Crime and Punishment in America

by

Morgan O. Reynolds

Executive Summary

Serious crime in the United States exploded during the 1960s and 1970s. It began to level off during the 1980s and has actually declined in the 1990s; however, the rate of serious crime remains three times higher than in 1960.

One reason: all too often crime pays. One measure of the potential cost of committing crimes is "expected punishment." Roughly speaking, expected punishment is the number of days in prison a criminal will serve for each crime. For example:

- Burglars face expected punishment of only six days since burglars as a group spend only six days in prison for each burglary committed.

- Thus a rational criminal will consider a burglary profitable if the stolen goods are worth more than six days behind bars.

- The expected punishment for murder is 2.1 years, for rape 93 days, for robbery 36 days and for aggravated assault 11 days.

- For the four crimes of violence and burglary, taken as a whole, expected punishment is only 17 days.

Crime increases when expected punishment declines. Between 1950 and 1980, expected punishment for crimes of violence and burglary declined more-or-less continuously from seven weeks to 10 days — an 80 percent decline — and the serious crime rate more than quadrupled during those years. In the 1980s, expected punishment began to increase, accompanied by the leveling off and then a decline in the serious crime rate. Still, the probability of punishment remains far below what it was through the 1950s.

The experience of our two most populous states — California and Texas — confirms the negative association between crime and expected punishment.

- During the 1980s, California increased its prison population at a rate faster than the nation and experienced a decline in serious crime relative to that of the nation.

- Texas, meanwhile, lagged in the growth of its prison population and its rate of serious crime shot up relative to that of the nation.

- The opposite has occurred during the 1990s, as Texas has enjoyed a 21 percent decline in serious crime while sharply increasing its prison population to the highest rate in the nation.

- During the same period, the growth in California's prison population has leveled off and now trails the national average, and California has made no progress against serious crime.

The cost of building and maintaining prisons is high, but studies indicate that the cost to society of not doing so is even higher. Rising prison costs can be reduced by privatizing prison construction and operation, as well as by employing prisoners in both state and private enterprise jobs.

Introduction: Crime in America

America is burdened by an appalling amount of crime and by the fear that it spawns. A 1994 Associated Press poll found that 52 percent of men and 68 percent of women are personally afraid of becoming victims. Senseless savagery occurs every day, providing rich justification for these fears. Most people have been victims of serious crime or have a family member who has.

- In 1992, an estimated 6.6 million Americans were victims of violent crimes.[1]

- In that year, 1.2 million Americans were robbed, and nearly one-half million of the robbery victims were injured.[2]

- Over a lifetime, the average man in our society has an 89 percent probability of being a victim of an attempted crime of violence and the average woman has a 73 percent probability, although half of the attempts are not completed.[3]

- A murder is reported to the police every 21 minutes, a forcible rape every 5 minutes, a robbery every 48 seconds and an aggravated (serious) assault every 28 seconds.[4]

- A motor vehicle theft is reported to the police every 20 seconds, a burglary every 11 seconds and a larceny-theft every 4 seconds.[5]

Figure I shows crimes of violence (murder, rape, robbery and serious assaults) and burglary per 1,000 population since 1950. These rates rose slightly during the 1950s and then exploded during the 1960s and 1970s, increasing the serious crime rate fourfold. In the 1980s and 1990s, however, serious crime reported to the police has leveled off and even shown signs of falling. For example, the FBI has found that the burglary rate is down 30 percent over the last 20 years.[6] In 1994, violent crime was down another 4 percent from the previous year and property crime, including burglary, was down 3 percent.[7]

Crimes reported to the FBI or to state agencies — murder/nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny/theft and motor vehicle theft — are compiled in the FBI Index of Crime and are sometimes referred to as "index crimes." In addition to these FBI crime statistics, another major source of information on the amount of crime is the National Crime Victimization Survey (NCVS), which records the amount of crime according to the victims — not all of whom had reported the crime to the police.[8] Since fewer than four of every 10 crimes are reported, the NCVS is thought to be the best estimate of true amount of crime. It does not measure murder, however, and there are other differences that allow the two indexes to diverge. According to the survey, the rate of victimization has

"The serious crime rate exploded during the 1960s and 1970s."

FIGURE I

Serious Crimes Reported to the Police, United States, Selected Years, 1950-94

(per 1,000 population)

Year	Value
1950	5.0
1960	5.9
1970	14.3
1980	22.8
1985	18.4
1990	19.7
1992	19.3
1993	18.5
1994	17.7
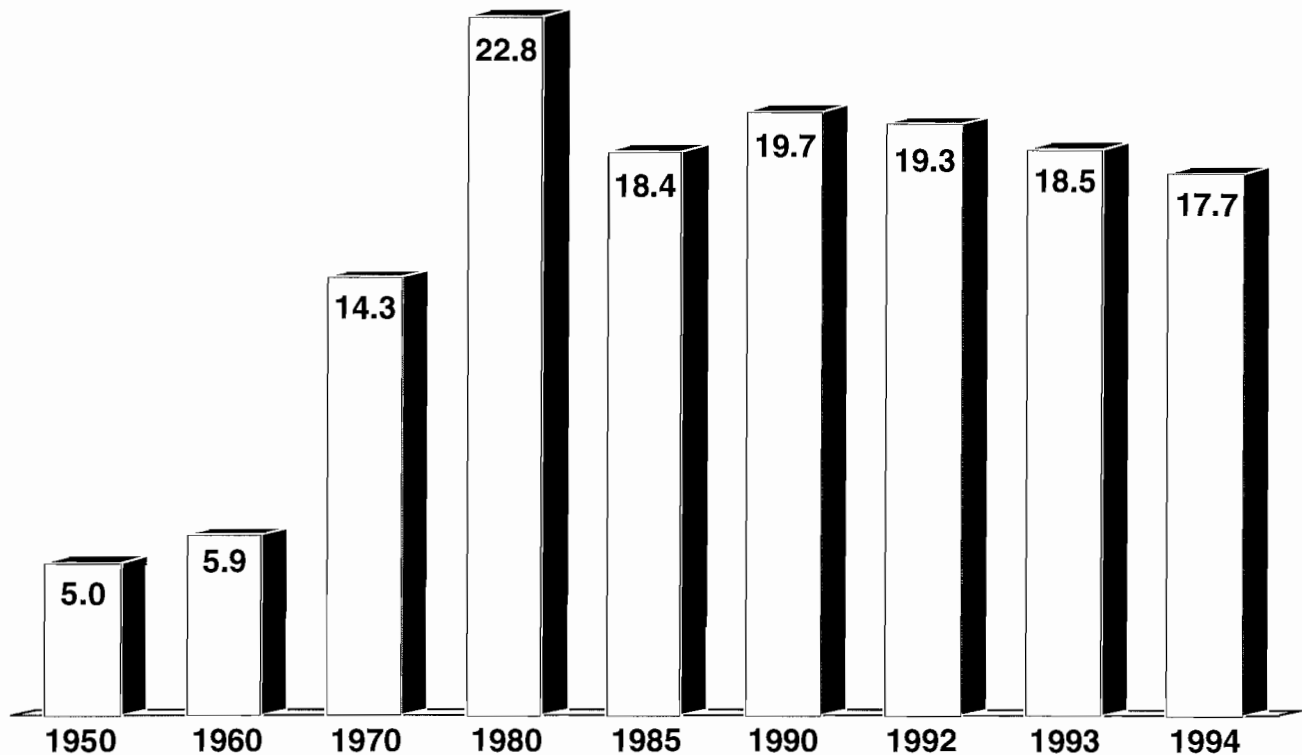
Source: FBI, *Crime in the United States*, annual; "serious crimes" are defined as murder/nonnegligent manslaughter, forcible rape, robbery, aggravated assault and burglary.

"In the 1980s and 1990s, serious crime reported to the police has leveled off and even shown signs of falling."

been falling steadily for 20 years [see Table I]. More than one of every three households was victimized by crime in the early and mid-1970s, but now fewer than one in four is. However, the numbers of violent crimes have remained high, and the FBI Index of Crime shows that the serious crime rate rose from 14.3 per 1,000 population in 1970 to 22.8 in 1980 before beginning to decline.

The NCVS shows that household willingness to report crime to the police has risen since 1973 from 32.4 percent of crimes to 38.7 percent, nearly a 20 percent increase.[9] Studies show that reporting itself discourages crimes.[10] Some of the movement in the FBI numbers on serious crimes no doubt reflects this increased willingness to report to the police, as well as recording and data management improvements by police organizations. Therefore, the recent decline in reported crime probably understates the decline in actual crime.

Still, the serious crime rate today is about three times higher than it was in 1960. [See Figure I.] Let's consider why.

TABLE I

Serious Crimes Based on Surveys of Victims

(per 1,000 persons age 12 and older)

	Violent Crimes	+ Burglaries	= Serious Crimes
1973	33	39	72
1974	33	40	73
1975	33	40	73
1976	33	39	72
1977	34	39	73
1978	34	38	72
1979	34	37	71
1980	33	38	71
1981	35	40	75
1982	34	35	69
1983	31	32	63
1984	31	29	60
1985	30	29	59
1986	28	28	56
1987	29	29	58
1988	30	29	59
1989	30	27	57
1990	30	25	55
1991	32	25	57
1992	32	23	55

"Surveys of victims indicate a falling rate of serious crime over the past 20 years."

Source: Calculated from Bureau of Justice Statistics, *Criminal Victimization in the United States: 1973-92 Trends*, A National Crime Victimization Survey Report, July 1994, NCJ - 147006, pp. 9 and 105.

