

When the inevitable happens—rising, not declining, crime rates—what to do?

For two decades crime rates, particularly for violent crimes, have been declining across the globe. Homicide rates, the best-measured violent crime, are down by 50% or more in many Western European countries and in the US. The crime drop is not limited to wealthy western countries. Over the past 20 years the homicide rate in large numbers of developing countries has declined by two-thirds or more.

It is hard to overstate the benefits of the crime drop, particularly in violent crime—innumerable lives have been saved and law-abiding people, particularly in the most disadvantaged, high crime neighborhoods, can now walk the streets without fear of being robbed or assaulted.

However, just like stock market trends, trends in crime rates are not immutable. At some point, possibly in the not too distant future, the crime drop will reverse itself in Europe, the US and elsewhere and we will move into an era of rising, not falling, crime rates. So what should policy makers do, or at least what does research suggest they do when crime rates start rising? Evidence-based crime policy must be grounded in the recognition that the response should have two arms: one involving resources outside the criminal justice system; another involving the resources of the criminal justice system.

Research tell us that crime is, in part, the product of forces that are far beyond the reach of the criminal justice system. Consequently, mobilization of resources outside of the criminal justice system should be an integral part of the crime prevention strategies of all countries regardless of the direction of crime trends. Three responses of this type are particularly important.

One was the topic of much deserved attention at last year's symposium—investing more in early childhood enrichment programs targeted at high risk children. There is much evidence of the effectiveness of these programs in reducing the crime and delinquency of the targeted children in their adolescence and beyond. The pay-off, however, takes a decade or more to be realized.

Another concerns the drug-crime nexus. A recent Council of Europe study reported that 20% of prisoners in Europe were incarcerated for drug offenses and that lifetime prevalence of use of drugs such as heroin and cocaine were 40% or more among Western European prisoners. In the US about 20% of prisoners report committing crimes to get money for drugs. Greater investment in drug treatment will reduce the number of people who commit crimes in order to support drug habits.

The third concerns the mental illness-crime nexus. Mental illness is a precipitating factor in many crimes, sometime horrific, as in the mass shooting at the elementary school in Sandy Hook Connecticut, but mostly minor. There are no easy solutions to this problem but one clearly bad option is turning prisons into substitutes for

mental hospitals. 50% or more of prisoners in many countries have diagnosed mental disorders. In the US jails and prisons, not mental hospitals, hold the largest institutionalized population of the mentally ill. We need to provide better mental health services to those who find their way into the criminal justice system, but the focus should be on keeping people struggling with mental health issues out of jail or prison unless they pose a serious threat to public safety.

Notwithstanding the importance of these three non-criminal justice policy responses, the focus of my remarks today will be on the criminal justice response particularly as it pertains to the use of prisons and police. My focus on these institutions reflects three realities. First, early childhood enrichment programs and drug and mental health treatment can mute but not avert the inevitable crime trend reversal. Second, prisons and policing will necessarily be the lead institutions in the criminal justice policy response. Third, the way police and prisons are used will be critical to the effectiveness and efficiency of the response both with regard to crime prevention and the equitable dispensing of justice.

My remarks today particularly as they pertain to imprisonment are heavily informed by the policies of my own country, the United States. Regarding the use of incarceration in the US, I suspect that most people in the audience know that the US is an outlier. The US incarceration rate, for example, is seven times higher than combined rate for the Western European democracies, and with 5% of the world's population, the US accounts for nearly 25% of the world's total prison population. Still the US experience with the use of imprisonment as an instrument for controlling crimes has lessons that transcend national borders. I say this for two reasons. First, over the past decade imprisonment rates have risen, in some cases substantially, elsewhere in the world. Second, it is important that we understand why US policies were ineffective in preventing crime to avoid repeating the mistakes not only in the US but elsewhere around the world.

More than 250 years ago the Enlightenment philosopher Cesare Beccaria admonished that "It is better to prevent crimes than punish them." The U.S. response to rising crime rates from the 1960s through the 1980s was predicated on two faulty premises that ignored Beccaria's warning:

The first was that sending more people to prison for longer periods of time was an effective way to prevent crime and the second was that the police were impotent to prevent crime.

