

NATIONAL  
PRIORITIES

FEDERAL

# CRIME POLICY

# TIME FOR A MORATORIUM

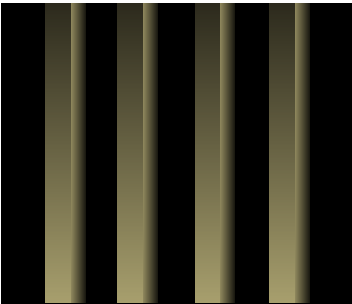
BY JOHN J. DI IULIO, JR.

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**BEFORE THE LATE 1960s**, crime was rarely on the federal government's agenda—for at least three reasons. First, most legal experts and judges thought that the national government had no constitutional role in crime control. Second, the public at large had no expectation that Washington would, should, or could do much to combat crime, and most members of Congress behaved accordingly. Third, many leaders and citizens in the South feared that if the federal government started passing criminal laws, it might make civil rights violations a federal crime.

Over the past three decades, all three of these barriers to an expansive federal role in crime control have fallen. After the late 1960s Washington's role in crime grew as the power to regulate interstate commerce was more broadly interpreted by the U.S. Supreme Court. For example, the Consumer Credit Protection Act of 1968 made loan sharking (loaning money at exorbitant interest rates and enforcing repayment by the threat of force) a federal crime. When this law was challenged, the Supreme Court ruled that even if loan sharking was a purely local activity, it might "affect" interstate commerce, and so Congress was free to regulate it. By the early 1990s, more than 3,000 activities had become federal crimes, and federal judges had hundreds of state and local criminal justice agencies, especially state prisons and local jails, responding to their orders on matters of policy, administration, and finance.

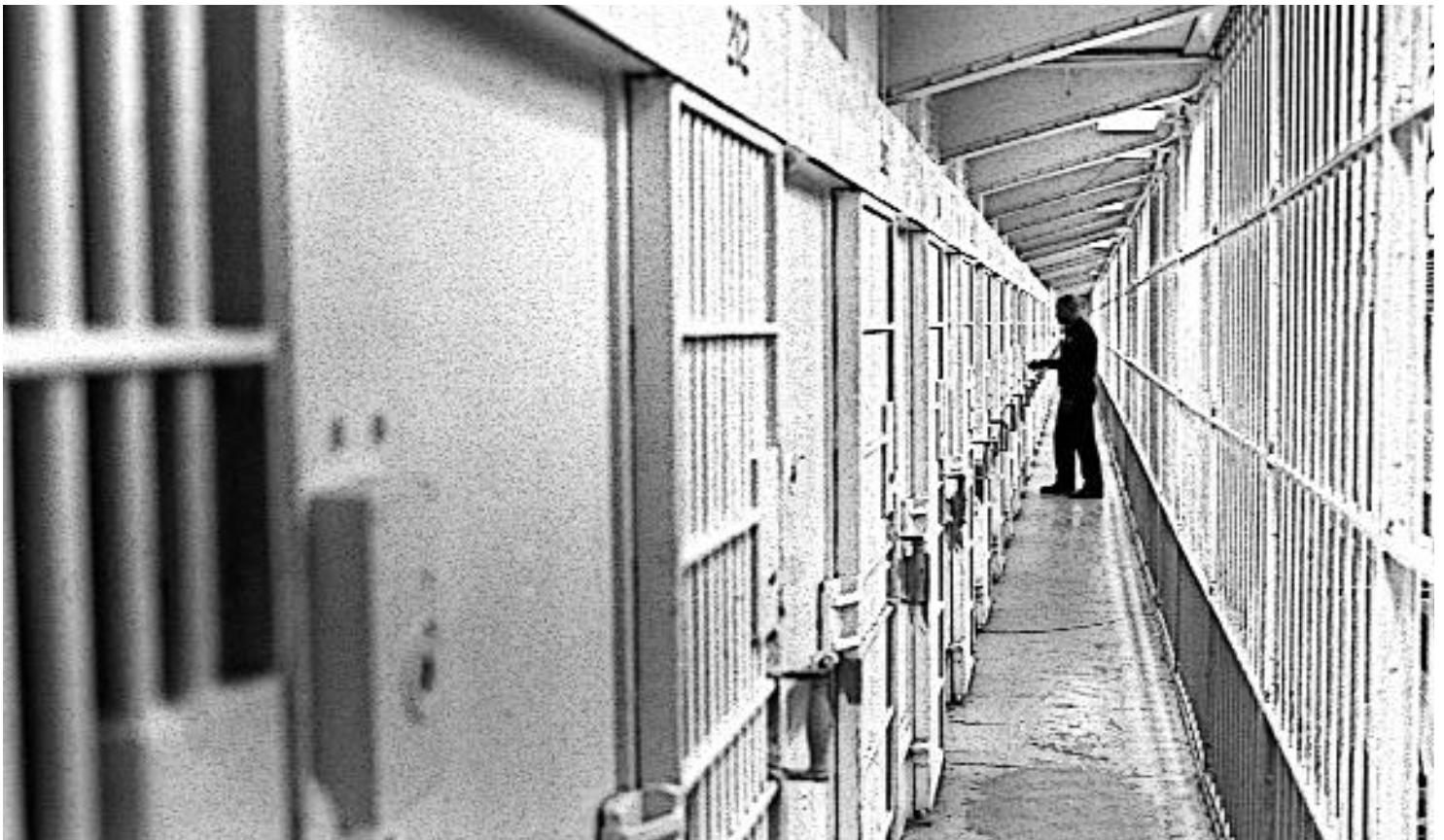
Second, since the late 1960s, crime has consistently been a top public concern, and elected leaders at both ends of Pennsylvania Avenue and in both parties have campaigned and governed accordingly. During the Johnson administration, the President's Commission on Law Enforcement and Administration of Justice declared, "Warring on poverty, inadequate housing, and unemployment is warring on crime," and recom-



