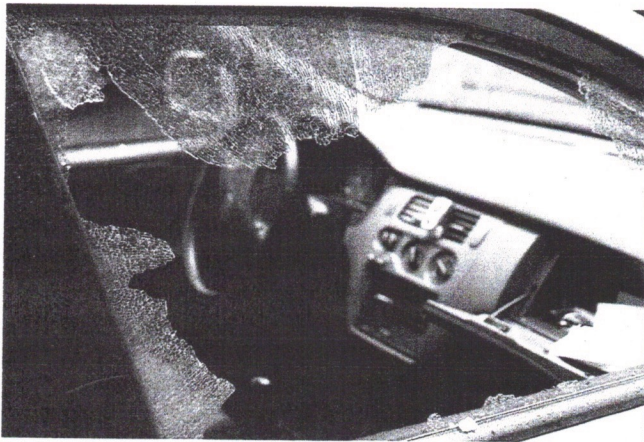




Choice Theory: Because They Want To

Learning Objectives

- LO1** State the major principles underlying rational choice theory and contrast it with positivist theory.
- LO2** Explain the concept of situational crime prevention.
- LO3** Explain general deterrence and critique its effectiveness in reducing the crime rate.
- LO4** Explain specific deterrence and critique its effectiveness in reducing the crime rate.
- LO5** Explain the logic of incapacitation as a means of crime reduction.
- LO6** Outline the policy implications of choice theory.



Electronic security measures have made stealing car stereos, airbags, xenon headlights, GPS, and DVD systems increasingly difficult to steal.

longer pays in general. For example, evaluations of auto protection systems that use hidden radio transmitters to track stolen cars have found that these devices help lower car theft rates. The auto protection systems not only deter auto thieves, but also seem to disrupt the operation of “chop shops,” where stolen vehicles are taken apart for the resale of parts. Stolen car buyers cannot be sure if a stolen vehicle they purchase contains an auto protection system, which the police can trace to their base of operations.⁵² Thus, a device designed to protect cars from theft also has the benefit of disrupting the sale of stolen car parts.

DID YOU KNOW?

- Situational crime prevention efforts are designed to reduce or redirect crime by making it more difficult to profit from illegal acts.
- General deterrence models are based on the fear of punishment that is severe, swift, and certain.
- Specific deterrence aims at reducing crime through the application of severe punishments. Once offenders experience these punishments, they will be unwilling to repeat their criminal activities
- Incapacitation strategies are designed to reduce crime by taking known criminals out of circulation, preventing them from having the opportunity to commit further offences.

LO3 General Deterrence

According to the rational choice view, motivated people will violate the law if left free and unrestricted. The concept of general deterrence is that, conversely, the decision to commit crime can be controlled by

the threat of criminal punishment. If people fear being apprehended and punished, they will not risk breaking the law. An inverse relationship should exist between crime rates and the certainty, speed and severity of legal sanctions. If, for example, the punishment for a crime is increased and the effectiveness and efficiency of the criminal justice system are improved, then the number of people engaging in that crime should decline.

The factors of certainty, speed, and severity of punishment may also be interactive. For example, if a crime—say, robbery—is punished severely, but few robbers are ever caught or punished, the severity of punishment for robbery will probably not deter people from robbing. On the other hand, if the certainty of apprehension and conviction is increased by modern technology, more efficient police work, or some other factor, then even minor punishment might deter the potential robber.

Do these factors actually affect the decision to commit crime and, consequently, general crime rates?

Certainty of Punishment

According to deterrence theory, if the certainty of arrest, conviction, and sanctioning increases, crime rates should decline. Rational offenders will soon realize that the increased likelihood of punishment outweighs any benefit they perceive from committing crimes. According to this view, crime persists because most criminals believe (1) that there is only a small chance they will get arrested for committing a particular crime, (2) that police officers are sometimes reluctant to make arrests even if they are aware of crime, and (3) that even if apprehended there is a good chance of receiving a lenient punishment.⁵³

Although this view seems logical enough, the relationship between certainty of punishment and crime rates is far from settled. While a few research efforts do show a direct relationship between crime rates and the certainty of punishment,⁵⁴ a great deal of contradictory evidence indicates that the likelihood of being arrested or imprisoned has little effect on crime.⁵⁵

One reason for this ambivalent finding is that the association between certainty of punishment and crime may be time-, crime-, and group-specific. For example, research shows that when the number of arrests increases, the number of serious crimes reported to police declines soon after.⁵⁶ It is possible

general deterrence
A crime control policy that depends on the fear of criminal penalties, convincing the potential law violator that the pains associated with crime outweigh its benefits.

crackdown

The concentration of police resources on a particular problem area to eradicate or displace criminal activity.

that news of increased and aggressive police activity is rapidly diffused through the population and has an immediate impact, but that the effect erodes over time.

