

Make Policy, Not War

by Charles G. Rogers



Approaching one of Oregon's most serious problems in the wrong way is

costly, inefficient, and unjust.

In the Gettysburg address, President Abraham Lincoln called America a "new nation," one that was "conceived in liberty" and "dedicated" to the proposition that all are created equal. He then observed, "we are engaged in a great civil war, testing whether that nation, or any

problem—it most assuredly is. Crime is one of the most difficult problems human beings face, in part because it goes to the fundamental fact that people are not perfect, and a distressing number of people do terrible things. However, approaching crime as a war is absolutely the wrong way to proceed.

War rhetoric and war-like thinking create the worst possible mind-set with which to approach the problem of crime. There are many reasons for this, but two stand out. First, war-like rhetoric narrows the focus to punitive, reactive measures that are based on fear and passion rather than on sound social policy. Second, addressing crime as a war erodes the freedoms which, since the Declaration of Independence, have been the hallmark of this nation. These are unacceptable losses. Let's look at each one in turn.

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nation so conceived and so dedicated, can long endure."

The great president might as well have been speaking today. America is at war. It is a civil war. And at stake are the liberty in which this nation was conceived and the equality which lies at its heart.

The war is the so-called "war on crime." The symptoms of the war are clear: bigger guns for police; the death penalty—kill and the state will kill back; extremely long prison terms for anybody convicted of a crime; and each new movie in the mold of *Dirty Harry* seen as a condemnation of the courts, a training film for the cops, and a cry to escalate the war.

This is a war that need not exist. Indeed, it should not exist. It isn't that crime is not a

How a problem is defined sets the tone for how it will be tackled. When people decide that a thing is so bad that a war must be waged against it, they begin thinking in war-like terms. The tools are war tools. Punishment—elimination of the enemy—becomes the mark of a successful campaign.

One result is that lawmakers fail to consider alternatives to punishment. However, punishment is a highly inefficient solution because it does not address the underlying causes of crime and because it provides such a small return for the cost. Politicians tout the so-called deterrent effect of punishment, but deterrence is

in real life. The first is that word of what can happen by way of punishment will get to others who might be considering doing the same crime. The second is that these people will meaningfully weigh the potential of punishment in deciding how to act. Experience shows otherwise.



Also, studies show there is a "diminishing returns" phenomenon that goes with "straight time." The greatest impact on many offenders comes from the first few months of incarceration. People do adjust, though, and after that inmates become socialized to prison. The anomalous result is that many of the "fence-sitters"—marginal offenders who could either go straight or go on to a life of crime, depending on what happens in their lives—are kept in an environment which is far more likely to make them do the latter.

The bottom line is that long periods of imprisonment have value only for those relatively few offenders who are truly so dangerous that they must be kept off the street for as long as possible.

Long prison terms are of little or no value in many, many cases other than to serve the notion of punishment. Retribution aside, these sentences are a ruinous waste of resources. The inescapable fact is that the taxpayers cannot afford to warehouse so many offenders simply for punishment.

Another unacceptable loss is the erosion of personal and civil liberties. The frenzy that accompanies the "war" brings into play the human tendency to conclude

based on two assumptions, neither of which is true



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that extreme problems justify extreme measures. It is far easier to justify police brutality, the commission of perjury, or the violation of constitutional rights when it is done against an enemy of the public than when it is against one who is

only part of a social problem. One example of this principle is the beating of Rodney King by Los Angeles police officers. Another is the beating of illegal aliens by Border Patrol agents near Temecula, California, also

captured on videotape, this time by a news helicopter. Also, consider the outrageous tactics employed by the FBI—approved at the highest levels of that agency—when agents decided (wrongly) that security guard Richard Jewell was responsible for the Atlanta Olympics bombing. Yet another example is the now all-but-forgotten illegal detention and interrogation in the wake of the Oklahoma City bombing of a man whose only crime was that he looked Middle Eastern and happened to be traveling away from Oklahoma at a “significant time.”

The fact is that many civil liberties and privacy rights exist in inverse proportion to the effectiveness of law enforcement, if “effectiveness” means only the identification and capture of lawbreakers.

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The more privacy rights a society enjoys, the less “effective” the police can be.

Warrantless house-to-house searches without probable cause are effective at capturing law-breakers. Even random searches or random roadblocks are effective in that they yield some previously unknown offenders. Doing away with the search warrant requirement—whereby the judgment of a neutral and detached third

party, who is not one of the cops, must be obtained before homes and other protected areas can be searched—would allow the police to make more searches based on hunches and dubious probable cause. Some of those intrusions would come up empty, but some would not. Law enforcement would be more effective if the citizens of this nation did not have civil and constitutional and privacy rights.

But at what cost to the quality of our life would this effectiveness come? What would be the

damage to the idea that America was “conceived in liberty and dedicated to the proposition that all men are created equal”? To be sure, some imaginary “absolute privacy,” such that under no circumstances could the police ever enter a person’s home or stop him on the street, would not be desirable either. The question is where to draw the line.

The Fourth Amendment to the U.S. Constitution drew this line when it specified that “the right of the people to be secure in their persons, papers, houses and effects against unreasonable searches and seizures shall not be violated.” What the Fourth Amendment did was strike a balance between the need to have privacy and civil rights and the need to give the police some measure of freedom to operate. The courts have struggled for years over how the balance should be applied in specific cases. “Law-enforcement-as-war” puts such an intolerable pressure on the courts and the police that this critical balance is placed in grave danger.

Interestingly, Oregon has its own Fourth Amendment, its own constitutional protection against improper searches and seizures. Also, in a series of case-law decisions crafted by careful judges concerned with privacy rights as well as law enforcement efficiency, the Oregon appellate courts created several areas where they felt the federal balance was not enough. These decisions had the

effect of giving, in limited situations, privacy rights that went beyond those required by the Fourth Amendment to the U.S. Constitution.

The right to do so is a vital aspect of states’ rights—the federal government is, after all, supposed to be one of limited enumerated powers. Yet, in a wave of war-on-crime hysteria, the voters were sold Ballot Measure 40 which, among its many war-like features, did away with the power of the Oregon Courts to provide different rights than those specified by the federal law.

If Measure 40 stands up, Oregonians will have deprived themselves of a vital part of their independent statehood. They will have dangerously undermined the independence of their judges, and they

will have handed over the question of how to strike the privacy balance to the feds. The result will be that Oregon police agencies will then be governed only by the federal standards, the same ones applicable to the agencies responsible for Waco, Ruby Ridge, and, on a lesser scale, the treatment of Richard Jewell.



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Crime is certainly a problem, but it is one that needs to be addressed without the passion of war. Anger is rarely conducive to sound decisions on a personal or family level. It is even less so on a social level. It is senseless to continue to squander resources on laws whose only focus is punishment. Legislatures and voters must make a reasoned analysis of crime and the best ways to solve it, free from such clouding passions, if this nation is to long endure.

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