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Criminological Highlights

Volume 2, Number 1
December 1998

Criminological Highlights is produced approximately six times a year by the Centre of Criminology, University of Toronto and is designed to provide an accessible look at some of the more interesting criminological research that is being published.

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Contents

- The first three pages contain "headline" that summarizes the important points of the article. This is followed by a single paragraph "conclusion" on what one might learn from the paper. **We suggest that the busy user of this service should begin by reading the headlines** and any of the "conclusions" that seem interesting.

- Next comes an 8-page section **--** the core of this document -- where we have provided one-page summaries of each paper.

- Copies of actual papers can be obtained from your own library or from the Centre of Criminology (at cost).

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The production of *Criminological Highlights* is assisted by contributions from the Department of Justice, Canada, and the Correctional Service of Canada.

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Crime and punishment: The impact of punishment

Don't be fooled: Judges are not a major cause of crime

In a report which received a lot of media attention, statistics can be found suggesting that more "punishment" is associated with "less crime." This is true only if one is willing to be selective in which statistics one looks at, and if one defines "punishment" in terms of the likelihood that someone who offends (and may or may not be apprehended and charged) will be punished by a court (i.e., *not* the likelihood that a convicted offender will receive a harsh penalty). In other words, this report presents no convincing evidence that increasing state imposed penalties will reduce crime. To quote the authors, "In England, correlations between punishment *severity* and crime trends were mixed. Roughly half were positive [more punishment, more crime] and half were negative [more punishment, less crime].... In the United States correlations between punishment *severity* and crime trends were mixed. Approximately half were positive and half were negative" (p. 38). Judges are not a major cause of crime. Nor is "punishment" policy. Then how does the English *Sunday Times* manage to conclude that "The report appears to be a vindication of tough American policies such as "zero tolerance" policing, "three strikes and you're out", which sends repeat offenders to jail for life, and frequent use of custodial sentences." **(See Item 1)**

Selective incapacitation is found, one more time, to be ineffective and wasteful of resources

In this study, as in many others, the "obvious" strategy of reducing crime by incapacitating serious offenders is shown to have two ineffective effects: people who would not otherwise commit serious crimes are kept in prison and people who are not predicted to commit serious offences are released. Mechanical approaches to incapacitation -- such as three strikes laws -- do not, therefore, reduce crime and, in fact, waste valuable resources.
(See Item 2)

Determinate sentencing laws (and the abolition of discretionary parole) do not necessarily have any impact on prison populations or levels of crime: They affect the nature and size of the punishments people get for crimes but do not necessarily have any other effects.

"The determinant sentencing laws (DSLs) cannot be blamed for any of the nationwide growth of prison populations, despite many opinions otherwise, and they may even be a moderating force." It appears to be the case that "the two DSLs with sentencing guidelines... and the only two that order prison capacity to be taken into account when setting sentencing levels" are the ones where prison populations were reduced.... [The authors found] little to suggest that DSLs affect crime rates..." (p. 122). The authors note that "for those states considering new DSLs, we conclude that the laws are unlikely to worsen prison overcrowding problems unless they are accompanied by a strong get-tough policy, and lawmakers can use DSLs to limit prison population growth if they so desire. The laws are not likely to affect crime rates appreciably" (p. 123). **(See Item 3)**

Youth justice policy south of our border: Policy and public reactions to it

Juvenile justice in the U.S. is in the midst of major changes. At the moment it is moving in the direction of slow abolition of the juvenile court. There are other options to examine if a distinction between youth and adults is to be maintained.

Juvenile justice programs are in flux in most of the U.S., as well as in Canada, parts of Australia, England, Japan, and South Africa, to name just a few countries. This paper suggests that instead of focusing solely on "where" youth are adjudicated, and whether youth are deemed to be adults or are allowed to remain youth, we should focus more on the type of system we want for particular kinds of offences. Such an approach may be less politically complex and may focus attention more on issues related to desired outcomes.
(See Item 4)

The public wants tougher laws to deal with violent and repeat juvenile offenders, doesn't it? No, not really.

Just because people say that they want to be "tough" on youth crime does not mean that these same people will endorse "tough" strategies. This survey, carried out on a nationally representative sample of Americans, suggests that "tough" federal standards for the youth justice system are not endorsed by the majority of American citizens. We suspect, based on other work (in Canada), that people are more interested in effective proposals. **(See Item 5)**

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Visions of crime: How crime is perceived

People differ on how they view crime: some see crimes as varying in how "morally wrong" each crime is; others tend to see crimes as being equally morally wrong, even when the crimes are quite different from one another. This latter group of people tend to identify themselves as "conservative Protestants."