Research carried out in the United States also finds that the certainty of punishment may be race-specific. Arrests of blacks may influence only black offence rates, whereas arrests of whites probably affect only white offending patterns. In large cities, the threat of arrest may be communicated within neighbourhoods, some of which may be racially segregated. This threat affects residents of each racial grouping independently.⁵⁷

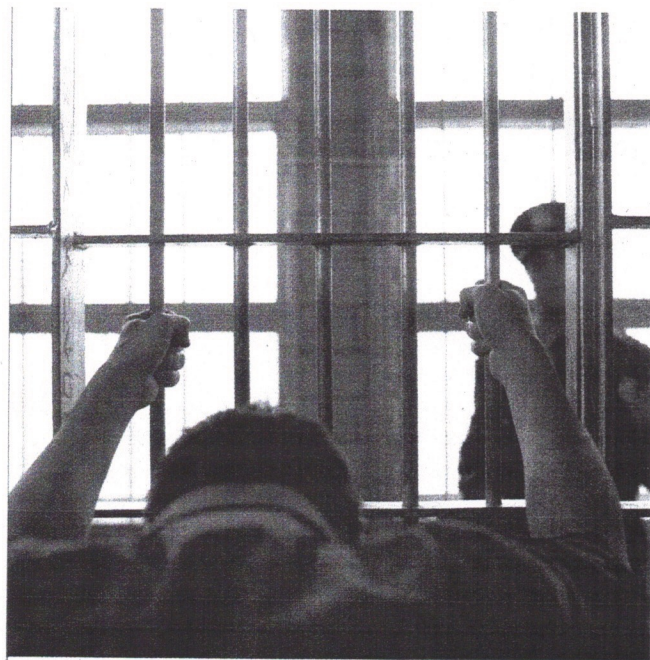
Some research efforts have found a crime-specific deterrent effect. For example, using national data sets measuring crime and arrest rates in the United States, criminologist Edwin Zedlewski found that an increased probability of arrest may help lower the burglary rate, whereas theft rates remain unaffected by law enforcement efforts.⁵⁸

Level of Police Activity

If certainty of apprehension and punishment deters criminal behaviour, then increasing the number of police officers on the street should cut the crime rate. Moreover, if these police officers are active, aggressive crime fighters, would-be criminals should be convinced that the risk of apprehension outweighs the benefits they can gain from crime. However, the evidence that adding police leads to reduced crime rates is spotty.⁵⁹ Numerous studies have failed to show that increasing the number of police officers in a community can, by itself, lower crime rates.⁶⁰

It is possible that while adding police may not work, adding more effective police could reduce crime. Research indicates that if police could make an arrest in at least 30 percent of all reported crimes, the crime rate would decline significantly.⁶¹ But how can that figure be achieved, considering that arrest rates today hover at 20 percent?

To lower crime rates, some police services have instituted crackdowns—sudden changes in police activity designed to increase the communicated threat or actual certainty of punishment. For example, a police task force might target street-level narcotics dealers by using undercover agents and surveillance cameras in known drug-dealing locales. However, these efforts have not proven to be successful mechanisms for lowering crime rates.⁶² An analysis of 18 police crackdowns by Lawrence Sherman found that while they initially deterred crime, crime rates resumed earlier levels once the crackdown



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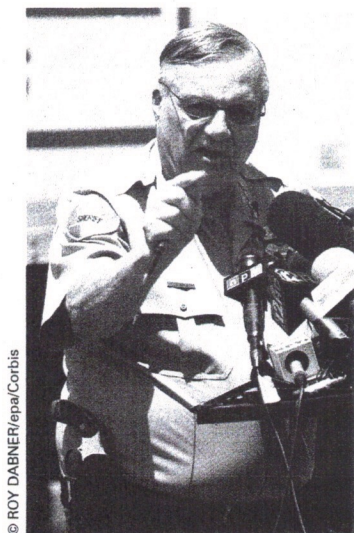
A prison term has historically been the deterrent of choice.

