

CHAPTER 1

An Introduction to Sentencing Reform

“The punishment should fit the crime.”

“The public demands a prison sentence.”

“This sentence will be a warning to others.”

“Lock them up and throw away the key.”

“And nobody can get you out.”

“Three strikes and you are out.”

These political campaign slogans reflect a popular response to the rise in violent crime during the past several decades. Political campaign oratory, of course, regularly oversimplifies the complex swirl of contending arguments about policy reforms. Beginning in the early 1970s, lawmakers, criminal justice professionals, academic analysts, and prisoners' rights advocacy groups reevaluated the rehabilitative goals of American prisons. The rehabilitative ideal was widely criticized because of disparities in sentences, paroles, and other outcomes of the criminal justice system. This political and academic debate brought to an end the indeterminate sentence system, which, in the name of rehabilitation, had granted judges and parole boards broad sentencing and releasing discretion.

State legislatures began by the mid-1970s to discard the rehabilitative ideal, embrace a punitive response to criminal violence and increasing crime rates, and, in effect, revive the nineteenth-century determinate sentence system. This shift in criminal justice policy was pervasive in scope and debatable in principle. To date, every state has adopted at least one type of sentencing reform. These reforms apply to a wide variety of offenses and offenders. They not only eliminate judicial discretion in many instances, but also set forth a new set of sentencing goals.

In the second half of the 1970s at least sixteen states passed mandatory minimum sentencing laws. In the early 1980s the number of states enacting such laws doubled. By 1983 the criminal codes of forty-nine states had mandatory prison sentences for certain crimes. Today at least ten states prescribe determinate sen-

tences for the majority of criminal offenses, eight states have presumptive sentencing standards, and at least six states implement varied forms of sentencing guidelines.

This study will review the origins of sentencing reforms, explain their features and rationales, and evaluate their impacts on the criminal justice system and violent crime rates in the United States. Three major research questions will be addressed to reveal nationwide consequences of sentencing reforms. First, have criminal sentencing reform policies succeeded in increasing the certainty of punishment? Second, have these sentencing policies increased the size of prison populations? Finally—and perhaps most important—has the implementation of these policies been a deterrent to crime?

A THEORY OF CRIMINAL SENTENCING REFORM

The present study requires a conceptually sound and simplistic model or theoretical framework by which to explain how sentencing reforms have been formulated, implemented, and evaluated in this country. In seeking to explain these hotly debated and often value-laden governmental reactions to the crime problem, we characterize “crime policies” in the United States during the past two decades as “simple theory”—a theory of criminal sentencing reform. It is a simple theory that reduces normally much more complex causal chains among relevant factors to a rather simplistic form that describes and predicts policy consequences, both intended and unintended. This theoretical framework provides us with a conceptual lens through which we can evaluate whether sentencing reform policies have achieved their declared goals and also what unintended consequences of implementing them have been produced.

Crime policies, including criminal sentencing reform policies, are derived from criminology theories that usually possess competing and conflicting policy implications. The fact that there have been so many theories in the field of criminology makes both policy makers and laypersons adhere to criminology theories that are consistent with preferred crime policies. One reason is that “people tend to believe in one or another theory of crime because its policy implications are consistent with what they believe should be done about crime” (Vold and Bernard 1986, 343).

It is also obvious that those who study crime come into the field of criminology from many other disciplines that tend to influence and shape their professional views toward human nature and society. Sociologists, for example, tend to see crime as the end result of economic and sociological factors and believe in eradication of its root causes by fighting poverty. Some believe in rehabilitation theories simply because they advocate treatment both in correctional institutions and in the community. Others believe in deterrence theories that prescribe punishment as the appropriate response to crime. These competing crime policies make certain theoretical assumptions about crime that we must hold in order to believe that they will work (Vold and Bernard 1986, 340–57).

In formulating policies, policy makers make “assumptions about what governments can do and what the consequences of their actions will be.” In general, public policies imply a simple theory that takes the form “If X exists, then Y will follow.” This simple theory will enable us to observe whether a particular policy fails either because the government fails to do X in full (which means that the simple theory may still be operating) or because X fails to produce the consequences as the theory predicts (which means that the simple theory is not operating). In practice, the causal chains on which a policy is based are usually much more complex (Hogwood and Gunn 1984, 18).

We admit that theories underlying policy are inevitably “complex” but we expect policy derived from theory to be “simple.” For crime policy, most of us make certain theoretical assumptions about crime that we must hold in order to believe that such policy will work; and we are also willing to believe in the theory that implies what we believe should be done about crime (Vold and Bernard 1986, 348).

