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## The Causes and Effects of Get Tough: A Look at How Tough-on-Crime Policies Rose to the Agenda and an Examination of Their Effects on Prison Populations and Crime

Cheyenne Morales Harty  
*University of South Florida*, [cheyenneharty@yahoo.com](mailto:cheyenneharty@yahoo.com)

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The Causes and Effects of Get Tough: A Look at How Tough-on-Crime Policies Rose to  
the Agenda and an Examination of Their Effects on Prison Populations and Crime.

by

Cheyenne Harty

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Masters of Arts  
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College of Arts and Sciences  
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Major Professor: Steven Tauber, Ph.D.  
John Cochran, Ph.D.  
Edwin Benton, Ph.D.

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institutional anomie theory

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## **DEDICATION**

I dedicate this work to my wife, Jeanmarie Harty, for all of her patience. Also, much thanks to Drs. Steven Tauber, John Cochran and Edwin Benton for their insight and input.

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## **ABSTRACT**

The paper analyzes the rise of get-tough crime legislation to the American public policy agenda and examines the effects of these policies on crime and inmate populations. Get-tough policies analyzed include sentencing reform, the War on Drugs and collateral consequences. Because there is no empirical literature on the effect of collateral consequences on crime, the paper employed an OLS regression model partly derived from institutional anomie theory to test for criminogenic effects. The study then employed OLS regression analysis to determine the affect of these independent variables on crime rates in each of the 50 states. The study concluded that state policies hindering the ability of offenders to find employment have a significant and positive impact on crime. According to the model, the most significant factors affecting crime rates are urban density, high school drop-out rates, a state's population of blacks, non-economic institutions, and policy barriers to offender employment. The research suggests that policy makers should reduce economic barriers to reentry, particularly those barriers focused on employment, to improve public safety.

## **CHAPTER 1**

### **The Escalation of U.S. Prison Rates and Public Policies Impeding Inmate Reintegration**

#### **Introduction**

The number of citizens who have moved through the criminal justice system in the United States has skyrocketed over the past three decades, resulting in the world's highest incarcerated population (Aizenman, 2008). At a rate of one in every 100 persons, there are about 2.3 million Americans behind bars. The United States now imprisons more people than Russia and China, accounting for one fourth of the world's incarcerated population (Pew Center on the States, 2008). Many have argued that a paradigm shift in criminal policy helped skyrocket the population behind bars by more than 600 percent since the 1970s (Mauer, 2003, p. 1).

Complicating the problem is the fact that most incarcerated people will eventually leave prison—about 95 percent of incarcerated inmates (Petersilia, 2003, p. V). As a result, the number of citizens who seek reintegration into society after “doing time” is about 630,000 per year— a figure of considerable public policy concern (Department of Justice, 2008, p. 28). Adding up the droves that have been arrested or convicted, about one fourth of Americans currently possess or have spent some time with a criminal record (Mukamal and Samuels, 2003, p. 1501). The obstacles for former convicts and arrestees created by easy access to criminal background information are made tougher still by public policies called collateral consequences that potentially impede societal

reintegration (Bushway 2006). For example, job applications often require statements of arrests and convictions, while public policies grant employers the right to deny employment to those with criminal records (Bushway, 2006, p. 1; Grogger, 1995); and in most states, having a criminal record can mean the denial of: employment, trade licenses, driving privileges, public education grants, housing and other welfare benefits (Bushway, 2006, p. 2; Legal Action Center 2002).

Much media attention has cited “get-tough” policies as contributing to the incarceration boom (Levitt 2004), which has accompanied a significant drop in crime over the past 30 years (BJS 2010). In light of this, the paper seeks to trace the development of get-tough policies and focuses on the effect these policies have had on incarceration rates and crime. The paper’s structure is in some way a guide for policy development. By considering both the implications of how incarceration policies developed and what is to be done to solve some of the new problems they have created, this paper hopes that formulators of new sentencing policies will focus as much on the reentry question as they have on calls for intensely punitive sentencing laws.

### **Organization of Paper**

Chapter 2 is concerned with various theories that helped influence this paper. Theorists addressed include David Easton, John Kingdon, Robert Merton, Richard Rosenfeld and Steven Messner. Chapter 2 explains how Easton’s work on political systems influenced the structure of this paper, which constitutes an analysis of both inputs into the political system and an evaluation of outputs. The chapter goes on to discuss Kingdon’s work on streams and windows, which provided the theoretical lens that shapes this paper’s perspective on agenda setting. Chapter 2 also reviews works from

Merton, Rosenfeld and Messner on institutional anomie theory (IAT), which influenced much of this paper's study of get tough outcomes.

Chapters 3, 4 and 5 each apply Kingdon's model to examine how certain crime policies were able to make it onto government's agenda before analyzing the effects these policies have had on crime and/or incarceration rates. Chapter 3 focuses on sentencing reform, Chapter 4 on the War on Drugs, and Chapter 5 directs its attention to collateral consequences.

While a review of existing studies provides sufficient information on the impact of the drug war and sentencing reform, there is no body of work that systematically measures the impact of collateral consequences. As such, Chapter 5, influenced by the works of Merton, Rosenfeld and Messner, provides a regression analysis of the effect of collateral consequence policies on crime rates. Chapter 6 summarizes the paper, discusses results, and provides policy recommendations.

## **CHAPTER 2**

### **Theoretical Influences**

#### **Frameworks for understanding policy**

Scholars have found that sentencing reform guidelines and the War on Drugs have driven the rapid rise in U.S. incarceration rates (Jacobson, 2005; Pager, 2003). This paper complements that body of work by tracing the development of incarceration-increasing policies as they move through the agenda setting process and examining whether policies aimed at curbing some of the post-incarceration barriers to offenders would help reduce crime. However, before delving into each policy, the paper shall review the theoretical frameworks that have influenced this study, beginning with the political science and public policy work of David Easton and John Kingdon and culminating with macro-criminological contributions of Robert Merton as well as Steven Messner and Richard Rosenfeld.

Easton (1956) tried to conceptualize the rule of law as resulting from the interaction of a political system (government) with its environment (society). In this conceptualization, the environment places “demands” on the system and provides the system with diffuse “support” for its institutions, its method of governing as well as specific support for particular laws. More stable political systems maintain their support primarily by way of diffuse support (Easton, 1975, pp. 436-439). Thus, although members of society may champion or protest particular policies (the War on Drugs and increased police expenditures, for example), these very citizens may likely— regardless

of the policy views— support the institutions and traditions of government that make up American democracy. By obeying laws, voting, voicing opinion, and organizing opposition and support for particular policies, citizens participate in accepted procedures of democratic activity, reaffirming these methods as the proper way to go about things. Thus, when a group of citizens lobbies a Congressman or marches in protest of a government policy, they are, by their participation, upholding the norms and conventions that prop up a democratic system, ensuring government’s legitimacy and stability despite policy outcomes. Furthermore, by placing pressure, “demands,” on the system citizen activity ensures that the government is ready to respond to the environment’s needs (Easton, 1975).

Demands and supports makeup what Easton (1956) calls “inputs” into the political system. The political system responds to these inputs, which can take the form of support for laws on the books or demands to combat a perceived problem, such as rising crime rates, with new legislation. The resulting policies and laws, called “outputs (Easton, 1956), are implemented and dispersed into society. Society, in turn, may find fault or favor with the policy as implemented, or the policy may result in new unintended problems or benefits, which members of society may support or protest. The result is the introduction of new inputs into the political system through a feedback loop, thus continuing a cyclical process— a constitutive policy relationship.

Easton’s work influenced the structure of this paper. While chapters 3,4 and 5, via a review of the literature and the study of certain cases, examines the movement of certain get-tough proposals from the environment to the political system, each of these

chapters also seeks to examine the impact these get-tough policy outputs have had on the environment.