ended.⁶³ Although these results contradict the deterrence concept, research shows that more focused efforts may reduce crime levels. Crime rates are reduced when police officers use aggressive problem-solving and community improvement techniques, such as increasing lighting and cleaning vacant lots, to fight particular crimes in selected places.⁶⁴ A good example of the effectiveness of the crackdown strategy is the success of Ontario's RIDE (Reduce Impaired Driving Everywhere) program, which has had a significant impact in reducing impaired-driving-related accidents and fatalities on Ontario highways.⁶⁵

Severity of Punishment

The introduction or threat of severe punishment should also bring the crime rate down. Although some studies have found that increasing sanction levels can control common criminal behaviours, there is little consensus that strict punishments alone can reduce criminal activities.⁶⁶ Because the likelihood of getting caught for some crimes is relatively low, the impact of deterrent measures is negligible over the long term.⁶⁷ For example, laws that provide expanded or mandatory sentences for crimes committed with guns have received mixed reviews. While some experts believe that these laws can lower crime rates, others question their deterrent effect. In sum, there is little empirical evidence that they have worked as planned.⁶⁸

The lack of evidence to demonstrate that severe punishment deters crime does not influence controversial Sheriff Joe Arpaio of Arizona. In 1994 he built



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Sheriff Joe Arpaio, in Maricopa County, Arizona (left), erected a "tent city," in which he uses severe punishment in an attempt to deter crime (right).



John Moore/Getty Images

Tent City using 70 surplus Korean War military tents as an outdoor jail stating, "Everything I do is geared to send a message to all the people who live in Maricopa County, that if you do something wrong you're going to end up in the tents." Of about 10 000 prisoners incarcerated in the county 800–900 of them are housed in Tent City, a figure Arpaio worries is too low; a neon sign in the corner of the jail says "vacancy." The most common crimes that will send someone to Tent City include driving under the influence, drug possession, domestic violence, and car theft. The outdoor jail has become quite a tourist attraction with visitors from around the world. Arpaio relishes the indignities he bestows upon his prisoners. For example, he eliminated meat and salt and pepper from their meals, forces them to endure 120-plus degree weather, and makes them wear pink underwear. Inmates must also perform indigent burials and work eight-hour shifts at a food factory. Television is provided but it plays only the Food Channel ("so they can see the good food they're missing on the outside," Jones said) and the Weather Channel ("Joe wants them to see how hot it's going to be").⁶⁹

Capital Punishment

In May 2004, Cobourg Police Chief Garry Clement called for the reinstatement of the death penalty for those who kill officers of the law. Clement was reacting to the death of one of his officers, Constable Chris Garrett, slain by an 18-year-old male during the course of a robbery. Since its abolition in Canada in 1976, there have been recurring calls from members of the public and politicians to bring back the death penalty.

It seems to stand to reason that if severity of punishment can deter crime, then fear of the death penalty, the ultimate legal deterrent, should significantly reduce murder rates. Failure of the death penalty to deter

violent crime jeopardizes the validity of the entire deterrence concept.

Various studies have tested the assumption that capital punishment deters violent crime. The research can be divided into three types: immediate impact studies, comparative research, and time-series analysis.

Immediate Impact

If capital punishment is a deterrent, the reasoning goes, then its impact should be greatest after a well-publicized execution. Robert Dann began testing this assumption in the United States in 1935, when he chose five highly publicized execu-

tions of convicted murderers in different years and determined the number of homicides in the 60 days before and after each execution.⁷⁰ Dann's study revealed that an average of 4.4 more homicides occurred during the 60 days following an execution than during those preceding it, suggesting that the overall impact of executions might actually be to increase the incidence of homicide.

The fact that executions may actually increase the likelihood of murders being committed is a consequence referred to as the brutalization effect. The basis of this theory is that potential criminals may begin to model their behaviour after state authorities: If the government can kill its enemies, so can they.⁷¹ The brutalization effect means that after an execution murders may increase, causing even more deaths of innocent victims.

brutalization effect
The belief that capital punishment creates an atmosphere of brutality that enhances rather than deters the level of violence in society.



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Although many criminologists question the utility of capital punishment, claiming that it causes more harm than it prevents, others believe that in the short run, executing criminals can bring the murder rate down.⁷² Steven Stack's analysis of 16 well-publicized executions in the United States concluded that they may have saved 480 lives by immediately deterring potential murderers.⁷³ In sum, a number of criminologists find that executions actually increase murder rates, whereas others argue that their immediate impact is to lower murder rates.