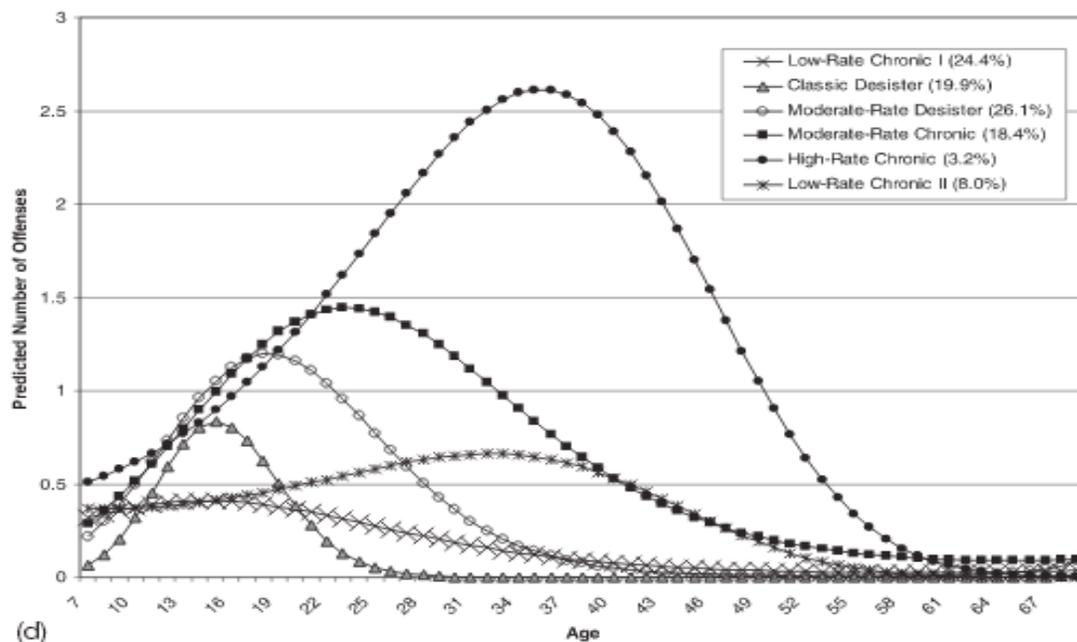
Over the past 5 years I have completed a number of reviews of the literature on deterrence and the crime prevention effect of imprisonment. Four important conclusions about the crime prevention effectiveness of criminal penalties have emerged from these reviews. Each should be regarded as provisional, because new evidence may emerge that requires their modification, but in each case it is my judgment that the evidence is sufficiently vetted and broad-based to base policy on.

Imprisonment may reduce crime by the physical isolation of offenders. My first key conclusion concerns preventing crime by incapacitation.

American-style incapacitation is an inefficient method of crime control and also extremely unjust. A linchpin of US sentencing policy has been the imposition of lengthy prison sentences on repeat offenders. The reasoning was that repeat offenders were also high rate habitual offenders whose offenses could be averted by their incapacitation. This reasoning is faulty because it ignores two important facts about crime.

The first is that nature's best cure for crime is getting old. The second is the extreme skew in offending.