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mended more than half a dozen new federal law enforcement and prevention efforts. After defeating Hubert Humphrey in a campaign that made "law and order" a key issue, Richard Nixon appointed "law and order" attorneys to the Justice Department and increased federal spending on anti-drug law enforcement and prevention. During the 1980s, Congress passed at least one new crime or drug control bill every two years. For example, the sweeping Anti-Drug Abuse Act of 1988 created the Office of National Drug Control Policy (commonly known as the "drug czar"). The Crime Control Act of 1990 newly federalized or beefed up federal action against scores of criminal activities, from international money laundering to selling drugs in or near local schools. The Violent Crime and Law Enforcement Act of 1994 expanded the federal death penalty, mandated life imprisonment for federal criminals convicted of three violent offenses, banned certain assault weapons, and authorized \$8 billion to hire 100,000 more police officers, \$8 billion to build prisons for state offenders, and \$7 billion for crime prevention.

Third, since the late 1960s, state and local leaders and members of Congress from the solidly Republican South, the nation's most conservative region on crime and many social issues, have gone from being brakes to



bulldozers on federal crime policy. The pro-death penalty governor from Arkansas who came to Washington in 1992 with a domestic policy blueprint that pronounced crime a policy domain in which “no federal role is justified” pushed hard for the Brady Handgun Violence Act of 1993 and the Violent Crime Act of 1994. Speaker of the House Newt Gingrich of Georgia and other key members of the sons-of-the-South-led 104th Congress talked devolution, but the “Taking Back Our Streets” provision of their Contract with America represented a \$20 billion widening of the federal role in crime control, and the crime block grants they eventually adopted expanded Washington’s reach in making, administering, and financing crime policy.

Since 1995, the crime policy debate in Washington has taken shape largely around four Republican proposals. The first three—restricting the role of federal judges in directing state prisons and local jails; increasing funding for states that adopt and enforce tougher sentencing practices in cases involving adult felons convicted of multiple violent crimes; continuing the 30-year-old war on drugs—were passed by the 104th and 105th Congresses and signed into law by President Clinton. The fourth proposal—giving the federal government a major role in assisting state and local governments that (in the language of one 1995 Senate proposal) “identify violent and hard-core juvenile offenders and treat them as adults”—has provoked three years of ideologically charged and highly partisan debate but has eluded final action.