The theory of criminal sentencing reform explains the causal chains that link four key policy-relevant variables: sentencing reform policies, sentencing behavior, the size of prison populations, and crime rate, as illustrated in figure 1.1. A set of eight causal relationships logically derived from criminology theories such as deterrence and incapacitation is clearly spelled out in the theory of criminal sentencing reform in order to understand or make sense of sentencing reform policies. It is obvious that some of these relationships attempt to define what appear to have been the policy maker’s intentions, both stated and unstated, in formulating criminal sentencing reform policies. Other relationships attempt to

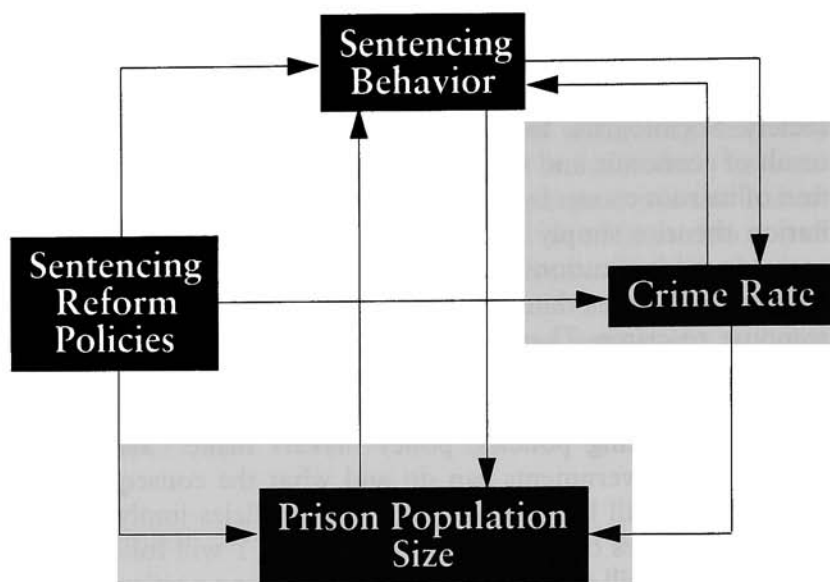


Figure 1.1

A Conceptual Framework for the Evaluation of the Impacts of Criminal Sentencing Reforms in the United States

explain what consequences reform policies are intended to produce (outputs) and what policy impact they are intended to achieve (outcomes). There are also statements that address some aspects of unintended results policy makers may or may not have foreseen. The following statements refer to this set of relationships:

1. Sentencing behavior influences the crime rate. Getting tough with criminals by increasing the certainty and severity of actually imposed punishment will deter crime. If the rate of imprisonment and the average sentence length increase, then the crime rate will decrease.
2. Sentencing reform policy influences the crime rate. Getting tough with criminals by increasing penalties prescribed in the revised criminal codes will deter crime. If a sentencing reform policy adopted in a given state appears to be tougher, then the crime rate will decrease.
3. Sentencing reform policy influences sentencing behavior. Variation in the rigidity of discretionary control—flat, determinate, mandatory, presumptive, voluntary, and indeterminate sentences—can achieve varying levels of

compliance in case disposition. The greater the rigidity of discretionary control, the higher the degree of uniformity in the certainty and severity of sentencing outcomes (compliance). While we expect this relationship to hold, we should foresee the unintended results in the following form: the greater the rigidity of discretionary control, the higher the degree of internal resistance to change (noncompliance).

4. Sentencing behavior affects the size of prison populations. If the rate of imprisonment and the average sentence length increase, then the size of prison populations will enlarge.
5. Sentencing reform policy affects the size of prison populations. If sentencing reform policy endorses determinate sentences, then the size of prison populations will enlarge.
6. The crime rate affects the size of prison populations. If the crime rate increases, then the number of persons arrested, prosecuted, convicted, and sentenced to prison will increase.
7. The crime rate influences sentencing behavior. A conventional view holds that if the crime rate grows, sentencing behavior will be more punitive. We also foresee the unintended results that can be explained by the system overload hypothesis: If the crime rate increases, then the system will be strained and rates of conviction and imprisonment will decline.
8. The size of prison populations influences sentencing behavior. If the size of prison populations enlarges to the extent that prisons operate beyond their rated capacities, then sentencing behavior will become less punitive and imprisonment rates and average sentence lengths will decrease.

The theory of criminal sentencing reform will be used to guide this evaluation study in explaining criminal sentencing reform policies as crime policies. The objective of the present study is to observe whether sentencing reforms have been capable of doing what policy makers believe should be done and to determine whether there are problems with theories underlying criminal sentencing reform policies, the internal consistency of the "simple theory" (policy theories), and the apparent validity of its theoretical assumptions (criminology theories).

An Overview of Sentencing Reform

Criminal sentencing laws over the past two centuries have oscillated between two extremes: determinate and indeterminate sanctions. The development of these laws can be divided into three phases: criminal law reform around the end of the eighteenth century, correctional reform since the 1870s, and sentencing reform since the early 1970s. In the first phase, states revised their criminal codes to substitute incarceration for capital and corporal punishment for noncapital crimes. The principle of equal punishment for the same crime, proposed by classical criminologist Cesare Beccaria in *On Crimes and Punishments* (1777), gave rise to the definite or flat sentence. The statutes prescribed penalties of fixed terms, and the function of judges was to determine guilt or innocence. The intent was to increase the certainty of proportionate (neither overly lenient nor overly harsh) punishment to achieve deterrence. The view toward crime and punishment inherent in criminal laws was articulated by English philosopher Jeremy Bentham's utilitarian principle (Cullen and Gilbert 1982, 46–58; Tappan 1960, 430–37; Twentieth Century Fund Task Force on Criminal Sentencing [hereafter cited as Twentieth Century Fund], 1976, 85–89; Vold and Bernard 1986, 18–34).

