Rhode Island Policy Reporter

It's a Crime

As THE STATE CONTINUES TO WRESTLE with its budget crisis, you hear a lot about unions and pensions and state employees. What you seldom hear about is the expensive policy choices we've made. Welfare reform, for example, may or may not have been a good idea, but why anyone thought that providing child care, job training and transition health insurance would be cheap remains a mystery. We will soon celebrate the opening of a lovely new bridge in Providence, but let's remember that this $700 million project was originally proposed as a substitute for $50 million in bridge repairs. And now let's talk about getting tough on crime.

In 1988, our state's jails housed 1528 people. As of September, there were 3937. In 1988 we spent $47 million on them. This year, we're expecting to spend $199 million. In 1988 we had just over 10,000 people on probation or parole, and now there are almost 27,000. In other words, after accounting for inflation, we're spending about 2.6 times as much now as in 1988, taking care of 2.6 times as many prisoners and monitoring 2.7 times as many probationers. Per prisoner, we're spending about the same as then, but there are lots more prisoners now.

1988 is notable because that year the Assembly passed legislation establishing a mandatory minimum sentence of 10 years for people convicted of possession of as little as one ounce of heroin or cocaine. We also amended the state constitution to deny bail for drug offenses where the potential sentence was 10 years or more. Sounds tough, right? These measures were put in place to be tough on crime, but whether you think them effective or draconian, they cost a lot. In the very first year, the number of female inmates jumped from 87 in 1988 to 215 in 1989.

(This past year, the legislature repealed the mandatory minimums, but the Governor vetoed the repeal so they remain on the books. The legislature met to override vetoes this week, but didn't have this one on their agenda.)

One of the more troubling things about our expensive policy choices is that frequently there is no one who chose them. For example, during the 1990's, there was a substantial drop in crime across America. Why this happened is the source of a great deal of argument, with many people claiming that their approach was the silver bullet. Steven Levitt, the economist who wrote *Freakonomics* (with Stephen Dubner, 2005), has spent some time with crime statistics, trying to answer this question. In a 2004 paper,[1] he suggested that the most easily identifiable causes were the increases in police and the increases in prisons, but that increasing police has a bigger effect for a smaller amount of money.

> *We've chosen some expensive crime-fighting policies. Others we didn't really choose; they just sort of happened.*

With that in mind, let's review the record in Rhode Island. Figure 1 shows how our police forces have changed in the higher-crime, medium-crime and low-crime communities in our state.[2] What you can see from the picture is that over the past several years, we've added police officers in exactly the places where they're least needed, while the places where we need them, we've barely kept even. Which is to say that our state is spending more on its police now than in 2000, but they're all in places like Charlestown and Little Compton, not in Pawtucket and Woonsocket, where the police forces have been cut.

Who's responsible for this brilliant crime-fighting strategy? Pretty much no one. Charlestown can add a police officer because Charlestown is growing fast enough to pay for him or her, and that's pretty much that. But about an eighth of Charlestown's non-education budget comes from the state, so their spending choices do have an impact on everyone else.
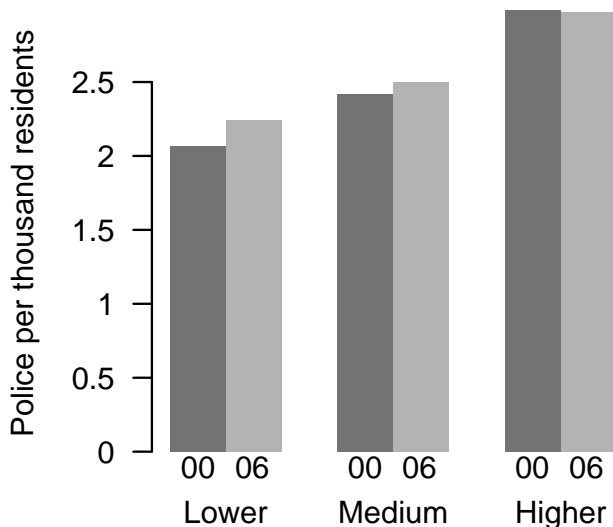