Comparative Research

Another type of research compares the murder rates in jurisdictions that have abolished the death penalty with the rates in those that employ the death penalty.⁷⁴ Two pioneering studies, one by Thorsten Sellin (1959) and the other by Walter Reckless (1969), showed little difference in the murder rates of adjacent states, regardless of their use of the death penalty; capital punishment did not appear to influence the reported rate of homicide.⁷⁵ Similar research carried out by Canadian criminologist Ezzat Fattah in the 1970s arrived at the same conclusion.⁷⁶ More recent research gives little reason to believe that executions deter homicide⁷⁷; more recent studies have compared murder rates in jurisdictions having a death penalty statute with those that don't and have also taken into account the number of people actually executed. These comparisons indicate that the death penalty—whether on the books or actually used—does not deter violent crime.⁷⁸

In addition, research conducted in 14 nations around the world found little evidence that countries with a death penalty have lower violence rates than those without. In fact, homicide rates decline after capital punishment is abolished, a direct contradiction to its supposed deterrent effect.⁷⁹

Time-Series Analysis

Statistical analysis has allowed researchers to gauge whether the murder rate changes when death penalty statutes are created or eliminated. The most widely cited study is Isaac Ehrlich's 1975 work, in which he used U.S. crime and execution data to reach the conclusion that each execution in the United States would save seven or eight people from being murdered.⁸⁰ Ehrlich's research has been widely cited by advocates of the death penalty as empirical proof of the deterrent effect of capital punishment.

informal sanctions
Disapproval, stigma, or anger directed toward an offender by significant others (parents, peers, neighbours, teachers), resulting in shame, embarrassment, and loss of respect.

However, subsequent research that attempted to replicate Ehrlich's analysis showed that his approach was flawed and that capital punishment is no more effective as a deterrent than life imprisonment.⁸¹ For example, a recent test of the deterrent effect of the death penalty during the years 1984–1997 in Texas found no association between the frequency of execution and murder rates.⁸²

Why Capital Punishment Fails

In sum, studies that have attempted to show the deterrent effect of capital punishment on the murder rate indicate that executing convicted criminals has relatively little influence on behaviour.⁸³ Although it is still uncertain why the threat of capital punishment has failed as a deterrent, the cause may lie in the nature of homicide itself. Murder is often an expressive "crime of passion" involving people who know each other and who may be under the influence of drugs or alcohol. Murder is also a by-product of the criminal activity of people who suffer from the burdens of poverty and income inequality.⁸⁴ These factors may either prevent or inhibit rational evaluation of the long-term consequences of an immediate violent act.

The failure of the "ultimate deterrent" to deter the "ultimate crime" has been used by critics to question the validity of the general deterrence hypothesis that severe punishment will lower crime rates. In general, there is little direct evidence that severity of punishment alone can reduce or eliminate crime.

Swiftness of Punishment

A core element of general deterrence theory is that people who believe that they will be swiftly punished if they break the law will abstain from crime.⁸⁵ Again, the evidence on the association between perceived punishment risk and crime has been mixed. Some research efforts have found a relationship,⁸⁶ while others have not.⁸⁷

The threat of swift retaliation seems to work best when would-be criminals believe they will be subjected to very harsh punishments.⁸⁸ However, even this fear may be negated or overcome by the belief that a crime gives them a significant chance for large profit. When interviewed by criminologists Alex Piquero and George Rengert, active burglars reported that fear of a quick capture was in fact a deterrent, but one that could be overcome by the promise of a "big score." In short, greed overcomes fear.⁸⁹

Informal Sanctions

Although the threat of even the most severe punishment may not have a deterrent effect, evidence is accumulating that the fear of informal sanctions may in fact reduce crime.⁹⁰ Informal sanctions occur

when significant others—such as parents, peers, neighbours, and teachers—direct their disapproval, stigma, anger, and indignation toward an offender. If this happens, law violators run the risk of feeling shame, being embarrassed, and suffering a loss of respect.⁹¹ Can the fear of public humiliation deter crime?

Research efforts have in fact established that the threat of informal sanctions can be a more effective deterrent than the threat of formal sanctions.⁹² Fear of shame and embarrassment can be a powerful deterrent to crime. Those who fear being rejected by family and peers are reluctant to engage in deviant behaviour.⁹³ These factors manifest themselves in two ways: (1) personal shame over violating the law and (2) the fear of public humiliation if the deviant behaviour becomes public knowledge. People who say that their involvement in crime would cause them to feel ashamed are less likely to commit theft, fraud, motor vehicular, and other offences than people who report they would not feel ashamed.⁹⁴