At the end of the nineteenth century, judges could impose indefinite sentences, incarcerating criminals with both minimum and maximum terms. The duration of a sentence was conditioned on the behavior of the imprisoned offender. The enactment of good-time laws and a parole system as part of correctional reform from the 1870s through the 1920s led to the emergence of indeterminate sentences in America. Imposing indeterminate or open-ended sentences without minimum or maximum limits, judges left to experts in determining when to release inmates back to society. State criminal codes granted parole boards broad discretionary power in discerning individualized treatment for rehabilitation of the offender and deciding when the treated offender was rehabilitated or perhaps cured, no longer dangerous, and thus ready to be released. The assumption that criminals were sick and in need of professional help was derived from the positivistic school of criminology's argument that crime was caused by forces beyond the control of the individual (Cullen and Gilbert 1982, 64–83; Der-showitz 1976, 89–98; Tappan 1960, 433–37).

Criminal justice policy today has several primary goals: deterrence and incapacitation for the protection of the general public as well as retributive sanctions commensurate with the gravity of crimes. The determinate sentencing reforms in the past fifteen years revised the early-nineteenth-century strategy of overcoming disparities and discrimination in sentencing. Reasons for advocating such reforms varied among individuals and groups. From the conservative perspective, determinate sentences ensure certain and severe punishment. The restoration of law and order can be achieved through deterrence and incapacitation. The conservative idea of promoting determinate sentencing reform to achieve law and order gained popular support, leading to the adoption of mandatory minimum sentences for the most severe offenses in forty-nine states. Liberals regard the determinate sentence as a fairer system, with equal punishment for similar crimes, proportionate to the gravity of crimes committed. The liberal "just deserts" approach to sentencing reform, outlined in von Hirsch's *Doing Justice* (1976), was widely endorsed by lawmakers, who passed presumptive sentencing laws in eight states.

Various forms of determinate sentencing have been in place in the United States for several years. Evaluative studies have reported on the effects on the system operation of the following reform types: mandatory minimum sentencing laws, mandatory determinate sentencing laws, presumptive determinate sentencing laws, presumptive sentencing guidelines, and voluntary sentencing guidelines. Most of these studies reveal that these types of reform received inconsistent support from criminal justice professionals. Previous evaluations found some evidence of behavioral adaptation by judges, prosecutors, and defense attorneys in the implementation process. However, given the kinds of data analyzed and the research designs employed, any conclusions about the success or failure of sentencing reforms must await further research.

Major problems encountered in this research involve design issues. Several methodological shortcomings inherent in these single-state case studies leave the reader wondering about the plausibility of many rival explanations not accounted for by research designs of these studies. Despite this problem with research validity, researchers tend to overstate their generalized conclusions by drawing inferences that the data and research design cannot support (Cohen and Tonry 1983; Tonry 1987). Further research with

a better design and sufficient data is clearly needed. Unlike prior evaluation research on this topic, this study takes a national perspective in its analysis of longitudinal data from forty-seven states before and after their sentencing reforms. This study will compare the effects of the five types of reform on the three major areas of policy interest: courts, prisons, and crime rates.

In this chapter, both sentencing reform models and the court community model will be discussed. The theoretical foundations of sentencing reform models have two major components: legislative control over sentencing decisions and the deterrent and incapacitative effects of the determinate sentence. The court community model provides a set of rival arguments based on the application of modern organization theories to the study of criminal courts. This study proposes an alternative view of criminal courts to help explain the absence of reform impact in the United States. The discussion then turns to one of the most crucial problems in evaluation research: how to define policy success criteria. These criteria should discern both intended and unintended consequences of sentencing reform.

Models of Sentencing Reform

Sentencing reform models posit a relationship among sentencing policy, sentencing behavior, and crime rates. Five sentencing reform models share the proposition that legislative control over sentencing decisions is the key to achieving desired changes in sentencing behavior, which are expected in turn to reduce crime rates.

Mandatory sentencing laws incorporate the principles of deterrence and incapacitation into their implementation process by mandating lengthy imprisonment for offenders convicted of designated crimes. These mandatory prison sentences promise punishment that is both certain and severe. The theory is to ensure that the costs of prohibited acts outweigh their benefits. In plain language, crime does not pay. Many revised criminal codes specify mandatory minimum prison terms as an additional deterrent. From the deterrence perspective, rational, calculating, potential criminals who perceive that the cost of punishment outweighs the benefit of a crime will refrain from prohibited acts. In addition, incarcerative sentences have a preventive effect on crime by incapacitating offenders, thus preventing them from committing other crimes.