An identifiable group of people -- who, typically, would be described as fundamentalist Protestants -- view crime in different ways from others. First they see crime, generally, as being more morally wrong than others see it. Second, they tend not differentiate among crimes: All crimes are equally "wrong." Other data suggest that this same group believes that sins (which include crimes, presumably) deserve punishment, and they believe in "punishment as retribution, rather than for deterrence or rehabilitation" (p. 462). "This movement represents a shift away from the previous paradigm of rehabilitation, deterrence, and crime prevention through social programs and it presents lengthy incapacitation of criminals (all of them) as the alternative. This message has an appealing ring for a public weary of crime and skeptical of past liberal rehabilitative efforts, as well as for politicians who are eager to exploit fears of crime and who advocate retributive solutions for the crime problem" (p. 462). "Manifestations of increased punitiveness, such as mandatory sentences... and the 'three strikes and you're out' provisions, can be understood as stemming from the successes of the conservative Protestant social movements, which has operated to form public opinion and to influence lawmaking" (p. 462-3). **(See Item 6)**

Why do unsuccessful policies persist even though they have failed? Probably because the policies are linked to the moral or symbolic role that these policies play. In other words, *failure* of a policy such as being tough on crime or drugs is not necessarily a relevant dimension in understanding the persistence of the policy.

American drug policy (The "War on Drugs") is seen by many observers to be a failure. However, within government circles, the failures of punitive responses to drugs appear to be explained as failures of the political will rather than as approaches which were doomed to failure. The suggestion is made that "more punishment" would be effective if only it were used. Moderates are often trapped in a game of who can "out-tough" the other. Drug use is made out to be a personal, moral weakness. Abstinence is seen as the only legitimate goal and anything less than this is seen to reflect moral weakness. Hence the focus of the drug policy on "dangerous classes" reinforces this view. The problem is that "The power of the drug war paradigm means that discussion of real alternatives rarely occurs" (p. 236). Hence "harm reduction" approaches like those popular in Europe never get much attention. A public health approach would focus largely on discouraging "any use of the most dangerous drugs" and, generally, would focus on reducing harm to society as a whole. Law enforcement "would no longer be the keystone of drug policy but merely an adjunct to generally nonpunitive policy" (p. 239). The authors point out that there are a number of "once avid drug warriors who now reject the prohibition model" (p. 239). Such changes might set the scene for what is necessary: a "major paradigmatic shift." This, they suggest, will only come from pressure from people, not from politicians, and will come if there is pressure to adopt a "politics of reason, care, and collective responsibility" (p. 239).
(See Item 7)

If the U.S. had not successfully banned the (Canadian) Film Board film *Drug Addict,* made with the assistance of the R.C.M.P. in 1946, it is possible that the U.S. might not have successfully entrenched (forever?) its punitive drug policies. The "drug czar" of the time was successful in controlling public access to views that challenged the war on drugs.

The repressive approach to drug problems in the U.S. is not new, nor is opposition to it a new phenomenon. When there has been vocal opposition to a repressive approach, U.S. officials have responded forcefully and successfully to the challenge. A punitive approach has persisted in the U.S. notwithstanding influences from north of the border which could have resulted in different approaches. The banning of a 1946 (Canadian) film board production on drugs was certainly symptomatic of the American approach and may have been important in understanding the persistence of U.S. drug policy. **(See Item 8)**

Don't be fooled: Judges are not a major cause of crime

Beware of simple correlational relationships. It would be easy to show, in any province, that the more judges there are living or working in a town, the more crime takes place. This is likely to be true whether one looks cross-sectionally (i.e., at different places at one point in time) or longitudinally (i.e., looking at the changes in the number of judges and the amount of crime over some period of time at one or more locations). Few, however, would jump to the conclusion that judges cause crime.

This report looks at crime (measured both by victimization surveys and by way of police reports) and the operation of the justice system in the United States and in England and Wales ("England" for short). There are two sets of findings that have received public notice. First, for crimes other than murder, England tends to have rates as high as, or higher than, the United States. There are problems with the comparisons in that different measuring systems have been used, but nevertheless, the conclusion of the report is clear. (The problems with comparisons are described in detail in the methodological sections of the report.) The second finding is that the trends in crime and "punishment" (or the reaction to crime) in the two countries are different. By juxtaposing crime trends and punishment trends in two countries, the obvious question is implied: are crime trends affected by punishment trends? These are not the ideal data to answer this question. Nevertheless, the report raises the question, and in this "review" we will focus, largely, on this issue.

Crime patterns and criminal justice policies have changed in the past two decades in England and in the United States. And they have changed in different directions. The United States has tended to favour intensive criminal justice processing, whereas England has tended to favour more selective prosecution of crime, diverting relatively minor offenders out of the system and attempting, somewhat inconsistently, to develop punishments in the community and to limit the use of imprisonment. Crime patterns have also varied in the two countries. Murder rates in England have been low and unchanged since 1981. American rates look more like a roller coaster: going down in the early 1980s, up in the late 1980s and then down again since 1991. Comparing other specific crime rates across countries is problematic. Looking at robbery, for example, police statistics suggest that firearms were used in 5% of English robberies and 41% of U.S. robberies. Nevertheless, this report does compare the crime levels in these two countries across time and one conclusion appears to have caught the imagination of the mass media. As one of the authors is quoted in news reports as saying, "With rising punitiveness in the U.S., crime rates are falling. In England, there is less punitiveness and crime rates are rising" (London *Telegraph* and Washington *Post*). The data in the report are *not* that simple.

