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A Capacity to Punish: The Ecology of Crime and Punishment

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A CAPACITY TO PUNISH: THE ECOLOGY OF CRIME AND PUNISHMENT. By *Henry N. Pontell*. Bloomington: Indiana University Press. 1984. Pp. xii, 140. Cloth, \$19.50; paper, \$9.95.

In *A Capacity to Punish: The Ecology of Crime and Punishment*, Henry Pontell¹ brings empirical information to the age-old debate over the efficacy of deterrence as a means of curtailing crime. Professor Pontell integrates research and theory from sociology, criminology, and organization theory and concludes that efforts to control crime are unlikely to succeed without directing more attention to its sociological roots. Although Pontell's analysis appears at first blush to be empirical proof of the obvious, the book is a needed reminder that the practical workings of deterrence theory are what legislators and policymakers use to formulate policy. Unfortunately, Pontell's failure to suggest solutions to the underlying social problems diminishes the book's usefulness.

Pontell's analysis of the practical side of deterrence is based on a

1. The research presented by the author is based on his doctoral studies at the State University of New York at Stony Brook.

discussion of the penal system's capacity to impose sanctions. The author discusses several factors that influence this capacity: the imbalance between police and judicial resources, trends toward lighter punishment, social inequality, and the effect of caseload pressure on prosecutors and judges.

Pontell's analysis of these factors leads him to conclude that the ability to punish depends on the capacity of the criminal justice system, particularly the courts, to mete out justice. Pontell initially suggests that the penal system is saturated as a result of a "1970s" conservative philosophy aimed at punishing wrongdoers. These conservative policies precipitated a massive increase in the prison population without a corresponding increase in facilities. The author argues that reaching "system capacity"² reduces the effectiveness of deterrence because heavier caseloads prevent swift, certain, and severe punishment — a core premise of deterrence theory.

According to Pontell, a composite of factors determines the capacity of a particular criminal justice system:

- (1) the structure of the law, especially procedural law;
- (2) the formal and informal organizational relationships both within and among criminal justice agencies;
- (3) resources given to the system's sanctioning arm, the courts (as both an absolute amount and relative to other agencies);
- (4) the social, political, and cultural milieu in which the court exists; and
- (5) other external environmental constraints, including the volume of cases to be processed. [p. 33]

Also, the political rhetoric against crime often leads to increased funding for the police agencies without a comparable increase for the court system. Pontell focuses on these factors to explain the structural imbalance between police agencies and the courts. This imbalance results in a caseload bottleneck at the judicial level.³

Data from the California criminal justice system provided empirical support for the study.⁴ Pontell focuses on expenditures, conviction

2. Pontell explains in another article that research on system capacity (what he calls "resource saturation") indicates that crime levels themselves affect criminal justice practices as much as criminal justice practices affect crime levels. See Pontell, *Deterrence: Theory Versus Practice*, 16 *CRIMINOLOGY* 3 (1978).

3. Pontell argues that the behavior of prosecuting attorneys is symptomatic of the underlying problem. After recognizing that prosecutors "have the greatest discretion in the formally organized criminal justice network," p. 35, the author asserts that these elected officials must produce favorable conviction statistics to protect their careers. Perhaps generalizing unfairly, Pontell argues that obtaining these statistics may come at the cost of "concerns of due process, social justice, and deterrence." P. 35. While this position does have some merit, Pontell's broad categorization of prosecutors as having little concern for the defendant's rights is at best overly inclusive and at worst patently insensitive to those prosecutors genuinely concerned with protecting the defendant's due process rights. Pontell's comments will probably receive a chilly reception at the local district attorney's office.

4. Pontell uses data taken from the Bureau of Criminal Statistics and Special Services of the California Department of Justice for the period 1966 to 1974. Using information from the California counties, Pontell examines ecological connections in six areas:

- (1) rates of felony crimes reported to the police;
- (2) resources per capita, in terms of both

rates, and personnel as important factors in the effectiveness of one system. Turning first to the differences in criminal justice personnel and expenditures in the counties, Pontell found a 10:1 (police/prosecutor) ratio for median personnel and expenditures from 1966 to 1974. Even more indicative of a possible resource imbalance is the difference between median police and court expenditures on personnel and resources during the period. In 1964, the ratio of police to court expenditures was approximately 10:1; by 1974 the figure was closer to 20:1, and the ratio of police to judicial personnel was between 70:1 and 80:1. Such findings support Pontell's hypothesis that the disparity in resource levels is severe (pp. 49-53, 114).

