The Economic Analysis of Criminal Law
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Abstract
This Chapter summarizes the literature on the economic analysis of the criminal law. First, it discusses the positive theory of criminal behavior and reviews the empirical evidence in support of the theory. Then, it discusses the normative theory of how public law enforcement should be designed to minimize the social costs of crime.

KEYWORDS: Becker, law and economics, empirics, criminal law, criminology, deterrence, incapacitation, rational choice, public law enforcement, certainty, severity, fines, imprisonment

A. The Economic Theory of Criminal Behavior

Beginning with the work of the economics Nobel laureate Gary Becker in 1968, economists have invaded the field of criminology, using their all-embracing model of individual rational behavior. Several of Becker’s ideas were foreshadowed by earlier writers—Cesare Beccaria in 1767 and Jeremy Bentham in 1789. These early scholars, though not economists, developed several concepts that would later be associated with the economic theory of criminal behavior: “. . . the profit of the crime is the force which urges man to delinquency: the pain of the punishment is the force employed to restrain him from it. If the first of these forces be the greater, the crime will be committed; if the second, the crime will not be committed.” Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (1907 [1789], p. 399).

However, from the beginning of the 20th century interest in their point of view dwindled as a plethora of other theories were developed. Fortunately, the main idea of Bentham was vitalized and modernized in Becker’s path-breaking article, Crime and Punishment, where he suggests that “a useful theory of criminal behavior can dispense with special theories of anomie, psychological inadequacies, or inheritance of special traits and simply extend the economist’s

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In Becker’s model, a criminal act is preferred and chosen if the expected benefits from committing a crime exceed the expected costs, including the costs of any foregone legal alternatives. The economic theory of criminal behavior is thus regarded as a special case of the general theory of rational behavior under uncertainty. Assuming that individual preferences are constant, the model can be used to predict how changes in the probability and severity of sanctions and in various socio-economic factors may affect the amount of crime. Even if individuals who violate certain laws differ systematically from those who abide by the same laws, the former, like the latter, do respond to incentives (i.e., to sanctions and economic conditions). Indeed, numerous empirical studies confirm that the predictions of the economic theory.

1. The Benefits and Costs from Crime

Thus, the economic model of criminal behavior assumes that the decision to commit a crime is the result of a cost-benefit analysis that individuals undertake either consciously or subconsciously. The gains and losses included in the economic model are usually meant to represent all kinds of benefits and costs that have an effect on the people’s decisions. People are assumed to allocate time to criminal activity until marginal benefits equal marginal costs. For some people marginal benefits of crime are probably always lower than marginal costs of crime; the economic model would predict that these people will never commit crimes. For others, the marginal benefits often exceed the marginal costs; we would expect these people to specialize in crime. For most of us, the marginal costs usually exceed the marginal benefits. However, every once in a while the marginal costs seem particularly low or the marginal benefits seem particularly high, and we commit a crime. For example, we may be driving on a stretch of country road where police seem unlikely (low marginal cost of speeding) or we are driving a Ferrari (high marginal benefit of speeding) so we decide to speed.

The kinds of gains obtained from a criminal act vary, depending on the type of crime and the individual criminal. Some are monetary, such as the gains obtained from theft, robbery, insurance fraud, killing a rival drug dealer, etc. Others are psychic, such as the thrill of danger, peer approval, retribution, sense of accomplishment, or “pure” satisfaction of wants (rape).
Obviously, the psychic benefits from crime will be different for different people: young men tend to enjoy the thrill of danger more than older women and gang members tend to get more peer approval than church-goers when they commit a crime. Incarcerated criminals may also gain human capital in committing future crimes if they learn techniques from other criminals or meet future potential crime partners while imprisoned.