### Public Concern Keeps the Focus on Crime

Crime is sure to stay on the federal agenda. Even as crime rates fall nationally, crime and drugs remain a top public worry. In a mid-1997 CNN-Time Magazine poll, crime was cited as “the main problem facing the country today” by 14 percent of respondents, tied with “lack of morals, values,” and followed by budget deficit (10 percent), drugs (9 percent), education (6 percent), and, near the bottom of the list, “taxes, high taxes” (3 percent) and health care (2 percent).

Some argue that the public’s continued concern about crime at a time of falling crime rates mirrors misunderstanding bred by a steady diet of “if it bleeds, it leads” journalism and media hype. Others point out that, despite the drop in crime rates, most Americans, especially minority citizens and their children living in central city neighborhoods, remain more likely to be victimized by crime today than they were decades ago when crime first became a national issue.

Still others stress that whatever crime rates do, the contemporary public’s concerns about crime reflect its doubts about how committed criminal courts really are to protecting the public, combined with deep discontents about being the first generation of Americans to routinely condition everyday decisions, and to devote ever-increasing shares of disposable income, to making the places where they live, work, play, shop, or attend school relatively impervious to crime.

Theories abound about why crime has gone down. Some cite changes in policing strategies and tactics (for example, New York’s quality-of-life policing initiative and dramatic citywide drops in murder and other crime). Others highlight shifts in drug markets, especially the demise of crack cocaine on inner-city streets. Still others cite demographic decreases in the number of young males or improved economic conditions or carrot-and-stick anti-violence efforts undertaken via police-probation partnerships with community and church leaders (as in Boston) or packed prisons, or even, alas, federal crime policies (for example, the Brady bill or “100,000 cops”).

Strictly speaking, and with all due deference to the chief lesson of all social science and policy analysis (“It’s a multivariate world!”), it cannot be “all of the above.” For example, New York-style policing is one story, but murders have also plummeted in several big-city jurisdictions (Los Angeles, to name one) where no such policing innovations have been made, as well as in those (Boston chief among them) that have followed a targeted community-based approach focused on gun-related youth violence in a few high-crime neighborhoods rather than a citywide, saturation policing model. Neither crack cocaine nor drug-selling, gun-toting street gangs have disappeared entirely or everywhere. Such data as we now have give only highly variable and highly state-specific answers to the question of what, if any, fraction of the decrease in crime rates has been due to increased imprisonment.

Politically, however, it matters little how and whether the public’s ongoing concern with crime is justified, and even less what criminologists conclude about the causes of changing crime rates. Federal officials will continue to respond to the public’s sense of the real and perceived threat of crime and to its moral demands against persons, adult or juvenile, who murder, rape, rob, assault, steal, and deal deadly drugs. It would be unrealistic, therefore, to call on federal lawmakers to turn the crime policy clock back to the days when the national government was hardly even a junior partner in law enforcement and corrections.

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It is, however, appropriate to encourage federal lawmakers to resist, and in some areas to begin to reverse, the trend toward federalizing crime prevention and control in this country. The 106th Congress should declare a moratorium on federal crime policy, and the White House should comply. Thirty years after the first omnibus federal crime package was passed, members of the next Congress would be well advised to ponder the areas, if any, where the federal government has a real comparative advantage in crime prevention and control; explore new crime-fighting technologies and new community-based strategies; stop getting out ahead and start getting back behind state and local crime policy initiatives; and cease questioning the motives and morality of those whose views on crime and punishment differ from their own.


