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Dirty Bombs and Garbage Cases

AS AMERICA'S CORRECTIONAL POPULATIONS HAVE ROCKETED UPWARD since the 1970s, researchers have quite properly focused attention on prisons and prisoners. Yet examinations of the US punishment record must look beyond prison gates, as criminal justice sanctions also trigger a range of formal and informal collateral consequences. For those so punished, employment restrictions and other collateral sanctions complicate and confound efforts to assume the rights and duties of citizenship.

I here suggest two broad approaches for scaling back some of the deleterious effects of punishment without compromising public safety. The first approach involves reducing the scope and number of collateral sanctions imposed automatically with a felony conviction. The second approach involves creating fewer records in the first place by redirecting low-level offenses away from the criminal justice system.

DEFUSING DIRTY BOMBS

In combining conventional explosives with a small amount of radioactive material, so-called dirty bombs can induce fear and panic, contaminate property, and require massive cleanup efforts (US Nuclear Regulatory Commission, 2007). The wide-ranging collateral consequences of criminal sanctions affect individuals and their families much as such bombs affect social groups. Just as dirty bombs, restrictions on employment, housing, educational benefits, government assistance, family rights, and civic service rarely kill. Nevertheless, they make such

an awful mess for people with criminal records that they may similarly be characterized as “weapons of mass disruption.” Even after serving their time and completing all other obligations, the criminal justice system’s clients carry the stain of their conviction whenever they attempt to apply for a job, secure an apartment, or enter a voting booth (Pager, 2003; Western, 2006). Paradoxically, such disruptions make it all the more difficult for individuals to secure the sort of steady employment and stable family life that reduces the likelihood of subsequent criminality (Laub and Sampson, 2003).

For the past decade, researchers have been chasing down the far-flung consequences of these sanctions for individuals and social groups, or the collateral damage wrought by collateral sanctions (Mauer and Chesney-Lind, 2002). Activists have lobbied—in some cases quite successfully—to pare back the most onerous and least defensible among them, such as restrictions on the voting rights of those who have served their sentences (King, 2006). There is no evidence that restoration of voting rights would constitute a threat to public safety. If anything, voters appear less likely rather than more likely to commit subsequent offenses (Manza and Uggen, 2006).

While such reforms have salutary effects, however, they necessarily proceed in piecemeal fashion. Whenever a state re-enfranchises a certain class of felons, for example, the beneficiaries of this policy change still remain subject to the same occupational licensing, housing, and other restrictions that existed prior to the reform. To follow the dirty bomb analogy, efforts to combat radiation sickness would have no effect on air or water contamination or the safety of affected buildings.

Of course, some collateral sanctions are no-brainers. If a school-bus driver harms a child, for example, it is only prudent to restrict the driver from occupations that involve contact with children. If such sanctions were imposed on an individualized basis at sentencing, with domain-specific restrictions narrowly tailored to the person and the crime, the task of offender reintegration would be far simpler. Of course, such systemic reforms are unlikely, given an already over-

burdened court system and the political and institutional barriers to change. Nevertheless, the time has come for a reasoned reassessment of the relative costs and benefits of sanctions that keep large classes of former felons from, say, becoming bartenders or securing student financial aid.

Expungement clinics and executive pardons offer one avenue for restoration of civil rights and privileges, yet such processes are costly and burdensome for even the tiny percentage of former felons who now pursue them. If individualizing collateral sanctions is impracticable, reducing their number to those necessary to enhance public safety would appear to be a far more efficient course of action.

THROWING OUT THE GARBAGE CASES

Apart from reducing the scope and number of formal collateral sanctions, a second approach involves creating fewer criminal records in the first place. Here I refer to low-level arrests rather than the felony-level convictions that trigger formal collateral sanctions. Court personnel sometimes refer to these as “garbage cases,” because they clog the system but rarely result in a conviction (Council on Crime and Justice, 2004).

Even in the absence of convictions, however, arrests for loitering, disorderly conduct, trespassing, and driving after revocation routinely emerge in the criminal background checks of otherwise law-abiding citizens. In 44 states, private employers may consider even low-level arrest records during hiring decisions (Legal Action Center, 2004). Moreover, arrest records and other low-level offense information is typically included, even if not requested, as a part of the criminal history reports provided to employers by the hundreds of firms that harvest publicly accessible data.

Today, the federal government is exploring methods to add such low-level crime information to official Federal Bureau of Investigation databases. In September 2006, the FBI announced plans to amend the Code of Federal Regulations to permit collection and retention of information on juvenile and misdemeanor offenses (Palazzolo, 2006).

The widespread availability of arrest and low-level conviction data from both public and private sources raises questions about the necessity of criminal justice processing for minor offenses, and the creation of an official criminal record. For example, primary and secondary schools now refer many disciplinary problems directly to juvenile courts. School-based peer courts and expanded counseling capacity may offer a partial alternative to costly formal justice system responses.

Similarly, complaints from business owners involving loitering, trespassing, and disorderly public behavior are sometimes more effectively addressed by direct police referral to social service agencies rather than by arrest and the initiation of formal charges. Whether in the schools or on the streets, the criminal justice system is filling the cracks that other social institutions lack the resources to repair. Yet short-term criminal justice solutions often create long-term collateral problems, even for those brought into the system through "garbage cases."

TWO BASIC APPROACHES

Though it is a simple matter to count the number of prisoners in a nation, it is far more difficult to gauge the full impact of a system of punishment. I have focused here on the collateral consequences of criminal sanctions—the formal and informal restrictions on the work, family, and civic life of those with criminal records. There are two fundamental approaches to reducing the deleterious effects of such punishments, both hinging on their judicious and parsimonious application. First, the scope and number of collateral sanctions can be reduced to those necessary to preserve and enhance public safety. Second, their long-term impact can be ameliorated by creating fewer low-level criminal records in the first place.

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