One must be very careful about statements such as the one quoted in the previous paragraph. Let us look at the summary the authors prepared on the issue of the "Justice system's impact on crime" (p. 38): "Negative correlations in England between trends in punishment *risk* and crime trends offer the strongest support for the theory that links falling risk of punishment to rising crime. Specifically, since 1981 the conviction rate fell in England and English crime rates... rose.... Likewise, the incarceration rate fell, and English crime rates... rose...." (p. 38, middle column). Statements such as these would seem to imply that failure to incarcerate people caused crime to rise (see p. 28 for "graphic" evidence that "incarceration rates" fell in England (and went up in the U.S.).

There is more to the term "incarceration rates" than meets the eye. The term "incarceration rate" does not mean the rate at which convicted offenders are put in prison. Thus, before we can compare England and the U.S., a rather simple question needs to be asked: "What do the authors mean by the term *incarceration rate*? They are clear in what they mean, but the full definition is on page 62, in the "Notes on figures 43-48." Incarceration rate turns out to be quite simple for most crimes. It is "the number of incarcerated persons per 1000 *alleged offenders* [which was] obtained by dividing the number of juveniles and adults sentenced to incarceration for the specified crime during the year... by the number of persons committing the crime [taken from police *reports* of crime, whether or not the offender was apprehended]... that year" (emphasis added). Incarceration rates are going "down" in England. But look carefully: in order for a person to be incarcerated, the offender has to be apprehended, and convicted, and, *finally*, sentenced to prison. What if apprehension rates decreased, or conviction rates decreased, but the rate at which convicted offenders went to prison stayed the same? The answer is simple, the "incarceration rate" will go down. The authors present changes in "conviction" rate and, *not surprisingly*, in England they tend to go down (see figures on page 18). Remember, however, that these do not necessarily reflect "failed" prosecutions. These data are "convictions per 1000 offenders" (apprehended or not). Failure to apprehend can lead, obviously, to failure to convict. But so can criminal justice policy. If minor offenders are apprehended but not prosecuted in the courts, and instead are dealt with in the community, there will be a decrease in "convictions" (and, consequently, a decrease in both the "conviction rate" and the "incarceration rate"). Using this type of definition, a successful diversion program -- where many minor offenders are diverted into programs that might, even, reduce recidivism, would lead to a "lower conviction rate" and a "lower incarceration rate."

Do other measures or punitiveness show the same pattern? Let us look at other measures of changes in punitiveness. These are conveniently presented on page 22 of the report. They show essentially *no change* in the likelihood that a convicted offender will be sentenced to incarceration. What they tend to show is that for property offences, the U.S. incarcerates more. But the *court based* incarceration rates -- the *probability that a convicted offender will go to prison* is essentially unchanged. And if one is interested in the "average incarceration sentence imposed on convicted offenders" one finds (page 30) that, if anything, these tended to go up in both countries (or they stayed the same). Finally, the percent of time served "is generally about the same in the U.S. and England" (p. 35) and the changes over time are small and inconsistent (see figures on page 34). So the inferences about "crime going up as punishment risk goes down" have *nothing to do with punishment as meted out by the courts.* If you are interested in sentencing policy, go elsewhere.

Let's go back one more stop: We do not really know what makes up the "conviction" rate. It is obviously partly a function of apprehension rate, and partly decisions to prosecute in the courts, and partly how successful a prosecution is in obtaining a conviction *for that offence*. But clearly the data in England -- higher crime going with "less punitiveness" -- has *nothing* to do with sentencing or sentencing policy.

What about the U.S.? The inference that "increased punitiveness" is associated with lower crime rates is challenged by referring to the authors' own words: "correlations between punishment *severity* and crime trends were mixed (Table 2, p. 39). Approximately half were

positive [more punitiveness, more crime] and half were negative [more punitiveness, less crime]. Moreover, in instances where there were negative correlations, they were often weak. Furthermore... correlations between punishment severity and [victimization] survey crime rates often had a different sign than correlations between severity and police-recorded rates for the same crime. In short, trends in punishment severity had an inconsistent relationship with trends in crime in the U.S." [They then point out that there was some consistency for burglary, but provide no explanation as to why there was "consistency" on this one offence and not others.]

What do these findings mean in the context of general deterrence literature?. Most criminologists would never look to a report such as this one to understand the deterrent impact of criminal justice processing generally, let alone sentencing. Crime is a complex phenomenon and looking at two sets of measures ("crime" measures and "punishment" measures) in isolation of all other factors and then inferring a causal link is just about as logical as suggesting that judges cause crime because there is more crime where there are more judges. There is nothing inherently wrong with the data in this report, just as there would be nothing wrong with counting crime and judges in various parts of Canada and relating the two measures. The manner in which they were obtained and processed is described carefully, largely in the "methodology" section of the report. But one has to read the notes that go with each figure carefully to understand what the data and the analyses mean.