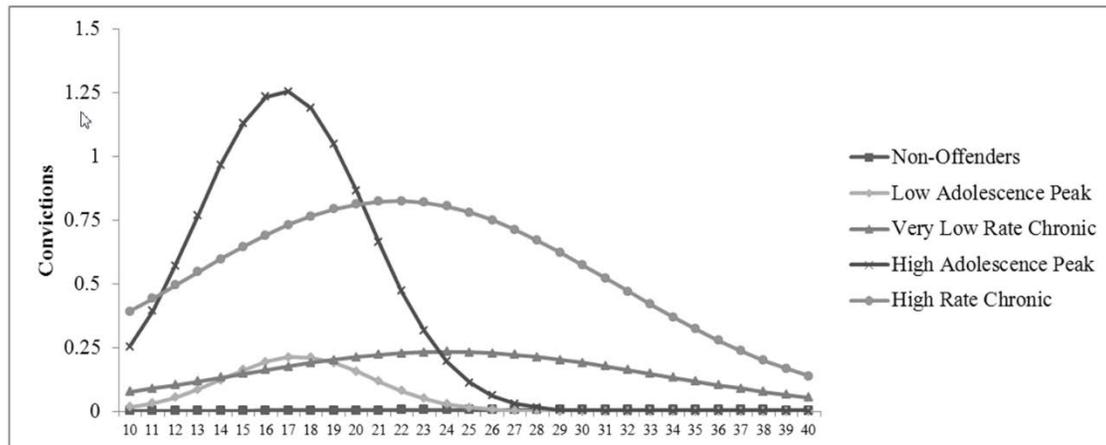
I'll illustrate the first point with applications of group-based trajectory modeling to two well-known data sets with very long-term follow-up periods on their subjects. The first is the Glueck data set on which John Laub and Rob Sampson have written extensively. This sample is composed of 500 males from the Boston area born in the 1920s who had been incarcerated in a juvenile facility during their youth. An analysis of these data conducted by Laub and Sampson conducted in conjunction with Elaine Eggeston's identified the 6 trajectories shown in this slide.



For our purposes here I make two observations. First, the trajectories are very heterogeneous despite the fact that all the individuals in the study had a history of juvenile delinquency. This finding makes clear that there is not a single age-crime curve. All trajectories, however, rise and then fall. The peak age of offending, as measured by arrest, tends to increase with overall frequency of offending but even for the high rate chronic group, rate of offending begins a steep decline at about 35.

The second analysis involves an application of trajectory modeling to another well-known data set assembled by David Farrington. This data is composed of about 400 British males born in the 1950s. In this application, which was conducted by David Farrington, Alex Piquero, and Wesley Jennings, 5 groups were identified.

Figure 5.4
Ages 10-40 Trajectories



As with the Glueck data the trajectories vary greatly but here the peak age of offending, as measured by conviction is even earlier than in the Glueck data—in no case is it greater than age 25.

The strong linkage between age and crime implies that lengthy sentences are a very inefficient way of preventing crime by incapacitation. Aging is a necessary accompaniment to serving a lengthy sentence and the age-crime linkage implies that recidivism risk declines with age. For example, a US Bureau of Justice Statistics study finds that released prisoners who were 45 years old or older had a three-year recidivism rate that was 40 percent lower than their 18- to 24-year-old counterparts. The broad based application of lengthy sentences in the US is turning US prisons into old age homes. Since 1991, the percentage of prisoners over 45 has nearly tripled from 10.9% to 27.4%.

The second fact concerns the extreme skew in the rate of offending. The extreme skew in offending is another source of inefficiency, as well injustice, in US style repeat offenders laws. Only a small fraction of repeat offenders are actually high rate offenders.

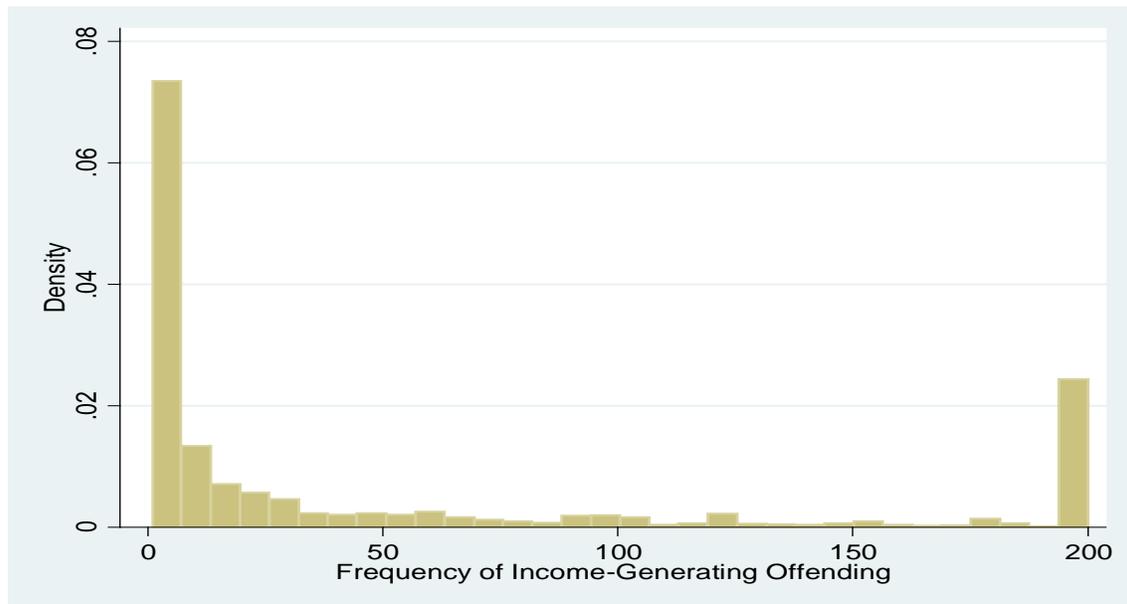
This point is reflected in the prior slides. In the Glueck data the high rate chronic group was estimated to only account for 3.2% of the sampled population. In the British data the high rate chronic group was estimated to compose only 2% of the population sampled in that study.