Thinking About Crime

Most crimes are not irrational acts. Instead, they are acts freely committed by people who compare the expected benefits to the expected costs.[11] The reason we have so much crime is that, for many people, the benefits outweigh the costs. For some, criminality is more attractive than their other career options. The loss of inner-city, two-parent families to the welfare state and the "me first" culture also has spawned more teen predators than ever before.[12]

Because criminals and potential criminals rarely have accurate information about the probabilities of arrest, conviction and imprisonment, they are generally uncertain of the punishment they can expect. Some overestimate their probability of success, while others underestimate theirs. Despite the element of subjectivity, the evidence shows that crime will increase if the expected cost to criminals declines. This is true for crimes of passion as well as economic crimes such as burglary or auto theft. The less crime costs, the less people try to control their impulses.

The view that potential criminals respond to incentives is consistent with public opinion[13] and with the perceptions of potential criminals themselves.[14] It also is supported by considerable statistical research.[15]

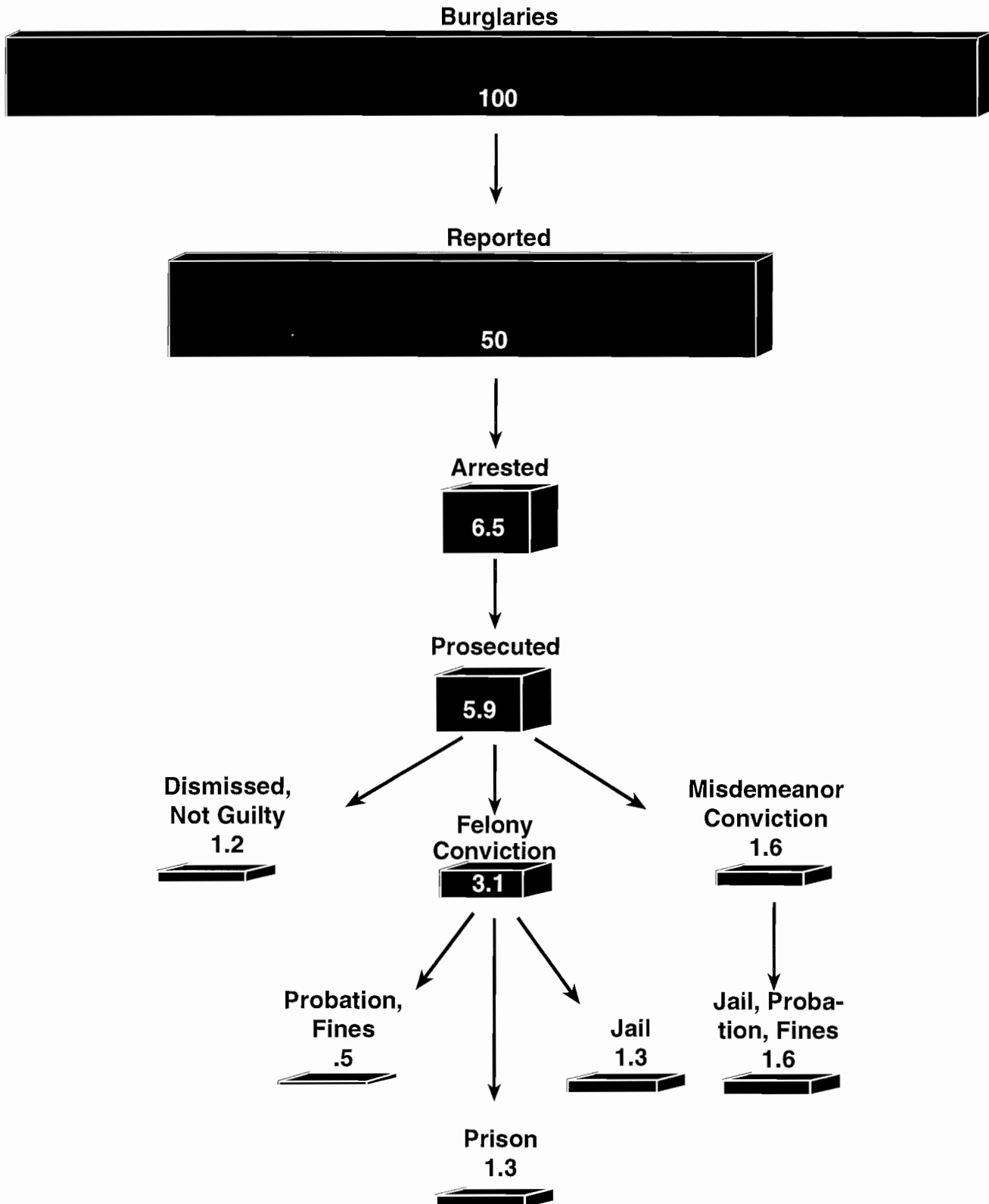*"Most crimes are not irrational acts."*

Expected Punishment

"Expected punishment" is a way of measuring the cost of committing a crime. It is not the same as the length of time criminals stay in prison. Rather, expected punishment is calculated by multiplying four *probabilities* — of being arrested for a crime after it is committed, of being prosecuted if arrested, of being convicted if prosecuted and of going to prison if convicted — and then multiplying the product by the median time served for an offense.

Limited data restrict the calculation of these detailed probabilities to a few years, the most recent being 1990, but they illustrate how the product of these probabilities results in low odds of prison time and therefore low expected punishment. Consider the details for burglary.

Expected Punishment for Burglary. In the United States, about half of all burglaries are reported to the police, according to the National Crime Victimization Survey. As shown in Figure II, therefore:

● For every 100 burglaries committed, about 50 will be reported to the police.

● FBI data show that about 13 percent of reported burglaries will be cleared by arrest, or about 6.5 burglaries out of the 50 reported.

The Crime Funnel for Burglars

Burglaries

100

Reported

50

Arrested

6.5

Prosecuted

5.9

Dismissed, Not Guilty
1.2

Felony Conviction
3.1

Misdemeanor Conviction
1.6

Probation, Fines
.5

Jail
1.3

Jail, Proba- tion, Fines
1.6

Prison
1.3

Source: Calculated from Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 1993*, p. 252; FBI, *Crime in the United States, 1993,* p. 208; Bureau of Justice Statistics, *Tracking Offenders, 1990,* pp. 2, 5, 8.

"Once a burglary is reported, the odds of going to prison are less than 3 in 100."

● The 1990 data on tracking offenders [see Table II] shows that about nine out of every 10 arrests for burglary will be prosecuted, or 5.9 out of 6.5.

● Just over half of the 5.9 prosecutions will result in felony convictions, or 3.1 felony convictions out of 100 burglaries.

● Of these convictions, 1.3 felons will be sent to prison while the remaining 1.8 will receive probation, fines or jail time.

Thus, the overall probability of doing any prison time for committing a burglary is only 1.3 percent [Figure II]. (Since only about half of all burglaries are reported to the police, the odds of going to prison once a burglary is reported rises to 2.6 percent, as shown in Table II.)

Once in prison, a burglar will stay there for a median sentence of about 15 months. But since only 1.3 of 100 burglaries result in prison time, the median prison term per act of burglary (both reported and unreported) is only

TABLE II

The Criminal Justice Process for Index Crimes in the 1990s

	(1) Probability of Arrest If Crime Reported to Police[1]	(2) Probability of Prosecution If Arrested[2]	(3) Probability of Felony Conviction If Prosecuted[3]	(4) Probability of Prison If Convicted of a Felony[4]	(5) Overall Probability of Prison[5]
Murder/Nonnegligent Manslaughter	65.6%	90.0%	67.0%	85.0%	33.6%
Rape	52.8	80.0	50.0	76.0	16.1
Robbery	23.5	85.0	45.0	69.0	6.2
Assault	55.5	81.0	27.0	31.0	3.8
Burglary	13.1	90.0	53.0	42.0	2.6
Larceny/Theft	19.8	89.0	43.0	28.0	2.1
Motor Vehicle Theft	13.6	71.0	50.0	28.0	1.4

[1] Federal Bureau of Investigation, *Crime in the United States, 1993*, p. 208.

[2] Bureau of Justice Statistics, *Tracking Offenders, 1990*, p. 2 (based on 11 states representing 32 percent of the nation's population).

[3] Ibid., p. 5.

[4] Ibid., p. 8.

[5] Column (1) x (2) x (3) x (4).

TABLE III

The Decline in Arrest Clearance Rates

	1950	1960	1970	1980	1990	1993
Murder/Nonnegligent Manslaughter	94.0%	92.0%	86.0%	72.0%	67.2%	65.6%
Rape	80.0	73.0	56.0	49.0	52.8	52.8
Robbery	44.0	39.0	29.0	24.0	24.9	23.5
Aggravated Assault	77.0	76.0	65.0	59.0	57.3	55.5
Burglary	29.0	30.0	19.0	14.0	13.8	13.1

Note: More than 14 million crimes reported each year to the police are Index crimes against person and property. In 1993, only about 2 million police arrests were for serious Index crimes. The table shows the decline in the probability of arrest for each Index crime since 1950 (the so-called clearance rate). For example, a murderer had only a 6 percent chance of avoiding arrest in 1950 but now has a 34 percent chance.

Source: Federal Bureau of Investigation, *Crime in the United States,* annual.

"Burglary is profitable if what is stolen is worth more than six days behind bars."

six days (1.3% x 15 months x 30 days per month). While this may seem like a short time, it is a sharp increase over the expected punishment of 4.8 days in 1990.[16]

On average then, a potential criminal can expect to spend only six days in prison for an act of burglary. This expectation of prison time per crime is, of course, heavily influenced by the chances of getting away with it. What a rational, risk-neutral criminal would consider is this: burglary is profitable so long as what is stolen is worth more than six days behind bars.

