

## THE ECONOMIC WAY OF LOOKING AT LIFE\*

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### 3. Crime and Punishment

I began to think about crime in the 1960s after driving to Columbia University for an oral examination of a student in economic theory. I was late and had to decide quickly whether to put the car in a parking lot or risk getting a ticket for parking illegally on the street. I calculated the likelihood of getting a ticket, the size of the penalty, and the cost of putting the car in a lot. I decided it paid to take the risk and park on the street. (I did not get a ticket.)

As I walked the few blocks to the examination room, it occurred to me that the city authorities had probably gone through a similar analysis. The frequency of their inspection of parked vehicles and the size of the penalty imposed on violators should depend on their estimates of the type of calculations potential violators like me would make. Of course, the first question I put to the hapless student was to work out the optimal behavior of both the offenders and the police, something I had not yet done.

In the 1950s and 1960s intellectual discussions of crime were dominated by the opinion that criminal behavior was caused by mental illness and social oppression, and that criminals were helpless “victims.” A book by a well known psychiatrist was entitled *The Crime of Punishment* (see Menninger [1966]). Such attitudes began to exert a major influence on social policy, as laws changed to expand criminals’ rights. These changes reduced the apprehension and conviction of criminals, and provided less protection to the law-abiding population.

I was not sympathetic to the assumption that criminals had radically different motivations from everyone else. I explored instead the theoretical and empirical implications of the assumption that criminal behavior is rational (see the early pioneering work by Bentham [1931] and Beccaria [1986]), but again “rationality” did not necessarily imply narrow materialism.

It recognized that many people are constrained by moral and ethical considerations, and did not commit crimes even when they were profitable and there was no danger of detection.

However, police and jails would be unnecessary if such attitudes always prevailed. Rationality implied that some individuals become criminals because of the financial rewards from crime compared to legal work, taking account of the likelihood of apprehension and conviction, and the severity of punishment. The amount of crime is determined not only by the rationality and preferences of would-be criminals, but also by the economic and social environment

created by public policies, including expenditures on police, punishments for different crimes, and opportunities for employment, schooling, and training programs. Clearly, the type of legal jobs available as well as law, order, and punishment are an integral part of the economic approach to crime.

Total public spending on fighting crime can be reduced, while keeping the mathematically expected punishment unchanged, by offsetting a cut in expenditures on catching criminals with a sufficient increase in the punishment to those convicted. However, risk-preferring individuals are more deterred from crime by a higher probability of conviction than by severe punishments. Therefore, optimal behavior by the State would balance the reduced spending on police and courts from lowering the probability of conviction against the preference of risk-preferring criminals for a lesser certainty of punishment. The State should also consider the likelihood of punishing innocent persons.

In the early stages of my work on crime, I was puzzled by why theft is socially harmful since it appears merely to redistribute resources, usually from wealthier to poorer individuals. I resolved the puzzle (Becker [1968, fn. 3] by recognizing that criminals spend on weapons and on the value of the time in planning and carrying out their crimes, and that such spending is socially unproductive - it is what is now called "rent-seeking" - because it does not create wealth, only forcibly redistributes it. The social cost of theft was approximated by the number of dollars stolen since rational criminals would be willing to spend up to that amount on their crimes. (I should have added the resources spent by potential victims protecting themselves against crime.) One reason why the economic approach to crime became so influential is that the same analytic apparatus can be used to study enforcement of all laws, including minimum wage legislation, clean air acts, insider trader and other violations of security laws, and income tax evasions. Since few laws are self-enforcing, they require expenditures on conviction and punishment to deter violators. The United States Sentencing Commission has explicitly used the economic analysis of crime to develop rules to be followed by judges in punishing violators of Federal statutes (United States Sentencing Commission [1988]).

Studies of crime that use the economic approach have become common during the past quarter century. These include analysis of the optimal marginal punishments to deter increases in the severity of crimes - for example, to deter a kidnapper from killing his victim (the modern literature starts with Stigler [1970]), and the relation between private and public enforcement of laws (see Becker and Stigler [1974], and Landes and Posner [1975]). Fines are preferable to imprisonment and other types of punishment because they are more efficient. With a fine, the punishment to offenders is also revenue to the State.

The early discussions of the relations between fines and other punishments have been clarified and considerably improved (see, e.g., Polinsky and Shavell (1984), and Posner [1986]). Empirical assessments of the effects on crime rates of prison terms, conviction rates, unemployment levels, income inequality, and other variables have become more numerous and more accurate (the pioneering work is by Ehrlich [1973], and the subsequent literature is extensive). The greatest controversies surround the question of whether capital punishment deters murders, a controversy that is far from being resolved (see, e.g., Ehrlich [1975], and National Research Council [1978]).