This line of argument is not new to the study of crime and punishment. Deterrence theory is rooted in the works of eighteenth-century penologists Beccaria and Bentham (Vold and Bernard 1986). Criminals are assumed to be rational, calculating individuals free to determine their own actions, legal or illegal. In this view, punishment in general and imprisonment in particular is a main instrument for creating fear and thus controlling behavior. Attention was refocused on this classical approach in the late 1960s, when both theoretical and empirical questions about deterrence were reconsidered more thoroughly in the light of modern behavioral sciences and quantitative methods (Andenaes 1974; Becker 1968; Ehrlich 1973; Gibbs 1975; Phillips and Votey 1972; van den Haag 1975; Wilson 1975; Zimring and Hawkins 1973).

Since the adoption of sentencing reform for crime control, researchers have developed and tested deterrence models with empirical data (Silberman 1976; Tittle and Rowe 1973; Waldo and Chiricos 1972). Modern deterrence theory focuses on the potential criminal's perception of sanction threats, rather than the quality of the sanctions imposed (Grasmick and Bryjak 1980; Paternoster et al. 1983a; Teevan 1976; Tittle 1977; Williams and Hawkins 1986). While deterrence is a complex psychological phenomenon, the recent determinate sentencing reform relies on an oversimplified relationship between criminal acts and penalty schedules.

In their book *Deterrence*, Zimring and Hawkins (1973, 72) draw attention to several theoretical concepts that distinguish between general deterrence and individual or special deterrence. Determinate sentencing contains several features intended to produce both general and individual deterrent effects. Prescription of lengthy imprisonment in the mandatory sentencing laws is consistent with the idea of punishment as a threatened consequence of serious crimes. At the same time, it alerts the general public to the fact that serious crimes will not be tolerated, and it reinforces and builds respect for law and social order. "To get tough with criminals" draws support from the process of general deterrence briefly discussed above. Individual deterrence aims at reducing recidivism through punishment.

Adherents of deterrence view sentencing reform as a way to maximize the efficacy of legal sanction by increasing both certainty and severity of punishment. Mandatory minimum sentences are based on the deterrent effects of lengthy imprisonment for violent

crimes. This element of sentencing reform relies on the argument that while both certainty and severity of sanction are important, neither alone is sufficient. Lengthy imprisonment imposed sparingly would have limited effects on crime, and consistency in the use of lenient sanctions is unlikely to produce any deterrent effects at all. Certainty and severity are interdependent and can reinforce one another synergistically (van den Haag 1975, 115).

Sentencing reform policy stands mainly for deterrence. The popular endorsement of mandatory sentencing laws throughout the United States emphasizes this goal. The law-and-order sentiment overrides the demand for justice in guiding criminal justice policy today in most states. The means to this political end is legislative control over judicial discretion in sentencing. The focus on sentencing decisions rests on the notion that sentencing behavior plays a vital role in determining the type and nature of legal sanctions for those convicted of crimes. To guarantee certainty and severity of punishment, changes in criminal laws and procedures are necessary to eliminate sentencing discretion regarding type of sentence and prison terms. Here the criminal court is charged with converting reform intentions into action, and the sentencing judge is the most important implementing agent.

Sentencing discretion exists in three major areas: (1) determining when incarcerative sentences are necessary; (2) if necessary, determining the appropriate lengths of sentence; and (3) determining when to release offenders. The first includes the certainty of severe punishment, given that imprisonment is considered harsher than other alternatives. The second involves the decision to set prison terms when imprisonment is used, and defines the degree of sanction severity. The third deals with the termination of prison terms for early release.

Various sentencing reforms, which will be reviewed more thoroughly in chapter 3, are designed to eliminate or reduce judicial discretion in these three areas. The ranges within which judges can exercise their discretion vary within these reform types, though the rigidity of restrictions on sentencing discretion does not necessarily vary to the same extent.

For instance, some new state laws seek to increase the certainty of imprisonment by mandating nonsuspendable prison terms to be served prior to parole eligibility. In most cases, judicial discretion to impose prison terms below mandated minimums is eliminated. This reform strategy was imposed to ensure a mini-

imum level of punishment for target crimes. At the same time, there is a tendency in state laws to grant judges broad discretion above mandated minimums.

Reduction of judicial sentencing discretion has obviously been developed by legislatures to shape sentencing behavior. The objective of sentencing reforms is uniform application of imprisonment for serious offenses such as felonies involving firearms and repeat or habitual offenders. Uniformity in sentencing decisions presumably raises the expectation of imprisonment, at least among convicts. However, this is a reasonable presumption only when conviction is certain for real offenses as charged and indicted (Coffee and Tonry 1983). Uniform use of incarcerative sentences based on convictions does not necessarily mean that imprisonment is uniformly imposed for real offenses.