Figure 1: The number of police personnel (officers and civilians) per thousand residents in 2000 (dark columns) and 2006 (light columns). The three groups correspond to the communities with relatively low, medium and high crime rates. Rhode Island's low crime towns can afford to add police, while the communities with more crime often cannot, and in many cases have cut their forces. For the low crime areas, the difference in the two columns is 40 officers. For the high crime areas, the difference is 1. (source: FBI Uniform Crime Reports)

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[1] *Understanding why crime fell in the 1990s: Four factors that explain the decline and six that do not*, Journal of Economic Perspectives, 18(1), 2004, pp163–190. Notoriously, he found that a highly significant factor was the advent of legal abortion in the US a generation before.

[2] The definitions of high, medium and low were fairly arbitrary, but the picture looks the same with several different choices of borders.

Somewhat arbitrarily, I put the towns into three other groups: towns that grew less than 1% between 2000 and 2005, towns that grew between 1% and 2.5%, and towns that grew more than 2.5%. For perspective, the statewide population growth between 2000 and 2005 was 1.35%.

The high-growth list was dominated by the towns of South County, but also included Lincoln, Foster and Glocester, a pretty rural list. These towns increased the size of their police payrolls by 16.25% between 2000 and 2006, though their population only grew by 4.1%.

The medium-growth cohort was harder to characterize. It had some cities (Providence and Central Falls), some first-ring suburbs (Cranston, Johnston), some second-ring suburbs (East Greenwich, North Kingstown) and some rural towns (Little Compton, Burrillville). These towns increased the size of their populations by 1.8% between 2000 and 2005, and grew their police departments' payrolls by 5.1%, on average.

With the exception of Barrington and North Smithfield, the low-growth places are a fairly urban group. They included Woonsocket, Newport, East Providence, and Pawtucket, among others. This group actually lost 2.17% of its police payroll, while its population barely moved. And what a surprise. Most of the high-crime towns are in the low-growth group and most of the low-crime towns are in the high-growth group. Police are not hired where they're most needed, but where towns can afford them.

The summary is this: we have spent and continue to spend a lot on prisons largely because we enacted drug laws that fill them up. There are plenty of ways to control crime for less expense. We could invest in drug treatment programs, we could end mandatory minimum sentences, we could reform our parole system,[3] we could hire more police officers. Instead, we rely on the most expensive possible crime-fighting strategy: lots of prisons, fewer police. We do manage to spend money on police, but by leaving all such decisions under local control, we guarantee that the police hired won't be in the communities where they could do the most good. No one has decided to do things so badly, and yet here we are, doing them badly. Now tell me again why there's a budget crisis? ■

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[3]Parole revocation hearings have a much lower standard of evidence than trials. We have many prisoners who are in jail because their parole was revoked for offenses of which they were later found innocent.

Year	Easy way	Hard way
FY07	$7.7	$8.4
FY08	$16	$15
FY09	$27	$27
FY10	$45	$49
FY11	$70	$88
FY12	$101	$112

Table 1: Estimates (in millions of dollars) of the cost of the alternative "flat" tax cut in coming fiscal years. (Full phase-in by 2012.)

Bait and Switch Tax Cuts

In 2006, when the legislature passed its tax cap for rich people (also known as the alternative "flat" tax), they did it without saying what services would be cut to pay for it. The way the tax cut game is usually played, the cut has to be phased in over several years, leaving. the harsh spending decisions to some future legislature. Naturally we're all supposed to pretend not to notice how cowardly it is to propose a tax cut without saying what will be sacrificed to pay for it. Are you in favor of lower taxes? Put that way, who isn't? Where it becomes hard is *after* we understand what we're giving up.

In the flat tax case, the phase-in strategy is especially nasty because the cuts get successively more severe each year. The way the cut works is this: taxpayers can choose between using the tax tables most of us use to calculate our taxes, or using a flat percentage of taxable income. Because of the way our income tax is structured, only the richest taxpayers will save any money by choosing the flat tax. Starting in 2006, the tax limit ratchets down by half a percentage point each year, until it rests at 5.5% in 2011. As of this coming year, the limit is 7%, so it affects married taxpayers only when they earn more than around $260,000 per year.

