Rational probation decisions for juvenile delinquents*

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Abstract. Assuming a risk of innocent conviction and fully rational individuals, the current study addresses the effects of immediate punishment and probation rules. Strict dominance of a probation rule requires that the judicial system is highly unreliable and, at the same time, learning over criminal careers is strong. Else, an optimal punishment scheme can always be based on either regularly offering probation or appropriate immediate punishments.

Key words: Juvenile crime, probation, optimal punishment.

JEL Classification: K14, K42.

1. Introduction

When courts issue a probation ruling, a punishment will only be applied if the convicted commits an additional crime within a certain period. According to the US Department of Justice (2000), 1.8 million cases of delinquency have reached the US juvenile jurisdiction courts in 1997. Probation sentences were issued in 37% of these cases. The growth rate of juvenile delinquency – 48% over the 1988-97 period – almost exactly equals the growth rate of total delinquency in the population. Yet, the Juvenile Justice and Delinquency Prevention Act of 1992 has already established a specific Coordinating Council on Juvenile Justice and Delinquency Prevention headed by the Attorney General. With particular reference to serious crime and drug trafficking, the Council’s “Action Plan” proposes to charge juveniles as adult offenders and to ensure sanction for every criminal act and for every delinquent in a gang crime [US Department of Justice (1997, 1999)].

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The recent development in Germany is remarkably similar. Again, the empirical evidence on the incidence of juvenile crime is rather ambiguous. On the one hand, juvenile delinquency has increased since 1992. Also, 63.7% of the 121,205 cases reaching juvenile courts in 1998 resulted in a probation ruling – compared to only 32.4% in 1955 [Heinz (2000)]. However, according to Pfeiffer and Wetzels (1999), there exists no evidence that the severity or violence of juvenile crime has actually increased as well. Nevertheless, in 2000 the Federal Council of German States ("Bundesrat") proposed the draft of a “Law to Change the Juvenile Court Law”. It focuses on introducing “accelerated court proceedings” into the juvenile jurisdiction in order to ensure immediate punishment [Bundesrat (2000)].

In both countries legislative actions thus aim at reducing probation rulings for juvenile first-time offenders. In fact, probation appears to impose no deterrence for an initial crime. It constitutes the opposite polar case to Becker’s (1968) suggestion that optimum deterrence implies an unbounded punishment. As summarized in Garoupa’s (1997b) survey, Becker’s solution fails if costs of sanctioning exist [Polinsky and Shavell (1979), Shavell (1987) and Kaplow (1990a)], criminals engage in costly avoidance activities [Malik (1990)], or offenders misperceive the actual criminal content of an anti-social act [Kaplow (1990b)]. Nevertheless, optimal punishment in a static framework is generally strictly positive.

These studies, however, ignore the dynamic aspects of recidivism and correctional treatment. Thus, immediate punishment – particularly if this implies a term in prison – may induce a socialization effect which encourages the young offender to become a career criminal. Although accepting a relatively high rate of juvenile offenses, the criminal potential of adults may therefore be lowered by granting probation. Clearly, probation is then perceived as a boundary case of parole rulings implying the premature dismissal of the offender.

Consequently, one stream of literature – including Avio (1973, 1975), Fabel and Meier (1999), Garoupa (1997a), Leung (1995), Lewis (1983), and Miceli (1994) – investigates parole decisions which reflect a trade-off between incurring the cost of correctional efforts and being exposed to a future crime risk. Boadway, Marceau and Marchand (1996) argue that exercising a specific punishment cannot possess any deterrence quality, since sanctions must always follow the actual crime act. Only the threat of a punishment deters the potential offender, not the punishment itself. All of these approaches share the view that probation introduces leniency into society’s punishment system, while providing various reasons why this may be efficient.

Abstracting from its direct cost, the most obvious social cost of punishment must be associated with possible errors of justice. In particular, innocent individuals run the risk of being falsely convicted. Ehrlich (1975), Rubinstein (1979), and Andreoni (1991) have already emphasized that this implies an upper bound on punishments. Moreover, given that police search strategies concentrate on individuals with a criminal record, the probability of being accused of a new crime increases. Thus, the probation ruling may well possess deterrence quality since recorded offenders face a higher risk of being punished for repeated crimes.

The deterrence effect is reinforced by a relatively severe punishment for repeat offenders. This constitutes a typical characteristic of a dynamic optimal punish-