While Easton provided a clear framework that understood policy as a homeostatic relationship between society and government, Harold Laswell (1956) contributed to political science and public policy theory with his depiction of policy as a process that takes place in stages. Laswell has influenced the prevalent literature describing a public policy process comprised of five stages: agenda setting, formulation, adoption, implementation and evaluation (Dye, 2005; Kingdon, 2003; Jones, 1984). The stages describe how societal issues move from the environment unto the agenda of governments (agenda setting), to which governments and those close to it develop solutions (formulation), for which some are enacted into laws (adoption), enforced (implementation) and later examined for effectiveness and/or unintended consequences (evaluation). Evaluation can serve as a feedback loop through which new issues are brought to the attention of government, thereby providing more inputs to the political system (Dye, 2005).

### **Problems, proposals and politics**

This paper's third chapter, with its concern over how certain incarceration-increasing policies arrived on government's agenda, spends much time focusing on inputs—the agenda setting process in particular. To analyze the inputs that led to incarceration-increasing policies, the paper applies a windows and streams model. In this paper, windows and streams, which John Kingdon applied to case studies in health and transportation, is used as a lens through which to examine the agenda process involved in get-tough crime policy.

Like many public policy scholars, Laswell's model of stages in the political system influenced Kingdon's work. However, Kingdon (2003, 3) directed much of his work to the agenda setting stage, which he defines as the list of problems on which government, and those with government's ear, focus. This definition of agenda is compatible with what Roger C. Cobb and Charles D. Elder (1983, 85) refer to as the "governmental agenda," which they distinguish from the "systemic agenda." The systemic agenda includes all those problems that merit public attention. While systemic agenda items are merely up for discussion, items on a governmental agenda, however, are those issues on which policy makers have decided they will act. Agenda setting is the process by which issues make it to a *governmental* agenda.

Kingdon (2003) also stresses a difference between alternatives (or proposals), and the agenda. For Kingdon, a "problem" may elicit policy maker attention; but "proposals" on how to solve that problem follow a separate path; and the "politics" surrounding that problem also take a different route. These distinct paths, what Kingdon calls "streams," merge to create a proverbial whirlpool that sucks in proposals to solve problems to the agenda. Kingdon calls this whirlpool a "window."

Kingdon's perspective is fresh in several ways. One important factor in Kingdon's agenda setting process is the hunting of opportunities by those wishing to apply their proposals. Thus, though Kingdon distinguishes between agenda and proposals, he considers them integral to the agenda setting stage (Kingdon, 2003). This perspective is a departure from the norm because traditional public policy models describe the proposal stream, often called the formulation stage, as separate from the agenda setting process. Kingdon also departs from theorist who, following Laswell's example, model policy as

semi-rigid, organized, and sequential. Instead, he sees the process as somewhat chaotic, comprised of rationalized and structured moments, but supported by idea and situation flows that are complex and highly disorganized (Kingdon, 2003).

Kingdon does not clearly define the term “problem;” but, taken in context, he seems to be using a traditional public policy definition. In this sense, problems are those concerns for which a public remedy is sought (Jones, 1984). Such problems may come to the attention of government playmakers via “routine monitoring activities (Kingdon, 2003, p. 91).” These activities can include analysis of annual statistical reports such as the Department of Justice’s *Uniform Crime Report*, which provides data on violent crime rates, arrest rates, prison and jail population sizes as well as studies on recidivism, drug treatment programs, and other information criminal justice agencies can use to assess success or failure. Dramatic changes in these reports can result in calls for policy action. In Kingdon’s case studies of the public health and transportation sectors (2003, p. 93), he found the assessment of routine reports to be a frequent factor in determining whether a problem would make it to the governmental agenda.

Another way that problems may rise to government’s agenda are through events, “like a crisis or a disaster that comes along to call attention to the problem, a powerful symbol that catches on, or the personal experience of a policy maker (Kingdon, 2003, pp. 94-95).” In the case studies of the next chapter, events are extremely important in affecting the governmental agenda. Such events include the heavily reported murders of children Kimberly Reynolds (whose father pushed for a new three strikes law) and Polly Klaas. Though Kingdon does not discuss the role of the media here, it seems logical to believe that if crises and events have an effect on public opinion, then the media, the

medium through which information about these crises are spread and framed, can affect whether policy makers decide the issue is something government needs to address (Cavender, 2004; Garland, 2001).

Kingdon (2003, pp. 94-110) also emphasizes the importance of interpretation, perception and ideology in defining a problem. Readings of annual statistics are subject to interpretation and debate, and events are not themselves influential unless they elicit call for reform from the public or policy-makers. Furthermore, how a problem is defined affects whether policy action is taken and what kind of policy action is taken (Kingdon, 2003, p.94). For example, if poverty is ideologically viewed as a trigger for crime, then preventing poverty can be defined as crime control, which, as it will be shown later, occurred during the Johnson administration (Baum, 1996, pp. 5-7). Also, if an increase in intensity of a particular problem such as drug abuse and overdoses is defined as a health problem (see War on Drugs, Chapter 4), the policy initiatives taken would be far different were drug abuse primarily defined as a crime control problem (Hawdon, 2001, p. 424). Perhaps this paper's most pertinent examples of problem definition's importance are "collateral consequences," post-incarceration "policies" that are directed at offenders but often are neither defined as criminal justice legislation nor included in the penal code. Because collateral consequences have generally not been included in the discussion and debate surrounding crime policy their effect on offenders and society has often been often ignored by the criminal justice community (see Chapter 5).

Various actors have different effects of problem definition, including the media—although Kingdon downplays their role. From his studies of agenda setting in the health and transportation sectors Kingdon concludes that the media has a minimal impact on

bringing certain problems to the attention of policy makers. Kingdon argues that the affect is nonetheless there and cites a case in which a high-level bureaucrat filed many reports on a problem but did not get a response from the White House until the *Washington Post* published an article on the problem. Kingdon concluded that media can serve as a tool through which public officials make each other aware of the importance of an issue.

The political stream refers to factors that government officials frequently consider in their decisions regarding policy action. Such factors include public opinion, election results, campaigns, change of political officials (for example, the election of a new president or majority party change in Congress), influence of pressure groups, and changes in ideology or political party (Kingdon, 2003, p. 145). The three categories within the political stream that Kingdon finds most important are public mood, interest group organizations, events within government and the effectiveness of political entrepreneurs.

While many scholars have discussed the importance of public opinion polls on the choices elected officials make, Kingdon deemphasizes their impact on the agenda. Instead of monitoring public opinion polls, Kingdon says public officials gage the public mood by speaking with other officials, communicating with interest groups and listening to the media. Therefore, where possible, the following chapters will take this observation of Kingdon's into account when analyzing political streams. However, the paper will depart from Kingdon by emphasizing relationships between public opinion polls, the political stream and the agenda. This departure is validated by the considerable literature that documents the importance of opinion polls on policy (Manza and Cook, 2002;

Monroe, 1998; Verba, 1995; Page and Shapiro, 1983). Furthermore, the public is more likely to have an impact on crime policy than on issues related to transportation and health, Kingdon observed. Transportation and health care— although the current debate over national health care may be an exception— tend to be policy areas over which technocrats and professionals in the field wield tremendous influence (Kingdon, 1984). In these sectors, physicians and engineers offer technical expertise on policy to which many average citizens may be willing to differ. On the other hand, while criminology experts may impact policy, expert opinion does not always drive it. Rather, because crime is frequently presented as a morality issue, there is often considerable citizen involvement in the policy process (Meier, 1994, pp. 7-8). For these reasons, public opinion polls such as the *Gallup Report's* “Most Important Problem,” which is easy to access and represents a standardized measurement of the nation’s pulse, will be employed when analyzing some of the political streams in the following chapters.