Another exciting feature of this cut is that it was made on the basis of false estimates of how much it would cost. The Tax Division declined to provide projections about the cost in future years. Instead, they provided an analysis of 2005 income tax data that showed what the cut would have cost in that year. This is not the same thing, but it's all they could be persuaded to do, and they calculated that if the whole thing had been in effect in 2005, we would have collected $73 million less than we did.

But incomes grow over time, and at this point in 21st-century America, the evidence mostly shows that incomes at the top end are growing faster than incomes at the bottom. In other words, these numbers can't possibly be good estimates of how much the flat tax cut will cost. Unfortunately, because there were no other numbers available, legislators and advocates seized on these, and in speeches and in discussions, you'd hear them speak as if this were the true cost.

Projections aren't that hard, though like any prediction of the future, you have to remember to be humble. In this

case, there's an easy way and a hard way. The easy way is to compare the tax division's numbers to the official projections of the total take each year (these are published with the Governor's budget). I did that, and the results are the first way shown in Table 1, above.

Another way to do the same thing, is harder, but you get more detail, so I tried that, too. Using income growth statistics and past tax data to simulate half a million taxpayers like ours, I wrote a computer program to fill out an imaginary tax form for each of them. This used to be the kind of number-crunching that could only be done by government researchers and others who could command lots of computer horsepower. But one of the great things about the march of technology is that any computer with enough oomph to run World of Warcraft has the speed to fill out a measly few hundred thousand tax forms, and I only played a couple of Freecell games before it was done crunching through them all. It gave good results for past years, so then I asked about the future. The predictions that burped out showed the tax cut will cost $27 million in fiscal 2009, an increase of about $12 million from this year. But in 2012, when it's fully phased in, it will cost around $112 million. This is a lot of money to give back to rich people in a state where no music teacher is safe.

The two methods produce slightly different results, but they agree in the big picture, which gives cause for confidence. The easy way probably underestimates the contribution from the wealthy and the hard way probably overestimates, leaving it likely that the answer is somewhere in the middle.

This year, you're going to hear a lot of people say we shouldn't raise taxes to balance the state budget. Those people are trying to mislead you by ignoring the fact that

> *A hundred million dollars is a lot of money to give to rich people in a state where no music teacher is safe.*

the biggest reason our state budget isn't in balance is the huge tax cuts we've given *and are still giving*. If we were to magically transform the income tax back to the rates of the bad old days of 1996 – reversing the 1996 capital gains cuts,[4] the 1997 Almond income tax cuts, the 2001 capital gains cuts and the 2006 flat-tax cuts – we'd be collecting over $200 million more than we are expecting next year, and that's only the cuts in the income tax. By itself, restoring these cuts wouldn't be a particularly good idea, since property taxes have shot up to take the place of the lost revenue, but it gives you a good idea about how we got into this mess: we chose it. It was the completely predictable result of

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[4]These were federal tax cuts that were reflected in the state tax, which was calculated as a fraction of the federal tax. The others were all state taxes, and were all phased in over several years. The 2001 capital gains cuts didn't even *begin* to take effect until 2006.

IRS Coverup

Rolling my own revenue projections was made more difficult by the fact that the IRS is deliberately providing worse data than it once did. Not long ago, the IRS annual statistical report on income taxes provided tax data for twelve income brackets for every state. In 2002, they combined the top three brackets in the state reports, so that only one category contains everyone earning more than $200,000 per year. This is a lot, but we also know that many recently enacted federal tax rules are intended to benefit only the richest of the rich. Combining the brackets makes it impossible to see how the super-rich do relative to the merely rich, effectively masking the effects of these policies.