The risk to an offender of committing an offence. Let's look at one final measure -- "Days of incarceration an offender risks serving." Again, the figures showing that these are generally going up in the U.S. and are unchanged or doing down in England are presented on page 36, but the explanation of what these data mean is put on page 63: "'Days of incarceration an offender risks serving' were obtained by multiplying the probability of conviction given an offence... by the probability of incarceration given conviction and by the average number of days served per incarceration sentence..." In other words, let us assume that there are 1000 burglaries in England and that about 60% of these are reported to the police (see page 8) and that the police "record" about 40% of these (page 10). Not everyone gets apprehended. In fact, most do not, and some of these who are apprehended are found not guilty. Some are also diverted into community programs. The result is that there are about 8 burglary convictions per 1000 alleged burglars in England (page 18). About 40% of those convicted (see page 22) are incarcerated. The report suggests that there are only about 2 burglars incarcerated per 1000 alleged burglars (page 28). Those two valiant burglars who make it this far in the process are each sentenced to about 12 months (page 30) and each serves about 6 months (page 32). In other words, for 1000 burglaries, 12 person-months (365 days) are served, the authors argue. Hence, the "days of incarceration a burglar risks serving" is less than one, or roughly 365/1000 days or 0.4 days (p. 36). But this is meaningless since the "days of incarceration a burglar risks serving" largely reflects the fact that most burglars are not apprehended.

When the data are examined like this, it is clear that changes in sentencing are more or less irrelevant. But beware of crafty statistics: this report suggests that in England the "number of months served *per offender*" for murder is 52.2 (or slightly over 4 years) for 1995. Any reasonable, but criminal justice naive person, would think that this means that people only serve a bit more than 4 years for murder. This is wrong. Some offenders are not apprehended;

others are found guilty of other offences. Still others commit suicide after committing murder. But they are part of the calculation of the "number of months served *per offender."* Yet even this figure is somewhat different from the 230 month "incarceration length given on average" (calculated in terms of how long, on average people serve before being released or dying in prison; page 95). Both of these figures ignore one rather important fact, "In England, a life sentence... is mandatory for murder." (p. 59). Those released from prison for homicide served, on average, 13.6 years or 163 months (p. 60).

The bored reader of this report might be interested in looking at the U.S. homicide sentencing calculations in this report. There is a serious problem in U.S. homicides: how does the researcher deal with people who, in fact, do serve life sentences and, therefore, die in prison. For the U.S. data, the authors seem to have considered this problem (p. 56) in their calculations. They estimated the time actually served before death. Thus, it appears that if people lived longer before dying in prison (or presumably before being executed) the "number of months served per offender" in the U.S. would be higher. It does not appear that this is a very useful statistic since, among other things, it would go "down" as the efficiency of capital punishment goes up.

Conclusion. In a report which received a lot of media attention, statistics can be found suggesting that more "punishment" is associated with "less crime." This is true only if one is willing to be selective in which statistics one looks at, and if one defines "punishment" in terms of the likelihood that someone who offends (and may or may not be apprehended and charged) will be punished by a court (i.e., *not* the likelihood that a convicted offender will receive a harsh penalty). In other words, this report presents no convincing evidence that increasing state imposed penalties will reduce crime. To quote the authors, once again, "In England, correlations between punishment *severity* and crime trends were mixed. Roughly half were positive [more punishment, more crime] and half were negative [more punishment, less crime].... In the United States correlations between punishment *severity* and crime trends were mixed. Approximately half were positive and half were negative" (p. 38). Judges are not a major cause of crime. Nor is "punishment" policy. Then how does the English *Sunday Times* manage to conclude that "The report appears to be a vindication of tough American policies such as "zero tolerance" policing, "three strikes and you're out", which sends repeat offenders to jail for life, and frequent use of custodial sentences." Go figure.

Full reference: Langan, Patrick A. and David P. Farrington. *Crime and justice in the United States and in England and Wales, 1981-96.* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (Note: the full text is available on the Internet). Included with *Highlights* is a copy of an "executive summary" and various pages referred to in the text above. Also included: a selection of news articles found on the Internet.

Selective incapacitation is found, one more time, to be ineffective and wasteful of resources

Background. The view that "crime control" interests can be served effectively by locking away in prison those offenders who commit serious violent offences is intuitively attractive. After all, if they are locked up, they cannot commit offences. Hence some argue that incapacitation strategies are "certain" to be effective. In a logical sense, if a person is locked up, that inmate will not be committing offences in the community. The question, however, is whether it is an efficient and sensible strategy.

This study uses New Zealand data to examine the effectiveness of sentencing strategies that differentiate between "serious violent offenders" and "other offenders." In New Zealand, as in many other jurisdictions, a policy was developed to attempt to incapacitate "serious violent offenders." The study looks at 613 offenders who were released from prison in 1986 in New Zealand. They were retrospectively classified as being "serious violent offenders" or "other offenders" on the basis of their offences of conviction. They were then followed after release. The New Zealand "incapacitation" strategy operated largely on the basis of denial of parole.