An assumption of determinate sentencing reform is that certain and severe punishment can be achieved by specific sentencing standards. Proponents argue that individualization of punishment often leads to capricious use of imprisonment, particularly when it is negotiated in exchange for guilty pleas, and extensive use of early parole release. To be more specific, the indeterminate sentence system makes punishment uncertain. Reformers are convinced that sentencing reforms are needed to overcome abuses of discretionary power (Dershowitz 1976; Fogel 1975; Frankel 1972; Gaylin 1974; Hart 1968; Morris 1974; van den Haag 1975; Wilson 1975). The conviction shared by advocates of determinate sentencing laws is that restrictions on sentencing and releasing discretion are essential to foster both certainty and severity of punishment, among other things (Feeley 1983, 117).

The individualization/standardization dichotomy is a key to understanding the fundamental difference between indeterminacy and determinacy in sentencing. While the indeterminate sentence system is based on individualized judgment, the determinate sentence system relies on standardized rules. A purely indeterminate system is characterized by individualization of punishments and vast discretionary power. A purely determinate system of definite or flat sentences requires standardization of punishments. Although determinate sentencing reforms vary in their rigidity, they endorse standardization, which is at the heart of the current sentencing policy. The higher the degree of standardization, the greater the rigidity of control and the more predictable the sentencing behavior that should result. A preference for strict sen-

tencing rules, with some variation among the five sentencing models, reflects the pessimistic view of determinate sentencing advocates, who regard judges as prone to abuse their discretionary powers in the sentencing process.

A basic assumption about the effect of control on judicial behavior is that judges will comply with the reform goals when strict rules are imposed. In principle, judges and lawyers must follow criminal procedures in handling cases. But in practice, this fundamental assumption does not necessarily hold because formal compliance with rules tends to follow adjustment of facts to justify decisions reached in advance. If this is the case, adjustment to circumvent rules is difficult to regulate.

Another assumption by advocates of appellate sentence review about the role of criminal procedures is that decisions inconsistent with the rules are subject to checks and balances. Either the prosecutor or the defense counsel can appeal decisions inconsistent with the law. However, such appellate review exists more in theory than in practice because most sentencing decisions are made outside the adversarial system of checks and balances (Nimmer 1978, 22–24).

To a large extent, the mandatory sentencing reform model emphasizes control over sentencing behavior to increase the certainty and severity of punishment. The likelihood of policy success rests heavily on the effect of such control mechanisms on actual sentencing outcomes. Compliance with the standardization principle, not only in form but also in substance, should lead to a system in which incarcerative punishment is more certain, particularly for offenders of violent crimes eligible for mandatory prison terms.

Theoretical issues and empirical evidence of deterrence have been reviewed since the mid-1970s (Anderson 1979; Blumstein et al. 1978; Fattah 1977; Gibbs 1975). Thus far, it remains unclear that punishment deters criminals, under what circumstances it deters criminals, and what kinds of punishment have deterrent effects. There is no consistent evidence that legal sanctions have significant effects on criminal behavior.

THE COURT COMMUNITY MODEL

It is important to understand how criminal courts operate because what happens at courthouses determines the outcomes of cases.

Courts do not merely apply the law to specific criminal cases coming before them. Most cases are not tried; they are settled. Their outcomes are either directly or indirectly negotiated in the plea process. It is not the content of criminal laws and procedures that generally matters, but the way these cases are handled. Understanding how cases are processed can help explain how courts determine the outcomes of cases.

An organizational approach to the study of criminal courts is a product of empirical research begun in the late 1960s by analysts including Blumberg (1967), Carter (1974), Cole (1973), Eisenstein and Jacob (1977), Eisenstein et al. (1988), and Packer (1968).¹ Among many concepts widely employed in explaining the actions of criminal courts, three merit special attention. Courts can be viewed as case processors because of their specialized functions performed by "courtroom work groups" (Eisenstein and Jacob 1977; Nardulli et al. 1988, 17–18). Alternatively, courts can be viewed as political institutions. Not only are members of court personnel recruited in a political process, but they also interact with one another politically. What happens in courts determines "who gets what" in the play of power (Eisenstein et al. 1988, 10–11; Nardulli et al. 1988, 18–20). In addition, courts can be conceptualized as communities in which judges, lawyers, and clerks (inhabitants) depend on each other to get their jobs done (occupational interdependence) at courthouses (common workplace). People working there develop a common set of values, perceptions, attitudes, language (verbal and nonverbal), and tradition. These factors affect inhabitants' interpersonal relations and work techniques (Eisenstein et al. 1988, 22–33).

The concept of courts as communities draws support from a sociological approach to a study of complex human institutions in the field of modern organization theory. The court community model integrates several organizational concepts: organizations as open systems, informal relationships within organizations, power and politics in and around organizations, and organizational culture. Thus, the metaphor of courts as communities provides a sociological approach to understanding how they actually run their everyday business.

