CONSISTENT CRIME CONTROL PHILOSOPHY AND POLICY: A THEORETICAL ANALYSIS

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ABSTRACT

The primary objectives of this analysis are to: articulate clearly the central premises of each of the theories of punishment (retribution, deterrence, incapacitation, and rehabilitation) and, to explore the policy implications that flow from each of the justifications. The differences among the theoretical justifications of punishment range from obvious to extremely subtle. This analysis clearly delineates the differing premises of the theories that underlie criminal justice. Attention then turns to the policies that would be pursued if any one of the justifications of punishment were used as the primary basis of the criminal justice system. The major conclusion is that the policies derived from the competing theories lead in divergent and often contradictory directions. Finally, bureaucratic accommodations such as plea bargaining are explored in terms of their relationship to the theories of punishment. It is contended that plea bargaining and failure to prosecute multiple charges tend to run counter to all of the justifications of the criminal sanction. The failure to address the policies of criminal justice with reference to the theories of punishment means that the system will have great difficulty achieving any particular goals.

Introduction

The criminal justice process operates in a low visibility and high discretion environment. In this environment the assumptions and theoretical justifications that underlie the criminal sanction are rarely examined in any systematic way. This analysis is a reaction to the grossly inconsistent crime control policy implementation evidenced in the last half century in American society. To the outside observer the pattern of existing policies and the rationales provided as their support could best be described as schizophrenic. It is argued here that what is needed is clear conceptual understanding of the goals of the various alternative crime control strategies used to justify policy decisions. At the same time the logically consistent means to these ends must be spelled out and transformed into clear concise policies which seem most likely to achieve the desired ends. Further, it seems imperative that the schizophrenic attempt to pursue multiple goals, the policy implications of which are, at minimum, counter-productive and, at maximum, mutually exclusive must be abandoned.

First, clear and exact definitions need to be presented for the four philosophies traditionally relied upon to justify crime control policy: retribution, deterrence, incapacitation and rehabilitation. The next step is to indicate what means these philosophies suggest should be implemented to obtain the desired ends. A by-product of this analysis will be an insight into the contradictions which result when conflicting goals are pursued simultaneously. Finally, policies such as plea bargaining, which it is contended run counter to all goals, are examined.

Major Justifications

Generally, there are four primary philosophies utilized to justify the imposition of criminal sanctions. Described below are these justifications.

Retribution and Just Deserts

"Retribution" and "just deserts" refer to the notion that the imposition and severity of punishment should be based solely upon the wrong committed. According to Mabbot (1969), adherents to retribution "would admit that one fact can justify the punishment of this man, and that is the *past* fact, that he has committed a crime. To this extent reform and deterrence theories which look only to the consequences are wrong" (p. 43). The severity of the crime is the factor that limits the extent to which the state can retributively punish the offender, because the penalty must be in proportion to the gravity of the misdeed. The death penalty for parking violations would be unjust even under a completely retributive system because of its disproportionality. Some penalty is deserved for parking violations. However, the just deserts model places bounds on the reaction of the state to wrongdoing: the principle of proportionality between crime and punishment. Further, there is an underlying assumption that a calculus ex-

ists that prescribes a limited range of punishments which are appropriate for a specific criminal act (see, Cederblom & Blizek, 1977). It is this calculus which distinguishes retributive justice from mindless revenge.[1] Thus, retributive theorists generally agree that (a) punishment is deserved when someone is guilty of a crime, and (b) punishment must be in proportion to the crime. These points are assumed by just-deserts theorists to be the basis of the criminal sanction. This view, however, is not completely shared by advocates of other theories.