It is, however, difficult to measure how severe the problem is, because Pontell suggests no optimal figures. It would be ridiculous to expect that one judge and her staff could process the reports of ten thousand policemen, but it is equally absurd to expect one judge per policeman. In order to assess "system capacity" figures in a meaningful way, optimal conditions must be suggested and compared to existing circumstances. This determination will be complex, because every county will have a different optimum ratio, linked (primarily) to demographic characteristics.

This misallocation of resources may result in convicted felons serving less prison time. Pontell also notes a trend that may be symptomatic of this resource maldistribution: Imprisonment has been replaced by "suspended sentencing, parole, and probation . . . as major forms of punishment" (p. 25), despite the fact that felony conviction rates have remained relatively constant. Conviction did not necessarily mean a prison term, because rates of both prison and jail sentences declined. "Thus, only a small fraction of convicted defendants ever served a prison term" (p. 65). Pontell interprets these findings to mean that the probability of receiving a severe sanction, once convicted, is small. He explains that the result of such limited sanctioning is to mitigate any deterrent effect of punishment. Pontell queries "whether the criminal justice system can actually achieve general deterrence through its sanctioning activities" (p. 26).

Pontell believes that an understanding of the relationship between social inequality and criminogenesis⁵ is essential to comprehend the relationship between deterrence and crime. The author maintains that because punishment is based largely on a deprivation of "valued states and social relationships," as inequality rises the rate of crime will also

personnel and expenditures for criminal justice agencies; (3) expenditure imbalance between agencies and the degree of caseload pressure in criminal courts; (4) felony court conviction rates and method of case disposition; (5) rates of punishment produced by criminal courts in terms of sentencing outcomes; and (6) demographic features of California counties.

P. 43.

5. Criminogenesis is a term often used by Pontell to indicate factors affecting the origins of crime.

rise because the deterrent effect of losing such status no longer exists (p. 39). For purposes of the crime rate study, Pontell uses the percentage of blacks in the population as an indicator of the degree of inequality.⁶

Looking at correlations between the crime rate and inequality, Pontell found that the relative size of the black community in a county was positively correlated with the county's crime rate. High levels of inequality also constituted the highest and most consistent positive correlation with court caseload pressure (p. 78). This correlation appears to substantiate Pontell's claim that as inequality rises, crime also rises (p. 40).

If the data are subjected to closer scrutiny, these correlations indicate a disturbing line of thought not discussed in Pontell's analysis. By equating the percentage of blacks with the increase in crime, Pontell suggests that as the black population increases, crime must also rise. It is not clear whether Pontell intends such a literal result. Such a claim would appear more plausible if coupled with other findings that the black population was highly correlated with poverty or unemployment, but Pontell does not provide such information. Because Pontell is relying on the work of others,⁷ it is possible that he is only using the racial correlation as a convenient way to express inequality, but there is a possibility that inadvertent racial prejudice could be built into the analysis.⁸

Analysis of caseload pressure resulted in a number of predictable conclusions. Pontell indicates that "[j]urisdictions with low levels of prosecutorial resources per capita are more likely to have greater caseloads than those with more prosecuting resources" (pp. 75-78). Even controlling for other factors, this particular correlation remains statistically significant. The number of reported crimes in a county also affects caseload. Jurisdictions with high rates of reported felony crimes are more likely to have greater caseload pressure in their felony courts. Pontell found this to be true despite high rates of case dismissals in crime-prone areas. One final correlation should be noted: Counties with high police resource levels are also likely to have high arrest rates and thereby create more work for the courts.

These intuitively "correct" correlations confirm expectations that high crime rates and an understaffed criminal justice system (at least

6. P. 70. Pontell relies on Frisbie & Neidert, *Inequality and the Relative Size of Minority Populations: A Comparative Analysis*, 82 AM. J. SOC. 1007 (1977), as the source of this correlation. Pontell says that this study "found that the relative size of minority population serves as a good indicator of the degree of social inequality." P. 128 n.1.

7. See note 6 *supra*.

8. Such an inherent prejudice is also evidenced by a finding that "inequality may increase police spending, which, in turn, may produce higher reported crime." P. 92. Given that increased crime puts pressure on politicians to bolster the police force, the inequality trap becomes circular.

from the prosecutorial and judicial perspective) serve to lessen any deterrent effect that might be achieved by swift, certain, and severe punishment. Such data, Pontell rightly argues, do not indicate that deterrence does not work in theory. These results only show that, as a practical matter, deterrence is smothered before it can operate.

