

“TOUGH ON CRIME” VS. “SMART ON CRIME”: WHAT’S THE DIFFERENCE?

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INTRODUCTION

Laws provide civilization its adhesive. Carefully conceived and applied laws bind us together as a civilized society, while reactionary and discriminatory approaches are inadequate bonding agents.

Such is the case with crime prevention with its vital role in society. Government seeks to enforce legislative enactments to protect the citizenry. Criminal laws help control the populace by urging order rather than chaos. Punishing individuals who break laws is important to deter them and to send a message to society that punishment occurs when a law is broken. This maintains order. Since crime prevention is crucial to civilization, consistent enforcement of credible laws is essential.

This begs the question, which method of enforcement best serves public safety without subjecting people to governmental mishandling? This query becomes pressing considering effects of enforcement methods on minorities with less voice and representation. In theory, the government is controlled by the majority, thus, minority populations should receive extra attention when analyzing governmental action. Minorities' vulnerability to unequal treatment is evidenced by the stricter standard of review our courts use when analyzing cases of racial discrimination by the government.¹

Therefore, when evaluating the societal effects of two different approaches to crime prevention, "tough on crime" and "smart on crime," effects on the minority population should be a core consideration because they likely will bear the burden of injustice.²

I. BEING "SMART ON CRIME" IS TO USE BRAIN RATHER THAN BRAWN

Being "smart on crime" implies providing a standard set of regulations to control crime while protecting *all*. A system utilizing this approach strategizes and plans to prevent the potential for criminal acts before their occurrence—a more proactive approach. Being "smart on crime" is the use of brain rather than brawn.

Here, legislative bodies pass laws that curtail impending crimes based on past observations. An example would be Congress passing laws providing monetary incentives to states that promote education, especially in communities with significant numbers of youth statistically determined to be at risk. If an individual is undereducated, chances of obtaining gainful employment are diminished. Chances are also less for individuals living in communities where unemployment is high. Hence, another example of being "smart" is legislating to create jobs and affordable housing.

So, "being smart on crime" means considering the roots of crime and implementing laws that bind us as a society, rather than those that destroy viable communities, destroy societal unity

¹ See *U.S. v. Carolene Products Co.*, 304 U.S. 144, n.4 (1938) (Justice Stone suggesting that a more stringent standard of review may be appropriate when analyzing racial discrimination, stating that "prejudice against discrete and insular minorities may be a special condition").

² See, e.g., April Walker, *Racial Profiling-Separate and Unequal Keeping the Minorities In Line-The Role of Law Enforcement in America*, 23 ST. THOMAS L. REV. 576 (2011).

and damage productivity.³ Furthermore, other smart crime prevention laws provide a rehabilitative system for reintroducing ex-offenders back into communities.⁴ There are few crime-free opportunities for one who has been through the legal system, incarcerated, and released with little direction. Statistics show disproportionate numbers of minorities in this group.⁵ Many minorities lack high school diplomas or college degrees,⁶ suffer the highest unemployment rates,⁷ and disproportionately occupy the penal system.⁸ Many also rank among the impoverished, which further illustrates a correlation between poverty and crime.

Since our goal is to bind a civilized society, being smart on crime means breaking bonds between those in or heading toward poverty and crime. Hence, a system that smartly focuses on proactive laws for crime prevention evaluates statistical evidence and legislates accordingly. Although our courts seem reluctant to consider these statistics as persuasive when determining the discriminatory impact of statutes,⁹ statistics can be distinctly useful when drafting laws.

Furthermore, calculated steps on the front-end versus reactive rhetoric are economically feasible and smart in our present economy. Amelioration of conditions birthing crime reduces spending on law enforcement and prisons and leads to more individuals being productive societal members. Thus, using statistics to proactively draft laws could improve minority communities, plus benefit society at large.

II. BEING “TOUGH ON CRIME” IS MERELY THE APPEARANCE OF BRAWN

By contrast, being “tough on crime” implies the appearance of action through reactionary force. This strategy is appealing to many because it gives an appearance of tough leaders taking action, a noticeable tactic. Being “tough on crime” also implies government going beyond the norms of crime prevention, inferring a need to do so, i.e., a rise in crime.

So, this suggests an identified problematic area needing extra exertion of force, or brawn. This reactive approach emphasizes punishment, rather than deterrence or prevention. Such methods may include increasing the number of no-nonsense law enforcement agents in certain communities, passing laws with harsher penalties for certain crimes, zero tolerance policies and mandatory sentencing guidelines. While such procedures provide audible assurances to the public, statistics show they do little to actually deter further crime.¹⁰

³ See generally Robert J. Sampson, *The Moynihan Report Revisited: Lessons and Reflections After Four Decades: Racial Stratification and the Durable Tangle of Neighborhood Inequality*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. (January 2009).

⁴ See J. McGregor Smyth, Jr., *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 CRIM. JUST 42 (2009).

⁵ See Heather C. West & William J. Sobol, *U.S. Department of Justice Bureau of Justice Statistics, Prisoners in 2009* (December 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>.

⁶ See Thomas D. Snyder, *National Center for Educational Statistics, Digest of Education Statistics: 2010* (April 2011), available at <http://nces.ed.gov/programs/digest/d10/>.

⁷ See U.S. Dept. of Labor, Rpt. 1013, *Labor Force Characteristics by Race and Ethnicity, 2010*.

⁸ See Heather C. West & William J. Sobol, *U.S. Department of Justice Bureau of Justice Statistics, Prisoners in 2009* (December 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>.

⁹ See *McCleskey v. Kemp*, 481 U.S. 279 (1987); *Washington v. Davis*, 426 U.S. 229 (1976).

¹⁰ See Joy M. Dunham, *Third Strike or Merely a Foul Tip?: The Gross Disproportionality of Lockyer v. Andrade*, 38 AKRON L. REV. 369 (2005).

Statistics also show that the poor and minority communities are disproportionately affected by the vices employed by such tactics.¹¹ Deference given to law enforcement, as the upholders of peace, leads to a “by any means necessary” mentality which beckons abuse and discrimination. Being “tough on crime” leads to minorities being subjected to racial profiling and unequal sentencing. Meanwhile crime increases, and our society is torn.

CONCLUSION

In sum, “tough on crime” policies give the perception of being an effective approach to crime prevention, but in truth, they are mostly helpful to politicians who seek to convey that they are doing something to keep certain people in line while protecting the communities deemed more worthy. This approach does little to bond us together as a civilized society. The fairest and more rational approach to crime prevention is the method of being “smart on crime,” which actually employs *preventative* measures to combat crime and promotes rehabilitative efforts. This method’s impact on the minority community can be considerably beneficial, and can help serve as an adhesive for all communities to live together in a more civilized and productive America.

¹¹ See Honorable Juan R. Torreula, *Déjà vu: A Federal Judge Revisits The War on Drugs, Or Life in a Balloon*, 20 B.U. PUB. INT. L. J. 167 (2011).