1. For a review of the organizational study of criminal courts, see Nardulli (1979).

Modern Organization Theories

The concepts of cooperation and adaptation reflect Simon's (1947) and Selznick's (1949) view of organizations as cooperative systems that maintain their internal stability by adapting to environmental influences. Cyert and March (1963) explain the process by which coalitions are formed to derive decisions through bargaining and side payments. Agreements within coalitions depend on the values of these side payments shaped by organizations' external environments and prior experience.

The adaptive system concept originated in contemporary organization theory literature, rooted in the works of Katz and Kahn (1966), Thompson (1967), von Bertalanffy (1951), and Weiner (1948). Both Weiner's cybernetics and von Bertalanffy's general systems theory emphasize the input-output-feedback iterative process of self-regulating behavior. In a social system, people in organizations tend to compensate for external forces exerting pressure at one location by adjusting their behavior at another location. This adaptive response to outside influences is called "homeostatic resistance." The principle of "equifinality" suggests that an adaptive system tends to develop multiple paths to reach the same final outcomes (Katz and Kahn 1966). This adaptive behavior is learned from prior experience and develops into organizational culture, norms, and values (Schein 1985).

Courts as Communities

The court community model rests on a set of underlying assumptions about the legal culture. The first is that a sense of community exists among people working at courthouses. Having a common workplace, courthouse officials share certain beliefs about their interpersonal relationships, certain attitudes about how cases should be processed, a special language for their verbal and non-verbal communication, and a sense of tradition in running courthouse business (Eisenstein et al. 1988, 28-33). Members of a court community interact with one another in performing their occupational duties as they adapt to external forces. Court communities adjust constantly as they respond to changes in the larger communities they serve.

As noted above, courtroom work groups and courthouse personnel can be regarded as belonging to a court community. Each

work group has at least three principal actors: a judge, a prosecutor, and a defense counsel. They are highly specialized professionals representing the interests of their sponsoring organizations, who must work together to determine the outcomes of defendants' cases. Having to work together on a case teaches members of a work group how to cooperate and compromise. Their familiarity can increase their cooperative interactions in disposing of cases. Courtroom work groups share four major goals: to handle cases expeditiously, to reduce uncertainty in the outcomes of cases, to maintain group cohesion, and to do justice (Eisenstein and Jacob 1977). These shared goals influence how a particular case is handled and resolved.

Doing justice is what courtroom work groups think they do. Problems arise when members of work groups have different criteria for justice. The concept of "equal justice under law" means that defendants pleading guilty or going to trial should receive equal treatment according to their offenses (Eisenstein et al. 1988, 5; Zimring 1976). Thus, applying the law to specific circumstances of a case requires no discretionary adjustment for offenders' characteristics. But in practice, work groups exercise their discretion in what they see as appropriate in a given case and to a given offender. In a sense, certain adjustments are made to achieve proper punishment in plea negotiations and circumvent rules work groups see as inappropriate (Rosett and Cressey 1976, 7). Discretionary adjustments are not necessarily concessions in exchange for guilty pleas (Rosett and Cressey 1976, 163), and the exercise of discretion in settling cases is not strictly free from rules or norms (Heumann 1978; Mather 1974, 1979). These adjustments are influenced by a "legal culture" shared by members of the court community (Eisenstein and Jacob 1977; Eisenstein et al. 1988; Heumann 1978; Mather 1979; Rosett and Cressey 1976; Utz 1978).

Guilty Plea Models

The argument that sentencing outcomes are largely a product of plea negotiation is pertinent to the reform issue. First, *charge bargaining* can lead to conviction on reduced or substituted charges that can circumvent reformed sentencing standards. Second, *fact bargaining* can mitigate the severity of original offenses and lead to conviction of lesser charges. Third, *sentence bargaining* can

influence the choice between incarceration and alternatives and, if incarceration is used, the length of the selected sentence.

Two models of plea bargaining are used to explain the types of disposition outcome it produces. In the concession model, increased certainty of conviction is a major objective that drives prosecutors to exchange concessions for guilty pleas. In accepting these offers, defendants and defense counsels waive their right to a fair trial and enter a guilty plea on charges the prosecutors might not have proven beyond a reasonable doubt. This type of plea negotiation can lead to conviction on reduced charges (charge bargaining), omission of key facts involved (fact bargaining), or adjustment or suspension of sentence length (sentence bargaining). Each type of plea bargaining can make the difference between imprisonment and nonincarcerative sentences or suspension of imprisonment. Deliberate manipulation of evidentiary facts is possible to secure certainty of negotiated sentencing outcomes (Alschuler 1979; Church 1976; Cole 1973; Friedman 1979; Krislov 1979). These explicit forms of plea bargaining have been criticized for their differential, perhaps unjust, results, accompanied by an ad hoc, irregular, and unpredictable pattern of punishment (Krislov 1979, 575–76).