Expected Punishment for Index Crimes. Table II displays the 1990 probabilities of arrest, prosecution, conviction and imprisonment for the other FBI index crimes as well. Multiplying these probabilities together results in probabilities of prison time ranging from 1.4 percent for motor vehicle theft to 33.6 percent for murder. Table III shows how the clearance of serious crimes by arrest has declined since 1950.

Expected punishment for five serious crimes for selected years is shown in Table IV.[17] In 1950, expected punishment for murder was 2.3 years. This had dropped to 1.1 years by 1970, but recovered to 2.1 years by 1992. Capital punishment was a more serious concern for murderers in the late 1940s and early 1950s, when more than 100 prisoners per year were executed

after relatively short stays on death row. This compares to only 20 executions per year in the early 1990s after average death row stays of 10 years.

Rape also displays a U-shaped pattern in expected punishment, although it increased between 1950 and 1960. Of course, rapists also faced significant odds of receiving the death penalty years ago. The other crimes show U shapes too, although recent increases in expected punishments have been smaller.

Table V shows the probability of prison time and median months served for the five serious crimes combined. The probability of prison declined steeply between 1950 and 1970 and then slowly recovered, yet it remains less than half that of 1950. Median months served have recovered to more than two years but fall short of the 32 months served in 1950. Expected punishment has recovered to more than half of what it was in 1960 (17 days versus 29 days).

Expected Punishment and Crime

"The number of commitments by courts remained steady while the number of serious crimes reported tripled."

Now we can put crime and punishment together. The serious crime rate exploded during the 1960s and 1970s, rising from only five per 1,000 per year to more than 22. This quadrupling in the rate of serious crime reported to the police is shown in Figures I and III. Meanwhile, expected punishment per crime plunged from 50 prison days in 1950 to only 10 days in 1970 [see Figure III]. In the midst of the 1960s and 1970s crime explosion, punishment philosophy softened so much that the number of commitments by courts for serious predatory crimes stayed constant at 38,000 admissions while the number of serious crimes reported to police tripled from 1 million to 2.9 million. Clearly, the probability of imprisonment for committing a serious

TABLE IV

Expected Prison Time for Serious Crimes

	1950	1960	1970	1980	1992
Murder/Nonnegligent Manslaughter	2.3 years	1.7 years	1.1 years	1.2 years	2.1 years
Rape	136 days	154 days	67 days	42 days	93 days
Robbery	140 days	93 days	30 days	34 days	36 days
Aggravated Assault	25 days	19 days	8 days	7 days	11 days
Burglary	25 days	14 days	3 days	4 days	6 days

Source: NCPA calculations derived from data described in the notes to Table V.

TABLE V

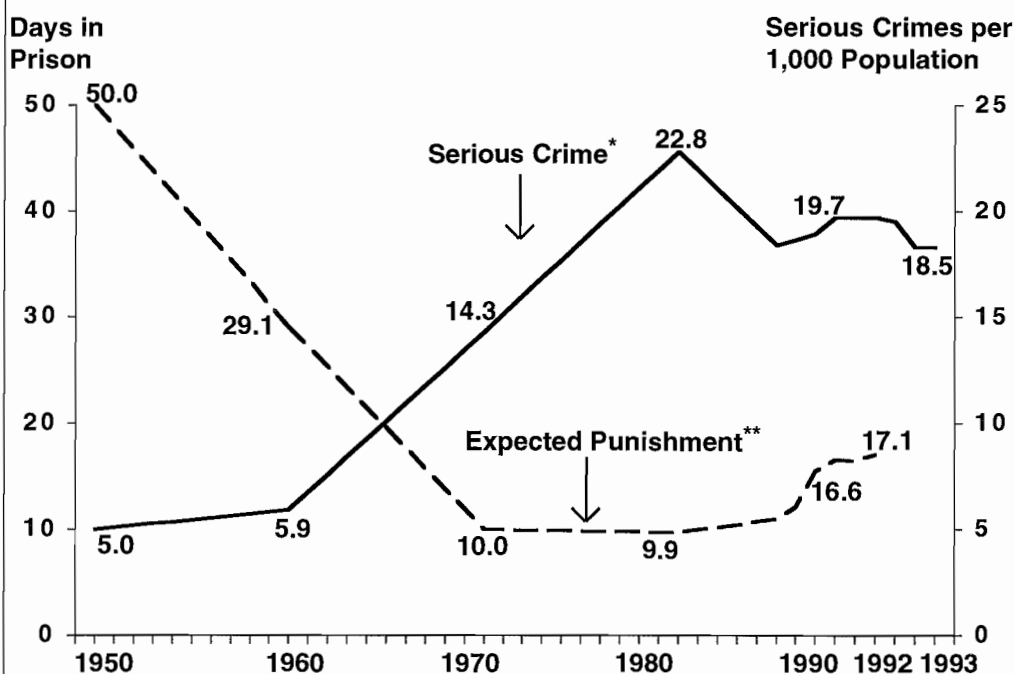# Expected Prison Time for
Serious Crime, Selected Years, 1950-92

	Probability of Prison per Serious Crime[1]	x	Median Months Actually Served in Prison[2]	=	Expected Prison Days per Serious Crime
1950	5.27%		31.6 months		50.0 days
1960	3.63%		26.7 months		29.1 days
1970	1.33%		25.1 months		10.0 days
1980	1.60%		20.7 months		9.9 days
1985	1.81%		20.3 months		11.0 days
1990	2.20%		25.1 months		16.6 days
1992	2.29%		24.8 months		17.1 days

[1] Numerator for 1950 to 1980 based on court commitments to state and federal prisons for murder/nonnegligent manslaughter, rape, robbery, aggravated assault and burglary as reported in Bureau of Justice Statistics (BJS), *Historical Corrections Statistics in the United States, 1850-1984*, December 1986, NCJ-102529, pp. 37 and 45. Note that between 1910 and 1960 the state data are inconsistent in whether they report all commitments, including those for less than one year, or only new commitments of more than one year; all commitments would inflate the probability of prison because they include various recommitments to prison; by 1980 the data include only new commitments. Note also that the estimated probabilities of prison for serious crimes calculated by the BJS in its publication, *Prisoners in 1986*, May 1987, NCJ-104864, p. 6, which range from 6.2 percent in 1960 to a low of 2.3 percent in 1970, 2.5 percent in 1980 and 4.2 percent in 1985, are nearly twice as high as the statistics in Table V because the BJS calculations mistakenly include all court commitments for any offense. The numerators for 1985-92 are from BJS, *National Corrections Reporting Program*, data for 1985 on p. 12, for 1990 on p. 10 and for 1992 on p. 14. The numerators also add federal commitments by the courts to federal prisons for the Index crimes of violence and burglary for 1986 and 1991 because proper data for the years 1985 and 1992 were not reported. The denominator depends on FBI data for the appropriate Index crimes for the United States as reported in *Crime in the United States,* annual.

[2] Median months actually served for serious crimes for 1953 and 1960 (data for 1950 not available) were obtained from BJS, *Historical Corrections*, p. 52, except that the data for rape were reported in the document cited below. Median months served in 1970 and 1980 were obtained from BJS, *Prison Admissions and Releases, 1982*, p. 8. Median months served for 1970 were estimated at 43 months as a midpoint between the 52 months served in 1960 and the 37 months reported for 1980. Median time served for 1985-92 was obtained from BJS, *National Corrections Reporting Program*, with data for 1985 on p. 24, 1990 on p. 26 and 1992 on p. 38.

FIGURE III

Crime and Punishment, Selected Years, 1950-93

* Defined as FBI Index crimes of violence (murder and nonnegligent manslaughter, forcible rape, robbery, aggravated assault) plus burglary, per thousand population; see Table I.

** Defined as probability of prison per serious Index crime x median days actually served in prison per serious Index crime; see Table IV.

crime reported to the police nearly collapsed, plunging from 3.6 percent per crime in 1960 to 1.3 percent in 1970, as shown in Table V.

Expected punishment per reported serious crime remained low until the early 1980s because the prison time served fell while the probability of going to prison began to increase, leaving expected punishment essentially unchanged. Sentences served were shorter primarily because of court orders and prison capacity constraints that kept the criminal justice door revolving rapidly. Not until the mid-1980s did expected punishment begin to rise for predatory crimes. By 1992, expected punishment had risen from an early 1980s low of 10 days to 17 days, a 70 percent increase. Yet expected punishment in the 1990s remains far below the 29 days of 1960 and the 50 days of 1950.

Between 1985 and 1992, the overall probability of going to prison for a violent index crime increased from 3.31 to 3.65 percent and for a burglary from 1.15 to 1.39 percent.

Expected Punishment, 1985-92. Between 1985 and 1992, the overall probability of going to prison for all index crimes, including larceny/theft and motor vehicle theft, increased from .8 percent to 1.02 percent. The expected punishment for property crimes increased about 16 percent, for violent crimes about 37 percent. Yet criminals still can expect to spend only about two days in prison per property crime. The primary reason for the low expected punishment rate is that the vast majority of reported property crimes are not cleared by an arrest and do not result in any prison time served.

Much of the recent increase in expected punishment results from an increase in the probability of going to prison, especially the higher odds of being prosecuted, convicted and sent to prison following an arrest. Prisoners served longer sentences between 1985 and 1992, too. During that period, the median time served by those convicted of a violent index crime increased from 25.4 months to 30.5 months while the median time served for property offenders remained flat at 12.5 months.

