

PHD THESIS SUMMARY:
The prisoner's dilemma:
the political economy of proportionate punishment.

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The most common heuristic used in economics is not coincidentally entitled the 'prisoner's dilemma'. Several classical economists saw in the social phenomena of crime and punishment an obvious demonstration of the principles of economics. Through changes in the criminal justice system society could deter criminals, thus ridding itself of the baneful costs of crime. Adam Smith (1762) explained the most basic choice inherent to all social action. Men are confronted with the perpetual choice to either truck, barter and exchange—or rape, pillage and plunder. The prisoner's dilemma is a modern and formal presentation of Smith's profoundly subtle insight. The game's namesake scenario describes two criminals so attracted by the personal rewards of defection that they forgo the higher social rewards of cooperation. Not only are the inmates in the narrative strategically pitted against one another, but so are all individuals constantly offered the short term rewards of taking to get ahead instead of trading.

As James Madison explained in the Federalist Paper, No. 51 (1788), institutional design attempts to promote mutual exchange while suppressing coercion. If punishments are levied so the short term rewards of crime are not attractive compared to the long term rewards of production and exchange, then individuals will choose the latter. In the prisoner's dilemma of social interaction, the rule of law acts at the meta-level.

As my title implies, I intend to treat the prisoner—the central planner, the government itself—as no different from the traditional agents that economists so often analyze. I entertain the possibility that state authorities are no better informed or incentivized than the ordinary individuals within society, and that are also tempted by the rewards of defection.

Men are governed by other men—imperfect and fallible. Real punishments are imperfect because those who create, interpret, and enforce the rules are not God. Yet it is a bizarre irony that today's most popular criminal justice theories—those theories which supposedly justify, legitimize, guide, organize, and motivate the criminal justice system—begin from the premises that the state authority is the necessary and sufficient purveyor of criminal punishments.

The most recent trend in punishment theory calls for adherence to the principle of proportionality: a punishment should be well-fitted to the crime, and like crimes should be treated alike. I accept the proportionality principle as intuitively appealing and theoretically sound, but the question remains, what institutional framework best produces proportionality?

In chapter 2, I begin this dissertation by drawing attention to the dominant trends in sociology and economics that are responsible for preserving the assumed role of the state in providing criminal punishment. Economics and sociology have long sat in opposition to one another. Sociologists sought to understand the essence and operations of punishment institutions, while economists tried to optimize the allocation and production of punishments. Naturally these perspectives were hostile to one another, but today each field has taken significant strides towards a common ground. Sociology and economics have both begun to look at the important role that institutions have on influencing the outcomes of social and economic processes. I present a framework of reciprocally embedded institutional influence to help explain significant historical changes in punishment paradigms over the last half century.

I go on in separate chapters to argue that a centrally-planned criminal justice system often produces disproportionate punishments because of its inability to deal with problems associated with dispersed knowledge and non-benevolent incentives. In chapter 3, I argue that knowledge problems inhibit a central-authority, even one guided by benevolent intentions, from knowing how to provide punishments in the quality and quantities that best produce proportionate outcomes. A central-planner can never possess the full scope of knowledge required to achieve proportionate punishments because such knowledge is often dispersed throughout society in the minds of several different people. Even if a central-planner fully embraced the insights of the

proportionality principle, he would still lack the knowledge of how to produce real proportionate punishments in practice.

In chapter 4, I argue that central-planners lack the incentives to avoid bureaucratic inefficiencies. If a central authority knew what decision making process—rules or discretion—could achieve proportionality it would still lack the incentives to follow such processes. In theory, the long and variable lags associated with punishment policy give good cause for rule-based sentencing rather than discretion-based sentencing. Rules should provide stable long-run expectations about the future level of crime and therefore promote investments in long-run production processes for security and deterrence technologies. But the government-monopoly over the criminal justice system lacks a credible commitment to obey rule-based criminal sentencing guidelines once they are in place. In the face of incomplete and non-credible rules, various agents in the criminal justice hierarchy wield de facto discretion over the outcomes of criminal sentences.

I take the ends of proportionality as given and ask the critical question whether centrally-planned institutions are ever capable of knowing or discovering the preferred techniques of proportionality or if they ever confront the incentives to produce proportionality. These theoretical exercises of assuming imperfect knowledge and imperfect incentives are not incompatible but are instead complimentary to each other. The incentive problems explained in chapter 4 are not a crucial critique against the knowledge problems explained in chapter 3. The essential knowledge regarding the ins and outs of the criminal justice system is suppressed when market-based decision-making processes are replaced by politics. Decisions must be made according to some criteria; the political process then introduces incentive incompatibilities. The logical inconsistency between the ends of proportionality and the means of central-planning is the fundamental problem that upholds the emergence of socially preferable outcomes in criminal justice. Low crime, low costs, proportionality, and equality before the law are replaced by high crime, high-costs, dis-proportionality, and disparity.

This dissertation is a step to constructing and implementing criminal-justice reform from a logical and philosophically consistent approach. Though my intentions are not necessarily the elimination or deterrence of crime, it seems reasonable to assume that the establishment of a criminal justice system that is more internally

consistent, responsive to social preferences, and informed by realistic assumptions will in turn also be more technologically efficient at responding to crime.

Daniel J. D'Amico obtained his PhD in economics from George Mason University on May 2008, under the supervision of Professor Peter J. Boettke (George Mason University). The author is currently assistant professor of economics at the Joseph A. Butt S. J. College of Business, Loyola University New Orleans.

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