

## Chapter 8

### The Economics of Crime and Law Enforcement

This chapter examines the economic approach to criminal law and law enforcement. The analysis is based on the assumption that offenders behave rationally in deciding whether or not to commit criminal acts, and that society chooses an enforcement strategy to minimize the social costs of crime.

#### Key Points

- The economic theory of crime is primarily concerned with the deterrent effects of criminal punishment. This approach rests on the assumption that at least some potential offenders act rationally when contemplating criminal activity.
- Several arguments have been proposed to justify public (as opposed to private) enforcement of criminal law. These include the fact that criminals—because they intentionally cause harm—seek to avoid detection, the existence of scale economies in detection and apprehension, and the fact that crimes cause public as well as private harm.
- Criminal sanctions also discourage individuals from transforming property rules into liability rules—that is, from taking property (theft) rather than engaging in market exchange. This argument incorporates criminal law into the general transaction structure outlined in Chapter 7.
- A rational offender commits a crime if the gain from the illegal act exceeds the expected cost. The expected cost equals the probability of apprehension times the cost of the sanction, which consists of a fine and/or prison.
- When the probability of apprehension is fixed, the optimal fine equals the harm imposed by the crime divided by the probability of apprehension.
- When fines and imprisonment are both available, a fine should be used up to the limit of the offender's wealth, and imprisonment should only then be imposed if additional deterrence is cost-justified. This reflects the fact that raising a fine is costless whereas imposing a prison term is costly.
- When the probability of apprehension is a choice variable, the fine should again be set equal to the offender's wealth, with  $p$  only raised as high as necessary to achieve the desired level of deterrence.
- When the fine, prison, and probability of apprehension are all variable, the fine should continue to be set at the offender's wealth, with the two remaining variables chosen to balance their marginal costs and benefits.

- The principle that fines should always be maximal—a fundamental prescription of the economic model of crime—is not generally consistent with observed practice. Several possible reasons may account for this, including offender efforts to conceal their wealth, aversion to excessive punishments in relation to the harm imposed (the “proportionality norm”), equal treatment of rich and poor, and consideration of marginal deterrence.
- Repeat offenders are generally punished more severely than first-time offenders, but economic theory has difficulty explaining this practice. One possible explanation is that the employment opportunities of convicted offenders are diminished due to the associated stigma, thus necessitating a harsher punishment to deter them from committing further crimes.
- Another explanation is to incapacitate those who reveal themselves to be dangerous and unable to be deterred for increasingly longer periods of time.
- Enforcement errors (wrongfully punishing the innocent and wrongfully acquitting the guilty) both erode the deterrence function of criminal punishment.
- Potential victims of crime often invest in measures aimed at reducing their risk of being victimized. Examples include alarm systems and private security guards. Private protection measures of this sort resemble victim precaution against accidents in tort law.
- Considerable empirical evidence supports the basic predictions of the economic model of crime. Most fundamentally, the evidence supports the notion that rational offenders respond to increases in expected punishments.
- Corruption of law enforcers can take the form of bribery and entrapment. Both reduce the efficacy of enforcement as a deterrent.
- The death penalty is the most severe and most controversial form of punishment. After a significant decline in the late 60’s and early 70’s, the number of executions in the U.S. has been on the increase.
- Many empirical studies have found that the death penalty is a deterrent. Still, opponents point to the risk of wrongful execution, the high cost of housing death row inmates for long periods of time, and the possible discriminatory use of the death penalty against poor and minority defendants.
- Empirical evidence links high unemployment and high crime rates. Economic theory explains this correlation as resulting from the rational choice between legal and illegal activities by potential offenders.
- Some empirical studies have linked more liberal right-to-carry gun laws with reductions in crime. However, critics have challenged these studies both in terms of their methodologically, and on whether they are a sound basis for policy.

- The study of primitive law enforcement shows that the modern concept of proportional punishment—an important feature of Anglo-American criminal justice—had its origins in primitive notions of vengeance and retaliation.
- Asset forfeiture laws allow the government to seize assets used in the commission of crimes. This practice can enhance deterrence, even if the asset is not owned by the criminal. However, the possibility of abuse exists.
- The illegality of so-called “victimless crimes” is something of a puzzle because they seem to impose no social harm. These crimes, however, may impose “moral” costs on society, and possibly incite actual harmful behavior as a by-product.
- Free speech is an important right guaranteed by the First Amendment of the U.S. Constitution. However, the Supreme Court has placed limits on this right—for example, when its free exercise creates a “clear and present danger” to society. Generally, political speech enjoys greater protection than ordinary speech.
- The illegality of blackmail can be understood as promoting efficient revelation of information prior to trade. Specifically, it discourages people from engaging in transactions aimed at concealing unfavorable information about themselves from prospective trading partners.