The consensus model suggests that work groups follow some unwritten rules in selecting appropriate punishments for particular cases (Heumann 1978; Mather 1974; Rosett and Cressey 1976; Utz 1978). This model explains plea negotiations in which deals are not made explicit. The emphasis on “the social and cultural experience of the courtroom” leads to the contention that the plea process is more orderly than critics of the concessions model have thought. Plea negotiation is structured by guiding principles and rules (Mather 1979). Rosett and Cressey, for example, argue that work group norms exist at all courthouses and play a vital role in determining when to impose incarcerative sentences and how long sentences should be (1976, 90–91).

Some sociologists view criminal courts as akin to modern supermarkets, where the price tags (prison or probation, and, if prison, how long) for various commodities (classes of felonies, prior conviction records, use of firearms, and other aggravating factors) are posted in advance (Feeley 1979, 462; Rosett and Cressey 1976). In a sense, plea negotiation ensures that judges follow these norms. As students of criminal courts note: “Going rates, like supermarket

prices, reduce the uncertainty and the need to bargain over what every case is worth" (Nardulli et al. 1988, 208-9).

In conclusion, the metaphor of courts as communities provides a useful tool for explaining how courts run their everyday business. It is essential to understand courts' everyday operations from this organizational perspective in order to explore ways they respond to changes imposed from outside.

DEFINITION OF POLICY SUCCESS

Evaluating public programs is difficult for several reasons. Determining policy success requires criteria for evaluation that reflect policy goals. Social scientists agree that the difficulty in defining policy success lies in problems encountered in determining policy goals (Rutman 1980). Defining policy success is more problematic when policy goals are vague or conflicting. It is even more difficult when the policy produces negative side effects or unintended consequences in implementation. How these conceptual problems are treated in this study raises several issues.

Problems with Policy Goals

This study considers policy goals in two related areas: sentencing behavior and crime. The first involves the outcomes of cases, whereas the second concerns the effects of these case outcomes on crime rates.

To determine whether public programs attain their goals is difficult from either a substantive or methodological perspective (Bingham and Felbinger 1989; Bowler 1974; Langbein 1980; Rossi and Freeman 1985; Rutman 1980). The term "success" is a vague concept that requires knowledge about policy goals. One faces problems with developing success criteria particularly when "the intent of the policy itself is difficult to ascertain" (Casper and Brereton 1984, 122). It is essential first to identify the goals and then to select those goals that are of policy interest for evaluation.

Not all goals are clearly stated in statutes. Some goals emerge during the course of policy debate. Defining these goals requires analysis of policy formulation and key elements that constitute policy. Evaluating goal attainment requires identifying criteria of success that recognize not only explicitly stated goals, or manifest

goals, but also those inherent in policy arguments, or latent goals (Casper and Brereton 1984, 123).

During the policy debate in states concerning more use of determinate sentences, law-and-order adherents advocated the automatically applied severe penalties of the mandatory minimum sentencing schemes. At the same time, liberals suggested limited use of incarceration and shorter but determinate sentences under presumptive sentencing systems (Cullen and Gilbert 1982, 127–31). To broaden the base of political support for policy adoption, state legislatures built coalitions and compromised to avoid conflict, which always produced vague policies. Coalitions between law-and-order conservatives and “doing justice” liberals in Illinois and Minnesota, for example, incorporated their conflicting interests in sentencing reform into the negotiated policy formulation (Casper and Brereton 1984, 126; Shane-DuBow et al. 1985, 159; Zimring 1983, 101–16).

There are significant differences between conservative and liberal advocates of determinate sentencing in terms of emphases and goals (Feeley 1983, 117). Conservatives emphasize that punishment through deterrence and incapacitation through lengthy imprisonment reduce domestic violence and restore societal order (Newman 1978; van den Haag 1975; Wilson 1975). Liberals stress the promotion of prisoners’ rights, reductions in sentencing disparity and discrimination, and increased accountability in criminal justice decision making. Liberals are less interested in crime control, but take a stand for fairness and equality in sentencing. Their dissatisfaction with indeterminate sentences leaves them no other options but to advocate determinate sentences (American Friends Service Committee 1971; Fogel 1975; Frankel 1972; Twentieth Century Fund 1976).

Another problem in identifying policy goals emanates from an abstraction of policy concepts and symbolic uses of political rhetoric (Edelman 1967) that obscure the relationship between means and ends (Braybrooke and Lindblom 1985; Hogwood and Gunn 1984; Lindblom 1959). This relationship involves the extent to which reform features are instrumental in attaining policy goals. The concepts of equality, equity, and fairness in sentencing practices are abstract and difficult to define, and even more difficult to measure and evaluate.

Measuring deterrent and incapacitative effects of legal sanctions is also problematic because of problems with deterrence the-

ories themselves (Greenberg 1975; Nagin 1978). Deterrence theorists argue that potential criminals act rationally, calculating the risk of being caught and the costs to themselves of punishment (Grasmick and Bryjak 1980; Paternoster et al. 1983a; Waldo and Chiricos 1972; Williams and Hawkins 1986). These theorists provide no explanation of how to define potential would-be criminals and how to measure whether they refrain from criminal acts or are deterred by fear of punishment or other confounding social control factors (Paternoster et al. 1983b; Thomas and Bishop 1984; Tittle and Rowe 1973).

