

Mandatory sentencing



Many changes have occurred over the past three decades with regards to the sentencing systems from both the state and federal levels. In 1975, all states and also the federal system principally relied on an indeterminate sentencing system that accorded judges wide discretion with respect to sentencing and gave parole boards practically unchecked discretion regarding the release of prisoners (Tonry & Hatlesad, 1997). All jurisdictions placed great emphasis on the philosophy of tailoring sentences to reflect offenders' characteristics.

This strategy represented an attempt to achieve the rehabilitation of the offender. That uniform response to sentencing has disappeared; in the year 2000, there is no common philosophy or common sentencing practices across jurisdictions in America (Tonry, 1999). All states, however, have adopted statutes requiring mandatory minimum prison sentences for certain violent, drug, and property offenders. The result has been increased sentence lengths (and numbers of admissions to custody) for a wide range of offenses. This, in turn, has led to overcrowded prisons across the country.

Mandatory Sentencing

Despite many legislative changes regarding specific crimes, 30 states still rely primarily on an indeterminate sentencing system which incorporates parole release (Tonry, 1999). Fourteen states have eliminated early release at the discretion of a parole board for all offenders, and many more states have substantially reduced “goodtime” credits, by which prisoners may earn their early release (Ditton and Wilson, 1999). Some jurisdictions have attempted to structure sentencing through the use of presumptive or

voluntary sentencing guidelines. Several states have made a conscious effort to avoid populist punitive policies by requiring legislators to consider the impact of a law on criminal justice resources.

For example, before approving legislation, Louisiana legislators must consider an impact statement on how a mandatory sentencing bill would affect jury trials, plea bargaining, overcrowding in prisons, and the corrections budget (DiMascio, 1997). In stark contrast to the federal sentencing guidelines, eight states have adopted “ front-end resource matching”; the resources required for the implementation of a sentencing law must be approved before the sentencing law is enacted. This focus on resource matching may create more rational sentencing and allow legislators some breathing space in which to resist intense public pressure arising from high-profile cases (Frase, 1995, p. 179). These efforts, however, are infrequent, and policies reflecting penal populism still carry the day more often than not in contemporary America.

Criminal Control

Truly, the complexity of the criminal justice problem is such that issues like the etiology of crime and the impact of drug addiction on criminal behavior may never be completely understood. Because of this, there is much room for the purveyors of scientific snake oil to sell their wares to an unsuspecting public. Proponents of the various programs that are engineered as solutions to such problems as recidivism and crime prevention are so diverse in their political philosophies and theoretical schools as to cause the head to reel.

Still, the public demands that there be answers, and politicians have mandated that they be found – and they have been. Bureaucrats and academics, professional consultants and political activists, government commissions and high-powered think tanks have all been analyzing data and constructing better programs for the alleviation of crime. Each of the many camps that have sprung up around this industry has a particular theory to espouse and a specific agenda to promote. Most of them have budgets, jobs, and political turf to protect. And whether one is trying to deflect attention away from the failure of law enforcement and its allies or pursuing failure as a means of promoting a political agenda of scapegoating the poor, nothing will achieve the goal better than the latest and most fashionable pseudoscientific technique for reducing crime.

Evaluating the Criminal Justice Policy

Criminological research, just as any other body of scientific knowledge, can serve ideological or bureaucratic ends just as readily as it can serve the advancement of positive social goals. Indeed, this is the entire point of Jeffrey Reiman's Pyrrhic defeat theory. By selectively collecting and analyzing some data while ignoring others, one can frequently arrive at whatever conclusion will support the practitioner's or researcher's favorite theory. At the very heart of Reiman's assessment of the American system of justice is the contention that the police focus on street crime while ignoring white-collar and corporate crime.

He notes, for example, that while 9, 285 members of the work force lost their lives due to crime in 1972, 100, 000 of them died as the result of

occupational hazards (Reiman 1979, p. 66). It is Reiman's contention that many of the latter deaths were preventable, and thus were tantamount to negligent homicides. It is no wonder, then, he contends, that corporate interests use their influence to ensure that no legislation that would make such negligence prosecutable comes into being while, at the same time, supporting the aggressive pursuit of street gangs, burglars, and robbery suspects.

Samuel Walker and the Criminal Justice Policy

Samuel Walker does an excellent job of illustrating the impact of ideology on criminology and the American system of justice. In his book *Sense and Nonsense About Crime and Drugs*, he describes what he refers to as the conservative theology (pp. 17-19) and the liberal theology (pp. 19-20) of crime control: “ Conservative crime control theology envisions a world of discipline and self-control; people exercise self-restraint and subordinate their personal passions to the common good. It is a place of limits and clear rules about human behavior. The problem with criminals is that they lack self-control” (p. 17).

So goes Walker's account of the stance of the right. He goes on to assess the position of the left on issues of crime as well: “ Liberal crime control theology views the world as a large and idealized school. It explains criminal behavior in terms of social influences. People do wrong because of bad influences in the family, the peer group, or the neighborhood, or because of broader social factors, such as discrimination and lack of economic opportunity. The liberals'

solution to crime is to create a different set of influences. Rehabilitation involves shaping the offender in the direction of correct behavior” (p. 19).

