

The Impact of Harsh Sentencing Policies on Overall Crime

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During the last four decades, the incarceration rate in the United States has increased to the degree that the correctional system has become overwhelmed in attempting to supervise more than six million individuals (Carson & Golinelli, 2013; Felman, 2012; Gopnik, 2012). Placing this number in context, while the United States is comprised of less than five percent of the world's population, more than a quarter of the individuals in the world who are incarcerated are imprisoned within the American correctional system (Liptak, 2008). This disparity in the number of incarcerated individuals is not due to a higher crime rate. Instead, the American Judicial System imposes severe sentences for more types of offenses, and convicted individuals remain imprisoned for more extended periods (Tonry, 2013). Consideration of these issues concerning the number of individuals incarcerated in the United States as compared to other industrialized nations increasingly leads to concerns of the sentencing laws and policy within the American Criminal Justice System.

Creation and Consequences of American Sentencing Laws and Policies

From the perspective of classical criminology, crime is perceived to be more related to the free choice of an individual who first considers the benefits of a given crime and then weighs these factors against the potential costs (Tittle, Botchkovar & Antonaccio, 2011). The criminal justice system serves as a deterrence mechanism by providing a threat of punishment and by punishing those who commit crimes in order to reduce the likelihood that they will commit another crime. However, the deterrent effects of punishment are seemingly of little significance considering that: the imposition of get tough on crime harsher sentences have failed to have any significant deterrent effect; and mandatory sentencing policies have not served to decrease crime to any appreciable degree (Shepherd, 2007; Slobogin, 2011).

The Evolution of American Sentencing Policies

From a historical perspective, the goals of sentencing policies in the United States can be characterized by the goals of society during a given period. Accordingly, over the last fifty years, indeterminate sentencing policies which imposed no specific duration for incarceration have evolved through a reform period designed to provide fair sentences to the present time which provides for harsh punishment through mandatory sentencing policies (Tonry, 2013). The increase of harsher sentencing process is directly attributed to the response of politicians to public fears of crime in the latter part of the twentieth century. As a result, laws were enacted which imposed harsher sentences on habitual offenders and established mandatory minimum sentences designed to eliminate judicial sentencing disparities by providing consistent punishment for similar crimes (MacKenzie, 2001). However, despite the best of intentions, the attempt to eliminate the discretionary authority of judges has only served to increase the discretionary power of prosecutors (Dervan & Edkins, 2013).

Discretionary Power of Prosecutors

The majority of Americans perceives a presiding judge as the symbol of the judicial system and most important actor in the court workgroup. While accurate to a certain extent, the reality is that the prosecutor has a more substantial role in the determination of a charge, negotiation of a plea bargain, and often a recommendation of a sentence. However, it is important to note that the responsibility of a prosecutor is not to obtain convictions at any cost and unnecessarily subject a convicted individual to harsh sentencing processes. Rather, a prosecutor has the responsibility to ensure that justice is accomplished through due consideration of the circumstances of a given charge to address potential disparities in the enforcement of criminal offenses (Howell, 2014).

Gender and Racial Disparities in Sentencing Processes

Studies provide compelling evidence of gender disparity along racial and gender lines in sentencing processes despite a concerted effort of the legislative bodies and the court system to ensure the fair and equitable administration of justice (Hessick, 2010). Studies of sentencing processes show that more females are being incarcerated and that the overall violent crime rate by females is increasing at a disproportionate rate than male offenders (Gonchar & Marshall, 2013). Concerning female offenders, data compiled by the Sentencing Project identifies that one-third of the females in prison are incarcerated for drug-related offenses (Harrison & Sabol, 2011). This consideration is also supported by current research data which suggests that females who associate with male offenders increase their probability of exposure to situations involving criminal activities (Sommers & Baskin, 1993). The gap between men and women as it relates to crime can somewhat be attributed to the focus of the judicial system on punishment in combination with stiffer sentencing laws has resulted in an incarceration rate that has more than tripled during the last thirty years (Gonchar & Marshall, 2013; Harrison & Sabol, 2011).

Although concerns associated with racial disparities in sentencing processes have led to significant reforms in criminal sentencing policies, contemporary research indicates that disparities along racial lines continue to exist (Johnson, & Lee, 2013). However, the causes of racial disparity in sentencing processes are also correlated to other issues associated with higher crime rates, access to public resources and an overall racial bias in society as a whole which increases the likelihood of minority involvement in the criminal justice system (Unnever, 2008). Research has also identified that issues with racial disparity in the pre-trial processes in which an individual is denied or cannot afford bail create a stigma that, while not impacting the trial process, results in harsher sentences for convicted individuals (Sacks & Ackerman, 2013).

