

Should We Incorporate Incarceration and Corrections Costs into a Cost-Benefit Analysis of Policing?

Tom S. Clark¹

January 31, 2017

Should a cost-benefit analysis of policing practices incorporate the costs of incarceration and other corrections? In short, the answer is yes. Presumably, when we consider the benefits of a policing practice, one of them is the ability to prevent crime, ensure a safe community, and catch criminal violators. Any non-myopic view of these benefits necessarily entails the subsequent costs of corrections for individuals who do violate the law. In addition, any non-myopic perspective should consider the potential savings in corrections that can derive from better prevention of crime in the first place.

A cost-benefit analysis of a policing practice necessarily entails as comprehensive as possible an assessment of the anticipated consequences. If one has any anticipation that a new policing practice will result in more offenders being caught, then we should expect and consider any associated increase in the cost of corrections that follows. Similarly, if one anticipates that a new policing practice will have a deterrent effect, then we should and consider any associated saving in corrections costs that follows. This might take the form of simply calculating the contemplated policing practice's anticipated effect on the rate of success in catching criminal offenders. However, it may also take the form of calculating the practice's effect on the strength of a case that could be built against a suspect, the range of offenses for which a suspect might be charged, and any deterrent effect the practice might have on potential violators' behavior.

In addition, it bears emphasizing, consistent with the spirit of this project, that the costs of corrections are not limited to the immediate fiscal implications of incarceration and other forms of corrections. The social costs of corrections—especially of incarceration—can be extensive. If a new policing practice risks identifying and pursuing individuals for any given kind of infraction, we should consider how that enhanced enforcement capacity will interact with policy-makers' choices about punishment. For example, does a given practice enhance the risk of catching minor violations that might lead to even short periods of incarceration? If so, do the adverse consequences of incarceration outweigh the benefits of punishing those minor infractions? This is obviously a deep question and the subject of extensive debate in many academic and policy literatures. However, for the purposes of performing a cost-benefit analysis of a proposed policing practice, this dimension seems relevant for consideration.

That having been said, there are at least two challenges to evaluating the costs and benefits of a policing practice with respect to the costs of corrections. The first is that corrections costs may themselves be endogenous to policing practices. We cannot expect to “turn the

¹ Asa Griggs Candler Professor, Department of Political Science, Emory University.

knob” of policing practice without anticipating a reaction in justice and corrections practices. The second is that there may be myriad unanticipated consequences that are difficult to assess, as well as a high degree of uncertainty about the cost implications of a proposed policing practice. If so, then a cost-benefit analysis may suffer from a high ratio of noise to signal.

Corrections costs may be endogenous to policing practices

Corrections entails decisions by lawyers (both defense lawyers and prosecutors), jurors, judges, and many others. When a defendant is charged with a crime, the prosecutor has already made a decision in light of the merits of the case and his or her expectations about what the outcome of such a charge will be. Built into that expectation is an understanding of the way judges and others behave. In other words, what we observe take place, empirically, is an equilibrium outcome—prosecutors calculate the optimal decision, conditional on their understanding of others’ incentives. Those others (defense lawyers, jurors, judges, etc.) similarly make their decisions conditional on their expectations about the prosecutor’s incentives and decisions. This is the basic tension that makes policy analysis so difficult. We cannot expect to change the options or incentives for one actor without the others responding.

The reason this is important in our setting is that the costs of corrections is something that is driven by the choices legislators, judges, and the like make. If policing technology changes, then we should expect that potential violators, judges, legislators, etc., will adjust their behavior in response. After all, if potential criminals (in Oliver Wendell Holmes’ language, the bad man) do not respond to changes in their incentives, the entire enterprise of criminal law is misguided! If, indeed, behavior throughout the system is likely to change in response to changing policing practices, then we are in need of a behavioral model to enable prediction of the anticipated corrections costs were a new practice adopted.

Uncertainty in the effects of a policing practice, and unanticipated consequences

A second challenge in the cost-benefit analysis of a new policing practice is that we may often be considering policing practices that are either entirely new to policing or have only limited implementation in the past. This can mean there is a great deal of uncertainty about the effects of a policing practice, and that uncertainty can have interactive effects as it propagates through the stream from policing to corrections. If we have too much uncertainty, then it could “drown out” the systematic components of our analysis and undermine the point of the entire endeavor.

Related is the idea that a new policing practice, as with any policy reform, might involve unanticipated consequences. Taking too broad a view on the cost-benefit analysis risks giving the analyst a false sense of comprehensiveness. We might imagine, for example, that a new piece of technology might gain so much interest among a police force as to lead officers into over-reliance or at least to take attention away from other policing tools. Or, we might imagine that a new policing practice causes fundamental shifts in behavior that bring about other kinds of crime that were previously not significant concerns. We should

be mindful that anticipating all of the downstream consequences of a policing practice is very hard to do, simply because of our limited foresight.