Deterrence

In a definitional sense deterrence is at minimum, two conceptually different things. First, deterrence is a philosophical theory which attempts to justify the use of punishment. Rooted in Eighteenth century writings of the utilitarian social contract philosophers, Beccaria and Bentham, deterrence justifies the use of punishment as a mechanism of social control designed to prevent crime and to achieve the utilitarian goal of "the greatest happiness for the greatest number." At the same time, deterrence is an actual phenomenon, specifically, the behavioral result of the fear a potential offender has that his or her law breaking behavior will result in punishment. In this sense, deterrence is defined as "the omission of an act as a response to the perceived risk and fear of punishment for contrary behavior" (Gibbs, 1975, p. 2). It must be emphasized that deterrence, if it exists, is a perceptual phenomena. As Henshel and Carey point out: "People are deterred (if at all) by what they *think* is the certainty of capture, and by what they *think* is the severity of the sanction, not by what the certainty and severity is objectively" (1975, p. 54). Though Beccaria and Bentham did not acknowledge the importance of perceptual properties of punishment, as opposed to the actual values these properties could obtain, it seems clear that if the perceptual values are not sufficient to thwart the rationally thinking individual from committing a particular act, that the individual's inaction relative to this act is due to some other factor(s). Other reasons for an individual not committing a particular criminal act could be either a lack of the opportunity to do so or the moral evaluation of the act as wrong and therefore unacceptable.

Incapacitation

Incapacitation, the reduction of crime through the physical restraint of the offender, has only recently been articulated as a justification of punishment. It is not as widely recognized as the other justifications, but is equally difficult to substantiate empirically. The argument is simple and straightforward. A person in prison cannot commit crime outside prison; *ergo,* the more criminals in prison, the less crime in general. The effect of incapacitation is distinct from other objectives of the criminal sanction in that it represents estimates of the amount of crime that would be committed if current offenders were not in prison. The ease with which the incapacitation hypothesis is expressed and understood is in stark contrast to the extreme difficulty and complexity involved in creating empirical tests to substantiate the claims. Incapacitation theory stipulates that the crime rate is a function of the total number of offenders in society minus those serving time, multiplied by an average number of crimes per offender. Thus, the crime rate is influenced by the likelihood of being arrested, convicted, and sent to prison for the commission of a crime (see Ehrlich, 1973; Greenberg, 1975; Wilson & Boland, 1976).

The minimum theoretical requirements for an incapacitation effect to occur are factual guilt and an accurate prediction of the dangerousness of the offender. While both requirements are necessary, dangerousness is clearly more difficult to assess. According to the theory, more dangerous offenders should be incarcerated longer than those who pose less of a threat to society. This means that two offenders could commit the same act but receive different sentences because one is thought to be more likely to commit that or a related act in the future. The concept of dangerousness poses potential problems for civil liberties as well because it can be argued that people should not be punished for crimes that have not yet been committed. If the potential problems of disparity and injustice are ignored, incapacitation can be politically attractive because of the crime reduction potential it purports.

Rehabilitation

Rehabilitation, as a crime control philosophy, has as its foundation uniquely different assumptions about the nature of man and human behavior than the other three approaches. Francis Allen recognized the problem of defining rehabilitation when he said: "The rehabilitative ideal is itself a complex of ideas which perhaps defies completely precise statement" (1973, p. 173). The starting point is the assumption that human behavior is the product of antecedent causes and not the exercise of choice or free will. Through the use of scientific methodology, the etiological factors which either directly or indirectly result in criminal behavior should eventually be identifiable. Ultimately the recognition of these antecedent conditions will, where possible, allow for the scientific control of human behavior.[2] Given this ability to control human be-

[1]In the past, retributive justice theories were criticized as merely a convenient rationalization of society's lust for vengeance: punishment for punishment's sake (Flew, 1954). Hospers (1977) disputes the vengeance criticism of deserts theory: "It is not punishment for punishment's sake, nor the infliction of pain for pain's sake, that is the justification for punishing (on the deserts theory); it is rather punishment for the sake of justice. Motives other than the desire for justice are irrevelant" (p. 22).