While heavy caseloads may decrease the deterrent effects of punishment, Pontell found no support for the argument that caseloads reduce the adversarial nature of federal courts.⁹ In fact, where "actual caseloads are higher, there may be *more* adversarial court proceedings than where such pressures are low" (p. 84).

Heavy caseloads thus have a dichotomous impact on prosecutors. Initially Pontell argues that prosecutors, pressured by heavy caseloads and political concerns, have little concern for the defendant's rights.¹⁰ Later he claims that where the caseload is greatest, more adversarial proceedings will occur. Unless the increasing number of adversarial proceedings has no effect on the defendant's due process rights,¹¹ the former claim seems at best counterintuitive.

After examining the capacity to punish in the criminal justice system in California, Pontell concludes

that the more violators we put into the criminal justice system, the less capable it becomes in effecting crime control through deterrence. At the same time, we know that the crime problem is growing. If people are to advocate putting increased resources into the criminal justice system, they cannot argue this on the grounds that it will deter crime. . . . The results presented here indicate that deterrence is not a valid basis for increasing criminal justice resources or for pouring more money into the "fight against crime." [pp. 107-08]

The reader/legislator is presented with a useful but bleak empirical picture of the judicial landscape of California, and by extrapolation, the United States. Pontell preaches that the criminal justice system has a limited capacity to punish. Once that capacity is exceeded, allocating more money to police forces only exacerbates the problem by pushing more violators through the revolving doors of the courts.

Pontell devotes the final pages of his book to an explanation of what will *not* rectify the current situation. Given projections indicating that eight to ten billion dollars will be needed to house decently the existing prison population, coupled with "huge budget deficits at federal, state, and local levels" (p. 108), Pontell persuasively argues that

9. Some commentators have suggested that heavy caseloads militate against the adversarial nature of the judicial process by encouraging cooperation, or plea bargaining. Such behavior is thought to endanger the due process rights of the defendant. See A. BLUMBERG, *CRIMINAL JUSTICE*, (1967).

10. See note 3 *supra*.

11. Such a claim seems wholly at odds with common sense. If each party zealously presents her position, more numerous adversarial proceedings would better protect the rights of the defendant than would fewer proceedings.

more and better prisons alone will not solve the crime problem. Pontell also cursorily dismisses the "get tough" stance as a potential weapon in the fight against crime. The author characterizes such policies as prohibitively expensive and not yet causally linked with any decrease in crime. After Pontell underscores the deficiencies of the status quo, the reader is left wondering what proposed solution will be suggested to cope better with the reality of crime and punishment. Unfortunately, Pontell's proposed solutions fall far short of expectations.

After considering the failures of the judicial system from an empirical perspective, where concreteness and quantification are important to the arguments, a proposed solution eliminating inherent structural and attitudinal barriers to change can reasonably be expected to have the same concreteness and definition. Pontell offers this:

Unemployment, discrimination, and inequality must be reduced if the criminal justice system is to help effect crime control. This is a positive approach to controlling crime, not one that relies on negative sanctions to force people into submitting to inequitable and miserable conditions. . . . The criminal justice system is likely to work best when it is used least. . . . With this major tenet as a focus for criminal justice and crime control policy, perhaps we can start to attack crime at its real sources, and allow the criminal justice system to operate effectively. [pp. 110, 112]

This conclusion leaves the reader with the impression that the last ten pages of the book were left out. After such an in-depth study, Pontell should have formed some reasonable suggestions to offer legislators and attorneys to help them work within the harsh reality of the overburdened criminal justice system.

Pontell's argument, if not logically satisfying, is emotionally persuasive. However, to suggest that social and organizational factors must be included in any effective deterrence formula is to suggest the obvious. Pontell implies that such factors are not considered, or are rarely considered, in legislative actions. That the ideological bases for punishment may have changed does not necessarily indicate that every vestige of the earlier "1960s" war on crime, with its emphasis on social reform, has been eliminated. Pontell's argument for the consideration of social and organizational factors would be more logically compelling if the reader were told what factors are considered by legislatures and what other factors should be considered. Pontell's alluring title, *A Capacity to Punish: The Ecology of Crime and Punishment*, conjures up images of the mysterious Raskolnikov, the protagonist in Dostoevski's classic *Crime and Punishment*. Raskolnikov explores the limits of the mind's capacity for self-punishment. Only after he realizes that this capacity is finite does he allow the criminal justice system to take over. Unlike Dostoevski, who gives the reader a psychologically com-

plete work, Pontell leaves the reader with an array of charts and tables describing a problem with no suggestion as to a concrete solution.

— *Samuel M. Hill*