Kingdon argues that the intensity and organization of interest groups can also weigh in considerably on whether an issue makes the agenda. Also, when there is a conflict among organized groups, political officials generally try to gage which direction the preponderance of group support is tilting. As in measuring public opinion, politicians are not always accurate in determining where the balance of organizational support rests. Sometimes the group that is simply the most vociferous wields the most influence (Kingdon, 2003, pp. 150-153). The effect of interest group organization and intensity is evident in the upcoming discussions of sentencing reform and the War on Drugs.

Within government, the most important political factors include changes of office and consensus building (Kingdon, 2003, pp. 154-157). In the case studies below these

factors are particularly evident during the conception and development stages of the War on Drugs during the ascensions of the Nixon and Reagan administrations as well as the consensus battling over the Congressional bill containing Truth in Sentencing legislation.

Finally, there is the importance of policy entrepreneurs, people who are “willing to invest their resources, time, energy, reputation and sometimes money in hopes of a future political return (Kingdon, 1984).” Elected officials, academics, or other agents who have an interest in a particular policy can all become policy entrepreneurs (Hayes, 1992, p. 154). In some cases, the effect of policy entrepreneurs cannot be overstated.

The final independent stream is the proposal, or formulation, stream. Described by Kingdon as “primordial soup,” the proposals sector is the realm of technocrats and academics specializing in particular areas (criminal justice for example) (Kingdon, 2003, p. 117). Such specialists work as: Congressional staff, members of presidential or gubernatorial task forces, policy writers for interest groups, implementers in the government bureaucracy, academics, and so forth (Kingdon, 2003). These experts communicate, pushing their ideas onto each other, members of the policy community and the public (Kingdon, 2003). For example, as Chapter 3 will demonstrate, the works of scholar James Q. Wilson, David Fogel, and Andrew von Hirsh were published in academic and policy journals, where they influenced actors within the academic and policy field. Furthermore, because major television networks and print media interviewed some of these academics, the general public was able to learn of these policy proposals.

Those who wish to gain support for their proposals also do so via draft bills, meetings, and speeches. This process, which can take many years, helps “soften up” conditions, helping to determine which proposals are accepted unto the agenda and which

ones are not. Communication also helps ideas evolve, as newly introduced proposals build upon old ones by extracting from and adding elements to older propositions (Kingdon, 2003).

How consistent proposals are with the values of those within the proposal community affects a formulated plan's chances of surviving long enough to make it onto the political agenda (Kingdon, 2003, pp. 132-133). Such values can include traditional liberal-vs.-conservative ideologies of the role of government, or American values on equity and fairness (Kingdon, 2003, pp. pp. 132-134). The following chapters suggest that these values are not static, but are transformed overtime when crime policy is concerned. Taking a page from Thomas Kuhn, Kingdon argues that the logic of proposals—or in more Kuhn-like terms, the paradigm (Kuhn, 1996, p. 3) that governs which proposals are acceptable and which are not— are shaped by the values and beliefs of those within the proposal community (Kingdon, 2003, pp. 132-134).

The get-tough movement, for example, was marked by a surge in conservative beliefs about individualism, the role of government, and punishment that led to a new paradigm in which law makers molded crime policy. The following chapters demonstrate how a change in ideology triggered a paradigm shift, in which the policy community softened up to proposals based on conservative ideals about crime (Bushway, Stoll and Weisman 2007, p. 32; Griswald and Wiatrowski, 1983, p. 29). Eventually the conservative emphasis on retribution, punishment, the role of government, individual responsibility and punishment would, in the public eye, hold more clout than liberal concepts of rehabilitation. Realizing this, Democrats eventually dropped rehabilitation-minded proposals in favor of more populist notions of punishment and deterrence (see

section on three strikes). Eventually, both parties would try to out-tough each other on crime.

Kingdon is not the only scholar who argues that ideology has an influence on policy. Walter Miller (1973), for one, agrees with Kingdon's conclusions about the role of values and applies it to criminal justice. Miller contends that ideology "constitutes a permanent hidden agenda of criminal justice, exercising a powerful influence on the policies and procedures of those who conduct the enterprise (1973, p. 142)." Miller claims several tenets represent the core of a crusading, conservative ideology in crime policy. These include opposition to policies that are "soft" on offenders and practices favoring the rights of offenders over victims' rights (Miller, 1973, p. 143).

Whereas the media, by its affect on public opinion and perception, wields an indirect affect in the problem and political streams, Kingdon (2003) argues that the media affect on the proposal stream is more direct. The willingness of certain newspapers, television stations, radio programs and academic journals to feature certain proposals, after all, has direct impact on the softening process. Chapter three, in its discussion of media attention to particular proposals, exemplifies this trait.

The arrival of certain policies on the governmental agenda are not the result of any one of the streams discussed above but are instead born from processes in which the three streams merge (Kingdon, 2003, pp. 166-167). Such processes open a brief 'window' through which policies can make it onto the very "short list of issues within the governmental agenda that government is actually deciding on (Kingdon, 2003, pp. 166-167)."

Problem and political streams, via catastrophic events, elections and their results, open windows; and proposal streams do not (Kingdon, 2003, 168-169). Once windows open, proposals that have gained prominence and some consensus within the policy stream enter (Kingdon, 2003). For example, the election of a new president with a new value system may influence the desire to address issues that were not priorities for a previous administration. This results in windows opening in the political streams and calls for proposals to address the issues (Kingdon, 2003).

In another example, a dramatic murder that captures the attention of the public or a rise in crime rates may bring attention to a crime problem, creating a thirst for proposals that have been aging and chilling in the specialists' cellar. Problems do not open windows without political support and political streams do not open windows for problems that are not perceived to exist. Thus, a confluence of all three streams is necessary for certain policies to make it to government's short list (Kingdon, 2003). The following chapters demonstrate the process of streams and windows in the development of sentencing legislation, the drug war and collateral consequences.

Kingdon (2003, pp. 79-83) does not argue that all governmental policies are the result of the three streams merging, acknowledging that once a policy is adopted, policy changes are often made by way of routine, incremental changes. The chapters below provide some evidence of this. Once sentencing reform got on the agenda, we see a move toward gradually increased sentencing along with policy jumps that are characterized by the merger of the streams. Also of note, is a strong element of federalism, with policies spreading from state to state or from the central government via federal tax incentives.

The federal Truth in Sentencing act, which provided prison construction grants to states that ensured convicts served at least 85 percent of their sentencing, exemplifies this.

It also must be noted that in this paper there is no clear division of labor in parts of the policy process. Formulation and agenda setting, often construed as executive functions, are frequently dominated by corporate and citizen interest groups, legislators and department heads. Likewise, adoption is not limited to Congress and state legislators, as the impact of lobbyists, bureaucrats, and the executive is often felt during adoption. Indeed, the processes of agenda setting, formulation or adoption may “be readily distinguished analytically although they may be empirically more difficult to pull apart (Anderson, 2005, p. 28).” This blurring of actors and roles becomes more evident as one observes the process involved in forming those policies that have most contributed to rising incarceration rates.

While explorations of the policy process and Kingdon’s theory of streams and windows provide a valuable insight into *how* policy proposals rose to the agenda, other tools are needed to examine the impact of these policies. The third and fourth chapters do this by reviewing the literature that examines the impact of sentencing reform and the war and drugs. Because there have been no studies examining the impact of collateral consequences on crime, the fifth chapter attempts to do so via its own regression analysis. Several theories in macro-criminology have helped influence this regression, particularly institutional anomie theory.