Samuel Walker and the Mandatory Sentencing

Having set the stage, Walker goes on to explain that each of these camps has set upon a quest for its own brand of success. He describes the liberal push for reforms in the area of corrections as " the story of a continuing search for the Holy Grail of rehabilitation" (p. 19). As for the conservative tendency to equate deterrence with parental discipline, he tells us that " The real world, unfortunately, does not work like family discipline" (p. 18) Walker then supports these characterizations of the liberal and conservative schools of criminology by debunking several of the programs the two sides support and the claimed successes for each.

One example used by Walker is that of the mandatory sentencing programs so near and dear to the hearts of law-and-order conservatives. The state of New York's 1973 drug law mandating lengthy prison terms is one of those examined. The law provided that convicted heroin dealers would serve minimum, mandatory prison terms ranging from one year to life for minor offenders, and fifteen years to life for major offenders (those who either sold an ounce of heroin or possessed two ounces of the substance).

It was found, however, that between 1972 and 1976, " the overall percentage of arrests leading to conviction fell from 33. 5 to 20 percent" (Walker 1994, p. 92). Walker points out that members of the " courtroom work group" (p. 48) (prosecutors, judges, and defense attorneys) were able to evade the intent of the law by selectively charging and dismissing the

offenders. Although he concedes that there was some modest success, in that the rate of incarceration did go up for those who were convicted, the effect of the law was essentially nullified (p. 92).

The claim that mandatory sentencing programs are, by and large, not successful is further supported by the experiences of both the state of Florida and the federal system. Even though Florida passed mandatory sentencing laws in 1975 and 1988, no significant impact on sentencing practices has resulted. Walker again points out that such factors as judicial discretion and "good time" reduction of prison terms effectively negated the laws' impact as an effective tool for reducing crime (pp. 87-88).

The story for the federal system is similar, though it must be conceded that the length of prison terms for those convicted did increase. Walker points out that this served to greatly increase the prison population and add to overcrowding. At the same time, however, correctional officials employed a greater use of "good time" programs in an effort to ease these conditions. The result is that whatever benefit might have been realized has again been negated (p. 95).

An example of how Samuel Walker explains the failure of the left to come up with the right answers to the question of how to control crime is found in his account of the Martinson Report. This 1974 criminological report by Robert Martinson resulted from a review of all of the evaluations of correctional programs that were available in English-language publications between 1945 and 1967. Walker informs us that most of this universe of data was eliminated as not scientifically valid, for the Martinson team found that

they were lacking such vital research components as control groups or drew "questionable conclusions from the data" (p. 209).

The upshot of the study was that although Martinson did find some positive results from correctional rehabilitation, he also stated that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on rehabilitation" (pp. 208-209). Follow-up studies of the type conducted by Martinson, Walker indicates, have resulted in similar findings, fueling a long-term debate on the efficacy of rehabilitation programs.

Samuel Walker makes it clear that practitioners and researchers alike are guilty of wishful thinking and of stacking the deck in favor of their individual arguments. Time and again he demonstrates that many of the so-called successes in rehabilitation have been invented rather than achieved. Closer attention to ethical decision making might have served to advance the state of criminology in these instances, just as it might aid in achieving a more effectively run police department. A brief look at two of Walker's examples will be illustrative.

Diversion is one of the programs Walker examines, and he chooses the Manhattan Court Employment Project as an example (p. 212). In this program employment services were provided to underemployed and unemployed defendants-not facing homicide, rape, kidnapping, or arson charges. Such persons were granted a delay of prosecution and could have their cases dismissed if they secured stable employment. A program

evaluation conducted shortly after the project was initiated gave it high marks, including a 48.2 percent success rate and a very low cost.

Later, however, another study found that recidivism was not abated and that the cost figures were misleading. Walker explains that this was due to the "net-widening syndrome," (p. 213) a situation in which low risk offenders who would otherwise have their cases dismissed were selected for inclusion in the diversion program. The result, of course, is a skewing of statistics and the incurring of a cost that would otherwise not have been necessary. "The net-widening phenomenon suggests that the 'old' diversion did a better job," writes Walker (p. 214).

Walker notes that what he means by this is that district attorneys who declined to prosecute and police officers who elected not to arrest offenders for minor violations of the law did a far more cost-effective and less intrusive job of diversion than did the Manhattan Court Employment Project.

Walker also takes a look at intensive probation supervision (IPS), another of the many fads to hit the rehabilitation scene. In IPS programs, probationers are closely supervised with a great number of contacts between the client and the probation officer, frequent testing of drugs, and generally much tighter restrictions on behavior and movements. Not all that surprisingly, Walker finds that such programs are not new. As evidence of this he cites the San Francisco Project, an IPS program that was put into place during the 1960s.

The San Francisco Project, a federal program of intensive probation supervision, was subjected to systematic evaluation at the time. Control

groups were set up, reports Walker, for the purpose of comparing the new intensive measures with more traditional and less restrictive ones. The evaluators learned that there was " no significant difference in the recidivism rates of offenders in the various groups" (p. 214). Walker points out that there are similar findings in studies of the newest wave of IPS programs. Evaluations recently conducted in California, New Jersey, and Georgia are equally disheartening. " IPS suffers from both confused goals and exaggerated promises," he writes (p. 220).

Conclusion

After all, a question still remains as to what are we to make of all of these? Confusion and a seemingly endless series of fits and starts appear to constitute our best effort at finding a solution to crime and violence. Samuel Walker provides us with a very solid explanation in his book as he goes about the task of illustrating the significant issues that encompass the current criminal justice policy.

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