Anti-crime campaigns have been designed to play on this fear of shame. They are most effective when they convince the general public that being accused of crime will make them feel ashamed or embarrassed.⁹⁵ For example, spouse abusers report they are more afraid of the social costs of crime (loss of friends and family disapproval) than they are of legal punishment (going to jail). Women are more likely to fear shame and embarrassment than men, a finding that may help explain gender differences in the crime rate.⁹⁶

The effect of informal sanctions may vary according to the cohesiveness of community structure and the type of crime. Not surprisingly, informal sanctions may be most effective in highly unified areas where everyone knows one another and the crime cannot be hidden from public view.⁹⁷



Christina Xur/Flickr

Critique of General Deterrence

Some experts believe that the purpose of the law and justice system is to create a “threat system.”⁹⁸ The threat of legal punishment should, on the face of it, deter lawbreakers through fear. Nonetheless, the relationship between crime rates and deterrent measures is far less than choice theorists might expect. Despite efforts to punish criminals and make them fear crime, there is little evidence that the fear of apprehension and punishment alone can reduce crime rates. How can this discrepancy be explained?

Rationality

Deterrence theory assumes a rational offender who weighs the costs and benefits of a criminal act before deciding on a course of action. However, criminals may be desperate people who choose crime because they believe there is no reasonable alternative. Some may suffer from personality disorders that impair their judgment and render them incapable of making truly rational decisions. Psychologists believe that chronic offenders suffer from an emotional state that renders them both incapable of fearing punishment and less likely to appreciate the consequences of crime.⁹⁹ For example, research on repeat sex offenders finds that they suffer from an elevated emotional state that negates the deterrent effect of the law.¹⁰⁰

Certainty, Severity, and Speed

As Beccaria’s famous equation tells us, the threat of punishment involves not only its severity, but also its certainty and speed. The Canadian legal system is not very effective. Less than half (about 40 percent) of all crimes are reported to police, and police make arrests in only about 20 percent of reported crimes. Even when offenders are detected, police officers may choose to warn rather than arrest.¹⁰¹ The odds of receiving a prison term are only about 20 per 1000 crimes committed. As a result, some offenders believe that they will not be severely punished for their acts and consequently have little regard for the law’s deterrent power. Even those accused of murder are often convicted of lesser offences and spend what seem to be relatively short amounts of time behind bars.¹⁰² In making their “rational choice,” offenders may be aware that the deterrent effect of the law is minimal.

Choice

Among some groups of high-risk offenders, such as youth living in economically depressed neighbourhoods, the threat of formal sanctions is irrelevant. Young people in these areas may believe they have little to lose if arrested, because their opportunities

CAREER CONNECTIONS



Kathryn Scott
Osler/Getty
Images

Tara Tomasi is a federal parole officer who works in Abbotsford, BC. She admits that it is a tough job and that you need to have a thick skin but says that the real key to the job is good communication and interpersonal skills. There are two classifications of parole officers in Canada. Tara is a federal parole officer and as such she is employed by Correctional Services Canada or the government of Canada. Parole officers are also hired by the respective provincial governments in Canada. Provincial parole officers have the added duties of being a probation officer. The chief difference between federal parole officers and provincial probation and parole officers is that federal officers supervise parolees who received a sentence of over two years while province officers supervise persons who received a sentence of two years less a day.

The qualifications to be either a federal parole officer or a provincial probation and parole officer include, among other things, having a social science degree. The pay ranges from \$60 000 to \$80 000 per year. Specialized training is required and is provided on the job. Correctional Services Canada also offers yearly training programs for parole officers to update their skills in certain areas, such as supervising Aboriginal offenders, or working with dangerous offenders. Parole and probation officers share the same government job classification as psychologists, counselors, clergy, and social workers. The prospects for these jobs, according to Employment and Social Development Canada, are good. There are opportunities to work in both institutions and offices as a parole officer for

Correctional Services Canada or probation and parole officers at the provincial level.

A parole officer, left, assisting a client.

As for Tara, she is currently stationed at a parole office. Her days and weeks are a mix of desk work and being out in the community. She's responsible for filing a lot of reports to the Parole Board of Canada, but otherwise she is out of the office making visits to offenders at their schools, homes, and workplaces. She works in a team on occasion, but also on her own. While the work can be hard, Tomasi has a very positive outlook on her job. "I love what I do," she says. "I feel blessed, I feel grateful, and I look forward to the challenges every day."