[2]There are, no doubt, situations which will be beyond the realm of possibility to control and thus prevent (i.e., genetic mutations, accidental brain damage,

havior it is assumed, as Allen points out, that "measures employed to treat the convicted offender should serve a therapeutic function, that such measures should be designed to effect changes in the behavior of the convicted person in the interests of his own happiness, health, and satisfaction and in the interest of social defense" (1973, p. 173).

Therefore, rehabilitation and its deterministic assumptions about the nature of human behavior mandate that "treatment" replace the use of "punishment." Society can be better protected if science can find a treatment to fit the individual, than if the state metes out a punishment to fit the crime. The goal should then be to reeducate, resocialize, or remold the criminal so that his skill and talents can be utilized to the benefit of society, instead of towards its destruction.

If the rehabilitative model were extended to its logical extreme, free will as a factor determining criminal behavior would be denied, as originally suggested by Ferri in 1878. The denial of this important assumption which underlies our criminal justice process would require that our entire system be drastically changed.[3] Further, were our criminal justice system to operate solely on the basis of the rehabilitative ideal, substituting treatment and the therapeutic state for punishment, a myriad of challenging and problematic issues would surface.[4]

Policy Implications[5]

Each of these justifications has concomitant policy implications. Some of these implications are explored below as are the contradictions which might result from simultaneous pursuance.

Policy Implications of Retribution

Guilt and proportionality are the two requirements that underlie retribution as the justification of the criminal sanction. Of the two requirements, proportionality is by far the more complicated to implement, but the proof of guilt is a moral imperative. The issue of proportionality is a particularly difficult one for the legislature to deal with since it requires the linking together of two ordinal scales: severity of punishment and severity of crimes (Pincoffs, 1977).

A truly proportional system of crime and punishment may be very difficult to operationalize; however, it does offer opportunities for a clearer definition of the harm resulting from particular criminal acts. For example, decriminalization of victimless and statutory types of crime might be the result of a more careful linking of harm and punishment; a thorough analysis of harm resulting from the commission of these acts could be found to be small or non-existent. The proportionality notion also suggests a more thorough implementation of fines and restitution as sanctions associated with property offenses. Such a policy could have a substantial impact upon the overall allocation of criminal justice resources since the bulk of crimes committed resulting in incarceration are property related. If fines and restitution were more widely employed the costs of maintaining prisons and jails could be greatly reduced.

Next, sentences would have to be fixed by legislatures in a retributive system so that they reflected the fine gradations of harm resulting from particular crime in proportion to the punishments attached. This process is actually occurring in many states that have adopted or are considering adoption of determinate sentencing systems (Price & Portney, 1983).

Parole would be eliminated under a purely retributive system as would any increased punishment for repeat or habitual offenders. The reasoning here is that the sentence associated with any particular crime would be fixed based on its harm. Regardless of the status of the offender, as first timer or repeater, the degree of harm resulting from the act would be a constant.

The role of the police in a retributive system would stress a more comprehensive description of the actual crime occurrence so that subsequent decision makers could fine tune the charges to achieve proportionality. This could require some readjustment of police record keeping so that multiple charges stemming from a single event would be thoroughly documented in order for the charges and punishments attached to be proportional to the total harm done. Then the courts would need to change significantly their emphasis to take into account the actual crime(s) committed rather than compromise charges resulting from the plea negotiation agreements. In addition, the physical, emotional, and material status of the victim would need to be evaluated fully to account for the harm inflicted by the crime. The discretion of the prosecutor would be limited to the determination of which charge is appropriate for the given event. Sentencing would be automatic once the charges were proven. Aggravating and

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etc.).

[3]The assumption of free will or choice in human behavior is one of the cornerstones upon which our Anglo-American legal system is based. Without free will the notion of moral responsibility and the related criteria of *mens rea* are meaningless. An individual cannot be morally responsible or possess criminal intent to commit an act unless he or she has the ability to choose that action over another. The definition of a criminal act is then reduced to merely the presence of *actus reus* (the fact that an individual committed an overt act that resulted in harm). This would, of course, simplify the trial process since criminal intent would not have to be proven.