Considerations for Age in the Sentencing Process

The age of an offender adds another more complex dynamic into the sentencing process. Historically, laws set the precedent that youthful offenders were to be given more lenient treatment than adults. However, the nature of an offense can often result in a juvenile offender being transferred into the adult court system. Research indicates that these individuals are not necessarily violent offenders, but rather older juveniles with a prior criminal record who, if convicted, are likely to receive a sentence of incarceration that would not have been imposed by the juvenile court system (Kurlychek & Johnson, 2004). The significance of this consideration is that the transfer of a juvenile to adult court makes little difference upon deterring future criminal acts. This consideration is supported by research which indicates that juveniles who receive harsher penalties when tried as adults tend to commit additional crimes sooner and more often than those who remained in the juvenile system (Juszkiewicz & Center, 1996; Singer, 2011).

Despite the distinction between adult and juvenile offenders, research studies have shown that age is not considered to be a relevant factor in the sentencing process (Mueller-Johnson & Dhami, 2009). Rather, the sentencing decision relies more on the perspective of focal concerns to provide a basis for comparison in the areas of blameworthiness, dangerousness and practical constraints (Spohn & Beichner, 2000). This consideration for focal concerns then places the consideration that a more lenient sentencing decision may be made, not specifically due to an individual's advancing age, but rather upon the fact that offenders beyond the age of sixty pose less of a threat to the community because of their age (Mueller-Johnson & Dhami, 2009). Nevertheless, the impact of harsher sentences upon younger offenders due to issues such as the three-strikes laws for habitual offenders and mandatory minimum sentences have a significant effect on the current overcrowding of the American prison system (Specter, 2010).

Conclusion

From a practical perspective, it is difficult to conceive that the United States prison system can sustain the continued population growth as the result of harsher sentences imposed as the result of three-strikes laws and mandatory sentencing policies. The fact that there has been no corresponding long-term decline in crime only serves to underscore the need to reform sentencing practices. Further, the increased imprisonment of individuals for relatively minor offenses and the continuing racial disparity in sentencing processes continues to serve as an underlying reminder of significant problems with the correctional policies of the United States. As prisons reach the breaking point in terms of sheer numbers and in consideration of an aging inmate population, many jurisdictions have been forced to adopt early release programs for offenders given the financial burden associated with building and maintaining new correctional facilities. Ironically, this economic reality in which correctional facilities take money away from other government needs such as education may ultimately be the catalyst for reforming sentencing processes. However, until a significant change in the political environment occurs, it is highly unlikely that any substantive changes will be made to the shortsighted criminal sentencing policies in the United States.

References

- Carson, A. E., & Golinelli, D. (2013). *Prisoners in 2012: Trends in admissions and releases, 1991–2012* (NCJ 243920). Retrieved from U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics website: <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>
- Dervan, L. E., & Edkins, V. A. (2013). The innocent defendant's dilemma: an innovative empirical study of plea bargaining's innocence problem. *Journal of Criminal Law & Criminology*, 103(1), 1-48. Retrieved August 30, 2014, from <http://web.b.ebscohost.com.ezproxy1.lib.asu.edu/ehost/pdfviewer/pdfviewer?sid=7774fc5f-b7d9-435e-99f2-b87db4386427%40sessionmgr198&vid=1&hid=114onmgr198>
- Felman, J. F. (2012). Testimony on behalf of the American Bar Association before the U.S. Sentencing Commission, February 16, 2012. *Federal Sentencing Reporter*, 24(5), 369-375. Retrieved August 30, 2014, from <http://dx.doi.org/10.1525/fsr.2012.24.5.369>
- Gonchar, M., & Marshall, T. (2013, April 10). Justice for all: Teaching about crime and punishment in America. *The New York Times*. Retrieved August 30, 2014, from http://learning.blogs.nytimes.com/2013/04/10/justice-for-all-teaching-about-crime-and-punishment-in-america/?_r=0
- Gopnik, A. (2012, January 30). The caging of America. *The New Yorker*, 87, 72. Retrieved August 30, 2014, from <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-America>
- Harrison, P., & Sabol, W. (2011). Women in the justice system. *The Sentencing Project*. Retrieved August 30, 2014, from <http://www.sentencingproject.org/template/page.cfm?id=138>

