] Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* (Spring 1974), p. 25.
[14] Francis Allen, *The Decline of the Rehabilitative Ideal*. (New Haven: Yale University Press, 1981) p.57.
[15] Department of Justice, *Survey of State Prison Inmates, 1991*. (Washington, DC: Bureau of Justice Statistics, 1993) 11.
[16] Department of Justice, *Recidivism of Prisoners Released in 1994*. (Washington, DC: Bureau of Justice Statistics, 2002) 1.

JEFFREY LEIGH SEDGWICK, PH.D.
MANAGING PARTNER & CO-FOUNDER
E: JEFFREY.SEDGWICK@KESWICKADVISORS.COM
P: (804) 560-6816 C: (413) 627-5785

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MANAGING PARTNER & CO-FOUNDER
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C: (413) 627-5785

A: 10220 UPPINGHAM COURT, RICHMOND, VA 23235-1135
W: KESWICKADVISORS.COM

1996 research preview from the National Institute of Justice used data from 1987 to 1990 and estimated the tangible costs of crime to victims at $105 billion annually and the annual intangible costs to victims at another $345 billion for a total cost of $450 billion annually.[17] The approximately 40% reduction in crime rates achieved during the decade of the 1990s was thus worth about $180 billion annually in saved victim costs, tangible and intangible; and this is a significant underestimate since it does not capture the increased quality of life, reduced fear, greater use of community spaces, and reduced psychological effects on non-victims.

In conclusion, we have had demonstrable success in reducing crime rates significantly in the United States. Based on that experience, we have evidence to judge what contributed to that success and how much. And we know who the primary beneficiaries of that success were. As we face the present challenges of fiscal austerity, we ought not ignore those hard-learned lessons. The aggregate size of the criminal justice budget, and its allocation among the component parts of the criminal justice system, should be constantly monitored and reassessed. But that assessment should be done wisely and judiciously by the lamp of experience.

[17] Department of Justice, *The Extent and Costs of Crime Victimization: A New Look.* (Washington, DC: National Institute of Justice, 1996), p. 2.

JEFFREY LEIGH SEDGWICK, PH.D.
MANAGING PARTNER & CO-FOUNDER
E: JEFFREY.SEDGWICK@KESWICKADVISORS.COM
P: (804) 560-6816 C: (413) 627-5785

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