### **Institutional Anomie Theory.**

Institutional anomie theory owes much to sociology founding father Emile Durkheim’s (1897) concept, *anomie*. Anomie, Durkheim wrote, occurs when individuals,

due to social transformation, often via industrialization or modernism, feel they no longer fit into their societies. Such transformations can separate individuals from their previous role in a once more organically whole community, in which traditional values function to maintain a social structure. When modernizing processes and changes in social structures make it such that traditional values no longer fit the new order, a certain gap between value, function and structure occurs. This gap is what Durkheim called *anomie*; and anomie, Durkheim contended, could lead to abnormal behavior such as suicide. Though anomie occurred during times of social transformation, the move from an agrarian society to a modern industrial one, for example, Durkheim theorized that modern capitalist societies, which he perceived as in perpetual economic change, could exist in a constant state of anomie.

Robert Merton (1938) introduced the concept of anomie to American criminology. Influenced by Durkheim, Merton said anomie occurred when the disparity between the cultural ideal and people's ability to attain it are too great. In the United States, Merton said, anomie can lead to the weakening of pro-social norms and values because the American Dream (the desire for success through upward mobility) trumps those values, creating a get-it-by-any-means attitude. Merton added that while American culture encourages competition for wealth at all levels of society, social structure limits the ability of many to achieve these goals. The resulting gap between the desire for "a deluxe apartment in the sky" and people's ability to pay for it via legitimate methods, i.e. college education, hard work, leads to crime.

*"Aberrant conduct, therefore, may be viewed as a symptom of dissociation between culturally defined aspirations and socially structured means (Merton, 1938)."*

His emphasis on both culture and structure led Merton to conclude that poverty and limited opportunity do not lead to crime on their own. Rather, poorer societies, in which intense values of social mobility do not transcend class, are not likely to have the high crime rates that wealthier societies possessing pervasive values for pecuniary success do (Merton, 1938, p. 681). Perhaps due to his idea that American values could be criminogenic, Merton fell out of favor in the 1970s and 1980s (Pratt, 2001). Then, criminological theories that suggested welfare programs and education investments were a way of shrinking the gap between expectations and abilities were no longer in step with a more right-leaning political culture, which looked at crime through the lens of individual responsibility. However, Merton's theories resurfaced when Messner and Rosenfeld (2001) published *Crime and the American Dream*.

While agreeing with Merton's contention that the American Dream could lead to anomie-based crime, Messner and Rosenfeld (2001, p. 56) departed from Merton by contending that increased economic opportunities could indeed be criminogenic. The authors argued that providing more pathways to economic success could reinforce the ideals of the American dream, while redirecting anomic pressures to those who do not have the skills to survive in the marketplace. Messner and Rosenfeld therefore provided an alternative method of reducing crime, directing their attention away from the mere reduction of structural impediments and toward the propping up of pro-social values.

In reworking Merton's work, Messner and Rosenfeld took a page from social disorganization theory, particularly the work of Shaw and McKay (1969). Shaw and McKay suspected that much crime resulted from dynamics at the neighborhood level. Poor population-shifting neighborhoods attracted crime because bad economic conditions

eroded families and churches, drove residents away, and attracted new residents with different cultural norms and values. Because community organizations, families and churches traditionally serve as promoters of pro-social behavior, their erosion in such poorer neighborhoods meant a rise in antisocial behavior such as crime. Furthermore, delinquent norms and values would replace the traditional middle class values that formerly established, pro-social institutions once perpetuated, also leading to higher crime rates.

Messner and Rosenfeld agreed with social disorganization theory's tenet that institutions such as, polity, family, and schools each have their own function in instilling means values. The polity, or civic structure, 'mobilizes and distributes power to attain collective goals;' families function as havens from the tensions of the world and emotionally reinforce the ability of persons to withstand the pressures of American life; and educational institutions instill cultural standards in new generations. All three of these institutions are heavily interdependent, particularly the family and educational system (Messner and Rosenfeld, 2001).

However, Messner and Rosenfeld departed from social disorganization theory by contending that it was not the replacement of middle class norms with new subservient norms that lead to crime. Rather, Messner and Rosenfeld posited that middle class values themselves weakened the ability of pro-social institutions to prevent crime. The economic logic of the American Dream, they contended, "*devalues, accommodates and penetrates*"-- other value inducing functions of family, education and polity (Messner and Rosenfeld, 2001, p.70). For example, rather than valuing education as its own end, Americans increasingly see degrees and diplomas as a way to get jobs. Furthermore, the

market “devalues” educators, through their relatively low pay and prestige factor when compared to teachers in other wealthy nations. It devalues the polity, as evidenced through the nation’s paltry participation in public service or even at the ballot. And it devalues the family by providing families or day care workers little support (Messner and Rosenfeld, 2001, p. 70). Messner and Rosenfeld believe that noneconomic institutions “accommodate” to the economy when noneconomic and economic institutions are in competition. Subsequently, working families mold their family schedule to their work schedules but rarely mold their work schedules to their family schedules. In another reference to family economic accommodation, the authors compare the United States to other wealthy nations, citing mandatory maternity and paternity laws in other countries and the absence of such laws in the United States. Schools also accommodate to economic conditions by scheduling times and creating curriculums aimed at market demands. The polity, in turn, falls to the mercy of businesses who are owed favors after making contributions to political candidates. Governments also need “to create environments hospitable for private investment. If they do not, they run the risk of being literally ‘downgraded’ by financial markets (Messner and Rosenfeld 2001, pp. 70-86).” Finally, the logic of the economy “penetrates” noneconomic institutions. Schools, for example, become businesses in their own rights, competing for dollars and customers. In families, both parents are increasingly becoming breadwinners while the role of homemaker is decreasing among women and not being filled by men. And in government, a bottom-line mentality takes over and businessmen are increasingly seen as viable candidates for political positions (Messner and Rosenfeld, 2001, pp. 70-75), i.e. Ross Perot, Michael Bloomberg, Mitt Romney, Donald Trump, or Herman Cain.

Via such accommodative, penetrating, and devaluing policies, the American Dream assumes a dominant role at all levels of society. However, the end result is not solely an increase in crime for monetary gain. Rather, Messner and Rosenfeld, argue that by eroding institutional power to instill means values, means are justified to achieve any end, not solely those that result in economic benefit.

*“The anomie associates with its cultural ethos; this tends to neutralize and overpower normative restraints generally, and the selection of means for realizing goals of any type, not simply monetary goals, tends to be guided by considerations of technical expediency. The American penchant for owning guns and using them reflects in other words, a more general anomic cultural orientation (Messner and Rosenfeld, 2001, p. 78).”*

In fact, recent work by Messner et al. (2007) focuses specifically on weakened noneconomic institutions in times of economic deprivation and their effect on increases in violent crime rates. In a reevaluation of the predictive powers of institutional anomie theory, the authors focus on Durkheim’s comments on “egoistic individualism,” a pathological departure from the cooperative individualism that Durkheim contended would normally characterize democratic societies. Differing from Durkheim, Messner, Thome and Rosenfeld (2007, pp. 170-172) argue that excessive individualism is increasingly a modern society norm. In such societies, the logic of the market, a logic based on perpetual cost benefit analysis and immediate utility, extends beyond monetary considerations. When such “marketness” takes over, individuals begin to see their interactions with others as a mere means to an end. Under this logic, benefits of hurting another to address perceived humiliations or disrespect, or of violently eliminating competition that may stand in the way of another goal such as sex or power, are seen as legitimate means to this end. Of course, such excessive individualism only occurs when

means values institutions are weakened by the power of the market and marketness (Messner, Thome and Rosenfeld., 2007, pp. 171-173).