As if that wasn't annoying enough, in subsequent years the IRS combined the five bottom brackets, so now all the poor are lumped together, too. One of the brackets folded into this one was the bracket for people who reported net losses. These, in general, are not the poor, but are rich people with clever tax lawyers, and that bracket was once useful as a measure of how clever tax lawyers are. But no more. In other words, the data are now pretty useless for making state tax revenue projections.   –TS

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conscious policy decisions made by people in charge.

As has been written here many times, there are important differences between income taxes and property taxes, and the most important is who pays. Income taxes fall most heavily on rich people and property taxes fall most heavily on the poor. These state taxes were cut, state support to cities and towns suffered, and those cities and towns raised their property taxes in response. The net result is that we shifted our tax system by cutting taxes on the wealthy and raising them on the middle and poor. ∎

BOOK REVIEW

The Costs of Guessing

Against Prediction
Bernard E. Harcourt, University of Chicago Press, 2007, 336 pages

Suppose you walk through the fish markets in southern Spain, and observe lots of sea bass and very little cod. What do you infer from that? Probably that sea bass outnumber the cod in local waters. As it turns out, though, the sea bass are in the Mediterranean, and the cod in the Atlantic. The imbalance may only be the result of a preference for fishing in calmer waters. The fish in the market are there in those proportions because of fishing strategy, not because of their populations. Bernard E. Harcourt, a professor at the University of Chicago law school, uses this and similar stories about arrest rates and racial profiling, to illustrate his assault on common strategies among
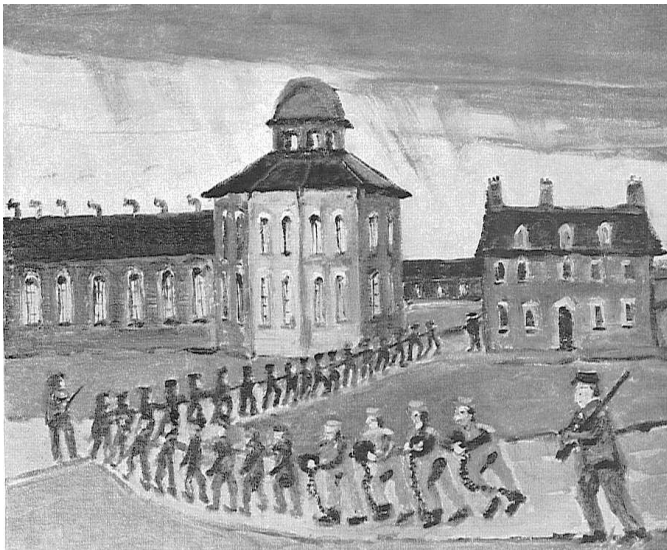
Figure 2: From the statehouse library: "The 'Lockstep, Ball and Chain' Gang", oil painting by Henry A. Jones, M.D., reproduced from his book, "The Dark Days of Social Welfare at the State Institutions at Howard, RI," a haunting and lovely fictionalized version of some of his experiences as a prison physician from the 1890's onward.

21st century police and prisons. His chief target: the practice of predicting who will be a criminal.

Prediction techniques are by now quite common in law enforcement, and are used to allocate police resources, to dictate sentences and to make parole and probation decisions. They involve gathering statistics from past offenders and neighborhood trouble spots, and using them to develop profiles of likely criminals. Harcourt's argument, roughly rendered, is this: There is at least a little crime everywhere, so in a very real way, you'll find crime wherever you look. So if you mostly look in minority neighborhoods, that's mostly where you'll find it. Imagine a world with 20% orange drivers, and imagine that 10% of them are carrying illegal drugs, and 8% of everyone else, who are green. There is a disparity, but it's not a big one.[5] Now imagine that the police begin an aggressive program to search orange drivers, devoting half their resources to them. Eventually word gets out that orange drivers are at risk and green drivers are safe. If drivers are rational[6] then the crime rate among orange drivers will go down as the risk of arrest goes up. Say it goes down to 9%. Un-

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[5]Especially in a world with such high crime rates. Remember this is just a fantasy world used for an illustration.