Between 1985 and 1992, expected punishment:

- for murder increased dramatically from 10 months to 26 months,

- for rape nearly doubled to 93 days,

- for robbery increased moderately to 34 days,

- for serious assault increased more than one-third to 10 days,

- for burglary increased nearly one-third to 6 days,

- for larceny/theft increased about one-third but remained at less than a day and

- for motor vehicle theft rose 60 percent but remained at less than two days.

Average vs. Median Time Served.[18] The average sentence served is more relevant to habitual criminals while the median is more appropriate for offenders with less substantial criminal records and less heinous crimes. If average sentence served is used as the measure of punishment severity, then the expected cost of punishment to criminals is substantially higher.

"Between 1985 and 1992, the average sentence served per violent crime increased from 31 to 46 days."

The average time served in prison exceeds the median time served because the average is sensitive to the small minority of prisoners released after serving extremely long sentences. The median, by contrast, is insensitive to the longest imprisonments. The average time served exceeded the median time by about 30 percent in 1985 and 40 percent by 1992 due to tougher sentencing policies.

Between 1985 and 1992, the expected punishment in terms of average sentences served increased from 31 to 46 days of prison time for violent crimes and from 2.7 to 3.3 days for property crimes. Total prison days served

by all criminals convicted of index crimes went from 5.8 to 9.1 days (vs. an increase from 4.5 to 6.5 days in median days served).[19]

The Prices We Charge for Crime

It is virtually impossible to prevent people outside of prison from committing crimes. Since criminals do not knowingly commit crimes in front of the police, the police rarely catch them in the act. The criminal justice system relies on punishments imposed afterward. In effect, the system constructs a list of prices (expected punishments) for various criminal acts, and criminals decide whether they are willing to pay, just as many of us decide whether to risk parking or speeding tickets.

Viewed this way, the expected prison sentences are the prices we charge for various crimes. Thus, the price of murder is about two to three years in prison after we factor in the odds of getting away with it, the price of burglary is about six days and the price of auto theft is no more than two days.

The Solution: Increase Expected Punishment

Despite recent increases in expected punishment, if we are to succeed in lowering the crime rate to, say, the level of the 1950s, we must create at least as much deterrence as existed then. For example, robbers served expected median prison terms of 140 days in 1950 vs. 36 days in 1992 [see Table III]. Getting back to over 100 days per robbery would require tripling the expected punishment per robbery. The three ways of doing so are to:

● increase the proportion of reported robberies cleared by arrest from 23 to 70 percent,

● increase the proportion of the accused that are prosecuted, convicted and imprisoned from 26 to 78 percent or

● increase the median prison time served by robbers from 26 to 78 months.

All three are expensive in the short run. A higher arrest rate requires more money for police staffing, equipment and procedures. Higher conviction and sentencing rates require more resources for prosecution and criminal courts. All three require more prison space for robbers. But a tough approach pays, especially over the long run. As the odds worsen for criminals, crimes decline and the same numbers of arrests and convictions begin to reduce the odds favoring criminals.

Figures IV to VIII show the relationship between each index crime of violence or burglary and its respective expected punishment since 1950 [see Table IV]. While not perfect, the correlation between the amount of each crime and its expected punishment is clearly negative.
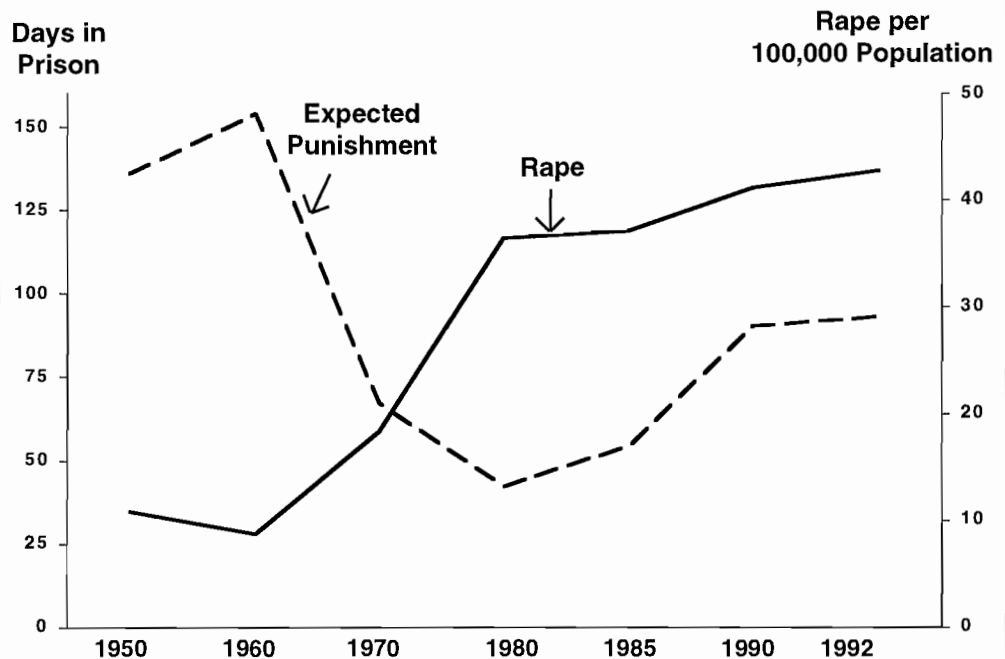
FIGURE IV

Murder and Expected Prison Time, 1950-92

Years in Prison

Murder per 100,000 Population

"The negative correlation between expected punishment and the murder rate is weakest among serious crimes."
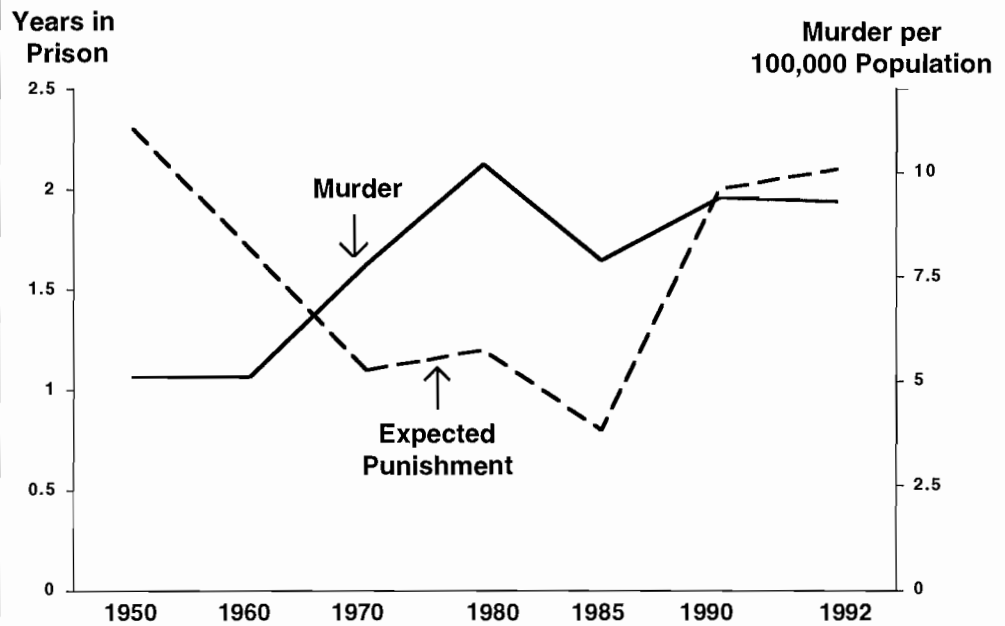
Source: FBI and Table IV.

FIGURE V

Rape and Expected Prison Time, 1950-92

Days in Prison

Rape per 100,000 Population

"Correlation analysis suggests that a one-week increase in expected punishment reduces rape by 6 percent."

Source: FBI and Table IV.

FIGURE VI

Robbery and Expected Prison Time, 1950-92

Days in Prison

Robberies per 100,000 Population

Robbery

Expected Punishment

| 1950 | 1960 | 1970 | 1980 | 1985 | 1990 | 1992 |

Source: FBI and Table IV.

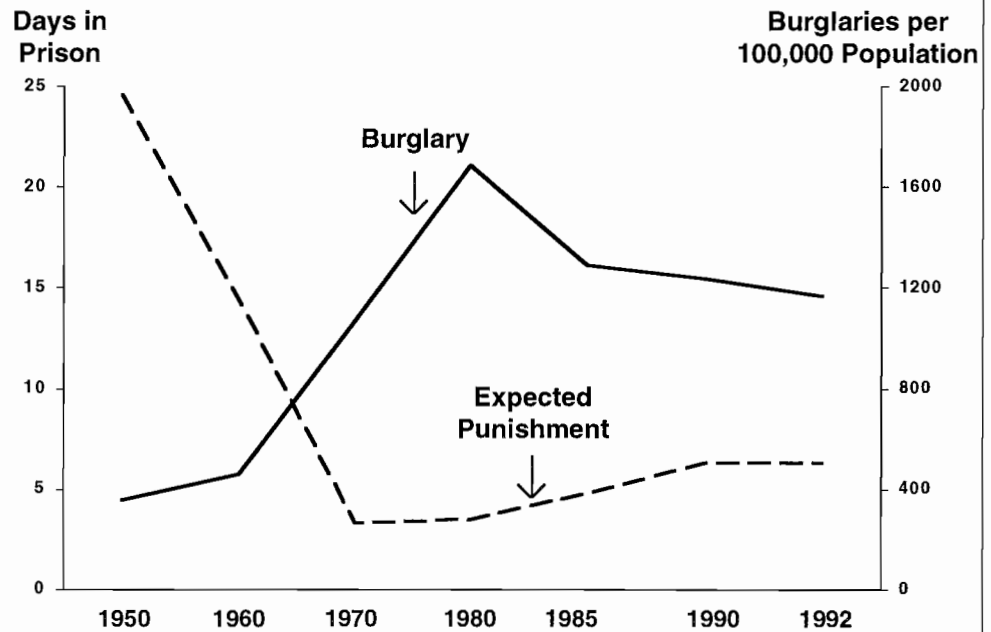*"A one-week increase in expected punishment reduces robbery by 7 percent."*