The costs of crime also depend on the crime and individual. The costs can include direct material costs, psychic costs, opportunity costs, and expected punishment costs. The material costs include the cost of supplies purchased to commit crimes (equipment, guns, vehicles, face masks). Psychic costs include any guilt, anxiety, fear, dislike of risk, or other emotions associated with committing crime. The opportunity cost of crime consists of the net benefit of the legal activity forgone while planning, performing and concealing the criminal act. The lower an individual’s level of income, the lower is his or her opportunity cost of engaging in illegal activity. The amount a person can earn in the legal sector may depend on factors such as age, sex, race, education, training, region, rate of unemployment, and IQ. People that are only able to earn a low wage will have a low opportunity cost of crime, as they are not giving up substantial legal income.

The expected punishment costs include the cost of all formal and informal sanctions, as well as the pecuniary costs arising from litigation (lost income and lawyers’ fees). When the formal sanction is a fine, the punishment cost is the amount of the fine. When the formal sanction is a prison term, the punishment cost incorporates the cost to the criminal of going to prison: the lost income, the monetary equivalent of the loss of liberty, the monetary equivalent of whatever harms come to the individual while in prison, etc. The costs of the informal sanctions result from the social stigma that accompanies arrest, conviction, and imprisonment. These sanctions can include the reactions of employers, family, and friends and the reduced legitimate income a criminal will earn once he has a criminal record. These expected punishment costs must be weighted by the probability that the individual will be arrested, convicted, and imprisoned. An individual facing a 50 percent chance of receiving a 10-year prison sentence has higher expected punishment costs that an individual facing a 5 percent chance of the same prison sentence. The probability of punishment will be different for different people. Some are cleverer than others at concealing the offense and eluding the police. There are also differences in the abilities of defending oneself in court, or in engaging good lawyers. Morriss Hoffman, Paul H.

a. The Stigma of Criminal Activity

The stigma from criminal activity can be social (inability to find a spouse) or economic (inability to find a job with a criminal record). Several scholars have attempted to measure the economic stigma. Lott finds a short-run income reduction of 39 percent after a bank embezzlement conviction and a 41 percent reduction after a bank larceny conviction. John Lott, Do We Punish High-Income Criminals Too Heavily?, 30 Economic Inquiry 583 (1992). Grogger finds that an arrest record can explain about two-thirds of the black-white youth employment differential in his sample. Jeffrey Grogger, Arrests, Persistent Youth Joblessness, and Black-White Employment Differentials, 74 Review of Economics and Statistics 100 (1992). However, in another study, he finds only a short-lived effect of arrest records on youth earnings. Jeffrey Grogger, The Effect of Arrest on the Employment and Earnings of Young Men, 90 Quarterly Journal of Economics 51 (1995). For gang members, having spent time in prison may actually increase future incomes.

b. The Criminal’s Discount Rate

The rate at which individuals discount the future also affects the expected benefits and costs from criminal activity. The gains from crime often occur immediately, whereas punishment is something that might come in the future, and be stretched over a long period of time. An individual with a high discount rate will therefore tend to commit more crime because he weighs the present (and the gains from criminal activity) much more heavily than the future (and the potential costs from criminal activity).

c. The Economic Theory of Recidivism:

Recidivism is sometimes explained by erratic behavior, a lack of self-control, or evidence that the deterrence model doesn’t work. However, a high rate of recidivism is consistent with the model of rational choice. Serving time in jail may reduce legal opportunities so that the opportunity cost of future criminal activity is lower. Additionally, convicts may acquire human
capital in illegal activities—prison is an excellent place to “network” with other criminals and learn the skills of the trade. Thus, if it was rational to commit a crime in the first place, for many criminals the incentives will only be stronger after having served a prison sentence.