### **Federal Crime Policy: What Next?**

My own view of 30 years of federal crime policy is that in some areas—for example, developing national data-gathering and information systems that enable us to measure criminal victimization and assist state and local justice officials—the federal government has made tremendous strides since the late 1960s but needs to do far more and far better. In other areas—for example, helping to stiffen state sentencing policies against adult violent offenders—the federal government has done some good but done enough. In still other areas—for example, anti-drug enforcement—it initially did some good but needs to reverse field and cut back toward treatment. And in a few important areas—for example, handling juvenile criminals—the federal government, while focusing public attention on a serious crime threat, has in recent years been on the verge of transgressing the bounds of both constitutional propriety and policy sanity. Let me briefly illustrate my reasons for each of these calls.

### **Counting Crime Victims**

Thanks to federal policy initiatives and the work of Justice Department survey researchers and statisticians, we know far, far more today about crime rates, patterns, and trends in this country than we did three decades ago. Even today, however, the federal government systematically undercounts criminal victimizations.

There are two main measures of crime in America. The Federal Bureau of Investigation compiles the Uniform Crime Reports (UCR) from voluntary reports by local police departments. The UCR is based on a so-called hierarchical



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counting method in which only the most serious of the crimes that occur in any given reported incident are recorded. For example, if a woman is raped by someone who then steals her car, the rape but not the car theft is counted.

The other main measure of crime in America is the Bureau of Justice Statistics' National Crime Victimization Survey, which is based on an annual household survey and measures both reported and unreported crimes excluding murders. The BJS has begun to adjust for its undercount of crime. For example, in May 1995, a redesigned NCVS reported new data on criminal victimizations for 1992 and 1993, and the new method found 26 percent more crimes and 56 more violent crimes than had been counted by the old method. But even the redesigned NCVS does not count crimes against children age 12 or younger or against people in jails, hospitals, shelters, or other institutional settings. Nor does it count serial victimizations: if a woman cannot recall precisely the number of times her boyfriend beat her, the survey counts just one crime. A separate but serious limitation of the NCVS is that the data cannot be disaggregated on a city-by-city basis.

The shortcomings of federal crime data information systems offer federal crime policymakers one way to make their mark. Given greater fiscal support, public recognition, and political backing, the chronically shortchanged BJS and the FBI could devise a more complete, timely, and jurisdiction-specific measure of crime rates, trends, and patterns in America, and provide even better assistance to state and local criminal justice agencies.

### **Sentencing Violent Felons**

Federal efforts to strengthen state initiatives dealing with violent adult offenders and career criminals have made a demonstrable difference, but any expansion in federal fiscal support for state prisons would be hard to justify.

The Violent Crime Control Act of 1994 provided incentive grants to states that have truth-in-sentencing (TIS) laws requiring violent offenders to serve at least 85 percent of their imposed sentences. Twenty-seven states have some such laws on the books. According to a 1998 report by the General Accounting Office, federal grants were a factor in getting 15 states to adopt or enforce TIS laws. The BJS estimates that were all violent offenders nationally to serve 85 percent of their sentences in prison, newly admitted prisoners convicted of a violent crime would serve 88 months in prison on average, up from the pre-TIS averages in the low 60s. That may not sound

like much, but it undoubtedly averts lots of serious violent crimes. For example, other BJS data indicate that persons released early from prison on parole who were back in prison for a parole violation or a new crime in 1991 had committed at least 6,800 murders, 5,500 rapes, 8,800 assaults, and 22,500 robberies while under community-based parole supervision.

But no policy measure is immune to the law of diminishing returns. As Harvard's Anne Morrison Piehl and I have argued previously in these pages, it is one thing to recognize the significant crime-reduction benefits of incarcerating violent and habitual offenders, but another to insist that every convicted felon spend every sentenced minute behind bars. Federal dollars should not be used to defray the costs of administering justice in states that choose to abolish parole, whether *de jure* (by passing new laws) or *de facto* (by returning ever more parole violators to prison on petty drug charges or the like). States now spend on average just 6 percent of all their annual revenues on all state and local corrections functions. Many states are now running multi-billion dollar budget surpluses. If anything, Washington should encourage states to reinvest their own money in intensive supervision probation and parole for the roughly 4 million persons who are under supervision in the community.