- Hessick, C. B. (2010). Race and gender as explicit sentencing factors. *Journal of Gender, Race & Justice*, 14(1), 127-142. Retrieved August 30, 2014, from <http://web.b.ebscohost.com.ezproxy1.lib.asu.edu/ehost/detail/detail?sid=50b2cee6-18be-4a1e-96cd-c03d2d6118b7%40sessionmgr111&vid=0&hid=114&bdata=JnNpdGU9ZWWhvc3QtbGl2ZQ%3d%3d#db=i3h&AN=62169909>
- Howell, K. B. (2014). Prosecutorial discretion and the duty to seek justice in an overburdened criminal justice system. *Georgetown Journal of Legal Ethics*, 27(2), 285-330. Retrieved August 30, 2014, from [http://www.lexisnexis.com.ezproxy1.lib.asu.edu/hottopics/Inacademic/?verb=sr&csi=168969&sr=TITLE\(Prosecutorial%20discretion%20and%20the%20duty%20to%20seek%20justice%20in%20an%20overburdened%20criminal%20justice%20system\)%20and%20date%20is%202014](http://www.lexisnexis.com.ezproxy1.lib.asu.edu/hottopics/Inacademic/?verb=sr&csi=168969&sr=TITLE(Prosecutorial%20discretion%20and%20the%20duty%20to%20seek%20justice%20in%20an%20overburdened%20criminal%20justice%20system)%20and%20date%20is%202014)
- Johnson, B. D., & Lee, J. G. (2013). Racial disparity under sentencing guidelines: A survey of recent research and emerging perspectives. *Sociology Compass*, 7(7), 503-514. Retrieved August 31, 2014, from <http://dx.doi.org/10.1111/soc4.12046>
- Juszkiewicz, J. & Center, F. (1996). Does treating kids like adults make a difference? | Juvenile Justice | FRONTLINE | PBS. *PBS: Public Broadcasting Service*. Retrieved September 27, 2013, from <http://www.pbs.org/wgbh/pages/frontline/shows/j>
- Kurlychek, M. C., & Johnson, B. D. (2004). The juvenile penalty: A comparison of juvenile and young adult sentencing outcomes in criminal court. *Criminology*, 42(2), 485-515. Retrieved August 3, 2014, from <http://dx.doi.org/10.1111/j.1745-9125.2004.tb00527.x>
- Liptak, A. (2008, April 23). U.S. prison population dwarfs that of other nations. *New York Times*. Retrieved August 30, 2014, from http://www.nytimes.com/2008/04/23/world/Americas/23iht-23prison.12253738.html?pagewanted=all&_r=0

- MacKenzie, D. L. (2001). Corrections and sentencing in the 21st century: Evidence based corrections and sentencing. *The Prison Journal*, 81(3), 299-312. Retrieved August 30, 2014, from <http://dx.doi.org/10.1177/0032885501081003001>
- Mueller-Johnson, K. U., & Dhami, M. K. (2009). Effects of offenders' age and health on sentencing decisions. *The Journal of Social Psychology*, 150(1), 77-97. Retrieved August 31, 2014, from <http://dx.doi.org/10.1080/00224540903365315>
- Sacks, M., & Ackerman, A. R. (2013). Bail and sentencing: Does pretrial detention lead to harsher punishment?. *Criminal Justice Policy Review*, 25(1), 59-77. Retrieved August 31, 2014, from <http://dx.doi.org/10.1177/0887403412461501>
- Shepherd, J. (2007). Blakely's silver lining: Sentencing guidelines, judicial discretion, and crime. *The Hastings Law Journal*, 58, 533-1331. Retrieved August 30, 2014, from <http://heinonline.org.ezproxy1.lib.asu.edu/HOL/Page?handle=hein.journals/hastlj58&collection=journals>
- Singer, S. I. (2011). Sentencing juveniles to life in prison: The reproduction of juvenile justice for young adolescents charged with murder. *Crime & Delinquency*, 57(6), 969-986. Retrieved August 31, 2014, from <http://dx.doi.org/10.1177/>
- Slobogin, C. (2011). Prevention as the primary goal of sentencing: The modern case for indeterminate dispositions in criminal cases. *San Diego Law Review*, 48(1), 1127-1172. Retrieved August 30, 2014, from <http://heinonline.org.ezproxy1.lib.asu.edu/HOL/Contents?handle=hein.journals/sanlr48&id=1&size=2&index>
- Sommers, I., & Baskin, D. R. (1993). The situational context of violent female offending. *Journal of Research in Crime and Delinquency*, 30(2), 136-162. Retrieved August 30, 2014, from <http://dx.doi.org/10.1177/0022427893030002002>

- Specter, D. (2010). Everything revolves around overcrowding: The state of California's prisons. *Federal Sentencing Reporter*, 22(3), 194-199. Retrieved August 31, 2014, from <http://dx.doi.org/10.1525/fsr.2010.22.3.194>
- Spohn, C., & Beichner, D. (2000). Is preferential treatment of female offenders a thing of the past: A multisite study of gender, race, and imprisonment. *Criminal Justice Policy Review*, 11(2), 149-184. Retrieved August 31, 2014, from <http://cjp.sagepub.com/content/11/2/149.short?rss=1&ssource=mfc>
- Tittle, C., Botchkovar, E., & Antonaccio, O. (2011). Criminal contemplation, National context, and deterrence. *Journal of Quantitative Criminology*, 27, 225-249. Retrieved July 1, 2011, from <http://dx.doi.org/10.1007/s10940-010-9104-8>
- Tonry, M. (2013). Sentencing in America, 1975–2025. *Crime and Justice*, 42(1), 141-198. Retrieved August 30, 2014, from <http://dx.doi.org/10.1086/671134>
- Unnever, J. D. (2008). Two worlds far apart: Black-White differences in beliefs about why African-American men are disproportionately imprisoned. *Criminology*, 46(2), 511-538. Retrieved August 31, 2014, from <http://dx.doi.org/10.1111/j.1745-9125.2008.00117.x>