The results of this study that are most damaging to those who favour an incapacitation strategy for dealing with crime come from an examination of re-offending after release. The study found that "those who would now be classified as serious offenders were no more likely [after release] to receive a further conviction... and were in fact significantly *less likely* to be re-imprisoned..."(p. 713-4). Furthermore, "Of all serious offences committed at offenders' first post-release conviction, 92% were committed by those imprisoned for ordinary offences" (p. 714). Put differently, "30 of the 613 offenders in the sample committed a serious offence within 2.5 years of release from prison, just three of whom were originally imprisoned for an offence of that sort" (p. 714).

Three other incapacitation models were then examined, including a multivariate prediction model. None were very good. Part of the problem is that the "base rate" of serious offending is (thankfully) low. There are few very serious offences committed by anyone. This automatically makes accurate prediction difficult. The accuracy of these prediction models, however, "while improved over present offence based classifications, remains low overall" (p. 720). The models tended to identify many non-serious offenders as "serious offenders." In one model, for example, 26 offenders were accurately identified as being serious offenders, but 271 were identified as serious when in fact they turned out not to be. At the same time 21 people who turned out to be serious offenders were not identified as such. The reason for the failure of the incapacitation in this instance and in other research is easy to understand: "offence specialization is much rarer than commonly thought" (p. 722). In other words, there is not an identifiable group of people who "do" serious offences. Serious offences tend to be committed rarely, but when they are, they are not necessarily committed by those who have done them in the past.

Conclusion: In this study, as in many others, the "obvious" strategy of reducing crime by incapacitating serious offenders is shown to have two ineffective effects: people who would not otherwise commit serious crimes are kept in prison and people who are not predicted to commit serious offences are released. Mechanical approaches to incapacitation -- such as three strikes laws -- do not, therefore, reduce crime and, in fact, waste valuable resources.

Reference: Brown, Mark. Serious violence and dilemmas of sentencing: A comparison of three incapacitation policies. *Criminal Law Review,* 1998, 710-722.

Determinate sentencing laws (and the abolition of discretionary parole) do not necessarily have any impact on prison populations or levels of crime: They affect the nature and size of the punishments people get for crimes but do not necessarily have any other effects.

Background. It does not take much thought to realize that changes in sentencing practice and changes in release procedures can affect prison populations. In the past two decades in the U.S., there have been two notable criminal justice trends: prison populations have increased dramatically and various states and the federal government have brought in determinate (sometimes guideline based) sentencing policies often along with the abolition of discretionary parole. However, "there is nothing inherent in determinant sentencing laws (DSLs) that would lead one to expect prison populations to grow or decline" (p. 109). Different U.S. jurisdictions have clearly had different goals when they brought in DSLs. Some wanted to affect crime, some wanted to reduce disparity in sentencing, some wanted to contain prison populations. Others were looking for combinations of these goals.

This study uses a "multiple time-series design [using] 10 states as 'natural laboratories'" and compares effects (prison populations, crime levels) to the other states. Various measures of crime, prison populations, etc., are used.

The results show no consistent effect. For some states, the number of prison sentences went up and in others they went down. The impacts of prison populations were predominantly in the negative direction. The introduction of DSLs in some states (Minnesota and Washington) reduced prison populations, but in at least one state (Indiana) DSLs were associated with an increase. There were no consistent effects on crime rates.

Conclusion. "The determinant sentencing laws cannot be blamed for any of the nationwide growth of prison populations, despite many opinions otherwise, and they may even be a moderating force." It appears to be the case that "the two DSLs with sentencing guidelines... and the only two that order prison capacity to be taken into account when setting sentencing levels" are the ones where prison populations were reduced.... [The authors found] little to suggest that DSLs affect crime rates..." (p. 122). The authors note that "for those states considering new DSLs, we conclude that the laws are unlikely to worsen prison overcrowding problems unless they are accompanied by a strong get-tough policy, and lawmakers can use DSLs to limit prison population growth if they so desire. The laws are not likely to affect crime rates appreciably" (p. 123).

Reference: Marvell, Thomas B. and Moody, Carlisle E. Determinate sentencing and abolishing parole: The long-term impacts on prisons and crime. *Criminology*, 1996, *34* (1), 107-128.

Juvenile justice in the U.S. is in the midst of major changes. At the moment it is moving in the direction of slow abolition of the juvenile court. There are other options to examine if a distinction between youth and adults is to be maintained.

Context. Public opinion polls in the U.S., read simply, suggest that two thirds of Americans think that kids under 13 years old who are charged with murder should be tried as adults. This is not an unusual finding. Research in Canada [Sprott, *Crime and Delinquency*, July 1998] suggests that they may "say" this, but when it comes down to individual cases, people are not so punitive. But the U.S. juvenile court -- with its welfare orientation -- may wither away on its own: decreases in funding for programs, and high probation caseloads limit the ability of the courts to intervene.