When looking at possible method of reducing crime rates, the authors look at both conservative and liberal crime policies and argue that both have failed. Exceedingly punitive, conservative policies have, by increasing the number of persons the system processes, have exhausted the capacity of district attorneys and public defenders to administer justice effectively—with expediency often trumping defendant rights. Furthermore, tougher laws have taken male bread winners away from families weakening their power to instill means values among the young, thereby increasing crime rates (Messner and Rosenfeld, 2001, p. 96).

On the other hand, liberal policies, based on providing society's have-nots with legitimate access to success have also not proven effective. The authors cite Johnson-era programs such as the Mobilization for Youth initiative as an example, noting that while such Great Society programs help reduce poverty, crime rates actually increased during the 1960s and 1970s, paving the way for the get-tough backlash that would eventually ensue. Furthermore, some of the crime increases that occurred in these years may have been result of liberal reforms. As economic opportunity becomes available, the proverbial George Jeffersons of the world leave their poorer communities for better places, taking with them the “skills, resources and modes of conventional behavior that contribute to community stability (Messner and Rosenfeld, 2001, p. 96).”

The failure of both conservative and liberal attempts at crime policy reform, Messner and Rosenfeld argue, stem from an unwillingness to look at how a fundamental element of American culture, the American Dream, contributes to crime. Looking at the

crime problem in that way would make the need for noneconomic institutional reforms more apparent. Such reforms, Messner and Rosenfeld state, should include policies that try to increase the time parents spend with their children and facilitate the interactions with schools and families. In regards to schools, the authors tout policies that will remove the economic logic of educational institutions and rather focus on learning as an ends to itself. When looking at the polity, the authors focus on the creation of youth civic engagement groups. Such public organizations would recruit high school graduates and dropouts during their most crime prone years, engaging them in national service and instilling a sense of service to a greater good than oneself.

The result, the authors imply, would be a reinforcement of means values that would reduce the individualist, anomic pressures of the American Dream. With an extremely expanded budget and recruitment base, governmental organizations such as Americorp could serve such a crime-reducing function (Messner and Rosenfeld, 2001, pp. 95 -105). Messner and Rosenfeld do not depart entirely from Merton's policy solutions and contend that policy reforms directed at noneconomic institutions are only effective when coupled with general welfare supports aimed at maintaining a general level of well being (Messner and Rosenfeld, 2001, pp. 106-107).

Chamlin and Cochran (1995) saw value in Messner and Rosenfeld's work and sought to operationalize at least some of its tenets. The authors reasoned that if Messner and Rosenfeld's theory held weight, then one could hypothesize that improvement in economic conditions would only reduce instrumental crime when noneconomic institutions are also strengthened. Chamlin and Cochran used the level of families below the poverty rate in states to measure economic conditions. To measure noneconomic

institutions, Chamlin and Cochran measured polity, family and church by looking at state voter turn out, divorce rates and religious organization membership and tested the ratio of each to state poverty rates as independent variables affecting crime rates. The results suggested that all three variables reduced the effect of poverty on crime.

Though it is not this paper's main objective to test the validity of institutional anomie theory, Chamlin and Cochran's work does help understand the possible effects that policies directly targeting former offenders can have on crime rates. Such policies directed at persons with criminal records are called "collateral consequences." Again, the term refers to punitive policies that are directed at offenders but often are neither defined as criminal justice legislation nor included in the penal code. Examples of collateral consequence policies include those that bar or limit the access offenders have to employment, housing, franchise, health care and parenting.

How then are collateral consequences related to the value-enhancing, crime-reducing, noneconomic institutions like family, church and polity? This paper hypothesizes that collateral consequences can reduce the ability of those institutions to reduce crime, as the struggle to survive and the anomic pressures of the American Dream take precedence. It is plausible that barring offenders' access to employment, housing, and other welfare benefits can erode family structure. A father who comes out of prison and is barred access to work, a home for his family, or government safety nets to mitigate against these obstacles, may feel pressured to engage in instrumental crime as a means of supporting his family. Or, this same man may find minimum wage employment, requiring him to work two or three jobs to make ends meet, thereby reducing his ability to monitor the behavior of his children or engage them in pro-social activities.

*One source of conflict involves competing demands associated with role performance. Given the fact that time is a finite resource, performing a given institutional role (e.g., working overtime) may preclude performing another role (e.g., taking one's daughter to soccer practice (Messner et al., 2007, 168)).*

It can also be argued that the denial of employment, housing, education and other welfare state benefits to former offenders can decrease the time available to participate in religious organizations and other pro-social activities, as the struggle to attain basic needs takes up an ex-offender's time. Third, collateral consequence policies that bar access to the ballot could arguably discourage participation in the political process, thereby reducing the use of legitimate pathways to seek grievances against government, while anomic pressures prevail.

It must be emphasized that the weakening of noneconomic institutions that collateral consequences can create, at least following the logic of institutional anomie theory, mean that the criminogenic effects of such laws are not limited to recidivism but rather extend to instrumental crime rates in general. Furthermore, employing the arguments this paper made about the collateral consequences' effect on noneconomic institutions and the recent considerations of violent crime and instrumental crimes as potential dependent variables in tests of institutional anomie theory, it can be hypothesized that collateral consequences can effect overall crime rates, violent and nonviolent.

Because of the increase of prisoners, there has been a corresponding increase of persons with criminal records who are released into society and affected by collateral consequences. The following chapters address two major questions. First, how did the public policies that contributed to these increasing incarceration rates come to be? And

second, what has been the effect of these policies on public safety? Policies addressed will include sentencing reform, the War on Drugs, and collateral consequences.

## **CHAPTER 3:**

### **Get Tough Replaces Rehabilitation and Triggers Sentencing Reform**

#### **On the Agenda: The Drive for Sentencing Reform**

One effect of a change in crime policy that took root in the 1970s has been a rising inmate population that has not corresponded to a comparable increase in crime rates (Boggess and Bound, 1997; Western 2006, pp. 43-45). In the realm of criminal justice policy, many scholars argue that a shift in policy paradigm launched the rise in arrests and convictions that drove prison populations upwards (Bushway, Stoll and Weiman., 2007, p. 8; Pager, 2007, p. 2; Petersilia, 2003, pp. 12-23; Gest, 2001) and that a transformation in ideology made this paradigm shift possible (Bushway et al., 2007, p. 32; Griswald and Wiatrowski, 1983, p. 29). The new ideological mindset was expressed by the phrase “get-tough.”

As noted in Chapter 2, Kingdon contends that ideology can shape policy alternatives. Miller (1973, p. 43) also focuses on the effects of values on crime policy and says several tenets represent the core of a crusading, conservative ideology in crime policy. Get-tough’s central tenets include opposition to policies that are “soft” on offenders and practices that favor offenders’ rights over victims’ rights (Miller, 1973, p. 43). The “get tough” movement that these beliefs propelled were expressed in a move from rehabilitative policies towards ones more focused on punishment, deterrence and incapacitation (Bushway, 2007; Pager, 2007).

If one accepts the notion that ideology drives policy, one must also ask how certain ideologies regularly penetrate government's agenda while others have less success. Employing Kingdon's (2003) format, one can hypothesize that a confluence of problems and politics permitted get-tough proposals to move onto government's agenda. Among the earliest get-tough policies to attain agenda status were a series of criminal justice changes known as sentencing reform. These replaced the indeterminate sentencing paradigm, which was characterized by a huge range of judicial discretion and a parole board with great leeway to grant early release. Once the policy window opened, it set a pathway for incremental increases in punitive laws and the development of new get-tough proposals, including the drug war and collateral consequence policies. Many of the most punitive sentencing reform policies would target drug offenders, and most inmates sentenced under these laws would face more collateral consequence policies than any time in history, resulting in the internal ostracism of ex-offenders. Furthermore, as Messner and Rosenfeld have contended, it can be argued that neither the policy paradigm that existed prior to the get tough movement nor the get tough policies that came as a backlash were significantly effective in reducing crime.