### **Treating Drug Offenders**

The 1989 report of William Bennett, the first U.S. drug czar, advised that regardless of the success of federal anti-drug efforts, "there will remain millions of individuals who need help to stop using drugs. For these reasons and more, the effective treatment of drug dependent individuals must be an important element in our overall strategy for reducing drug use in America." The report stressed the urgent need to get "more users into treatment."

The 1998 drug czar's report adopted the same urgent tone on drug treatment, noting that while treatment "can help individuals end dependence on addictive drugs," it is "available for only 52 percent of people in immediate need of it, despite a 33 percent increase in federal expenditures for treatment since fiscal year 1993."

The crux of the problem, as was noted in the 1989 drug czar's report, was and remains that "the treatment system remains largely voluntary." Research by Yale's Dr. Sally Satel and others has demonstrated the efficacy of "coerced treatment" programs of various types, but the federal government has yet to get squarely behind such programs for convicted offenders in prison, in jail, on probation, or on parole.

### **Handling Juvenile Offenders**

In 1967, the President's Commission on Crime noted with alarm that the rate of juvenile violent crime arrests per 100,000 persons age 15-17 was 223. By 1994, violent crime arrests per 100,000 persons age 10-17 had exceeded 500. The nation's juvenile population increased about 10 percent between 1986 and 1996, while the number of crimes committed by juveniles rose 17 percent for rape, 39 percent for mur-

der, and 64 percent for aggravated assault—an explosive trend that was especially pronounced among African-American males.

As UCLA's James Q. Wilson noted in a 1996 speech in Washington, some experts "think that juveniles are immune to the justice system because they are so impulsive as to give no thought to the consequences of their actions and so reckless as not to care what the larger society thinks of them." I count myself as one who believes that some tiny but terrifying fraction of today's violent youth criminals is virtually beyond criminal deterrence. But that is a minority view among experts, and doubly so among federal lawmakers and average citizens, most of whom seem to believe that increases in juvenile violence have resulted in no small measure from policies that handle even hardened and habitual youth criminal as mere delinquents.

One thing seems clear: even with the enactment in many states of so-called get-tough youth crime laws, few juvenile offenders are ever actually "treated as adults." For example, a September 1998 report by the BJS and the National Center for Juvenile Justice indicates that from 1990 to 1994, in the nation's 75 largest counties, barely 2 percent of juveniles age 15 or older were transferred to criminal courts by judicial waiver.

As I have elsewhere argued, given the abused, neglected, and otherwise severely at-risk life circumstances of most youth who go on to become serious offenders, and given estimates that as many as 60 percent of the most serious youth criminals are never caught or convicted, it is a profound mistake to think that violent crimes by and against juveniles can be prevented or controlled simply or mainly by increasing the punitiveness of the juvenile justice system, let alone by incarcerating convicted juvenile felons in cells next to convicted adult felons. As Berkeley's Susan Estrich has argued, restraining as needed even many thousands of convicted violent juveniles in juvenile-only facilities is justifiable, but doing so while forgetting about prevention or planning prisons for preschoolers is not.

Moreover, there are now roughly 40 million children in this country under age 10, the youngest members of a record-high juvenile cohort of more than 70 million. Millions of these children are growing up materially and morally impoverished without adequate adult care and nurture. Demography need not be destiny for such facts to stir concern about the future.

Even if I believed that enhanced juvenile criminal sanctioning were both feasible and desirable, I would still recommend that, for at least the next two years, the federal government steer clear of any major changes in its juvenile crime policy regime. See whether the demographic youth bulge begins to exert any upward pressure on juvenile crime rates or whether rates continue to drop. Let the state and local governments decide, without any further federal nannying or inducements, whether, indeed, they truly wish to enforce laws of their own that "treat juveniles as adults." Alas, there may be greater wisdom in this and other state and local crime policy implementation gaps than Washington can possibly know. ■