

February 3, 1975

Professor M.W. Reder
Department of Economics
Graduate School of Business
University of Chicago
Chicago, Illinois 60601

Dear Mel,

The reprint that you sent me "Citizen Rights and the Cost of Law Enforcement" touches on so many of the deepest questions of the "social contract" that I hardly know where to begin in commenting upon it. On the question of the urgency of adopting a balanced cost-risk-benefit analysis of the police problem I am entirely with you. Just in the last few days I have been collecting a few clippings that reflect some of the inherent contradictions in the arena you have examined. But despite the occurrences of absolutist thinking I wonder if this is prevalent as you make out. Have there not been some more objective social investigations along that line? In fact, from the popularity of "law and order" as an issue in election campaigns I would have thought that the public consciousness was tipped rather far to the right; however, much the articulate academic elite may speak from the other side. Consider who was in fact the legally constituted principal officer of the United States Department of Justice until rather recently!

The subject plainly illustrates another arena where the assumption of a value as "infinite" results in economically unsolvable equations. My own concerns about this have been primarily in the field of drug and environmental safety where the assumption that the value of human life in fact should be placed at an infinity (so contrary to actual social decisions that bear on this point!) has had consequences similar to those that you deplore in the law enforcement field. Rather than focus just on the cost questions in an economic framework, one could also stress how absolute rights inevitably conflict with one another: we simply cannot have absolute health, absolute environmental safety and absolute privacy all at once.

If one views your economic theoretical framework as a prescription for further empirical studies in order to establish the points of possible optimality in the trade-offs, I would be particularly enthusiastic. I did once dabble in a discussion a bit closer to the theme of your article - see attached correspondence relative to the investigation of the optimum level of IRS audit and investigation of tax returns.

over

That example may illustrate the difficulties and dangers of proceeding too rapidly with a simplified first order economic model, which may be just as hazardous as the infinitism that we both attack. There are considerations of comity, of the psychosocial sense of participation in a social enterprise, which being very difficult to measure in economic terms may be inadvertently left out of one's calculations. This in fact would be my principal objection to the general style of your analysis although I found the last few pages of your article the most interesting insofar as they took up such matters. The questions that you address are in fact so complex and deserved to be filled out with detailed examples to such a degree that I might hope you could expand the article into a rather large book which the subject certainly deserves! It might come to have a place in the relevant literature comparable to Calabresi's work on the "Cost of Accidents", which I think has had a significant policy influence.

Among the more "political" questions that I think must be dealt with in an enlargement of this analysis might be included some of the following:

Precedent. Many, many transactions in this sphere are judged not in terms of their own immediate economic outcome but the extent to which they appear to serve as precedents for further incursions of privacy.

Other social functions of law enforcement besides deterrence. I do not know where to find the empirical evidence that the level of street crime bears a functional relationship to the level and efficacy of police activity. And if one did, one of course might wonder which was cause and which was effect, no matter what one's common sense of view of the matter. Before there are large scale social restrictions obviously we should know more about this. One concern that polite people often leave out of their discussions about crime and law enforcement is the element of retribution which I view to be an essential ingredient of a society based on law. Perhaps my training on this goes back to reading the Greek classics, but I do not think one can ignore the considerations that encourage the citizenry to allow the law to take its course as an alternative to personal vengeance.

Diametrically opposed is the consideration of totally different approaches to the prevention of crime that at first order may seem to be in conflict with the diligent prosecution of offenders and vigorous police activity. Certainly, further analysis should investigate more closely the extent to which this conflict is real. I have in mind the extent to which efficient aculturation would be a better route to producing crime than vigorous prosecution. (Another way of putting this is that your own model puts down the "law abiding citizen" as a given). Enthusiastic compliance with the law certainly depends upon a high level of confidence that the innocent will not be abused, no matter what one's economic equations.

over

One should also give at a higher level of system analysis very careful consideration to a wide variety of other technical solutions which may involve different kinds of surveillance and risks of invasion of privacy. Do you know of any reliable statistics on the efficacy of steps like reducing the amount of cash that bus drivers have available, an obvious temptation to crime. This of course entails a reduction of services to the public in requiring the passenger to have exact change, etc. and does reflect a situation where there evidently has been a balancing of prospective utilities. But on the assumption that this was an effective measure, I would anticipate further advantages from technical progress towards the "cashless society"; and I have even wondered about implementing a further variation thereof, namely the routine processing of paper money for the recording of certificate numbers allowing for the possibility of retrospective monitoring of cash transfers where a crime had been involved. I believe that this is both technically and economically feasible; its efficacy and the extent to which it would be acceptable in the light of possible privacy issues are still in question. It would certainly increase the chances of effective prosecution if there were a greater likelihood that cash obtained illegally could be identified as such. (Why this was not systematically adopted as a way of dealing with hijacking and kidnapping, I am not sure - perhaps indeed it was! But then why keep it a secret?)

A couple of further remarks on the overlay of political and historical on economic considerations. Your reference on page 450 (2) - I doubt that the practice is based on any special rationale rather than as a product of long standing tradition. If that historical tradition did not exist, I could not imagine that it would be possible on any rationale to impose such a constraint de novo - perhaps except under the cover of a hysterical demand for better enforcement against narcotics or the like. On the other hand, the lumping together of the inspection of baggage on airplanes or at customs with "search without warrant" is an unnecessary mingling of very different circumstances. It is very different to have a well known and well advertised checkpoint; another to contemplate the preemptory invasion of one's home. Indeed, the important underlying distinction is the decreased likelihood that checkpoint examinations will be abused beyond the functions for which they were originally intended, and vice versa.

Furthermore, as to the disposition of offenders strictly non-economic considerations - I would put them under the heading of comity - govern the level of retribution that would generally be expected in dealing with minor offenders. It might be a very efficient procedure indeed to decapitate, or even better to transport, minor thieves but I cannot imagine our standing for it. (Let me say in parenthesis that the only penal system that I am aware of as having been historically successful was precisely that of transportation to Australia). But I do not know what I could use as an analog for that today.

To close with interjecting ~~anew~~ a more personal view, I believe that we all suffer a great deal from the occasional actual and greater potential abuse of police power given the costs of the reactions that you summarize in your article. If we could discover more effective measures to prevent that abuse (which you cover very lightly in your footnote 29) we might well do better in a rational approach to the other problems you summarize. In particular we ought to find better solutions to the abuse of police power than the exclusionary principle which must have no parallel elsewhere

in economics for adjusting a system of transactions in terms of who benefits in each microscopic situation. Many other market oriented procedures are subject to reversal or evolutionary change. The political side-effects of uncontrolled police power, lacking such assurance, are so horrendous that I think we can afford to pay some premiums by way of an insurance policy against the police state. That must be included among the benefits that are entailed by, if not always perfectly articulated, a high order of defensiveness about personal civil liberty. To summarize a few points I would be most interested in a better assessment of empirical determinations of the level of suboptimizations under which you believe we presently labor and about the costs and benefits of some of the remedies that you would now propose. And of course I am asking this in the sense of an inquiry about the most effective procedures to gain those ends rather than expecting a completed answer.

Sincerely yours,

Joshua Lederberg
Professor of Genetics

JL/rr