The small size of the chronic group is reflective of an important observation made by Marvin Wolfgang and colleagues more than 50 years ago in their seminal study of

delinquency in a birth cohort in which they found that 6% of the cohort accounted for about 50% of the total arrests.

This concentration is mirrored in the British data—8% of the individuals account for 53% of cohort’s total convictions.

It is also mirrored in a contemporary data set called the Pathways to Desistance study assembled by Ed Mulvey and colleagues. This remarkable US-based data set tracks about 1400 individuals who had committed serious crimes as juveniles. Only 2 to 5% of individuals account for 50% of self-reported crime depending on type of crime and the handing of individuals with extremely high rates of self-reported offending.



This histogram is based on the Pathways data and shows the distribution across study members of number of income generating crimes committed. It is a dramatic example of the skew in offending. Of special interest is the small group of individuals who commit 200 or more crimes. High rate offenders such as these are easy to identify after the fact.

However, historically efforts to identify high rate offenders before the fact have all ended in failure or even worse. Again another example from the US illustrates this point. In the 1990s there was a panic about the coming wave of juvenile super predators. The assumption was that super-predators could be identified by the fact of their youthful violence. This led to large numbers of states passing statutes that waved juveniles 14 years old or younger who had committed serious violent crimes to adult court. Many were sentenced to life in prison. Yet the coming age of super-predators upon which these laws were based never materialized.

We are presently in the era of “big data” and much touted statistical methods called machine learning that are proffered as providing a reliable and accurate means for predicting all sorts of outcomes from breakfast cereal purchases to disease outbreaks. A

few researchers are just now turning their attention to using these methods to identify high-rate, violent offenders.

Are these methods capable of identifying the high rate offenders early enough in their criminal careers to avert many of their crimes by incapacitation? This question could be subject of my entire address. Instead I'll limit myself to making two points. First, no amount of computing power and technical elaboration can change the reality that there is a large dose of unpredictability in human behavior. Second, prediction is more than a technocratic exercise. It requires value judgments about the relative cost of false positives and false negatives. In this context false positives are persons who are predicted to be dangerous but who in fact are not. And false negatives are persons who are predicted not to be dangerous who in fact are dangerous. Until a consensus is reached on their appropriate relative weighting, policy must be grounded in the recognition that our capacities for making reliable and valid predictions are modest.

Just as important is the recognition that the current operation of the CJS is probably already doing a good job at capturing and incarcerating high rate offenders. This follows from what Al Blumstein and Jose Cacho-Canala call 'stochastic selectivity.' Stochastic selectivity formalizes the observation that unless high rate offenders are extremely skillful in avoiding apprehension they will be disproportionately represented in prison relative to their representation in the population of offenders who are not incarcerated. This is because they put themselves at risk of apprehension so much more frequently than lower rate offenders. Blumstein and Canala demonstrate that stochastic selectivity is an extremely effective way of incapacitating high rate offenders without special policy intervention.

Criminologists have long drawn a distinction between specific deterrence, which refers to how the experience of punishment might affect recidivism and general deterrence which refers to how the threat of punishment might affect criminal behavior in the public writ large.