In contrast, a prior conviction or imprisonment might increase some criminals’ evaluations of how probable or severe sanctions might be. For these criminals, the expected costs of additional crime may be higher than the expected costs accompanying their initial crime and they will tend not to recidivate.

d. Economics versus Criminology:

How does the economic approach to criminal activity differ from the criminology approach? The criminological literature is essentially composed of three branches. One branch focuses on the biological factors contributing to crime, such as brain abnormalities or hormonal imbalances. The economic approach doesn’t deny that biological factors matter, it just assumes that these factors explain the baseline level of crime that exists regardless of the incentives created by other costs and benefits of criminal activity. The second branch of the criminological literature asserts that people turn to crime when they are prevented from reaching their goals through legal means. This assertion is consistent with the economic model that predicts that people with limited legal opportunities may turn to crime. However, the economic approach, in contrast to the criminological approach, predicts that individuals weigh the relative costs and benefits of crime and legal activities, and only engage in crime if it is relatively more attractive. The third branch of the criminological literature is concerned with the social interactions through which criminal behavior is learned or culturally transmitted. This approach is also consistent with the economic model that maintains that community influences and cultural factors can influence various costs and benefits of crime: an individual committing a crime may feel less of a stigma (a cost of crime) or even gain approval (a benefit) depending on how others in his social circle view criminal activity; an individual may feel more or less internal guilt (a cost) depending on their religion or community; individuals may learn smarter criminal tactics when they associate with other criminals. Thus, the economic model of crime, for the most part, encompasses many of the criminological explanations for crime. The difference between the two approaches is mainly one of emphasis. For further reading, see Steven D. Levitt & Thomas J.
Miles, Empirical Study of Criminal Punishment, in Handbook of Law and Economics 455 (A. Mitchell Polinsky & Steven Shavell eds., 2007)

There is also a branch of criminology which stresses the implications of everyday activities on crime. For example, as more women enter the labor force there are more vacant houses and so perhaps more burglaries. As more people carry cell phones the ability to contact police increases and so crime may be reduced. Marcus Felson and Rachel Boba Santos, Crime and Everyday Life Sage Publications, 2009. This is also consistent with the economic model: everyday activities can affect the gains from crime or the expected punishment, and in turn, the level of crime.

e. Are Criminals Really Rational?:

The economic approach posits that everyone (except, perhaps, individuals with severe mental disabilities) responds, to some degree, to changes in the expected costs and benefits of criminal activity. Several authors have discussed whether people have sufficient information about the environment and about outcomes of actions to make rational choices. Becker and others maintain that even if choices are based on subjective beliefs that are wrong, the choices are meaningful from a subjective point of view, and behavior can be explained and understood on this basis. Moreover, even if people are not exactly accurate in their estimation of the expected benefits or costs of criminal activity, an obvious increase in an expected cost of crime or decrease in an expected benefit of crime should still influence (albeit imperfectly) the incentives to commit crime.

B. Empirical Studies of the Economic Model of Crime

Predictions from the economic model of crime have been tested in a great number of empirical studies. However, these empirical studies face several challenges. First, although the economic model of crime is based on individual rational choice, the data available to empirical researchers is based on levels of aggregation ranging from countries and states down to municipalities and campuses. Thus, the empirical results can tell us only about general deterrence—the effects on people in general—rather than the effects on an individual’s decision making.
Second, it is extremely difficult to identify causal relationships in empirical studies of crime. For example, in testing the relationship between imprisonment and crime, one may find a positive relationship (imprisonment and crime increase together or decrease together). Based on these results, some scholars may conclude that prison increases crime, when in fact, the positive relationship may be attributable to higher crime rates producing more potential prisoners.

Controlling for the factors that lead to high crime could solve the problem, but it is impossible to quantify and control for every factor, so omitted variable bias can be a problem. More recent empirical studies have devised clever ways to tease out causal relationships, for example by taking advantage of exogenous changes in imprisonment levels, such as court-ordered prison releases, that could not be caused by crime. Steven D. Levitt, The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation, 111 The Quarterly Journal of Economics 319 (1996).