FIGURE VII

Aggravated Assault and Expected Prison Time, 1950-92

Days in Prison

Assaults per 100,000 Populatioin

Expected Punishment

Aggravated Assault

| 1950 | 1960 | 1970 | 1980 | 1985 | 1990 | 1992 |
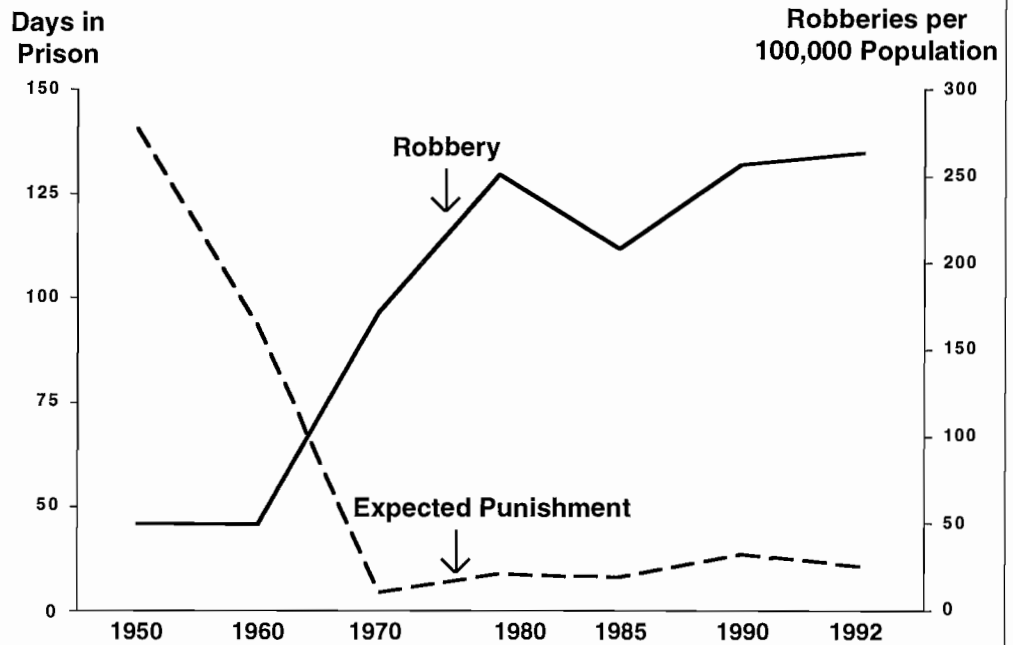
Source: FBI and Table IV.

"A one-week increase in expected punishment reduces aggravated assault by 42 percent."
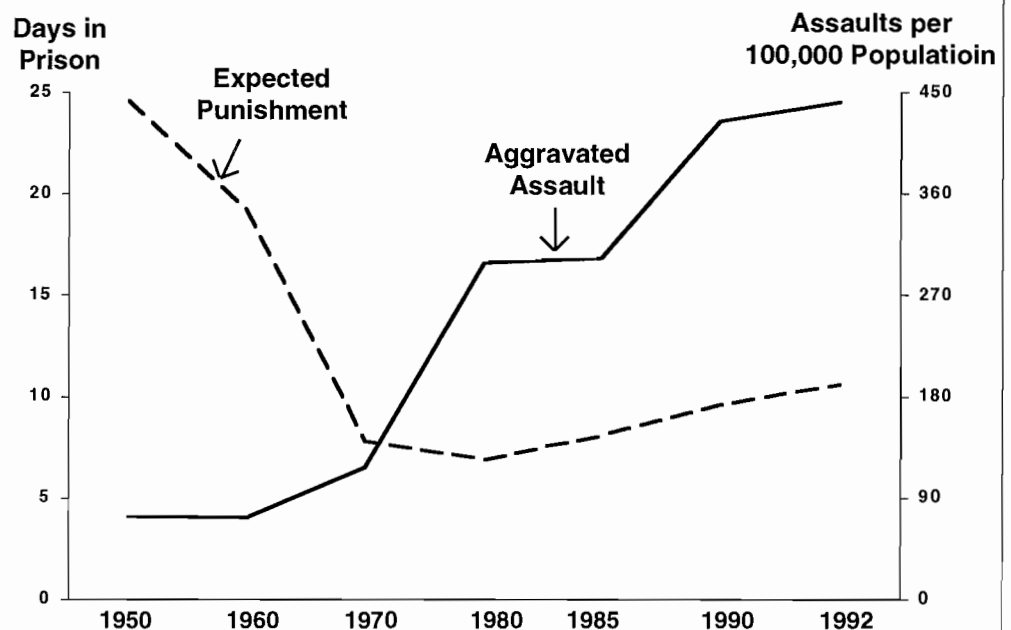
> **FIGURE VIII**
>
> # Burglary and Expected Prison Time, 1950-92
>
> **Days in Prison**
>
> **Burglaries per 100,000 Population**
>
> Burglary
>
> Expected Punishment
>
> 1950 1960 1970 1980 1985 1990 1992
>
> Source: FBI and Table IV.

Statistically, a simple correlation between two variables may range from +1.0 to -1.0, indicating that crime and expected punishment go up and down together perfectly (+1.0) or go up and down in a pattern perfectly opposite from each other (-1.0) or somewhere in between. The simple correlation between each crime and its respective expected punishment is -.26 for murder, -.68 for rape, -.63 for aggravated assault, -.87 for robbery and -.88 for burglary. While all are negative and therefore consistent with the theory that punishment deters, the correlations are most significant for robbery and burglary, increasing our confidence that crimes with an obvious economic motive are particularly sensitive to expected punishment.

Most studies find that criminals and potential criminals are more responsive to changes in arrest and conviction rates than to punishment length. That may be because changes in the first two deterrents are more visible. A clear example of how deterrence works was the response of college basketball players to adding a third referee on the court. Critics feared that the game would be slowed down by more whistles and foul shots, but the number of fouls per game actually fell by 17, a 34 percent reduction. Like criminals, basketball players reduced their infractions in response to more "police" and higher detection rates.[20] Similarly, Steven Levitt has shown that an additional police officer stops eight to 10 serious crimes per year.[21]

"An additional police officer stops eight to 10 serious crimes per year."

Evidence From the States: California vs. Texas

The two most populous states, California and Texas, together account for more than one in five inmates in the country, with 124,813 and 100,136 prisoners, respectively, in 1994. These two states have followed opposite paths during the 1980s and 1990s, with very different impacts on the amount of serious crime.

In 1980, the California state prison population (98 per 100,000 population) was 30 percent below the national average and its rate of violent crime and burglary was 40 percent above the national average. In Texas, by contrast, the prison population (210 per 100,000 population) was 50 percent above the national average and its serious crime rate only 5 percent above the national average [see Figures IX and X]. By the end of the 1980s, California's state prison population was 9 percent above the national average and its serious crime rate had declined to 22 percent above the national average [see Figure X]. In Texas, meanwhile, the state prison population had fallen 5 percent below the national average and its rate of serious crime had jumped to 45 percent above the national average.

The ratio of prisoners to Texas residents remained below the national average in the late 1980s, primarily due to federal court orders and prison capacity constraints. During the early 1990s, however, Texas went on a building spree and doubled its prison population. At 545 prisoners per 100,000 population, Texas became the state with the highest number of inmates per resident in 1994 (Louisiana stood second at 514 and South Carolina was third at 504; lowest was North Dakota at 75). [See Figure XI.]
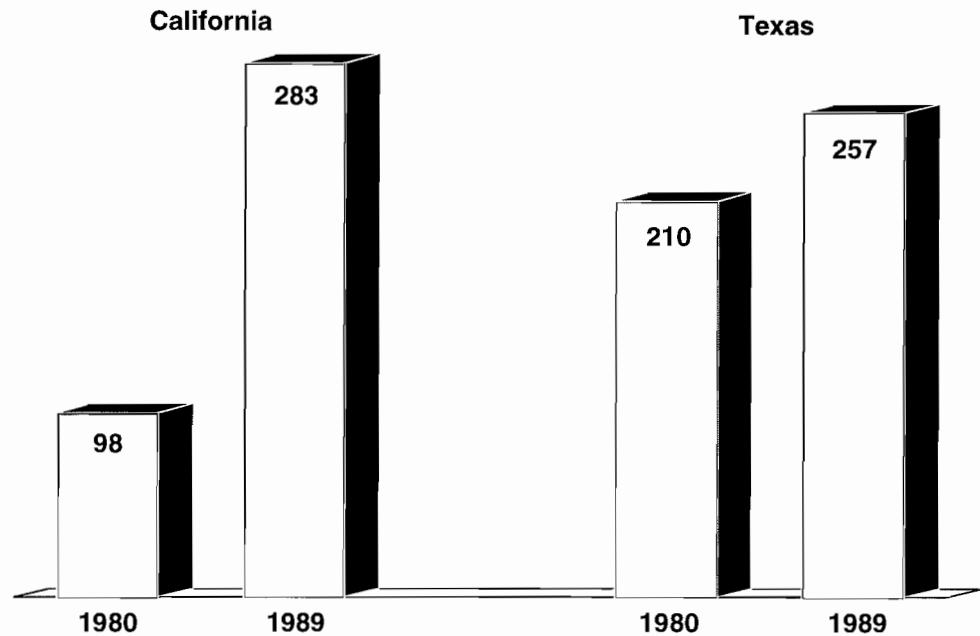
Has crime in Texas declined? Definitely. As Figure XII shows, California was unable to reduce its rate of violent crimes and burglaries, while in Texas the rate declined 21 percent. Preliminary FBI data show a further 9.4 percent decline in Texas' largest cities in 1994. The national rate fell only 4.6 percent. When compared to 1990 rates, the lower 1994 crime rates imply that 800 fewer Texans were murdered and 340,000 fewer felony crimes were reported to the police. Houston Mayor Bob Lanier attributes the continuing decline in crime in his city to "increased law enforcement and an increase in state action on prisons and paroles."[22]

"Root causes" of crime did not change in Houston or Texas, although the economy recently has strengthened and unemployment has dropped. Despite liberal rhetoric to the contrary, economic factors like poverty, a poor economy, low wage or income growth and high unemployment do not cause crime. If anything, the reverse is true: crime causes poverty and economic stagnation. None of the unpleasant social or demographic facts about Texas have changed: births to unmarried women continue to grow, high school dropout rates remain at about 20 percent and the number of Texans living in poverty has increased about 20 percent in the 1990s, to more than 3.1 million.