### **Before the backlash: rehabilitation**

Criminal justice policies established before the rise of the get-tough movement, if not completely derived from, were in many ways aligned with some of the macro-social theories of crime discussed in Chapter 2. For example, juvenile delinquency was perceived as resulting from "social disorganization (see Chapter 2)," and Richard Cowler and Loyd Ohlin, two anomie theorists, were key members of Kennedy's Presidential Committee on Juvenile Justice and Youth Crime and would impact the types of crime

policy the Johnson administration pursued. The following quote from Ohlin, had one not known the author, could be easily mistaken as Merton's.

*"In a democratic society such as ours, equal opportunity is expressed constantly. The myth of log-cabin-to-president and city-street-to-bank-president is deeply ingrained in us. The trouble comes with the break between aspirations and opportunities. When we lead people to aspire to higher and higher standards and then fail to produce opportunities for them to do so, they are left with a sense of having been denied and they often become delinquents (Ohlin, 2009, p. A28)."*

Influenced by a similar perspective, Kennedy and Johnson-era rhetoric focused on providing economic opportunity access to those who were least capable of "success." The result was a rather holistic focus on criminal justice, in which the goals of the welfare state and that of the corrections system were viewed as different sides to the same coin. "Poverty. Strike poverty down tonight," President Johnson said; "and much of the crime will fall down with it (Gest 2001)." Subsequently, the Great Society programs of the Johnson Administration were both welfare and crime policy, aimed at unearthing the "root causes" associated with crime (Gest, 2001).

The U.S. prison system and sentencing, long before the Kennedy and Johnson administrations, had functioned on a treatment/rehabilitative model, and a 1967 Presidential Crime Commission reaffirmed these principles. The specific rehabilitative theme echoed throughout the commission's publication was Mertonian, defining crime as a "psychologically normal though culturally variant response to bad social conditions (Zalman, 1987, p. 546)."

In the field of sentencing, the Kennedy and Johnson administrations saw no need to change the dominant indeterminate sentencing model, as it was cast in a rehabilitative mold. At the time, every state practiced indeterminate sentencing, which granted judges

considerable discretion when imposing sentence length (in some cases a judge could sentence a convict to a term ranging for between 2 and 20 years). After sentencing, it was up to parole boards to determine when a prisoner was eligible for release; and eligibility was determined by deciding whether the prisoner was considered rehabilitated. To receive a proverbial rehabilitated stamp of approval from the parole board, prisoners would often have to participate in programs of the ilk the Johnson administration's Commission on Law Enforcement and Justice recommended. These included vocational and educational training and work furlough programs aimed at improving prisoners' chances of economic success once released (Zalmam 1987).

### **Problems, proposal, and politics affecting early sentencing reform**

In the mid 1960s and early 1970s, one problem that helped open a get-tough window and pave the way for sentencing reform was a violent crime rate that was climbing steeply. In 1963, the violent crime rate was at 168 per 100,000. By 1978, it had shot upwards to more than 487 per 100,000 (BJS, 2008). Helping draw attention to the concern over crime were a series of racial urban riots that began in the wake of the Civil Rights movement. The first of these occurred on June 18, 1964, just days after Johnson had signed the Civil Rights Act, in response to the New York slaying of a black youth by a white police officer. Whereas racial violence had been frequently perceived as a southern issue, the New York protests kindled a series of other urban riots that famed through New York, Illinois and Pennsylvania that same year. The riots, which continued in Los Angeles in 1965 and in Newark and Detroit in 1967, served as a sharp-relief depiction of the problems of racial injustice and increasing violence in America.

Some helped define the rising violence problem as a consequence of indeterminate sentencing and the rehabilitation paradigm. One influential study was *Nothing Works*, a study by Robert Martinson (1974), who concluded that amid rising crime rates, attempts to rehabilitate criminals were completely ineffective. Mass media latched onto this theme, making criminal justice a focus point. The television news program, *60 minutes*, extremely popular in the 1970s, ran a story on prison ineffectiveness, for which host Michael Wallace interviewed Martinson (Cavender, 2004, p. 341). A search in the Vanderbilt Television News Archives (2010) shows that between 1974, the year Martinson's book hit the press, and 1980, 41 stories on the ABC, CBS and NBC nightly news reports mentioned problems with prisons and sentencing.

While reports such as Martinson's and media attention help define the crime problem as related to indeterminate sentencing or rehabilitation, many political factors would bring rise to sentencing reform. Among them was the 1964 presidential campaign of Republican Barry Goldwater. In response to soaring violent crime, the urban riots, and a public mood shift, Goldwater upped his rhetoric towards "enforcing law and order" and fighting "violence on the streets (Gest, 2001, p. 5; O'Reilly, 1988, p. 93)." Although Goldwater lost, his noticeable effect on voters stirred Democrats to battle crime from their own platform (Gest, 2001, p. 5; Benekos, 1992, p. 4) and host a commission on crime and racial violence in 1968 (O'Reilly, 1988, pp. 104-105). Meanwhile, Republicans refused to be "out-toughed," thereby keeping the crime issue alive long enough for it to spillover into the next presidential election. Then, Richard Nixon gave 17 stump speeches on crime, calling for a toppling of the ideals of the "soft, liberal" Warren

Court (Gest, 2001, p. 15). With Goldwater, Johnson and Nixon giving crime attention, the issue had a bipartisan feel.

The aftermath of the Civil Rights movement also led to support from the left and the right. Calling for an increase in victim's rights, conservatives began to vociferously oppose the 1950s rehabilitation paradigm and the corresponding shift in Supreme Court decisions towards treating offenders instead of vindicating and protecting them (Goodstein and Hepburn, 1985, pp.14-20). The left would join in the fight for victim's rights through increased mobilization among women's rights groups, who soon rallied against unfair treatment of women in rape cases. They argued that courts often gave the perpetrators soft penalties and frequently blamed the victims' sexuality for the crime. Those who fought for rights of the elderly also mobilized, drawing broader public support for victim's rights and tougher laws against criminals (Greene, 2002). Kingdon (2003, p. 150) states that government officials often look towards interest group positions to weigh the balance of support for certain agenda items. The policy makers who looked at interest group activity in the 1970s and early 1980s would have seen broad support on both sides of the political fence for a change in the way the criminal justice system was handling affairs.

The mood of the Civil Rights movements also reverberated in a report by the American Friends Service Committee, a Quaker-based civil rights and anti-violence organization. The AFSC study (1971) concluded that minorities and individuals with low-income generally served longer sentences than others due to judicial discretion, which was deemed capricious and arbitrary. Backing the AFSC's findings was a 1971 study by the Senate Committee on Criminal Law and Procedure, which found that judges

sentenced blacks more often and for longer terms than they did whites. On average, the Senate committee concluded, African American convicts served sentences of more than 4.5 years, while whites served more than a year less in prison (Saint-Germain and Calamia, 1996).

Along with mobilization from groups advocating more rights for minorities, women and the elderly, public sentiment toward crime changed. A 1965 American Institute of Public Opinion (AIPO) poll, which asked respondents whether they felt at risk walking anywhere within one mile of their home, said 17 percent of men and 43 percent of women were afraid. By 1972, the numbers rose to 20 percent of men and 58 percent, while another AIPO poll reported that four out of every five Americans wished the justice system was tougher on crime (Hindelang, 1974, pp. 102-106).