Tara has a particularly challenging case she is working on. John Z., one of her parolees, did time for armed robbery and was recently released from prison. She knows John, his wife and two children. John is a good father; however, after being injured on the job became addicted to pain killers and as a result became involved in robbing local grocery stores for money to buy drugs. Use rational choice theory to explain why John became involved in the life of crime and identify some crime prevention strategies that Tara might employ to keep John on the right course.

Source: Excerpt from: Canada's Best Jobs 2014: Probation & Parole Officer, It helps to have a thick skin. *Canadian Business*, Apr 17, 2014 CB Staff. Accessed 25 August 2015 from: <http://www.canadianbusiness.com/lists-and-rankings/best-jobs/2014-probation-and-parole-officer/>

specific deterrence
The view that criminal sanctions should be so powerful that offenders will never repeat their criminal acts.

are few and they have little attachment to social institutions such as school or family. Even if they truly fear the consequences of the law, they must commit crime to survive in a hostile environment.

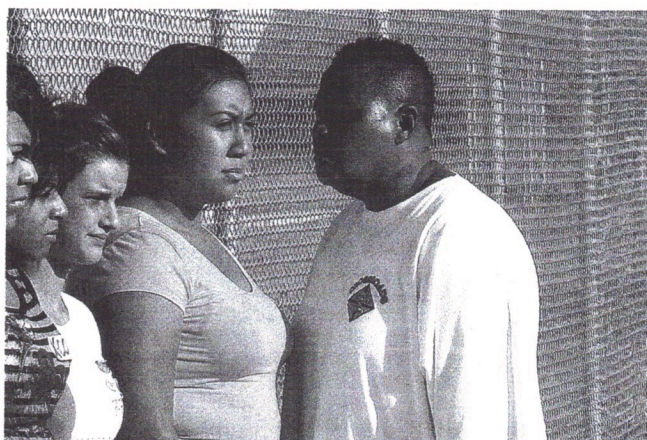
To recap, studies measuring the perception of punishment agree with studies using aggregate criminal justice data that the certainty of punishment has a greater deterrent effect than its severity. Nonetheless, neither the perception nor the reality of punishment can deter most crimes.

LO4 Specific Deterrence

The theory of specific deterrence (also called special or particular deterrence) holds that criminal sanctions should be so powerful that known criminals

will never repeat their criminal acts. According to this view, the drunk driver whose sentence is a substantial fine and a one-year licence suspension should be convinced that the price to be paid for drinking and driving is too great to consider future violations. Similarly, burglars who spend ten years in a tough, maximum-security prison should find their enthusiasm for theft dampened.¹⁰³ In principle, punishment works if a connection can be established between the planned action and memories of its consequence; if these recollections are adequately intense, the action will be unlikely to occur again.¹⁰⁴

Despite the popularity of "scared straight programs" as evidenced by the popular TV program *Beyond Scared Straight*, there is little evidence to suggest that such programs act as either general or specific deterrent to youth committing crime. In fact, recent studies have shown that they may increase the likelihood of recidivism in youth. See <http://ebn.bmj.com/content/6/1/12.full>.



Does Specific Deterrence Deter Crime?

At first glance, specific deterrence does not seem to work, because a majority of known criminals are not deterred by their punishment. Research on chronic offenders indicates that arrest and punishment seem to have little effect on experienced criminals and may even increase the likelihood that first-time offenders will commit new crimes.¹⁰⁵ Nearly two-thirds of all convicted offenders are re-arrested within three years of their release from prison, and those who have been punished in the past are the most likely to commit a new offence.¹⁰⁶ Incarceration may sometimes slow down or delay recidivism in the short term, but the overall probability of re-arrest does not change following incarceration.¹⁰⁷ On the other hand, recidivism rates are generally lower (in the 30–50 percent range) for those who have received a sentence of probation, suggesting that for some offenders, rehabilitation and ongoing integration in the community may be a more effective deterrent than punishment.¹⁰⁸

Some research efforts have shown that, rather than reducing the frequency of crime, severe punishment actually increases reoffending rates.¹⁰⁹ Punishment may bring defiance rather than deterrence, while the stigma of apprehension may help lock offenders into a criminal career.

Stigmatization Versus Reintegrative Shaming

In his book *Crime, Shame, and Reintegration*, John Braithwaite helps explain why specific deterrence measures may be doomed to failure.¹¹⁰ In most Western societies, punishment stigmatizes offenders and sets them, resentful, outside the mainstream. Law violators view themselves as victims of the justice system, punished

by strangers, such as police and judges, who are being paid to act. In contrast, Braithwaite notes that countries such as Japan, in which conviction for crimes brings an inordinate amount of personal shame, have extremely low crime rates.