"The two most populous states, California and Texas, followed opposite paths in the 1980s and 1990s, with very different impacts on the amount of serious crime."
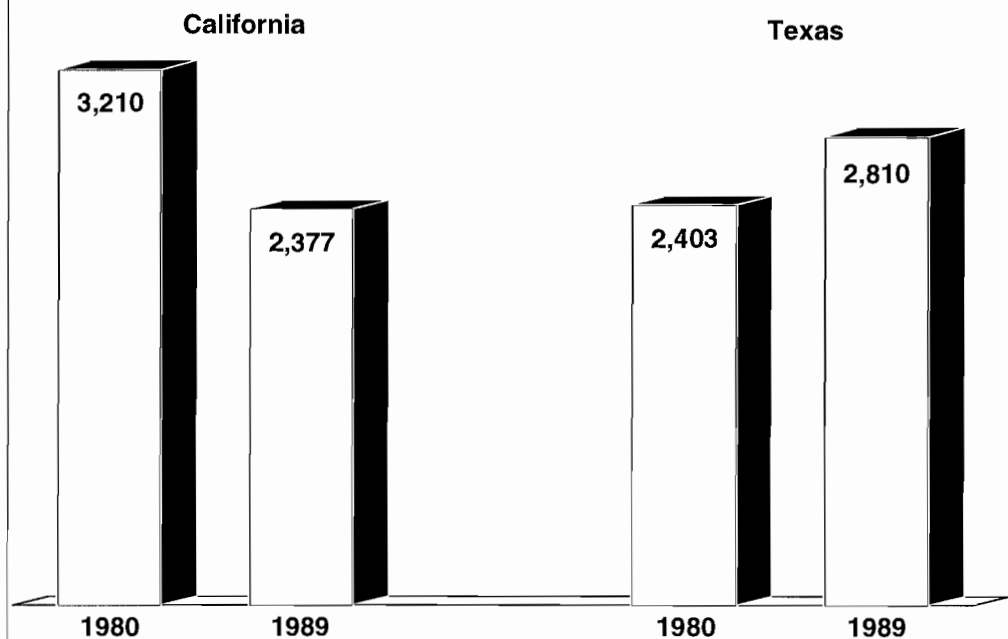
FIGURE IX

State Prisoners per 100,000 Population

California

Texas

283

257

210

98

1980   1989   1980   1989

"During the 1980s, California's prison population increased and its serious crime rate fell."

FIGURE X

Violent Crimes and Burglaries per 100,000 Population

California

Texas

3,210

2,377

2,403

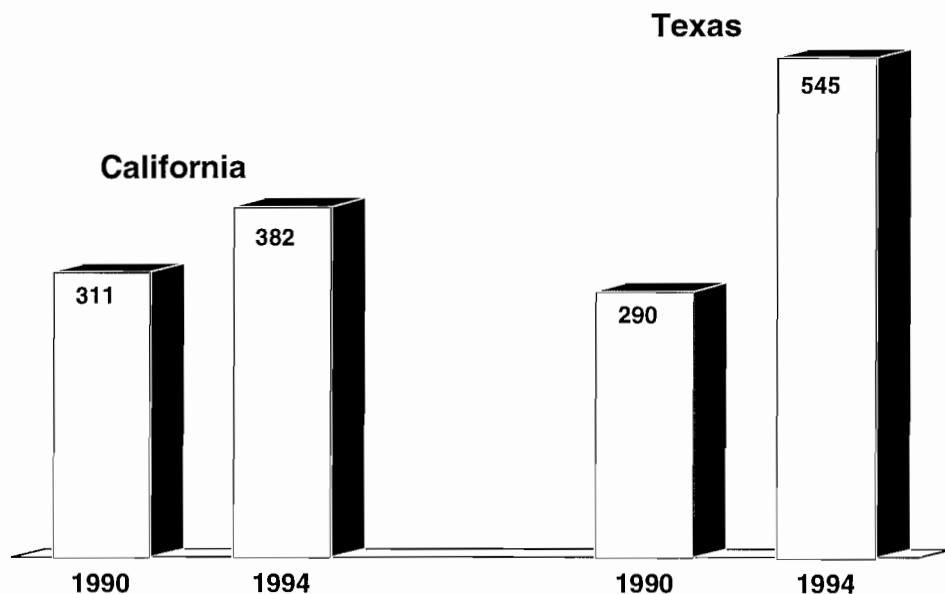2,810

1980   1989   1980   1989

Source: FBI.

"As the Texas prison population fell below the national average in the 1980s, its serious crime rate went from 5 percent to 45 percent above the national average."
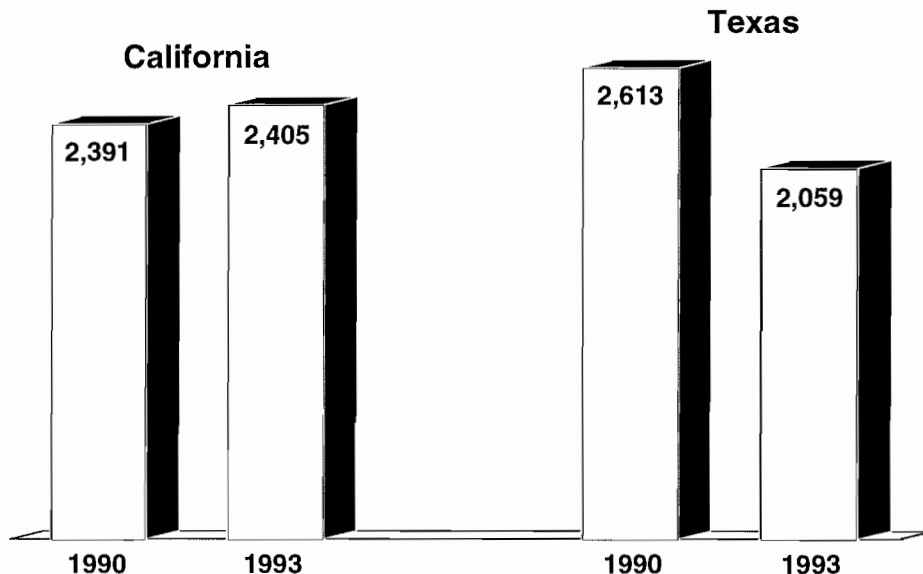
FIGURE XI

State Prisoners per 100,000 Population

Texas

California

311	382	290	545
1990	1994	1990	1994

Source: Bureau of Justice Statistics.

FIGURE XII

Violent Crimes and Burglaries
per 100,000 Population

Texas

California

2,391	2,405	2,613	2,059
1990	1993	1990	1993

Source: FBI.

The Cost of Not Building Prisons

Although the cost of building and maintaining more prisons is high, the cost of not doing so appears to be higher. A recent study by Brookings Institution researchers found that keeping most prisoners behind bars lowers their cost to society.[23]

- The latest Bureau of Justice Statistics figures show that it costs under $16,000 per year to keep a prisoner in state or federal prison. Hidden and indirect expenses to taxpayers may inflate this figure to $20,000 or $25,000 per year.

- In the late 1970s, the Rand Corporation found in prisoner surveys in Texas, Michigan and California that the median number of nondrug crimes committed by prisoners the year before they were incarcerated was 15; similar surveys in Wisconsin in 1990 found 12 nondrug crimes, as did a 1993 New Jersey survey.

- Based on Vanderbilt University management professor Mark Cohen's analysis of jury awards, the average annual social damage prevented by incarcerating a newly admitted New Jersey criminal is $1.6 million and the median damage prevented is $70,098.

Thus, even at $25,000 a year, keeping the "average" criminal in prison is worthwhile, since on the streets he would commit an average of 12 or more nondrug crimes each year. For serious crimes, therefore, imprisonment pays for itself.[24] The researchers measured benefits only in terms of crime prevention and ignored retributive, deterrent and rehabilitative benefits. Thus they underestimated the benefits of prison to society.

Moreover, the failure to keep offenders in prison once they are there is another hazard created by a lack of prison space, and early release often leads to more crime.