The merger of the problem stream (comprised of increasing violent crime rates and perceived criminal justice unfairness to victims and minorities) with the political stream (comprised of victim and minority right's mobilization along with rising public concern with crime) would open a policy window in the 1980s that elicited a call for proposals. Most of these proposals resulted from scholarly works that began circulating in the late 1960s, when attention to the deterrence model in criminal justice resurfaced, spurring several theoretical works from major scholars, including Franklin Zimring and Gordon Hawkins (1973), Gary S. Becker (1968), and Jack Gibbs (1968). The works of these authors shared several common themes, including a focus on the decision making process of individual actors and the effect of certainty of punishment or level of punishment in deterring current and potential offenders from crime. The focus on the rational process of individuals marked a sharp turn from the macro-criminology of

scholar's like Merton, who studied structural and cultural factors affecting aggregate groups. It is this paper's contention that the focus on crime as an individual choice would complement a Republican emphasis on individual responsibility over collective responsibility. Such a perspective would affect ideas on how policies such as welfare and drug treatment affected crime, and this shift would lead to profound changes in criminal justice policy.

Deterrence-minded theory would have more of an impact on policy alternatives when the works of Martinson and James Q. Wilson (1974) drew media attention. Wilson argued in favor of sentencing structures that would mandate definite time behind bars for most offenders and that increased chances of punishment would deter offenders from recidivism. If not, stiffer penalties would at least incapacitate them from committing crime during their stints in prison or jail. Wilson emphasized the value of punishment over rehabilitation in improving public safety. Among the most conservative reformers, he railed against the Mertonian belief that welfare support was a form of crime reduction, countering that welfare triggered a sense of entitlement, eroded work ethic and led to criminal behavior. Reducing welfare benefits, Wilson posited, would conversely encourage work ethic and reduce crime (1974). For this reason, he wrote, the Johnson Administration's New Society expansions were accompanied by a nation-wide rise in crime rates (Wilson, 1974). Following the *60 Minutes* interview with Martinson, Wilson, also received heavy coverage in *The New York Times* (Wilson, 1974)."

Others wielded influence in the sentencing reform movement. David Fogel, head of the Illinois Law Enforcement Commission, advocated doing away with power of parole boards to release an inmate before a sentence was completed (Bagley, 1979).

Scholar Andrew von Hirsh supported curtailing judicial discretion and eliminating parole boards, while replacing them with a “sentencing structure that would shape and constrain judicial practice” (Greene, 2002, p. 6). U.S. And District Court Judge Marvin E. Frankel, in his book *Criminal Sentences: Law Without Order* (1972) called for a national commission to evaluate the federal sentencing and parole practices of the time and to create rules based on their findings, which Congress would have the power to overrule (US Sentencing Commission Report 2003). Frankel would have the ear of some powerful political figures, including Sen. Edward Kennedy (D-MA), who in 1975 invited Frankel to dinner and thereafter quickly moved to enact some the key provisions in Frankel’s book (Stith and Kohn, 1993). The proposals these academics made influenced sentencing reform proposals that rose to the agendas of various states and the federal government. In their attempts to increase sentence length, decrease disparity, and reduce parole or judicial discretion, the new policies marked a fundamental move away from the rehabilitative ideal in criminal justice.

Determinate sentencing was among the first sentencing reforms proposed and eventually adopted. Aligned with Fogel’s recommendations, such reforms generally strip the power of parole boards to decide whether prisoners are qualified for early release (Stemen and Renfigo, 2010, p.11). The reforms also ensure that inmates, via a good-time credits system, serve a certain percent of the sentence judges impose before qualifying for parole (Stemen, Renfigo and Wilson, 2010, p.18). Since the beginning of the sentencing reform movement, 17 states have enacted some form of determinate sentencing (Stemen, Rengifo and Wilson, 2006, p.12).

Structured sentencing reform, which shows Frankel, Wilson and Von Hirsch's influence, reduces judicial discretion to determine sentence length. Forms of structured sentencing include presumptive sentencing guidelines and voluntary sentencing guidelines. Presumptive sentences legislatively recommend single prison terms for each of a state's various felonies. A judge may depart from the recommendation only under extenuating circumstances (Stemen and Rengifo, 2010, p.7). Voluntary sentencing guidelines are similar in nature to their presumptive counterparts except that voluntary sentencing guidelines allow judges more leeway to depart from the recommended guidelines (Stemen, Rengifo and Wilson., 2006, p.16). Nine states have implemented some variation of presumptive sentencing. And the federal government has enacted sentencing guidelines, which Frankel's work significantly influenced (Stith and Kohn, 1993).

Mandatory sentences address particular crimes and generally try to control a judge's ability to decide whether an offender will go to prison and for how long (Goodstein and Hepburn, 1985, pp. 29- 30). However, forms of mandatory sentencing can vary drastically. Some states require judges to order prison time for particular offenses, while leaving sentence length up to the judge; others mandate higher sentence ranges, which the judge must choose from; and others stipulate precise sentencing length for particular crimes, for example, 10 years for crack-cocaine possession. Since 1975, every state has enacted some sort of mandatory sentencing (Stemen et al., 2006). Three Strikes legislation, which this chapter shall soon address, is a form of mandatory sentencing.

### **Summary of early sentencing reform's rise to the agenda**

Quickly reviewing the agenda setting process for early sentencing reform, one can see the streams system at work. Problem and political streams merged to create a window during the 1980s for reform proposals that had been circulating since the mid 1970s. In the problem stream, high crime rates were a factor, while scholars and the media helped define the problem as related to the indeterminate system, the principle of rehabilitation, the system's unfair treatment of minorities, and insensitivity to victims. Factors at work in the political stream included attention to the matter in presidential campaign rhetoric and interest group pressure from the left and the right for reform. Public opinion was also a factor, as Americans increasingly said they felt less safe and wished crime laws were tougher. This may have been the result of media attention to crime and prison system problems. Such coverage increased significantly in the years leading up to reform. As it became politically necessary to deal with the problem of crime, policy makers drew from already cultivated reform proposals from scholars like Fogel, von Hirsh, Martinson and Wilson. Such proposals were also popular because of media attention.

It is of note that the media played a role in problem, political and proposal streams, a theme that recurs in this paper's other case studies. Another theme that all the case studies have in common is the presence of a tougher mindset in crime legislation and dwindling support for rehabilitative crime policies based on the works of scholars like Merton. Instead, policies from micro-economic perspectives that focused more on individual choice than macro-social factors began to gain favor. The impact of this change in crime policy will be further discussed in this chapter.

## **Later Sentencing Reform: Truth in Sentencing**

Despite prison overcrowding and heavy media attention to the issue (Vanderbilt Television News Archives, 2010), the three streams would again merge to bring about other sentencing reform policies that favored even tougher approaches, helping to cement the concepts of punishment over rehabilitation as a criminal justice standard. The first of these policies this paper shall examine was the federal legislation known as Truth in Sentencing. The phrase was actually coined in the 1980s during a brain-storming session of conservative Republicans, including Newt Gingrich of Georgia and Dan Lungren of California. The two men came up with the phrase during a push for the federal sentencing reforms of 1984 mentioned above (Gest, 2001, p. 201). Recognizing the importance of a politically savvy slogan, the men sought a phrase that would steer the debate towards their purpose (Gest, 2001, p. 201). The phrase would help get the 85 percent provision for federal crimes in the 1984 act through Congress, but criminal justice reformers, who saw continuing problems with the system in states, adopted the phrase when attempting to pass similar reforms on the state level.