[4]For a comprehensive discussion of possible problems resulting from a thorough use of the rehabilitative model see Kittrie (1971).

[5]Some of these policies or a version of them are already in operation. Other suggested policies derived from the logical extension of these four theories have not as yet been implemented. In all cases the policies suggested here are those which should facilitate the attainment of the desired goal if the particular theory under consideration were the only theory governing criminal justice system policy.

mitigating circumstances could be carefully described in the law and the court would need only identify the presence or absence of such factors when calculating the sentence. The function of corrections would be solely of a custodial nature since sentences would be fixed and parole eliminated. Retributive justice may require a substantial increase in prison beds if alternative sanctions such as fines and restitution were not utilized for many categories of offenses.

Researchers in criminal justice would be employed to help to establish the relationship between the harm of the offense and the proportional punishment. This is an extremely difficult task and agreement over this issue may be virtually impossible to achieve. Political choices, however, would need to be made and scientifically competing explanations of proportionality would be beneficial.

Policy Implications for Deterrence

Because the goals of general and specific deterrence are not the same, there are policy implications which may relate to one but not the other. There may be procedures which work to the benefit of one and the detriment of the other. Even the basic requirements needed for each to operate seem different. For example, general deterrence can operate under conditions where factual guilt of the individual punished is not clearly present.[6] All that matters is that potential offenders *think* that violators are caught and punished. On the other hand, specific deterrence can logically only operate under conditions where individuals perceive the punishment *they* receive to be the direct result of their own factual guilt.

The other requirement for either general or specific deterrence to operate is that some threshold level of certainty, severity, and celerity of punishment be perceived by the individual so that a potential criminal act might be deterred. It must be pointed out that all individuals are probably not deterrable. Some, such as the criminally insane, are not deterrable because they lack the capacity to weigh rationally the consequences of their behavior (see Stitt & Huddleston, 1984). Others are not deterrable by criminal sanctions because they have come to define the prohibited behavior as morally wrong. Under normal circumstances these individuals would not even contemplate the prohibited behavior; thus punitive consequences in their cases would be irrevelant. With these exceptions, individuals whose perceptions of certainty, severity and celerity of punishment are sufficiently great, will forego committing the prohibited act out of the fear of the consequences.

At this point two issues emerge which go beyond the scope of this research effort. First, it is assumed that there exists some minimum set of threshold values for perceived certainty, severity, and celerity which for each individual would be sufficient to deter the commission of a criminal act. Unfortunately this combination probably varies by individual along perhaps all three dimensions.[7] This issue represents an as yet unanswered empirical question. The second issue which cannot be directly confronted here deals with the causal relationship between actual and perceived properties of punishments. This relationship has not been and perhaps never will be ascertained. The reason for this is most clearly exemplified in the case of certainty of punishment. The problem is, though perceived certainty can be empirically measured, actual certainty is probably unknowable. For actual certainty to be calculated it is necessary to know the true frequency of the occurrence of a particular act within a population and criminologists have yet to devise a means of measuring crime which could be agreed upon as valid.

In order to overcome these shortcomings it is necessary to make some assumptions: (a) that there is a direct relationship between actual and perceived levels of certainty, severity, and celerity; and, (b) that severity of punishment can be fixed at an optimal level to maximize its deterrent effect. This optimal level would be one where the pain of punishment would exceed the pleasure of the offense for a majority of potential offenders. Given these assumptions policy recommendations should be designed to achieve the greatest levels of certainty and celerity.

Within this framework legislatures should pass laws designed to maximize certainty of apprehension and punishment, provide optimum levels of severity, and increase celerity of punishments. Such action could serve to maximize citizen support for the entire criminal justice system and thus further increase the degree of certainty with which all levels of the system will operate. Citizen support for the system could also be enhanced by decriminalizing unpopular and generally unenforceable laws. Legislative action to increase police power in the areas of search and seizure, though it might diminish individual freedom, would also tend to decrease the likelihood that offenders could escape punishment.