- A Rand Corporation survey of former inmates in Texas found that 60 percent were rearrested within three years of their release and 40 percent of those were reconvicted.[25]

- A survey of 11 states showed that 62 percent of all released prisoners were rearrested within three years, 47 percent were reconvicted and 41 percent were reincarcerated.[26]

- A study of 22 states for the Bureau of Justice Statistics found that 69 percent of young adults (ages 17-22) released from prison in 1978 were rearrested within six years, after committing an average of 13 new crimes.[27]

"For serious crimes, imprisonment pays for itself."

As Bureau of Justice statistician Patrick Langan pointed out in *Science*, whatever the causes, in 1989 there were an estimated 66,000 fewer rapes, 323,000 fewer robberies, 380,000 fewer assaults and 3.3 million fewer burglaries than there would have been if the crime rate had been at the 1973 level. If only one-half or even one-fourth of the reductions resulted from increased incarceration, imprisonment has reduced crime significantly.[28]

Bringing Down Costs Through Privatization

The private sector can build and maintain prisons less expensively. A number of studies have found savings of 20 percent for private construction costs and 5 to 15 percent for private management of prison units.[29] Further, independent observers who monitor, for example, the contracts of Corrections Corporation of America (CCA), a Nashville, Tenn., company, praise the quality of the company's operation.[30] George Zoley of Wackenhut Corp. in Coral Gables, Fla., years ago predicted a gradual building process in which the private sector establishes a "good track record and proves it can do the job."[31] Within a decade, it has come to pass:

"Studies find savings of 20 percent for private prison construction and 5 to 15 percent for private operation."

- With 28,678 adult prisoners in private correctional facilities on December 31, 1994, the market share of private prisons has risen to 2 percent of the prison and jail population.[32]

- Between 1993 and 1994, private facilities under contract also rose from 71 to 88, a one-year increase of 14.5 percent.

- The Federal Bureau of Prisons has awarded its first contract to design, construct and manage a 1,000-bed medium security prison (to be located in Eloy, Ariz.) to Concept, Inc., of Louisville, Ky.

- Texas leads the nation in privatization, with 33 private adult correctional units in operation or under construction.

Major companies in the industry include CCA, with a rated capacity of 17,061 inmates in facilities under construction and planned expansions, Wackenhut Corrections with 13,732 and Concept, Inc. with 4,800. Profits, however, remain elusive.[33] For example, CCA reports that it makes a small profit, but Pricor, Inc., of Murfreesboro, Tenn., an early leader in the industry, quit adult corrections after suffering a series of losses.

Economic theory implies that if there were a formal market to buy, sell and rent prison cells, the problems of funding and efficiently allocating prison space would decrease. And there are numerous — unexploited — opportunities to reduce the net costs of prisons by creating factories behind bars, having prisoners earn their keep and compensating victims.

The most promising ways to control taxpayers' costs include privatizing prison construction and operation. Short of full privatization, government-operated correctional facilities could be corporatized and operated like private businesses.

Prison Operation. There is no insurmountable legal obstacle to total privatization of prison operation.[34] Unlike government agencies, private firms must know and account for all their costs, including long-run costs.[35] If they can do so and still operate prisons for less than the government — and all indications are that they can — then government should set punishments for felons and let the private sector supply prisons.

- CCA charges Harris County, Texas, and the Immigration and Naturalization Service only $35.25 per inmate per day to operate a 350-bed minimum security facility in Houston, a charge that includes recovery of the cost of building the facility.[36]

- Operating costs for government-run prisons can be twice that amount, even without taking construction and land costs into account.[37]

Employing Prisoners. America's prisons originally were intended to be self-supporting, and during the 19th century many state prisons ran surpluses and returned excess funds to their governments. In 1885, three-fourths of prison inmates were involved in productive labor, the majority working in contract and leasing systems. Fifty years later only 44 percent worked, and almost 90 percent of them worked in state rather than private programs.[38] Today, prison inmates are a huge drain on taxpayers, despite the millions of available hours of healthy, prime-age labor they represent.

"Prisons originally were intended to be self-supporting."

Increasing productive work for prisoners requires the repeal of some federal and state statutes and clearing away bureaucratic obstacles. The federal Hawes-Cooper Act of 1929 authorized states to prohibit the entry of prison-made goods produced in other states. The Walsh-Healy Act of 1936 prohibited convict labor on government contracts exceeding $10,000. The Sumners-Ashurst Act of 1940 made it a federal offense to transport prison-made goods across state borders, regardless of state laws.[39]

Throughout the nation, a score of exceptions to the federal restrictions on prison labor have been authorized, *provided* the inmates were paid a prevailing wage, labor union officials were consulted, other workers were not adversely affected and the jobs were in an industry without local unemployment.[40]

A survey commissioned by the National Institute of Justice identified more than 70 companies that employ inmates in 16 states in manufacturing, service and light assembly operations.[41] Prisoners sew leisure wear, manufacture water-bed mattresses and assemble electronic components. PRIDE, a state-sponsored private corporation that runs Florida's 46 prison industries — from furniture making to optical glass grinding, made a $4 million profit in 1987.[42]

Such work benefits everyone. It enables prisoners to earn wages and acquire marketable skills while learning individual responsibility and the value of productive labor. It also ensures that they are able to contribute to victim compensation and to their own and their families' support while they are in prison. A 1991 study by the U.S. Bureau of Prisons found that only 6.6 percent of federal inmates who had been employed in prison industries violated their parole or were rearrested within a year of their release vs. 20 percent for nonemployed prisoners.[43]

By the end of 1994, the Private Sector Prison Industry Enhancement program had 74 private firms employing 1,663 prison inmates to manufacture goods ranging from circuit boards to bird feeders to graduation gowns.[44] Airline reservations, telemarketing, data processing and map digitizing services employed others. At the current annual rate, $11 million in gross wages is being paid ($6,600 per prison year), for a cumulative total of $46 million since 1979. Prisoners have retained 56 percent of their wages and paid out the rest in room and board (19 percent), taxes (12 percent), victim restitution (6.6 percent) and family support (6.4 percent).

South Carolina and Nevada have become leaders in private sector use of prison labor, yet nationally only 5,000 prisoners (far less than 1 percent) work for private companies because of the additional costs of doing business in prisons.[45]

Fred Braun Jr., president of Workman Fund in Leavenworth, Kan., has been a key promoter of Private Sector Prison Industries — PSPI. Organized as a nonprofit foundation, Workman lends venture capital to private enterprises interested in training and employing prisoners on-site in "real world" work. Workman reported promising results from an enterprise in which convicts worked alongside nonconvict labor. Braun also is president of Creative Enterprises, the umbrella company for two plants, Zephyr Products, Inc. (sheet metal products) and Heatron, Inc. (electric heating elements), which train and employ minimum-custody inmates at the Lansing East Unit in Leavenworth.[46] Braun's original vision was of an industrial park of three or four firms employing 200. Thirteen years after opening Zephyr, he had added no more businesses, but his two original plants were employing about 150 prisoners.[47]

Bureaucratic inertia slows the transition to private work for prisoners. For example, the state corrections system in Texas has long been a leader in state-run prison industries, which probably has hindered the introduction of private sector opportunities for prison employment and production there.

Conclusion

The odds of imprisonment for a serious offense increased in the late 1980s and early 1990s as legislators responded to the public's "get tough" attitude. The result has been a decreasing national crime rate. To build on this trend, we must continue raising the odds of imprisonment, making crime less lucrative for potential criminals. We also must reduce prison costs through privatization.[48] Finally, we must relax the laws hampering the productive employment of prisoners.

NOTE: Nothing written here should be construed as necessarily reflecting the views of the National Center for Policy Analysis or as an attempt to aid or hinder the passage of any bill before Congress.

Notes

[1] Bureau of Justice Statistics, *Criminal Victimization in the United States: 1973-92 Trends*, July 1994, NCJ-147006, p. 9.

[2] Ibid., p. 25.

[3] Bureau of Justice Statistics, Technical Report, *Lifetime Likelihood of Victimization*, March 1987, NCJ-104274, p. 2.

[4] Federal Bureau of Investigation, *Crime in the United States, 1993*, p. 4.

[5] Ibid.

[6] Federal Bureau of Investigation, *Crime in the United States, 1993*, p. 58.

[7] Federal Bureau of Investigation, *Uniform Crime Reports, 1994 Preliminary Annual Release*, May 21, 1995.

[8] The U.S. Department of Justice administers two statistical programs to measure the magnitude, nature and impact of crime in the nation: the Uniform Crime Reporting (UCR) program and the NCVS. The UCR data, which includes the FBI Index of Crime, are compiled from monthly law enforcement reports made directly to the FBI or to state agencies which then report to the FBI. The Bureau of Justice Statistics' NCVS collects detailed information on crimes from a nationally representative sample of approximately 49,000 households. A basic reason for two statistical programs is that only a minority of crimes — fewer than four in 10 — are reported to the police. See Federal Bureau of Investigation, *Uniform Crime Reports, 1993*, pp. 385-86.

[9] Also see Bureau of Justice Statistics, Special Report, *Reporting Crimes to the Police*, December 1985, NCJ-99432.

[10] See Itzhak Goldberg and Frederick C. Nold, "Does Reporting Deter Burglars? — An Empirical Analysis of Risk and Return in Crime," *Review of Economics and Statistics*, 62, August 1980, pp. 424-31.

[11] Stanton Samenow, a criminal psychologist and interviewer of thousands of criminals, insists, "The criminal is rational, calculating and deliberate in his actions. Criminals know right from wrong. ... A habit is not a compulsion. On any occasion, the thief can refrain from stealing if he is in danger of being caught." In Robert James Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility* (Irvington-on-Hudson, NY: Foundation for Economic Education, 1994), p. 48.