The third challenge is the difficulty in distinguishing incapacitation and deterrence. The economic model of crime assumes that increases in imprisonment increase the expected costs of crime and deter some individuals from committing crimes. However, an empirical finding that increases in imprisonment are associated with decreases in crime might not be evidence of deterrence. Crime could also decrease because more criminals are behind bars due to the increased imprisonment. Although the end result is the same, the rational choice model assumes that individuals can be deterred from committing crime. Thus, if the entire decrease in crime was caused by incapacitating criminals, this would not confirm the predictions of the economic model of crime.

There are various other challenges that involve the correct variables to control for in empirical analyses, the particular methodology to employ, and other sophisticated empirical questions. Nevertheless, the awareness of the methodological problems and easier access to various statistical methods has gradually led to more sophisticated empirical studies that address several of these challenges.

Cognizant of these empirical challenges, law and economics scholars have studied the relationship between crime and various costs and benefits of criminal activity. Summarizing the entire empirical literature, which consists of thousands of articles, is beyond the scope of this
chapter, but below we discuss the general consensus or important articles studying the effects of different variables.

1. Police


2. Imprisonment

Most studies find that imprisonment also has a negative effect on crime rates. Some of this effect is due to deterrence and some is due to incapacitation. See, e.g. Steven D. Levitt, Why Do Increased Arrest Rates Appear to Reduce Crime: Deterrence, Incapacitation, or Measurement Error?, 36 Economic Inquiry 353 (1998); Daniel Kessler & Steven D. Levitt, Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation, 42 Journal of Law and Economics 343 (1999). Severe prison conditions also have a deterrent effect. Lawrence Katz, et al., Prison Conditions, Capital Punishment, and Deterrence, 5 American Law and Economics Review 318 (2003).

3. Capital Punishment:


There is a tendency to conflate findings regarding capital punishment with general issues of deterrence. In the contemporary U.S. capital punishment is rare and unpredictable. It could be that the rarity of this punishment reduces or even eliminates the deterrent effect. It is also possible that its rarity means that statistical methods are unable to detect a deterrent effect even if one exists. Nonetheless, even if we cannot detect a deterrent effect of capital punishment, this does not mean that more normal punishments such as jail time do not deter.

4. Gun Laws:

5. Income:
No systematic relationship appears between various measures of income and crime. Several studies find that high legitimate wages (an opportunity cost of crime) are associated with low crime rates. Stephen Machin & Costas Meghir, Crime and Economic Incentives, 39 Journal of Human Resources 958 (2004); C. Cornwell & W. N. Trumbull, Estimating the economic model of crime with panel data, 76The Review of Economics and Statistics 360 (1994). On the other hand, some studies find that higher pecuniary benefits to crime (a benefit of crime) are associated with increases in crime. Edward L. Glaeser & Bruce Sacerdote, Why is there more
crime in cities?, 107Journal of Political Economy 225 (1999). This ambiguity in results is likely due to the fact that the income measures used represent benefits not only of legal activities, but also of illegal ones: higher legal incomes tend to make work more attractive than crime, but to the extent that higher legal income in a region produces a greater number of more profitable targets for crime, crime also becomes more attractive. If these mechanisms are at work simultaneously, and their relative strength is not universally constant, it is not surprising that the results of various studies differ.

6. Income Inequality:

A large income differential may indicate that crime is a comparatively rewarding activity for the very-low-income group that may find a lot to steal from the very rich. Nevertheless, empirical studies also find no systematic relationship between income inequality and crime. Several studies find that greater income inequality does lead to increases in crime. P. Fajnzylber, D. Lederman, & N. Loayza, Inequality and violent crime, 45 Journal of Law and Economics 1 (2002). In contrast, others find no statistically significant relationship between income inequality and crime. E. Neumayer, Inequality and violent crime: Evidence from data on robbery and violent theft, 42 Journal of Peace Research 101 (2005).