Legal changes in many states are also having important effects on the juvenile court. The most dramatic, one might argue, are the changes making it easier to try a youth charged with an offence in adult court. The number of judicial decisions to try a youth in adult court has gone up by about 40% in the past ten years. But the big changes are "automatic" transfers where youths charged with specific offences are automatically dealt with in adult court, and laws allowing prosecutors to determine the venue of the court hearing. Between these changes and increases in the severity of sanctions in the juvenile court, nearly every state has (since 1992) enacted laws treating youths like adults. [One estimate suggests that as many as 200,000 youths under age 18 are tried in adult courts in the U.S. The comparable figure for Canada would be roughly 100 youths per year tried in adult court.]

This paper suggests that the juvenile court in the U.S. is doomed since it is rapidly becoming a "scaled-down, second-class, criminal court." The authors suggest that the way to maintain courts that accept the reality that youth are not the same as adults is to develop specialized alternative courts to deal with special problems. A range of these already exist in the U.S. (e.g., drug courts, gun courts, or various alternative dispute resolution systems). The suggestion is that court intake procedures which are typically already in place (which resemble Canadian post-charge alternative measures decision processes) could be used to stream cases into a range of different types of "court-like" institutions which would be closer to the community and which would address underlying problems more directly.

As the authors suggest, the central issue is "what happens to young people following arrest" not whether they are called delinquents or criminals. They argue that the U.S. must consider possibilities other than the "all" (juvenile court as it is) or "nothing" (all youth in adult court) approaches to youth justice.

Conclusion. Juvenile justice programs are in flux in most of the U.S., as well as in Canada, parts of Australia, England, Japan, and South Africa, to name just a few countries. This paper suggests that instead of focusing solely on "where" youth are adjudicated, and whether youth are deemed to be adults or are allowed to remain youth, we should focus more on the type of system we want for particular kinds of offences. Such an approach may be less politically complex and may focus attention more on issues related to desired outcomes.

Reference: Butts, Jeffrey A. and Adele V. Harrell. Delinquents or criminals: Policy options for young offenders. The Urban Institute: Crime Policy report. June 1998.

The public wants tougher laws to deal with violent and repeat juvenile offenders, doesn't it? No, not really.

Background. The United States Congress apparently is interested in passing laws to show the public that it takes crime committed by youth seriously. A Senate bill, introduced by two prominent Republicans, would, among other things, allow youth to be imprisoned along with adults, make juvenile records available to colleges that the youth might apply to later in life, provide funds for prison construction, and give federal prosecutors sole discretion to decide whether those youth charged with offences would be tried as adults or as youth.

This paper provides survey results from February 1998 on a representative sample of U.S. adults designed to determine what level of support there is for the various provisions of the bill. The results suggest that "tough" may be "good" in the abstract, but when it comes down to specific provisions, "tough" doesn't sound so good.

The results show that the American public:

- Disagreed with the proposal that would allow youth to be housed in adult jails on arrest (67% disagreed with this proposal). This finding was similar to that obtained in a survey of 548 American police chiefs, 83% of whom agreed with the view that the focus for youth should be rehabilitation and the avoidance of placing youth with adult criminals.
- Disagreed with the proposal (70% disagreed) to allow the sharing of juvenile records with colleges the youth might apply for later in live.
- Agreed (74%) with the suggestion that the bill should earmark money for prevention.
- Disagreed (72%; mostly strongly) that youth be expelled from school for using tobacco.
- Tended to disagree (56% disagree, 41% agree, 3% undecided) with the proposal to give prosecutors total discretion on whether to try youth as adults or as youth.

One may well hear statements that we should be "tough on crime" but when it comes down to particular ways in which this might be done, people seem more pragmatic than tough. Canadian data on this are quite similar. See, for example, Sprott [*Crime and Delinquency*, July 1998] and Doob, A. N., J.B. Sprott, V. Marinos, and K. N. Varma [An exploration of Ontario residents' views of crime and the criminal justice system. Centre of Criminology, 1998].

Conclusion. Just because people say that they want to be "tough" on youth crime does not mean that these same people will endorse "tough" strategies. This survey, carried out on a nationally representative sample of Americans, suggests that "tough" federal standards for the youth justice system are not endorsed by the majority of American citizens. We suspect, based on other work (See Doob *et al.* cited above), that people are more interested in effective proposals.

Reference: Schiraldi, Vincent and Mark Soler. The will of the people? The public's opinion of the violent and repeat juvenile offender act of 1997. *Crime and Delinquency*, *44* (4), October 1998, 590-601.

People differ on how they view crime: some see crimes as varying in how "morally wrong" each crime is; others tend to see crimes as being equally morally wrong, even when the crimes are quite different from one another. This latter group of people tend to identify themselves as "conservative Protestants."