In general it would be necessary to devote more resources to all segments of the criminal justice system. Additional funds would be needed to provide more personnel throughout the system, more courts would have to be established, and more facilities to administer punishment (these may be traditional jails and prisons, or punishment centers to administer electroshock as suggested by Newman (1983), or lashes, or whatever is deemed appropriate). At the same time it would

[6]It should be noted that were innocent individuals punished with great frequency, and were the general citizenry aware of this, the result may not be deterrence, but civil unrest and rebellion against the perceived unjust system.

[7]For instance, an obvious example exists relative to the individual's abhorence of a particular punishment. Six months in jail for those who have never experienced a deprivation of liberty and the humiliation of such an experience, to say nothing of their fear of victimization by other inmates or guards during their incarceration, would be seen as a horrible fate. However, those who have experienced incarceration in jails or prisons a number of times for longer periods may face such a threat with little or no trepidation.

be necessary for legislatures to establish fixed, flat, mandatory sentences for all offenses to eliminate discretion throughout the system. This policy would result in uniformity of punishment and thus certainty that an individual would receive a specific punishment. With the elimination of discretion, parole would be eliminated. Probation, would be prescribed for only extremely minor offenses since it does represent a minor form of punishment through the regulations and limitations applied to individual freedom.

Next, because the apprehension of criminals is the key to maximizing certainty, a number of policy implications for law enforcement would be recommended. Over and above having more and better trained public police, the expanded use of private police (security forces) would act to increase the certainty of apprehension. Also, the increased use of other security methods, such as alarm systems and other technological devices for crime detection and offender identification should operate to maximize certainty. A greater emphasis on proactive policing and preventive policing should be undertaken. Police-community programs such as neighborhood watches, personal property identification projects, and media campaigns designed to increase citizen involvement in crime detection and prevention could also increase certainty of apprehension.

At the adjudication stage of the justice process, the elimination of plea bargaining could be the single greatest step to increase both certainty and severity of punishment. The creation of a sufficient number of new courts should not result in a decrease in celerity. A decrease in the use of bail, assuming the parties are guilty, increases the celerity and perhaps the certainty and severity of punishment, as well as providing an immediate incapacitation function. Another policy which would increase both certainty and severity, would be for prosecutors to prosecute all charges, both multiple counts of the same offense and multiple violations resulting from the same incident.

The implications of deterrence notions for corrections would be simply to provide uniform, swift application of the punishments prescribed by law. Uniformity of application should result in both maximization of certainty and severity. Where possible the public execution of sentences might enhance the general deterrent effect.

Finally, if the deterrence strategy were to be implemented, there would be a need to involve the behavioral sciences. This would include determining what levels of certainty, severity, and celerity would provide the optimum deterrent level for that proportion of the population which is deterrable. This would first involve identifying this population which would be no small task in itself.

Policy Implications of Incapacitation

The principal theme of incapacitation is to reduce crime by taking the offender off the street so that he or she cannot violate the law again, at least for the period of incarceration. The overall crime rate would be reduced by the amount of crime that the individual would have committed had he or she been at liberty. To implement incapacitative theory it is necessary to ascertain factual guilt and potential dangerousness (i.e., the number of crimes a person is likely to commit).

As yet, no accurate method of predicting dangerousness exists. Many legislatures, however, have adopted statutes prescribing life imprisonment for those convicted as habitual offenders. These statutes use the number of prior convictions as a substitute measure of dangerousness. This set of policies is premised upon the idea that the best predictor of future behavior is previous behavior.[8]

The legislature operating according to incapacitation assumptions would be required to develop a criminal code with more severe penalties provided for more dangerous criminals. This means that two offenders could receive widely disparate sentences based on the calculations of dangerousness. Punishment is not based on the seriousness of the crime alone, as in retributive justice, but rather on the likelihood of repeating the behavior.