Conclusion 2 concerns specific deterrence. Implicit in the label is the assumption that experiencing punishment will have a chastening effect. There are, however, many sound reasons for predicting that the experience of punishment, in particular, imprisonment may exacerbate, not reduce, recidivism—for example, prisons may themselves be schools for crime. In fact there is no evidence of the chastening effect. In 2009 Frank Cullen, Cheryl Jonson, and I published a review of evidence on the effect of imprisonment on reoffending. Based on reviews of this evidence, which included a sizable number of studies based on data from outside the US, we concluded that

“... compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement. We caution that this assessment is not sufficiently firm to guide policy, with the exception that it calls into question wild claims that imprisonment has strong specific deterrent effects.”

The next two conclusions pertain to general deterrence. General deterrence refers to how the possibility of imprisonment may cause some to be deterred from committing crimes in the first place. Thus even if the actual experience of imprisonment does not reduce the recidivism of those who are actually punished, their punishment may serve as a warning to others of the consequences of law breaking and in so doing deter crime in the general public—thus, the label general deterrence. Does the threat of prison deter? Here it is important to distinguish between the certainty and severity of punishment—a distinction first made more than two centuries ago by Jeremy Bentham and Cesare Beccaria.

Conclusion 3 pertains to the severity punishment. In the context of imprisonment, severity refers to sentence length. Debates about the deterrent effect of severe sentences are commonly posed in terms of questions such as: Will a 10 year sentence deter armed robbery? This is the wrong framing of the question because it does not specify the alternative. From a policy perspective the correct framing is whether a 10 year sentence will serve as a greater deterrent than an acceptable alternative—say a 5 year sentence?

Viewing the findings of research on severity effects in their totality, there is evidence suggesting that short sentences may be a deterrent but a consistent finding is that increases in already lengthy sentences produces at best a very modest deterrent effect whose crime prevention benefit falls way short of the social and economic costs that are incurred.

Conclusion 4 pertains to the certainty of punishment. Conventional wisdom is that certainty of punishment, not the severity of punishment, is the more effective deterrent. My review of the evidence has led me to a refinement of this conclusion that has very important policy implications.

The certainty of punishment is the product of a series of risks that correspond closely to the functioning of the criminal justice system. It is the product of the risk of apprehension given that a crime is committed, the risk of convictions for those who are apprehended, and the risk of various punishments, including imprisonment, for those who are convicted.

Support for the deterrent effect of certainty of punishment, however, pertains almost exclusively to research related to the certainty of apprehension.

There is no evidence of a deterrent effect of increasing the risk of convictions given apprehension.

And the evidence does not support the proposition underlying mandatory minimum sentencing that increasing the risk of imprisonment given conviction serves as a deterrent.

Consequently, the more precise statement of the certainty principle is:

It is the certainty of apprehension, not the severity of the ensuing consequences, that is the effective deterrent. The most important set of actors affecting certainty of apprehension is the police—absent detection and apprehension, there is no possibility of being charged, convicted or formally sanctioned.

The revised certainty principle has two important policy implications. First, it makes clear the fallacy of claims that harsh punishments deter crime. Second, it places police center stage in preventing it.

This brings me to my recommendations for the criminal justice policy response to the inevitable era of rising crime rates, whenever it might occur. I will begin by reiterating what shouldn't be done—repeating the mistakes of the US over the past three decades.

In 2003 Supreme Court Justice Kennedy made the following observations about imprisonment rates in the US: “Our resources are misspent, our punishments too severe, and are sentences too long.”

This past Fall Attorney General Holder observed: “Too many Americans go to too many prisons for far too long and for no good law enforcement reason.” They're right.

This means that countries shouldn't respond by increasing sentence lengths or passing mandatory minimum sentencing laws of the sort commonly used in the US. Instead we in the US should repeal the ones we have. Still another non-starter is sending more people to prison for drug offenses. In both the US and Europe drug offenders presently compose over 20% of the prison population. We need to find alternative ways of waging the war on drugs—too many low level dealers are going to prison without demonstrable evidence of an effect on drug use.