Context. Survey data in the U.S. has identified a group of people "who did not discriminate among crimes on their perceived wrongfulness" (p. 454). Knowing that such a group exists and are identifiable may help us understand public responses to various crime policies. Various Government of Canada policy statements, for example, differentiate among crimes -- and suggest a more severe response to "more serious" crimes. If, on the other hand, all crimes are seen as equally reprehensible, such policies may not receive support. And, in the context of this paper, particular groups may differ from others on this dimension.

This paper examined public attitudes in Oklahoma City, Oklahoma, in 1993. Respondents to a survey were asked to "indicate how morally wrong [they thought] it was for a person to commit [each of 12 of crimes]" such as shoplifting, breaking into a house and stealing a television, robbing a store and killing two employees, etc. Separate measures were also obtained of "conservative Protestantism" and of more general "religiosity." "Conservative Protestantism" was operationalized largely in terms of a literal interpretation of events and ideas from the Bible (page 456).

The findings were clear: Those who were most likely to believe in a literal interpretation of the Bible (High on the scale of conservative Protestantism) were most likely to rate the average severity of the 12 crimes very high, but, more importantly, were less likely to differentiate among the different crimes.

Conclusion: An identifiable group of people -- who, typically, would be described as fundamentalist Protestants -- view crime in different ways from others. First they see crime, generally, as being more morally wrong than others see it. Second, they tend not differentiate among crimes: All crimes are equally "wrong." Other data suggest that this same group believes that sins (which include crimes, presumably) deserve punishment, and they believe in "punishment as retribution, rather than for deterrence or rehabilitation" (p. 462). "This movement represents a shift away from the previous paradigm of rehabilitation, deterrence, and crime prevention through social programs and it presents lengthy incapacitation of criminals (all of them) as the alternative. This message has an appealing ring for a public weary of crime and skeptical of past liberal rehabilitative efforts, as well as for politicians who are eager to exploit fears of crime and who advocate retributive solutions for the crime problem" (p. 462). "Manifestations of increased punitiveness, such as mandatory sentences... and the 'three strikes and you're out' provisions, can be understood as stemming from the successes of the conservative Protestant social movements, which has operated to form public opinion and to influence lawmaking" (p. 462-3).

Reference. Curry, Theodore R. Conservative Protestantism and the perceived wrongfulness of crimes: A research note. *Criminology*, 1996, *34* (3), 453-464.

Why do unsuccessful policies persist even though they have failed? Probably because the policies are linked to the moral or symbolic role that these policies play. In other words, *failure* of a policy such as being tough on crime or drugs is not necessarily a relevant dimension in understanding the persistence of the policy.

Background. In criminal justice, it is easy to find policies that persist, even though they do not seem to work. In the U.S., policies to increase the use of punishment, the death penalty, and punitive approaches to drugs can all be cited as examples. This essay explores the attachment to ineffective policies in the context of a review of two recent books on drug policies. Policies obviously have to be understood within the social and cultural context in which they exist. The persistence of "ineffective" policies, then, may be explained by understanding what other "functions" these policies serve.

U.S. drug policy, which follows a punitive or prohibition model, has clearly failed if drug use, and drug-related problems, are the focus. Serious drug use in the U.S. does not seem to have declined. The U.S. drug policy is seen as having failed for three reasons: (1) the "profit paradox" -- drug enforcement efforts increase drug prices which has the effect of increasing drug profits to those who are successful at it. It is estimated that "drug organizations" can lose 70-80% of their product and still be successful. (2) The "hydra effect" -- attempts to stamp out drug production tend, only, to shift its location. (3) The "punish to deter fallacy." In the area of drugs, it appears to be even less likely than in other domains that punishment deters use. The "drug war" also has negative effects (e.g., exacerbating health problems, focusing punishment on the poor and on ethnic and racial minorities).

The U.S. drug war is, of course, a relatively recent phenomenon, having its origins in the first 20 years of this century. Other countries did not join the war, but U.S. policy appears to have been guided in part by the "anti-vice" crusaders. A more "medical" or harm-reduction approach where the medical profession might have been important did not develop. In fact, when "treatment" became prominent in the 1960-70s, it was seen as a "useful adjunct to punishment" (p. 232). Drugs were seen as not only dangerous but as being morally wrong.

The failures of punitive responses to drugs appear to be explained as failures of the political will rather than as approaches which were doomed to failure. The suggestion is made that "more punishment" would be effective if only it were used. Moderates are often trapped in a game of who can "out-tough" the other. Drug use is made out to be a personal, moral weakness. Abstinence is seen as the only legitimate goal and anything less than this is seen to reflect moral weakness. Hence the focus of the drug policy on "dangerous classes" reinforces this view. The problem is that "The power of the drug war paradigm means that discussion of real alternatives rarely occurs" (p. 236). Hence "harm reduction" approaches like those popular in Europe never get much attention.