Law enforcement strategy in an incapacitative mode would stress the arrest and pretrial incarceration of offenders to remove them from society. This approach may require substantial expansion of pretrial detention centers. The central theme is that crime is assumed to be reduced by the incarceration of the offender for at least some period.

The courts, operating under the incapacitation model, would stress pretrial confinement and limitations on bail release. If it is assumed that those arrested by police are guilty, then a long period of confinement prior to the actual finding of guilt is not a problem and may serve to reduce crime through incapacitation. This situation bears a strong resemblance to the description of lower court processing provided by Feeley (1979) where misdemeanor defendants were routinely sentenced to time served prior to trial.

If the legal principle of "innocent until proven guilty" is to be honored in an incapacitative system then it would be necessary to have a speedy determination of guilt and dangerousness. This is important because the incarceration of innocent people would be counterproductive to incapacitation in two ways: (a) innocent people cannot be restrained from the commission of further crimes since they did not commit a crime to begin with; and, (b) scarce jail or prison space misused by holding innocent people would mean that these resources that could serve incapacitative purposes would be wasted. The

[8]There are substantial problems with this methodology especially concerning the length of time between offenses and the types of offenses that might be counted towards an offender's total. Under some habitual felon statutes; it would be possible to incarcerate someone as an habitual offender who committed car theft (joyriding) at age 16, larceny at 20 (shoplifting), and assault at age 26 (spouse abuse). The time between the events and the differing nature of the felonies make this a difficult case for the long term imprisonment called for in habitual offender laws.

speedy determination of guilt and dangerousness would help to eliminate these problems but might require additional resources to eradicate the backlog of cases that exists in most jurisdictions.

Correctional policies would be severely limited by adherence to incapacitation. Prisons would be large warehouses with little purpose but to hold inmates securely until they are scheduled to be released. Since there would be no effort to reform offenders the prison could concentrate upon that which it is described as having done well in the past, namely incapacitate (Fogel, 1975; Martinson, 1974).

Incapacitation does not imply that all prisoners would need to be housed in expensive maximum security facilities. Instead, the determination of dangerousness would also include a systematic classification process based upon the level of the crime committed. The classification would then indicate whether a particular offender would be best held in a maximum, medium, or minimum security facility. This policy should make the corrections function as cost effective as possible. Parole and other forms of early release such as halfway houses and work furloughs would be eliminated since they detract from incapacitation. Because this may cause some difficulties for control of prisoners it would be necessary to develop other mechanisms to influence the conduct of those incarcerated (e.g., the limitation of privileges).

The social scientist would play an important role in the application of incapacitative theory. The main focus would be the creation of a mechanism for the determination of dangerousness of convicted offenders, a major challenge that might prove quite difficult to accomplish.

Policy Implications for Rehabilitation

Regardless of the form that rehabilitation takes (psychological, physiological, and vocational), the prerequisite for such rehabilitation is the presence of problematic behavior, in this case, crime. Rehabilitation cannot logically occur unless there is a behavior to be modified, conditioned out, substituted for, or in some way eliminated. In the strictest sense criminal intent is irrelevant to the concern for changing behavior[9] unless rehabilitation is defined as it was by early reformers such as Wines (1910). These early proponents of rehabilitation saw it as a form of moral cure as opposed to the modern, late twentieth century conception of rehabilitation as the scientific manipulation of the individual or his environment for the purpose of controlling behavior. Finally, for rehabilitation to occur rehabilitative experts must possess the capacity to change the problematic behavior. Without the knowledge of how to change behavior, rehabilitation attempts cannot succeed.

If rehabilitation as a crime control strategy were to be pursued as the exclusive societal means of dealing with crime there are a number of reforms which would have to be initiated by legislatures. First of all, our system of criminal law which assumes free will and individual responsibility would have to be modified such that punishments as threats for compliance would be eliminated. Indeterminate treatment facilities and policies would be substituted for institutions designed to punish. This would require substantial expenditures for construction of treatment complexes, many additional highly trained personnel, and sophisticated multidisciplinary research on criminal etiology and treatment. Of special importance would be sufficient funding for thorough monitoring and evaluation of all treatment programs.