[6]Almost all theoretical analyses of crime and punishment (including Harcourt's) are committed to the idea that we exist in a universe of rational people. Despite everyday evidence of irrational people, academics refuse to give up the concept because to do so would imply that society is forever beyond the reach of the analytical tools of science. Unfortunately, people's lives—and the choices they're presented—tend to be much more complicated than sociologists' models, so rationality is seldom adequate for the task at hand. A social scientists who uses rational choice models to study human society resembles a meteorologist equipped with a box of plastic bags with which to study clouds.

fortunately, it's also likely that the rest of the world will notice, and the offending rate among the green drivers might go up, say to 9%. There are lots more of them, so now you've actually got *more* crime than you had before the policing began.

What you also have is statistics to "prove" that orange drivers are responsible for half the crimes. After all, they make up half the arrests, don't they? In this regime, an orange offender is more than three times as likely to be arrested than a green one.

Now, using these arrest statistics, we develop a profile of who is most likely to be arrested again after being released from jail. Since oranges are far more likely to be arrested, the statistics are likely to show them far more likely to be re-arrested. So obviously we should be less eager to offer them parole, right?

But look what's happened: A series of seemingly sensible policing and incarceration policies have led to an increase in crime and a tremendous disparity in arrests and sentencing policy. Sometimes "seemingly sensible" just isn't good enough.

To wind up with a world like this, we only assumed that the offense rate among minorities was slightly higher than that for everyone else, but Harcourt also shows that the system drives to the same outcomes, no matter what the actual starting point. The only requirements are the *perception* that crime is more prevalent among some minority group than it is in the majority, and that groups change their behavior according to the degree of police attention. Essentially, you can't police a community without having the biases of the police force affect it.

Strategies like these are quite common, and have become an everyday part of our justice system. Three-strikes laws, parole policies and police resource choices all depend on these kinds of predictions. To Harcourt, what's at least as troubling as this is that the effects of these strategies have shifted our attitudes about what exactly justice *is*. It was once thought that equal punishment for equal crimes constituted a just system, but now we have people who will claim that justice demands that certain classes of people deserve harsher punishment for the same crimes. Laws that automatically put repeat offenders away for life for minor crimes, are a perfect example. This is not how we used to define justice.

> *You can't police a community without having the biases of the police force affect it.*

Statistics run amok Unfortunately, after a powerful indictment of prediction practices, Harcourt's analysis misses some facts about how we use statistics and then goes astray on his recommendations for the future. He accurately points out that assessing the amount of crime by

analyzing arrest records inevitably lets the biases of the police leak into the analysis. To analyze crime, it is true that what you really want—and can't get—is statistics about how much crime happens, not statistics about how much is detected. What's at least as important, though, is what you do with the data you get. There is a fundamental difference between the use of statistics in science and the use of statistics by insurance actuaries. It's central to the problems Harcourt identifies, but he misses it.

When actuaries compile their data to prove that young men are poor risks for auto insurers, they do not claim that there is anything about being a boy that makes you a bad driver. Instead, the claim is that being a boy in 21st-century America entails a bunch of other facts—some known, some unknown—some of which cause unsafe driving. Being a boy is a good *marker* for unsafe driving, but it isn't a *cause*, strictly speaking. A marker has two important properties: it must have a good correlation to risk, and it must be easy to see. Insurance companies find it convenient to use the sex marker in setting their auto premiums, simply because determining sex is easier than determining a driver's general level of responsibility or likelihood of being out late with friends.[7]

Contrast this with researchers in science. Psychologists

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[7]There are cases where a marker can be a cause, such as a waterfront home having a higher risk of flooding, but these are only coincidences whose contrast with the other cases proves the point.

Figure 3: "The 'Lockstep, Ball and Chain' Gang", detail.

looking into questions about learning to read may look at correlations between a mother's education and a child's achievement, not because they think that the one is a good marker for the other, but because they hypothesize that the one is a possible cause of the other.[8] The statistics these researchers develop are a way to test this hypothesis. A decent correlation is an invitation for further research to look at exactly what's going on, but the researchers don't conclude that the correlation means anything by itself.