Braithwaite divides the concept of shame into two distinct types. In North American society, shaming typically involves stigmatization—an ongoing process of degradation in which the offender is branded as an evil person and cast out of society. Shaming can occur at a school disciplinary hearing or a criminal court trial. As a specific deterrent, stigma is doomed to failure. People who suffer humiliation at the hands of the justice system “reject their rejectors” by joining a deviant subculture of like-minded people who collectively resist social control. Despite these dangers, there has been an ongoing effort to brand offenders and make their “shame” both public and permanent. For example, most American states and some Canadian provinces have passed sex offender registry and notification laws that make public the names of those convicted of sex offences and warn neighbours of their presence in the community.¹¹¹

Braithwaite argues that crime control can be better achieved through a policy of reintegrative shaming. In this approach, the offenders’ evil deeds are condemned while, at the same time, efforts are made to reconnect them to their neighbours, friends, and family. A critical element of reintegrative shaming is an effort to help offenders understand and recognize their wrongdoing and feel ashamed of their actions. To be reintegrative, shaming must be brief and controlled and then followed by ceremonies of forgiveness, apology, and repentance.

An important part of reintegrative shaming is bringing offenders together with victims so that the offenders can learn to understand the impact of their actions. Close family members and peers are also present to help the offender reintegrate back into society. Efforts like these can humanize a system of justice that today relies on repression, rather than forgiveness, as the basis of specific deterrence.

incarceration
Confinement in jail or prison.

recidivism
Repetition of criminal behaviour.

probation
Sentence served in the community under the supervision of a probation officer and subject to certain conditions.

stigmatization
Ongoing degradation or humiliation, in which the offender is branded as an evil person and cast out of society.

reintegrative shaming
Brief and controlled shaming that is followed by forgiveness, apology, repentance, and reconnection with the community.

LO5 Incapacitation

It stands to reason that if more criminals are sent to prison, the crime rate should go down. Because most people age out of crime, the duration of a criminal career is limited. Placing offenders behind bars during their prime crime years should lessen their lifetime opportunity to commit crime. The shorter the span of opportunity, the fewer offences they can commit during their lives; hence crime is reduced. This theory, known as the incapacitation effect, seems logical, but does it work?

The past 20 years have witnessed significant growth in the number and percentage of the population held in prisons and jails. Today, on any given day, more than 32 000 Canadians are incarcerated. Advocates of incapacitation suggest that this effort has been responsible for the decade-long decline in crime rates. However, critics counter that what appears to be an incapacitation effect may actually reflect the effect of some other legal or social phenomenon. The economy has improved, the huge cohort of baby boomers is now entering their 50s and 60s and has aged out of committing many types of crime, and police may simply be more effective. Crime rates could also be dropping because potential criminals fear tough sentencing laws that provide long mandatory prison sentences for serious violent crimes. What appears to be an incapacitation effect may actually be an effect of general deterrence.¹¹²

Can Incapacitation Reduce Crime?

Research on the direct benefits of incapacitation has been inconclusive. A number of studies have set out to measure the precise effect of incarceration rates on crime rates, and the results have not supported a strict incarceration policy.¹¹³ Gendreau, Goggin, Cullen, and Andrews report that, in fact, incarceration results in as much as a 3 percent increase in the likelihood that those imprisoned will reoffend when they are released, thereby increasing the crime rate.¹¹⁴ On the other hand, Gendreau and colleagues report that community-based correctional programs such as probation and parole reduce the likelihood of reoffending by as much as 10 percent. Looking at the relationship from another perspective, if the prison population were reduced and community correctional programs were used more, we could reduce the crime rate by at least 3 percent and possibly more.¹¹⁵

While these findings are problematic, a few studies

incapacitation effect

The idea that keeping offenders in confinement will eliminate the risk of their committing further offences.

have found an inverse relationship between incarceration rates and crime rates. In a frequently cited study, Reuel Shinnar and Shlomo Shinnar's research on incapacitation in New York led them to conclude that mandatory prison sentences of five years for violent crime and three for property offences could reduce the reported crime rate by a factor of four or five.¹¹⁶ Other research studies also claim that a strict incarceration policy can reduce the level of violent crime.¹¹⁷

The Logic Behind Incarceration

Considering that the criminals are unable to continue their illegal activities while housed in a prison or jail, incapacitation should in fact be an excellent crime control strategy. For example, a study of 201 heroin abusers in New York City found that, if given a one-year jail sentence, they would not have been able to commit their yearly haul of crimes: 1000 robberies, 4000 burglaries, 10 000 shopliftings, and more than 3000 other property crimes.¹¹⁸