The major change which would seem mandated for law enforcement would be to provide more sophisticated training in psychology, sociology, and counseling. Since so much of the law enforcement role involves some form of crisis intervention and dealing with emotionally distraught individuals, the rehabilitation model seems to suggest that the development of clinical skills and sensitivity would be highly desirable.

At the adjudication stage, there would be a major focus on the valid determination of criminal guilt, in the *actus reas* sense, and on assigning proper sentences in order to achieve rehabilitative goals. In order to achieve this latter goal the following three needs should be addressed. First, better quality presentence information would be needed in order to achieve the best individually directed program. Second, judges need to place greater reliance on clinical practitioners for diagnosis so that sentences would be conducive to meeting rehabilitation goals. Finally, juries would be removed from sentencing decisions in order to minimize emotional responses to the criminal in ways which are probably dysfunctional to rehabilitation.

In the corrections stage, where true rehabilitation would take place, a number of recommendations could also be in order. Punishment, as it is traditionally used, must be taken out of the system. This is not to say that in behavior modification settings, for example, punishments of a relatively mild and short-term duration would not be used. Rather, the use of incarceration as punishment would, by necessity, be eliminated. Next, early diagnosis and intervention, especially for predelinquents and precriminals, must be implemented. Since the focus of treatment would be on the individual offender, a great deal more attention must be paid to classification of offenders. A broad spectrum of programs would be needed. Individuals would also be sentenced to programs on an indeterminate basis so that correctional experts could make determinations of rehabilitative progress. Given the need for

[9]Intent to violate the law (*mens rea)* and/or the knowledge that society generally considers the prohibited behavior to be wrong are of no concern since free will is not assumed. Regardless of whether choice may be relevant, a good example being the civil disobedient (who purposefully violates a law to protest either the unjust nature of the law itself or the unjust nature of some other policy supported by government action), an individual can be rehabilitated or have his or her behavior modified to conform to a set of standards. This can occur even though he or she may not agree with those standards. It is in the area of control of human behavior that important ethical questions emerge. These issues, however, are beyond the scope of the present analysis.

individualized treatment and the expense associated with such an approach, it will also be necessary to make maximum use of community-based treatment programs. Continued and expanded use of parole and halfway houses as a means of reintegrating offenders into the community would further facilitate rehabilitative success. For those for whom there is no hope of successful treatment, it is likely that a humane form of total incapacitation would be recommended.

The largest burden for a rehabilitation strategy would be placed on the behavioral scientists. These experts would be needed to constantly monitor the system, and, through vigorous research efforts, attempt to provide answers to basic questions which have gone unanswered for generations. These questions include: "Why do individuals commit crimes?" and "How can we change their behavior?"

Incompatible Elements of Crime Control Theories

The four crime control theories discussed above are inconsistent with one another and the policies that logically derive from these theories lead in different directions. The conflicts among the theories can be grouped into two categories. The first is based on the central discrepancy between rehabilitation and the three other approaches: deterrence, incapacitation, and retribution. This could be described as the desire to help offenders versus the desire to harm. Rehabilitation aims to help the criminal overcome the problems (social, medical, etc.) that led them to a violation of the law. Some scholars, however, argue that rehabilitation is punishment like any other, but it is at least not intended to be harmful to the offender.[10]

In contrast, deterrence, incapacitation, and retribution have the same underlying orientation: to harm the criminal. This punishment is carried out either to protect society (deterrence and incapacitation) or to provide just deserts to the offender. In each case though, the intention is to hurt the offender in order to achieve some purpose.

These two orientations toward offenders, help versus harm, are clearly incompatible. Ignoring this incompatibility our criminal justice system attempts to achieve these seemingly opposing objectives simultaneously. Perhaps this is one of the reasons that rehabilitation has never been implemented on any large scale (Fogel, 1975).

