

# Crime up, punishment down

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by ERNEST Van Den Haag

Some acts, although harmful to any society that wishes to secure the life and liberty of its members, may yet seem advantageous to individuals.

Therefore, criminal laws must proclaim these acts to be wrong and threaten punishment to those who commit them.

Courts distribute the threatened penalties to persons they find guilty of having committed the acts the law forbids.

If the laws prohibiting acts such as murder are morally justified, so is the punishment of those who break them—provided that the punishment is effective in reducing lawbreaking.

THE TEMPTATION to do what is forbidden by law has always been with us. We were expelled from Paradise because we succumbed to it. In Tolstoy's words, "The seeds of every crime are in each of us."

The threats of the law are needed to prevent them flowering, to control crime, to enforce rules indispensable to moral and to social life.

We may be tempted to defy natural laws, too, but the law of gravity enforces itself by defeating us if we defy it. However, unless we are punished, we can defy human laws and profit from our defiance.

Therefore, threats of punishment must be attached to legal prohibitions. Like promises, these threats remain credible only if they are carried out. And unless they are credible, they cannot be effective.

THE PUNISHMENT of lawbreakers may gratify the vindictiveness of victims and perhaps of those who, although tempted, restrained themselves from breaking the laws.

Indeed, legal punishment may serve to prevent them from seeking revenge on their own.

But above all, punishment is indispensable to make the threats of the law credible and thereby to deter others from violating the law as the punished lawbreaker did. Without actual punishment, legal threats would amount to bluffs, crime would pay.

ONE REASON the crime rate is currently rising is that so few offenders are punished—less than one per cent of all crimes lead to prison terms—

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that crime does pay for many people. However, legal threats, if they remain credible by being carried out as promised, deter most people, most of the time, from doing what the law prohibits.

It is possible that additional people might be deterred by still harsher or more certain punishment, but we prefer tolerating more burglaries to cutting off the head of a third-time burglar, as is done in some countries such as Yemen, Saudi Arabia and Libya.

Most of us do not seriously entertain the criminal opportunities offered by life, let alone deliberately weight the threats of the law against the possible advantages of crime. We have absorbed the laws' prohibitions and the moral norms on which they rest through the socialization process that is part of normal growing up. We don't consider committing crimes because we have learned to feel that they are morally wrong.

THE LONG-STANDING and effective threat of punishment contributed to our automatic rejection of criminal opportunities as morally acceptable. "Some men," the English Judge J.F. Stephen wrote, "probably abstain from murder because they fear . . . that they would be hanged. Hundreds of thousands abstain from it because they regard it with horror. One reason they regard it with horror is that murderers are hanged."

They are not hanged any longer, whether because we regard the life of the victim as too cheap to make the murderer pay with his, or that of the murderer as too precious to forfeit. The murder rate—about 100 annually in the United States—certainly seems high.

LATELY, SOME very persuasive statistical evidence on the deterrent effect of capital punishment has been presented.

For example, University of Chicago Prof. Isaac Ehrlich, after an elaborate statistical analysis, concluded that one more execution per year during the period 1953-59 would have probably deterred an average of seven or eight murders per year.

It seems that, by failing to execute a convicted murderer, we may risk failing to prevent other murders that might have been prevented by the execution. The risk strongly argues in favor of the death penalty.

THE SIZE of the threatened punishment and the probability of suffering it are only two among many influences that deter us from crime.

The effect of legal threats differs, depending on personality and social situation; thus the perception of the threat and the intensity of the desire for doing what the law proclaims to be wrong will differ from person to person.

Even the strongest threat will not deter some persons; therefore, the threat of punishment, while it controls crime, cannot eliminate it. Offenders already guilty of crimes obviously have not been deterred. Among them, the proportion of people who cannot be deterred at all may be high.

However, most people are deterred. Society could not function at all if the law did not directly and indirectly deter them from doing what it prohibits, whether it be something universally regarded as evil—a murder—or something prohibited to secure some practical good, such as exceeding the speed limit, or practicing medicine without a license.

The evidence, statistical and experimental, shows clearly that a higher probability of severe punishment effectively reduces crime rates. In one experiment of mine, for example, the experimenters found that a credible threat of punishment reduced cheating among college students by two-thirds, but moral education was ineffective.

WHETHER THE CRIMINAL potential that more or less strongly inheres in all of us is activated depends on external as well as internal factors. Some people would become criminals under nearly any circumstances; they are internally driven to defy social rules.

The threat of punishment is thus only one of many factors influencing crime rates. But threats can be more easily controlled than, say, family dis-

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integration, which contributes importantly to high crime rates.

Some of the social changes through which improvement had been expected have had no discernible effects on crime rates. Poverty and ignorance often have been blamed for crime. However, only 11 per cent of all families now fall below the poverty line compared to 50 per cent in 1920.

Yet the crime rate has risen. Education, too, has greatly increased, as has psychiatric care, but the crime rate has risen even more.

ON THE OTHER hand, rates of punishment have decreased.

Between 1960 and 1970, the crime rate (per 100,000 people) rose 144 per cent; the arrest rate did not keep pace—it rose only 31 per cent.

And while 117 persons were in prison per 100,000 inhabitants in 1960, only 96 were in 1970. In other words, while crime rates went up, punishment rates went down.

The decline in punishment occurred in the face of accumulating scientific evidence (by Isaac Ehrlich and others) which shows (contrary to what had been believed among criminologists until about 10 years ago) that swift, certain and reasonably severe punishment can significantly reduce crime rates.

WHY, DESPITE rising crime rates, are convictions hard to obtain? Why are courts lenient, despite the fact that 50 per cent of all violent crimes are committed by persons out on probation, parole or bail?

One reason is that we have long accepted the generous idea that offenders are misguided or sick and could—therefore—be rehabilitated rather than punished.

But no effective ways of rehabilitating offenders have been discovered, either in this country or any other. Whatever the merit of various humanitarian programs, none has led to lower recidivism rates than occur in their absence.

Further, the evidence shows that the proportion of offenders who suffer from psychic impairment is no higher than that of non-offenders in the same socio-economic group.

The conclusion is inescapable that by making punishment as uncertain, rare and mild as we have, we have licensed crime.

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