Nonetheless, evaluations of incarceration strategies reveal that their impact is less than expected. For one thing, there is little evidence that incapacitating criminals will deter them from future criminality and even more reason to believe that they may be more inclined to commit crimes upon release. Prison has few specific deterrent effects: The more prior incarceration experiences inmates have, the more likely they are to reoffend (and return to prison) within 12 months of their release.¹¹⁹ The short-term crime reduction effect of incapacitating criminals is negated if the prison experience has the long-term effect of escalating the frequency of criminal behaviour upon release. By its nature, the prison experience exposes young, first-time offenders to higher-risk, more experienced inmates who can influence their lifestyle and help shape their attitudes. Novice inmates also run an increased risk of becoming infected with HIV/AIDS and other health hazards, and that exposure reduces their life chances after release.¹²⁰

Furthermore, the economics of crime suggest that if money can be made from criminal activity, there will always be someone to take the place of the incarcerated offender. New criminals will be recruited and trained, offsetting any benefit accrued by incarceration. Imprisoning established offenders may likewise open new opportunities for competitors who were suppressed by the more experienced criminals. For example, incarcerating organized crime members may open drug markets to new gangs. The flow of narcotics may actually increase after the more experienced organized crime leaders are imprisoned, because newcomers are willing to take greater risks.



Toronto Sun

Though his crimes occurred over 25 years ago, the name of Allan Legere (66), the so-called “Monster of Miramichi,” continues to instill fear in the residents of Miramichi, New Brunswick. While serving a sentence for murder, he escaped and while on the run he raped and beat to death 75-year-old Annie Flam and her sister. After brutally beating to death an elderly priest, he was the subject of one of the largest manhunts in Canadian history, which ended with his recapture in 1989. He is one of 90 inmates at the Special Handling Unit in Quebec, a dubious distinction he shares with the notorious child killer Clifford Olson. Should dangerous predators such as Legere ever be released from incapacitation? Is rehabilitation even a remote possibility?

Another reason that incarceration may not work is that most criminal offences are committed by teens and very young adult offenders, who are unlikely to be sent to prison for a single conviction. At the same time, many incarcerated criminals, aging behind bars, are already past the age when they are likely to commit crime. As a result, a strict incarceration policy may keep people in prison beyond the time they are a threat to society while a new cohort of high-risk adolescents is on the street. It is possible that the most serious criminals are already behind bars and that adding less dangerous offenders to the population will have little

appreciable effect while adding tremendous costs to the correctional system.¹²¹

An incapacitation strategy is very expensive. The prison system costs billions of dollars each year. Even if incarceration could reduce the crime rate, the costs would be enormous. Are Canadian taxpayers willing to spend millions, even billions, more on new prison construction and annual maintenance fees? A strict incarceration policy would result in a growing number of elderly inmates whose maintenance costs, estimated at as much as \$80 000–\$100 000 per year, are two to three times higher than those of younger inmates. In 2000, inmates 50 years and older comprised 12 percent of the federal correctional population; 38 percent of those serving life terms will be 55 or older before they are eligible for parole, raising fears of a “geriatric overload” of the prison system and prison costs.¹²²

three strikes and you’re out American policy whereby people convicted of three felony offences receive a mandatory life sentence.

Three Strikes and You’re Out

Some experts maintain that incapacitation can work if it is focused on the most serious chronic offenders. For example, in the United States, the three strikes and you’re out policy, giving people convicted of three felony offences a mandatory life sentence, has received widespread publicity. Many American states already employ habitual offender laws that provide long (or life) sentences for repeat offenders. In Canada, an individual can be declared a “dangerous offender” and sentenced to an indeterminate period in prison if the prosecution can show evidence of a continuing pattern of aggressive or sexual behaviour that is not likely to be deterred by a traditional sentence.¹²³ Criminologists retort that although such strategies are politically compelling, they will not work, for several reasons:

- Most three-time offenders are at the verge of aging out of crime anyway.
- Current sentences for violent crimes are already quite severe.
- An expanding prison population will drive up already high prison costs.
- There would be racial disparity in sentencing.
- The police would be in danger because two-time offenders would violently resist a third arrest, knowing they face a life sentence.¹²⁴
- The prison population probably already contains the highest-frequency criminals.

Those who support a selective incapacitation strategy argue that criminals who are already in prison (high-rate offenders) commit significantly