[12] John J. DiIulio Jr., "White Lies About Black Crime," *The Public Interest*, No. 118, Winter 1995, pp. 30-44; James Q. Wilson and Joan Petersilia, eds., *Crime* (San Francisco, CA: Institute for Contemporary Studies, 1995), p. 507.

[13] As UCLA management professor James Q. Wilson wrote, "The average citizen thinks it is obvious that people discovered it is easier to get away with it." James Q. Wilson, *Thinking About Crime*, rev. ed. (New York: Basic Books, 1983), p. 117.

[14] "The risks posed by the criminal enforcement system are notoriously low," wrote economist Kip Viscusi, "and data show that youthful criminals know it." W. Kip Viscusi, "The Risks and Rewards of Criminal Activity: A Comprehensive Test of Criminal Deterrence," *Journal of Labor Economics*, Vol. 4, No. 3, 1986, pp. 317-40.

[15] Ibid. See also the earlier surveys of the literature in Gordon Tullock, "Does Punishment Deter Crime?" *The Public Interest*, Vol. 36, Summer 1974, pp. 103-11; Morgan O. Reynolds, *Crime by Choice* (Dallas: Fisher Institute, 1985), ch. 12; Donald E. Lewis, "The General Deterrent Effect of Longer Sentences," *British Journal of Criminology*, Vol. 26, January 1986, pp. 47-62; Samuel Cameron, "The Economics of Crime Deterrence: A Survey of Theory and Evidence," *Kyklos*, 41, 1988, pp. 301-23; Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility*; and Steven D. Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime," National Bureau of Economic Research, Cambridge, MA, Working Paper No. 4991, January 1995.

[16] Morgan O. Reynolds, "Why Does Crime Pay?" NCPA Policy Backgrounder No. 110, National Center for Policy Analysis, November 6, 1992, p. 3.

[17] The criminal justice probabilities shown in Table II are available only for the late 1980s and 1990 and then only for 11 states. Fortunately, we do not need such detail to calculate expected punishment. We require only three numbers for each type of crime: (1) the number of new convicts the courts sent to federal and state prisons for those crimes, (2) the number of those crimes reported to the police and (3) the median prison time served by those released from prison. Mathematically, the percentage of crimes cleared by arrest multiplied by the ratio of prosecutions to arrests multiplied by the ratio of convictions to prosecutions multiplied by the ratio of those sent to prison to total convictions equals the ratio of new prisoners to number of crimes, that is, the probability of prison. Reasonable approximations for these data are available in selected years all the way back to 1950, while the more abundant 1985-92 data allow quite precise calculation of expected punishment.

[18] Average time served is calculated by adding all the time served for Index crimes and dividing by the number of crimes reported. Median time served is calculated by arranging the time served in order from shortest to longest; the median is the middle value, with half below and half above.

[19] All of these numbers increase slightly if the jail time served by prisoners is added to state prison time served.

[20] Robert E. McCormick and Robert D. Tollison, "Crime on the Court," *Journal of Political Economy*, 92, April 1984, pp. 223-35.

[21] Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime."

[22] *Houston Chronicle*, January 26, 1995, p. 23A.

[23] Anne Morrison Piehl and John J. DiIulio Jr., "Does Prison Pay? Revisited," *The Brookings Review*, Winter 1995, pp. 21-25.

[24] Prisons, however, do not pay for themselves with many drug offenders, who have grown to 30 percent of new state prisoners, up from 7 percent in 1980. There is no social benefit for incarcerating drug dealers, according to Piehl and DiIulio, because they are readily replaced in the drug marketplace. Hence, the researchers calculate that prisons cannot pass a cost-benefit test for about one in four prisoners.

[25] Stephen Klein and Michael Caggiano, *Policy Implications and Recidivism* (Santa Monica, CA: Rand Corporation, 1986); and Joan Petersilia et al., *Prison Versus Probation* (Santa Monica, CA: Rand Corporation, 1986).

[26] U.S. Department of Justice, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics, 1988*, p. 658.

[27] Allen Beck, *Recidivism of Young Parolees* (Washington, DC: Bureau of Justice Statistics, 1987). Also see "The Case for More Incarceration," Office of Policy Development, U.S. Department of Justice, in Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility* .

[28] Quoted in Bidinotto, ed., *Criminal Justice? The Legal System Versus Individual Responsibility*, p. 214. Also see George Allen, "The Courage of Our Convictions: The Abolition of Parole Will Save Lives and Money," *Policy Review*, Spring 1995, pp. 4-7.

[29] Gary W. Bowman, Simon Hakim and Paul Seidenstat, eds., *Privatizing Correctional Institutions* (New Brunswick, N.J.: Transaction Publishers, 1993).

[30] For a comparison of the quality of private and public prisons, see Charles H. Logan, "Well Kept: Comparing Quality of Confinement in Private and Public Prisons," in *Journal of Criminal Law and Criminology*, Vol. 83, No. 3, Fall 1992, pp. 577-613. In a comparison of privately and publicly operated corrections facilities in Kentucky and Massachusetts, both staff and inmates generally gave higher ratings to the services and programs at the privately operated facilities, where escape rates also were lower and disturbances fewer. See Dana C. Joel, "The Privatization of Secure Adult Prisons: Issues and Evidence," in Bowman, Hakim and Seidenstat, eds., *Privatizing Correctional Institutions.*

[31] Benson, *The Enterprise of Law*, p. 345.

[32] Author's telephone conversation with office of Charles W. Thomas, Director, Private Corrections Project, Center for Studies in Criminology and Law, University of Florida, Gainesville, FL, March 1995; also see Charles W. Thomas, "The Transformation of Correctional Privatization from a Novel Experiment Into a Proven Alternative," presentation at the National Convention of the American Legislative Exchange Council, Tampa, FL, August 4, 1994.

[33] *Wall Street Journal*, June 10, 1993, p. B2.

[34] CCA offered to operate the entire prison system for the state of Tennessee in the 1980s, but the state government declined the proposal. See Bowman, Hakim and Seidenstat, eds., *Privatizing Correctional Institutions*, p. 29.

[35] Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990).

[36] Author's telephone conversation with CCA Program Director, Houston, TX, March 14, 1995.

[37] Ibid. For the hidden costs of public corrections, see Charles H. Logan and Bill W. McGriff, "Comparing Costs of Public and Private Prisons: A Case Study," National Institute of Justice, U.S. Department of Justice, No. 216, September/October 1989.

[38] Alexis M. Durham, "The Future of Correctional Privatization: Lessons From the Past," in Bowman, Hakim and Seidenstat, eds., *Privatizing Correctional Institutions,* p. 39.

[39] Barbara Auerbach, "Federal Government Involvement in Private Sector Partnerships in Prison Industries," in Bowman,

Hakim and Seidenstat, eds., *Privatizing Correctional Institutions*, pp. 91-104.

[40] Bruce Fein and Edwin Meese III, "Have to Fight Crime Within Our Limited Means," *Houston Chronicle*, May 3, 1989, p. 29A.

[41] James K. Stewart, Director, National Institute of Justice, U.S. Department of Justice, in a letter to the *Wall Street Journal*, July 26, 1989.

[42] See Jack Eckerd, "Responsibility, Love and Privatization: A Businessman's Guide to Criminal Rehabilitation," *Policy Review,* 45, Summer 1988, p. 52; and Judith Schloegel, "PRIDE of Florida: A Working Model for Inmates," in Bowman, Hakim and Seidenstat, eds., *Privatizing Correctional Institutions,* pp. 105-11. PRIDE is an acronym for Prison Rehabilitative Industries and Diversified Enterprises.

[43] Andrew Peyton Thomas, *Crime and the Sacking of America* (Washington, DC: Brassey's, 1994), p. 121.

[44] Prison Industry Enhancement Certification Program, Quarterly Report, American Correctional Association, Laurel, MD, March 1, 1995.

[45] *Business Week*, February 17, 1992, p. 42.

[46] "Governor Praises Heatron, Zephyr," *Leavenworth (KS) Times*, October 7, 1992, p. A1.

[47] See also Rod Miller, George E. Sexton and Victor J. Jacobsen, "Making Jails Productive," National Institute of Justice, U.S. Department of Justice, NCJ-132396, October 1991; and "Private Sector Prison Industries" and "Prison-Based Joint Ventures," both by Criminal Justice Associates, Philadelphia, PA, December 7, 1990.

[48] For more ideas on privatization, see Morgan O. Reynolds, "Using the Private Sector to Deter Crime," NCPA Policy Report No. 181, March 1994.

About the Author

Morgan O. Reynolds is an NCPA Senior Fellow, Director of the NCPA Criminal Justice Center and a professor of economics at Texas A&M University. He was 1993-94 Visiting Scholar with the Joint Economic Committee, U.S. Congress. He has published many articles in academic journals; edited *W. H. Hutt: An Economist for the Long Run* (1986); and written *Power and Privilege: Labor Unions in America* (1984), *Crime by Choice* (1985), *Making America Poorer: The Cost of Labor Law* (1987) and *Public Expenditures, Taxes, and the U.S. Distribution of Income* (1977). His newest book, *Economics of Labor,* was published this year by South-Western. Dr. Reynolds has been a consultant for the National League of Cities, the U.S. Department of Labor, the National Labor Relations Board and many private organizations. He also serves on the boards of the *Journal of Labor Research* and the *Review of Austrian Economics* and is a member of the Mont Pelerin Society and an adjunct scholar of the Cato Institute.

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- Special taxes on the elderly have destroyed the value of tax-deferred savings (IRAs, employee pensions, etc.) for a large portion of young workers; and

- Man-made food additives, pesticides and airborne pollutants are much less of a health risk than carcinogens that exist naturally in our environment.

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