The obvious conflict between rehabilitation and the other theories tends to mask more subtle but nonetheless important differences among incapacitation, deterrence, and retribution. While deterrence and incapacitation both suggest that the offender should be punished to help society, the reasons underlying the sanction are different. Deterrence, either general or specific, uses the sanction as an example for the public or the individual offender, so that they will be dissuaded from criminal activities. Incapacitation punishes to prevent the offender from committing additional crimes during the period of confinement.

The real similarity between deterrence and incapacitation is that they both seek to help society by harming the criminal. This orientation is quite different from the purpose of retribution which seeks to harm offenders because they deserve it for violating the law. Retribution justifies punishment even if it does not reduce crime by deterrent or incapacitative effects. The extent of this punishment is strictly limited under a retributive model to that which is proportional to the harm of the offense. This proportionality principle is not required for either incapacitation or deterrence.

Dysfunctional Policies

Within the criminal justice system there are a number of policies which have the manifest function of making the system work more effectively or efficiently. The results, however, may be only a minimal level of functioning sufficient to deal with the constant volume of cases which must be processed. While plea bargaining allows the understaffed and overworked system to continue functioning, the latent consequences are pressures contrary to the expressed goals of all four crime control strategies discussed.

Relative to retribution, plea bargaining allows the guilty to escape with a punishment not comensurate in severity to the harm they have wrought. Assuming deterrence is the goal, if punishments set by statute are sufficient in severity to deter most potential offenders, then plea bargaining serves to dilute deterrence by substituting a less severe punishment. In addition, plea bargaining greatly decreases the certainty that an individual will receive the statutorily prescribed punishment. The goal of incapacitation is also diminished since plea bargaining generally results in incarceration for a lesser period of time as the individual is pleading guilty to a lesser offense. Finally, as they currently operate, plea-bargained outcomes are potentially detrimental to rehabilitative goals. If sentencing relies on the assumption that an individual is guilty of one offense when another was actually committed, this may prohibit the individual from being placed in a situation most likely to meet rehabilitative needs, such as a drug or alcoholism rehabilitation program at a state prison. Such programs generally are not accessible to misdemeanants by virtue of their location.

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[10]C.S. Lewis (1948) eloquently made this point in the following way:

> They are not punishing, not inflicting, only healing. But do not let us be deceived by a name. To be taken without consent from my home and friends; to lose my liberty; to undergo all those assaults on my personality which modern psychotherapy knows how to deliver; to be remade after some pattern of 'normality' hatched in a Viennese laboratory to which I never professed allegiance; to know that this process will never end until my captors have succeeded or I grow wise enough to cheat them with apparent success—who cares whether this is called punishment or not. (p. 11)

Other problematic policies which seem to be counterproductive to all crime control goals are the failure to prosecute multiple counts of the same offense and multiple offenses, and the stubborn insistence of the system on attempting to enforce unpopular laws concerning victimless crimes. The failure to deal with multiple counts or multiple offenses acts to dilute any of the goals of punishment strategies and the failure to recognize total offense patterns seems a prerequisite to successful rehabilitative attempts. The continued enforcement of unpopular laws causes an erosion of respect and support for the criminal justice system, and at the same time probably creates more crime than it prevents or deters.

Conclusion

The policies which were logically derived to attain the goals specified by these four major crime control philosophies have been found to be contrary and counterproductive if implemented simultaneously. The simultaneous implementation of counterproductive policies within our criminal justice system has been the product of the past pursuit of incompatible goals. Also, policies were identified which seem to have no connection to any of these strategies and which result in the general failure to attain any of the four goals commonly recognized by the system in its effort to control crime.

It seems apparent that it will not be possible to attain success using any of these four strategies until a decision is made to pursue only one goal and consistently implement policy to that end. Undoubtedly a substantial amount of the fragmentation, discretion, and ineffectiveness which characterize the operation of the criminal justice system could be eliminated with such an approach.

Authors' Note

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