If sending more people to prison isn't an effective response to the inevitable era of rising crime rates, how should the resources of the criminal justice system be mobilized in response? Here my key recommendation again follows from the revised certainty principle and is likely to be greeted with skepticism at least in some quarters. That recommendation is that the police needed to be strategically mobilized to deter crime from happening in the first place. This needs to be done in a way that does not violate the civil liberties of the citizens that the police are supposed to be protecting. The objective is to create a safe democratic society not a safe police state. Countries around the world, including in Europe during the lifetimes of most people in this audience, have experienced the tyranny of a police state. We need to better understand how to mobilize the crime prevention capacities of the police in a way that is consistent with the values of a democratic society.

Robert Solow, Cynthia Lum and I recently completed a paper called “Deterrence, Police, and Criminal Opportunities.” I'll summarize several of our key conclusions pertaining to the strategic use of police in a democratic society.

The term “crime hot spot” describes a striking empirical regularity uncovered by Larry Sherman, David Wesiburd and colleagues. They documented that even in high crime communities, most crime is concentrated at discrete locations such as problem bars. This gave rise to what has come to be called “hot spots” policing, a police deployment tactic in which police presence is focused on these hot spots. Randomized experiments conducted by Larry, David and colleagues have convincingly demonstrated that hot spots policing is effective in preventing not just displacing crime.

Hot spots policing is an example of what I describe as police acting in their sentinel role. In my recent writing on deterrence I distinguish between two distinct crime prevention functions of the police—their role as apprehension agents and their role as sentinels. The apprehension role kicks in when deterrence fails and a crime is perpetrated.

In this role police attempt to apprehend the perpetrator. In their sentinel role the police are acting, in the parlance of Cohen and Felson , as “capable guardians.”

Capable guardians are persons whose presence discourages a motivated offender from taking advantage of a criminal opportunity. The distinction between the sentinel and apprehension agent roles is important because in their sentinel roles police are deterring crime from happening in the first place—if no crime occurs, then there is no need to make an arrest. This is the best outcome because, as Beccaria reminds us, it averts the cost of both crime and the punishment.

The apprehension agent and sentinel role are closely intertwined. For example, if police are ineffective in their role as apprehension agents their credibility as sentinels is undermined. Notwithstanding, convincing evidence of police effectiveness in preventing crime is primarily in their role as sentinels not in their role as apprehension agents. As already noted, hot spots policing is an example of police acting in their sentinel role, a role that has the potential of averting the social costs of both crime and arrest.

Proactive policing tactics such as hot spots policing, however, have potential downside consequences. Stop, question, and frisk which, as the label implies, takes the form of police stopping, questioning, and possibly frisking persons that police deem suspicious—often young, minority men. Stop and frisk has been the source of enormous controversy not only in New York City but in other places around the world where it is practiced in various forms. The practice has alienated communities and clogged the courts with trivial cases.

How then should proactive policing methods be conducted if police are to be effective in helping to reverse a trend of rising crime rates? The police have to have more tricks in their sentinel bags than just stop and frisk. They need to be armed with problem-solving skills that will facilitate and strengthen their sentinel role in three ways. First, and most importantly, police organizations must shift their metric of success from makings arrests to preventing crime from happening in the first place. Every time they make an arrest police should ask themselves whether there is something they could have done to prevent the crime that precipitated the arrest. Second, police need to improve relations with

community members in ways that increase the willingness of citizens to report crimes and their perpetrators if known. Third, the police need to mobilize community members themselves to be surrogate sentinels who will call on the police when necessary to act in their official capacity as either sentinels or arrest agents. Success in the second two functions requires that the police be trusted not feared.

The crime drop of the past two decades has brought us incalculable benefits in terms of lives saved, freedom to enjoy public spaces and the revitalization of cities. In some countries, however, including my own, the costs to society from incarceration and aggressive policing have also been enormously high both in terms of economic cost and human suffering. In my address today I have tried to lay out policies that are known to be effective in preventing in crime in a democratic society. These include the effective mobilization of resources from both within and outside of the criminal justice system. They are intended to serve as an alternative to policies that warehouse more people in prison to no effective end in terms of crime prevention and are also deeply destructive of democratic values.