7. Unemployment:


C. The Economics of Public Law Enforcement

The economic theory of public law enforcement is based on a specific perception of justice as efficiency. Under this perception, the purpose of public law enforcement is to maximize social welfare, where social welfare is the benefits that individuals obtain from crime
minus the costs of committing crime, the costs of harm to victims, and the costs of enforcement. The government can maximize the social welfare function through three policy instruments: the probability of capture and punishment, the length of prison terms, and the level of fines. In setting these policy instruments at their ideal levels, the economic model assumes that criminals behave rationally and weigh the costs and benefits of criminal activity before turning to crime.

Deterrence is the goal in the traditional economic model of public law enforcement. The optimal amount of deterrence occurs at the point where the marginal social cost of additional deterrence equals the marginal social benefit.\(^3\) Thus, under the traditional definition, efficient deterrence balances the marginal costs of enforcement and the reduction in illegal gains to criminals against the marginal benefit of enforcement, which is the reduction in harm that results from enforcement. Thus, deterrence is inefficient if the marginal gains to criminals plus marginal enforcement costs exceed the marginal harm to victims.

However, many researchers have questioned whether the gains to criminals should be considered (Stigler 1970, Lewin and Trumbull 1990, Dau-Schmidt 1990, Shavell 1985). If we ignored these gains, optimal deterrence would occur at the point where the marginal enforcement costs equal the marginal enforcement benefits (which is the marginal harm to victims). With fewer costs of deterrence to consider (i.e. ignoring the reduction in criminal gains that results from deterrence), the optimal level of deterrence increases.

We begin with the optimal law enforcement choices between probability and severity and between fine and imprisonment in the basic model. Then we consider several extensions of the basic model.

1. **Certainty versus Severity**

Law enforcement can influence various policy instruments to achieve the optimal level of deterrence: the probability of punishment, the length of prison terms, and the level of fines. The probability of punishment depends on policing levels, arrest rates, conviction rates, imprisonment rates, funding for law enforcement, funding for courts and prosecutors, etc. In the economic model of law enforcement, the probability of punishment is often referred to as the

\(^3\) Following most of the literature, we focus on optimal enforcement when deterrence is a goal. Incapacitation as a goal has received much less attention. See Shavell (1987) and Ehrlich (1981) for a discussion of optimal enforcement when incapacitation is a goal.
certainty of punishment. In contrast, the length of prison terms and level of fines, which law enforcement can also influence, are referred to as the severity of punishment.

In her decision to commit a crime, a criminal’s expected penalty is the product of the certainty of punishment and the severity of punishment. Table 1 shows several combinations of certainty and severity (presented as either a fine or the cost of imprisonment) that produce identical expected penalties:

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<th>Probability of Sanction</th>
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If potential offenders are risk neutral and have no wealth constraints, all of the combinations of probability and severity should produce identical levels of deterrence. However, more severe sanctions are cheaper for society to implement. Increasing a monetary fine imposes almost no additional collection costs; rather, it generates additional revenue for society. In contrast, increasing certainty requires more resources spent on police and courts, which can dramatically increase society’s costs. Thus, a low probability/high fine combination will achieve the same deterrence as a high probability/low fine combination, but at much lower cost to society.

In contrast to fines, increasing the severity of imprisonment imposes significant costs on society that include the costs of running a prison (estimates suggest that it costs $40,000 a year to house a prisoner), the productivity costs of removing a criminal from society (assuming he provided some positive benefits to his community), and any psychic or stigma costs the criminal experiences while imprisoned. Despite these significant costs associated with imprisonment, it may still be relatively cheaper to increase the severity of imprisonment than to increase the
probability of sanctions. Although the longer prison sentences increase enforcement costs, fewer individuals are imprisoned, which decreases enforcement costs and offsets some of the increase from longer sentences. In the linear case, these exactly balance – one person serving 10 years has the same cost at 10 people serving one year each.

Thus, regardless of the form of sanction, low certainty/high severity is, in general, the optimal combination because it achieves deterrence at the lowest possible cost (Polinsky and Shavell, 1984). Factors that may contradict this generality are discussed below, but first we discuss the optimal choice of fines versus imprisonment.