Despite such problems with the definition of policy goals for evaluation, there is some agreement about what the reforms should achieve. Both conservative and liberal reformers agree that "punishment means prison" and that sentences should be administered consistently (Zimring 1983, 107). While conservatives favor the certainty of "severe" punishment, liberals call for the certainty of "fair" punishment.

The criminal sentencing reforms in the United States are broad, complex, and diverse. Mandatory minimum sentencing laws are identified with certain and severe punishment for deterrent and incapacitative effects. Presumptive sentencing laws and sentencing guidelines share the goal of promoting justice through fair and certain punishment. This study is not intended to evaluate all policy success criteria. Rather, it is limited to analyzing the goal of promoting certainty of imprisonment agreed on by both conservatives and liberals.

Crime control was the underlying goal of many who voted for more determinate sentences in state legislatures. The certainty of severe punishment was directed toward controlling crime, even when it was not stated explicitly in the statutes. This study is not designed to test deterrence theory or explain crime phenomena, but rather to evaluate whether the sentencing reforms served as an effective deterrent to crime.

Within the scope of this study, only two indicators of policy success were selected for evaluation. First, successful implementation will be measured by an increase in the probability of prison commitment per adult arrest, that is, the use rate of incarcerative sentences. Second, if sentencing reforms serve as an effective deterrent to crime, crime rates should drop during the period of implementation. Therefore, crime rates are also measured to evaluate

policy consequences on potential criminals after an appropriate lag time for deterrence to have an effect.

Problems with Unintended Consequences

In addition to the two criteria for policy success, this study will also attend to policy impacts that were not intended by the sentencing reformers. The National Research Council Panel on Sentencing Research acknowledges that sentencing reforms can produce heavy financial and administrative burdens on the corrections sector. In particular, they can lead to crowding in state institutions (Blumstein et al. 1983, 225). This policy concern has stimulated research on the relationship between sentencing reforms and prison crowding (Casper 1984; Hepburn and Goodstein 1986; Mullen et al. 1980). In 1979 about 40 percent of inmates were housed in local jails in Mississippi and about 25 percent in Alabama (Blumstein et al. 1983, 230). Seven years later, many states continued to house a substantial portion of their prisoners in local jails, particularly in New Jersey (16%), Kentucky (14%), Louisiana (22%), Mississippi (17%), and Tennessee (14%) (Flanagan and Jamieson 1988, 483).

The growth in prison populations, however, cannot be attributed solely to changes in sentencing policies. Other factors influence the size of prison populations, such as changes in the composition of the civilian population and changes in crime rates. In this study, attention will be paid to the impact of sentencing reform policies on the size of prison populations in state institutions relative to the civilian population in the states.

PLAN OF THE STUDY

This chapter has explained the theory of sentencing reform, the features of sentencing reforms, and problems confronting definitions of policy success. Both intended and unintended consequences of the reforms were considered for evaluation. Sentencing reforms were analyzed with regard to their theoretical foundations and strategic instruments for achieving desired behavioral changes. The court community model advanced by contemporary students of criminal courts was examined to provide an organizational context for sentencing reforms.

Chapter 2 traces the evolution of the American criminal justice system from colonial times to the present. This historical analysis focuses on how changes in values and theories of crime and punishment moved from a punitive model to a rehabilitative one and back to deterrence.

Criminal justice reformers since the 1970s have sought to determine legal sanctions by controlling judicial behavior and discretion in sentencing. Criminal sentencing reforms have led to alterations in criminal procedures in the United States. These reforms vary from state to state but fall into five major types, which will be defined and explained in chapter 3.

A series of single-case studies has evaluated early experiences with reform implementation and their impacts on sentencing outcomes and crime rates. These evaluations, which will be reviewed in chapter 4, reveal several substantive findings of implementation difficulties. The generalizability of these findings is limited by the research designs employed. The discussion will also cover methodological issues in the sentencing reform evaluation literature.

Methodological issues related to research design and statistical procedures will be discussed more thoroughly in appendixes A and B. Evaluation models will be specified, one for each research question. The discussion will center on the development of research methodologies particularly designed for a study of comparative public policy in the American states.

Chapter 5 will explore the context and dynamics of the criminal court process that explain what happens at courthouses and how it affects the dispositional outcomes of criminal cases. In chapter 6, both pooled time-series and interrupted time-series analyses will be used to document the wide variance in the consequences of sentencing reforms nationwide. The period under study covers at least fourteen years. Major substantive findings will be discussed with reference to the five types of sentencing reform strategies. Chapter 7 will summarize major research findings and their policy implications. Finally, both the sentencing reform theory and the court community explanation will be reevaluated in light of the results of this evaluation study.