The authors of one of the books reviewed here reject simple "legalization" as a realistic alternative, though it is pointed out (p. 237) that there are a range of different forms of legalization that are possible. They prefer a "public health" approach where "drug use [is seen] as a public not an individual problem -- one that can be caused and exacerbated by social conditions.. and one that has social consequences..." (p. 238). However, they point out that "no policy paradigm can take root unless it finds fertile soil in already-existing patterns of thought" (p. 238). In the U.S., there has, historically, been some support for the "public health movement" though this approach has been fought quite successfully by organizations like the American Medical Association that preferred to see health as an individual, not state, responsibility.

A public health approach would focus largely on discouraging "any use of the most dangerous drugs" and, generally, would focus on reducing harm to society as a whole. Law enforcement "would no longer be the keystone of drug policy but merely an adjunct to generally nonpunitive policy" (p. 239). The authors point out that there are a number of "once avid drug warriors who now reject the prohibition model" (p. 239). Such changes might set the scene for what is necessary: a "major paradigmatic shift." This, they suggest, will only come from pressure from people, not from politicians, and will come if there is pressure to adopt a "politics of reason, care, and collective responsibility" (p. 239).

Reference: Ryan, Kevin F. Clinging to failure: The rise and continued life of U.S. drug policy. *Law and Society Review,* 1998, *32*(1), 221-242.

If the U.S. had not successfully banned the (Canadian) Film Board film *Drug Addict*, made with the assistance of the R.C.M.P. in 1946, it is possible that the U.S. might not have successfully entrenched (forever?) its punitive drug policies. The "drug czar" of the time was successful in controlling public access to views that challenged the war on drugs.

Cast of characters: **Alfred Lindesmith** (an American sociologist, an early opponent of a punitive approach to drugs) and **Harry Anslinger** (Head of the U.S. Bureau of Narcotics who acted as one of the early soldiers in the U.S. War on Drugs).

Background: The U.S. Federal Bureau of Narcotics (FBN) was unsuccessfully challenged by an American academic, Alfred Lindesmith, a University of Indiana sociologist, for two decades (from 1939 until the early 1960s). The FBN was obviously concerned about Lindesmith in that it began a campaign in 1939, soon after Lindesmith first was employed at the University of Indiana, to get him fired. Lindesmith criticized, in a 1940 article, "stereotyped misinformation about drug addicts such as news stories of the 'dope-crazed' killer or the 'dope fiend rapist'" (p. 668). This article "so angered Harry Anslinger [head of the FBN] that he arranged to have an attack on Lindesmith published in the same journal. The FBN sponsored article "associated the spread of addiction with Japanese imperialism as well as a variety of crimes.... As if this were not enough to attempt to discredit medical treatment of addicts, even nudism was associated with drug addiction. [The judge who had been recruited to write the response] concluded that Lindesmith was a 'pseudo-scientist'" (p. 668).

The Canadian connection to this story surrounds an award winning 1946 documentary made by the Film Board, "with the assistance of the narcotics specialists in the RCMP" (p. 670). In Canada, the film was cited as being a "bold, honest record of the drug traffic and its toll in human misery. It is as honest as it is stark. The film treats drug addiction as an illness and thus has run afoul of some who would condemn as criminals all who use drugs" (p. 670). The U.S. response was somewhat different: the FBN arranged for it to be banned. The film's message was unacceptable since it suggested that (p. 670-1):

- addicts and traffickers were recruited from all races and classes.
- high level drug traffickers are (typically) white
- law enforcement efforts target low level drug dealers
- addiction is a sickness
- addiction to legal and illegal drugs are essentially the same
- cocaine is not necessarily addictive
- law enforcement control of drugs is, in the final analysis, impossible

The FBN first asked Canada not to distribute the film in the U.S. and then asked Canada to censor the film. It even requested that the Canadian government not allow Lindesmith to view the film while he was visiting Canada. Canada refused. But the effect was that the film could not be seen in the U.S., though it was unclear exactly who was responsible for imposing the ban.

Technically, the film is still banned in the U.S. and, of course, its message -- which many drug researchers would still endorse -- is in conflict with current U.S. drug policy. More importantly, the forces that successfully suppressed the message of the film (and Lindesmith) were successful in their long term policy goals. The authors suggest that "The [Canadian] film, in hindsight appeared to be the last and best chance to create a rational and humane policy on narcotics... Had Lindesmith been more successful in opposing the ban, it is conceivable that punitive drug policies would not have become firmly entrenched in [U.S.] laws." (p. 681-2).

Conclusion. The repressive approach to drug problems in the U.S. is not new, nor is opposition to it a new phenomenon. When there has been vocal opposition to a repressive approach, U.S. officials have responded forcefully and successfully to the challenge. A punitive approach has persisted in the U.S. notwithstanding influences from north of the border which could have resulted in different approaches. The banning of a 1946 (Canadian) film board production on drugs was certainly symptomatic of the American approach and may have been important in understanding the persistence of U.S. drug policy.

Reference: Galliher, John F., David P. Keys, and Michael Elsner. Lindesmith v. Anslinger: An early government victory in the failed war on drugs. *The Journal of Criminal Law and Criminology,* 1998, *88* (2), 661-682.