2. Fines versus Imprisonment

Criminal sanctions can be monetary or nonmonetary. As we discussed in the previous section, fines impose little cost on society, and even generate revenue. In contrast, imprisonment imposes substantial enforcement costs on society. Thus, fines are the preferred sanction.

However, a combination of fines and imprisonment is necessary in many situations. If a fine exceeds an individual’s wealth level, then the individual’s expected penalty will be less than the expected penalty that law enforcement anticipated when selecting the probability and severity of sanctions. For example, in Table 1, a probability of 10% and a fine of $1000 for an individual with a wealth level of only $500 will achieve an expected penalty of only $50 instead of $100. Since criminals tend to be those with low opportunity costs of committing crime, for many types of crime it is likely that criminals’ wealth levels will be insufficient to achieve optimal deterrence.

When there are wealth constraints, the fine should be set as high as possible, equal to the individual’s wealth level. A prison sentence should also be imposed to bring the expected penalty to the desired level. Empirical studies indicate that there is a tendency to impose larger fines and shorter prison sentences on wealthy defendants, although there could be several reasons for this result (Waldfogel 1995 and Meade & Waldfogel 1998).

3. Extensions of the basic model:

According to the basic economic model of law enforcement, sanctions should be as high as possible and probabilities should be as low as possible to achieve a given level of deterrence. However, this low certainty/high severity combination is not always optimal.
a. **Risk Preferences**

When criminals are either risk averse or risk loving, the low certainty/high severity combination may no longer be optimal.

First, consider the case where individuals are risk averse in sentences so that their disutility of the expected penalty rises more than in proportion to the expected penalty. In the case of prison sentences, this could result from an increasing desire for freedom or growing distaste for the prison environment as the time in prison increases (*Polinsky and Shavell 2005, pg. 22*). Risk averse individuals prefer a certain penalty, $f$, to an uncertain penalty with a mean of $f$.

Table 2 shows several combinations of certainty and severity (presented as either a fine or the cost of imprisonment) that produce the same disutility, but have different expected penalties. In contrast to the risk neutral case where combinations with equal expected penalties produce equal deterrence, when severity increases for a risk averse individual, combinations with lower expected penalties produce equal deterrence.

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<th>Probability of Sanction</th>
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If Table 2 referred to fines, it is not clear that a low certainty/high severity combination, such as a 1% probability of a $1000 fine, is more optimal than the other combinations in Table 2. Although enforcement costs are low, the expected fine, and therefore fine revenue is also low. If the decrease in fine revenue is greater than the savings in enforcement cost, the high fine
combination could be a more expensive combination from society’s perspective (Polinsky and Shavell 1979, Kaplow 1992, and Chu and Jiang 1993).

In contrast, if the sanctions in Table 2 were prison sentences instead of fines, then low expected sentences would not be costly. That is, the 1% probability of a 1000 day sentence has both low enforcement costs and low imprisonment costs. Thus, when offenders are risk averse, the high sentence/low probability combination is unambiguously the optimal combination.

Next, consider the case when offenders are risk loving in sanctions; their disutility of the expected penalty rises less than in proportion to the expected penalty. In the case of prison sentences, this could occur for several reasons: if the disutility from the stigma of prison does not increase with the length of imprisonment, if more brutalization of prisoners occurs at the beginning of a sentence, or if discounting of future disutility makes earlier years in prison seem worse than later years (Polinsky and Shavell 2005, pg. 23). Risk-loving individuals prefer an uncertain penalty with a mean of \( f \) to a certain penalty, \( f \).

Table 3 shows several combinations of certainty and severity (presented as either a fine or the cost of imprisonment) that produce the same disutility, but have different expected penalties. In the risk-loving case, as severity increases, combinations with higher expected penalties produce equal deterrence.