Actuaries look for markers and scientists look for causes. There is a world of difference.

There are some superficial similarities between these two activities. Both use sophisticated statistics and sampling strategies and both report their findings in terms of carefully couched probabilities, but at root, these are fundamentally different enterprises. The actuaries are looking for correlations good enough to predict the future, and the scientists are using the good correlations they find to uncover new facts.

The difference is in the application. Where a correlation is used to penalize members of some group, we want to know that there is a cause to link the group and the property. For example, being black and smoking are both associated with shortened life expectancies. Basing life insurance premiums on smoking has been done for years, while basing premiums on race can only be done covertly, when it is done at all. Intuitively, we see one as just and the other unjust.

Using markers instead of causes reliably produces unjust results, because it classifies people by what they are instead of what they do. In some cases, the potential injustices (overcharging safe-driving boys, undercharging reckless girls) are small, so we tolerate them. In the cases Harcourt writes about, the statistics are used to determine punishments, and the stakes are far higher. When you're talking about sending someone to prison, there are no small injustices.

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[8]See, for example, *Unfulfilled Expectations: Home and School Influences on Literacy*, by Catherine Snow, et al., Harvard University Press, 1991.

Where from here? If statistical reasoning can't help us in matters of crime prevention, what do we do? Harcourt suggests that the only fair policing strategies involve random sampling. In a purely technical sense, this is absolutely correct. The only reliable way to get the prison population to reflect the population at large is probably to police randomly.

Unfortunately, this cure seems worse than the disease. In the post-9/11 world, our nation already seems to be creeping slowly towards a world where everyone is under surveillance all the time. It is difficult to understand how anyone but an academic worrying about statistics could imagine that adding a regime of random scrutiny to our society might be a good idea. In the past week, I've had to empty my pockets for a visit to the State House library and as a chaperone on a grade school field trip to Ellis Island. We don't really know the extent to which the government has been spying on all of us, but what little evidence is available tells us it's not been modest. The "war on terror" has already left Fourth Amendment strictures against searches without cause lying in tatters. Do we have to burn the remnants to fight crime?

How to address police bias? Please not by random searches.

Probably not. Harcourt imagines that there are only two alternatives: profiling and random sampling. But it won't be possible for police to patrol without using their experience and hunches to predict what might happen and who might do it. Police officers are human, and demanding that they ignore their experience seems akin to Canute ordering back the tide. Harcourt's research shows us that a system that isn't aware of the limitations of these tools can expect bad racial outcomes. Instead of ditching the system, we can work to make it aware of the limita-

tions. Instead of designing a police regime to deliver a randomly sampled prison population, how about working toward a regime where racial imbalances are widely seen—within and without the police establishment—as evidence of discrimination, and where police seek to fix that discrimination rather than defend it?

We need to talk about restoring justice to our system of justice. The sad truth is that there are a tremendous number of people in America who perceive the justice system as oppressive and unjust. Much research shows that beliefs in the legitimacy and effectiveness of law enforcement are the two most important determinants of

Instead how about demanding we use evidence of bias to restore justice to our justice system?

whether someone obeys the law,[9] *and* that legitimacy stems from a basic sense of whether the system is fair and respectful. It's not all about outcomes, but whether people think the system gives them a fair shake. In this respect it's hard to argue that the system hasn't failed large numbers of people in Rhode Island.

Ten-year prison sentences for possessing an ounce of drugs, the abandonment of the assumption of innocence in parole violation hearings and the use of excessive force all contribute to a weakening of the legitimacy of law enforcement. We can use Harcourt's findings to work toward restoring the legitimacy of law enforcement without trying to get police officers to roll dice before making a search. ∎

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[9]See Tom Tyler, for example, *Why People Obey the Law*, Yale University Press, 1990. (Reissued in 2006 by Princeton University Press.) See chapter 5 especially, and Tyler and Huo, *Trust in the law: Encouraging public cooperation with the police and courts*, Russell Sage Fdn, 2002.