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If Table 3 referred to fines, then the optimal combination of certainty and severity would be high fine and low probability. This combination would achieve the same deterrence as other combinations, and the expected fine, or fine revenue, would be high and enforcement costs would be low.

If Table 3 referred to prison sentences, then the optimal combination may not be the long sentence/low probability combination. Because the increase in prison sentences is proportionally larger than the decrease in the probability, the expected penalty, or expected prison term rises. If the cost of longer imprisonment exceeds the savings in enforcement costs, then the long sentence/low probability combination would not be the cheapest way to achieve deterrence (Polinsky and Shavell 1999).

b. Marginal deterrence

The low certainty/high severity combination may also not be optimal if the goal is marginal deterrence. If penalties for all offenses are set at their maximal level, there is no reason to not commit a more serious offense. If an individual decides to mug someone, he might as well shoot the victim and other potential witnesses; murder carries no additional penalty and killing witnesses reduces the probability of being caught. Instead, the severity of sanctions should increase with the seriousness of the crime. Thus, the penalty for mugging should not be set at its maximal level; it should be set sufficiently below the penalty for murder so that the higher penalty for murder will provide an additional deterrent. Although the lower expected penalties will increase lesser crimes, the reduction in harm from the decrease in more serious crimes will more than offset the increase in harm from the lesser crimes, increasing social welfare. For more detailed discussions of marginal deterrence, see Stigler (1970), Wilde (1992), Shavell (1992), and Mookherjee and Png (1994).

c. Repeat Offenders

The low certainty/high severity combination may also not be optimal for first-time offenders so that there is room to increase the sanction if those offenders become repeat offenders. There are several reasons why it may be optimal to increase sanctions for repeat offenders. First, a prior criminal record signals that an individual has a higher propensity to commit criminal acts because either the costs of crime are lower for her or the benefits of crime are higher. Thus, higher sanctions are necessary to deter these high-risk offenders (Rubinstein
1979, Polinsky and Rubinfeld 1991, and Chu et al. 2000). Second, imposing higher sanctions on subsequent crimes increases the cost of committing first offenses; not only does a first offense carry an immediate penalty, it also increases future penalties. Thus, higher sanctions for subsequent crimes may deter first crimes (Polinsky and Shavell 1998). Third, a repeat offender has already suffered the social stigma of conviction from the first offense. The cost of committing subsequent crimes is less because they do not carry the potential cost of social stigma. Thus, other costs of subsequent crimes, like the expected sanction, must be increased to maintain deterrence (Miceli and Bucci 2005). Finally, repeat offenders may be better able to avoid detection and apprehension of subsequent crimes because they understand the system and have a larger criminal network. If the probability of punishment is lower for repeat offenders, the magnitude of punishment must be higher to maintain deterrence (Polinsky and Rubinfeld 1991). In reality, repeat offenders are typically punished more severely than first-time offenders for the same offense. However, some scholars have presented theories where it may be optimal to lower sanctions for repeat offenders. See Burnovski and Safra (1994), Emmons (2003), Polinsky and Rubinfeld (1991), Dana (2001), Rubinstein (1980) for a discussion.

d. Criminal Procedure

There is also a growing literature on the economics of criminal procedure, including discussions of issues such as the rules of evidence. For example, one finding is that the Supreme Court decision Mapp v. Ohio which required courts to exclude evidence that was the result of an illegal search has led to increased crime rates. This literature is discussed and summarized in Hugo Mialon and Paul H. Rubin, “The Economics of the Bill of Rights,” American Law and Economics Review, Spring, 2008, V. 10, No. 1, 1-60.

D. Conclusion

This chapter is a summary of a very large body of research. It is impossible to summarize what is itself a summary. But we can say that Gary Becker’s 1968 paper has been enormously successful in that it has led to a huge body of research which has greatly enriched our understanding of crime and criminal behavior, leading to significant improvements in policy. For more detailed surveys, see Eide et al. (2006), Polinsky & Shavell (2007), and Levitt & Miles (2007).

REFERENCES