Helping to spread the truth in sentencing concept was Robert James Bidinotto, who published a very popular and award-winning article entitled “Getting Away with Murder (1987).” The article focused on convict Willie Horton, who committed a series of violent crimes during his escape from a prison furlough program. Using Horton’s image, Bidinotto argued that violent crime was on the rise because of a soft justice system that implemented reintegration techniques that did not work, such as parole, probation, halfway houses, good time credits and early release. George Herbert Bush’s team successfully used Bidinotto’s Willie Horton image in the presidential campaign against

Michael Dukakis (Greene, 2002). Bidinotto's and Bush's arguments were supported by a significant increase in violent crimes between 1985 and 1988 (Bureau of Justice Statistics, 2010).

Ironically, a rise in prison populations during the 1980s and 1990s helped open a window for the spread of state Truth in Sentencing policies (Driessen and Durham, 2002, 626; Gest, 2001, p. 203). To deal with overcrowding, states had begun to incorporate early release policies (Greene, p. 11), resulting in criticism that prisoners were not serving enough of their terms. Criticism increased in the last years of the first Bush Administration, when Attorney General William Barr (1992) cited Department of Justice statistics that said offenders only averaged 37 percent of their sentence behind bars. Barr (1992) had similar criticisms to Bidinotto and cited 24 recommendations for reform. Once Barr left his post due to a change in administration, the conservative think tank, the Heritage Foundation, re-popularized his report in an attempt to label the Clinton administration as soft on crime. The Heritage article cited Barr's 37 percent figure, criticized the early release mechanisms that led states to release prisoners early and used the phrase "truth in sentencing" when concluding that states should enact one of the same provisions used by the federal sentencing guidelines—that prisoners be required to serve at least 85 percent of their sentences (Cary, 1993). As the rallying cry for Truth in Sentencing increased, proponents pointed to violent crime figures that were on rise, intensely increasing between 1990 and 1994 (Bureau of Justice Statistics, 2010). The Heritage Foundation would also argue for the creation of more state prisons (Cary, 1993), and these recommendations would shape major Republican stipulations that would be introduced into the 1994 crime bill.

Several political factors supported the policy proposals of Biddinito, Barr and the Heritage Foundation, including the mobilization of the American Legislative Exchange Council (ALEC), an organization that lobbies for conservative policy, and the National Rifle Association, which added to the prevalent pressure on Democrats to take a tougher stance on crime (Greene, 2002). The political climate was particularly favorable for the Heritage Foundation recommendation after Clinton used a get-tough platform to win his campaign against President Bush, and Republicans could spin the absence of TIS from the agenda as a Clinton administration failure to keep its promise to address crime (Greene 2002). Other prominent Democrats, such as Sens. Joseph Biden (Delaware) and Bill Schumer (New York), saw the coupling of a Democratic president and Congressional majority as a chance to steal the crime-policy thunder Republicans had wielded since the 1960s (Gest, 2001). The Democrats' leverage in the White House and Capitol Hill was complemented by public opinion, as most Americans now considered crime the nation's most important issue (Carroll, 2005). The media likely played a role here, as news shows from the three major networks, ABC, CBS, and NBC, which in the 1990s accounted for 54 percent of the television news market, steadily increased their coverage on crime. Between 1991 and 1994 the amount of crime news the "big three" networks covered tripled (Turner, Fain, Greenwood, Chen and Chiesa, 2001). As a result of these factors a crime bill window opened. The final version of this bill was \$32.5 billion piece of legislation, of which \$9 billion went for new police officers, \$7 billion for crime prevention programs, and \$10.5 billion for new prisons, while much of the remainder went to gun control and crime prevention programs (Chernoff, Kelly and Crogger, 1996). Though Congress passed the bill and Clinton signed it, political

conditions that would affect the new law in general and TIS in particular were still present. Although the Democrats could call the new law a triumph, Republicans had also scored a few significant victories. For one, the Violent Offender Act was not popular. Republican attacks on prevention programs and gun laws in the bill seemed to successfully affect public opinion. Opinion polls that had redefined Democrats as more competent than the GOP on crime control, had, by the bill's passage, returned a Republican advantage (Withlin Group, 1995). Second, the right-wing political mobilization that had taken shape during the crime bill debates would remain intact for the 1994 Congressional elections. During the elections, the NRA and Republicans, under the slogan, "Contract with America," focused on the crime issue and supported changing the prevention elements of the 1994 crime bill (Seelye, 1995).

The tactic worked well for Republicans, who in 1994 won a landslide Congressional victory that gave them control of both houses. By February of 1995, House Republicans moved to toughen the crime bill by eliminating Democratic provisions and granting more funds to Republican priorities (Seelye, 1995). By 1996, Congress had amended the 1994 act to increase VOITIS grants for prison construction by \$10 billion (Turner et al., 2006, p. 364) and narrow the qualification standards for the grants. In 1994 states had to demonstrate that their laws required serious, repeat violent recidivist and drug convicts to serve 85 percent of their sentences (Sabol, Rosich, Kamala, Kirk and Dubun., 2002, p. iii). By 1996, states were required to promise that within three years all violent offenders and drug convicts would serve at least 85 percent of their sentence (Sabol et al., 2002, p. iii).

**Summary of Truth in Sentencing.** The concept of Truth in Sentencing, which required that felons complete at least 85 percent of their sentence, had been existent in the proposal stream since the move for sentencing reform in the early 1980s, when it was passed as part of federal legislation. However, most crime policy is state implemented, meaning this proposal would have its greatest impact once it became a state staple. Activity in the problem and political streams helped facilitate the move to make the 85 percent standard state law. The problems that stirred more interest in TIS were increasing crime rates and prison overcrowding, which states tried to solve by using early release measures. The problems such early-release measures posed were brought to front stage by Bidinotto in his article on Willie Norton and by candidate Bush in his campaign against Dukakis. Barr's article, which noted that the average offender served 37 percent of his sentence, kept the issue alive during Clinton's presidential campaign, thereby stirring up the political stream. Because Clinton had promised to be tough on crime, interest group mobilization from the heritage foundation, the NRA and ALEC were able to create the pressure needed to open a policy window for TIS reform.

Also discussed briefly was the role of the media, which had intensely increased its coverage of crime. This increase in coverage was partly stimulated by a few heinous homicides, including the murder of a young girl named Polly Klaas. In addition to its indirect effect on TIS, the homicide would affect the sentencing policy phenomena known as Three Strikes, our next topic of discussion.

### **Three Strikes**

As federal legislation moved to make sure that convicts spent more time in prison, many states had already begun to implement reforms aimed at increasing sentence

length— even without the TIS 85 percent requirement. In the 1990's the most famous and politically symbolic of these state laws was the sentencing reform movement known as "Three Strikes and You're Out." Beginning in Washington state and California, three strikes quickly spread to other states and the federal government.

John Carlson, a right-wing Seattle television political commentator, was the first to come up with the term "three strikes (Jones and Newborn 2006)." Carlson, like many conservatives, believed that crime increases when criminals do not fear the law, reasoning that more punitive penalties would reduce crime by increasing fear of legal consequence. Criminals who were not deterred, he argued, would at least be incapacitated from committing other crimes against the public while they served their punishment. Under Carlson' plan, which he proposed in 1988 on a local news show, a person convicted of two serious crimes would have to serve a mandatory lengthy sentence (Jones and Newborn 2006, 783). A third offense would result in a life sentence with no chance of parole (Gest, 2001, 190). The three strikes proposal was not entirely new. Habitual offender and mandatory sentencing laws have long existed in the United States. However, where habitual offender laws generally applied to repetitions of a certain type of crime, proposals in the threes strikes mold intensely increased prison sentences for repeat offenses of any type of felony. Eventually, Washington would be the first state to pass a three strikes law (Vitello, 1997).

In California, a sensational murder birthed the three strikes proposal in 1991, when a released convict, desperate during a botched robbery attempt, killed 18-year-old Kimberly Reynolds (Saunders, 2008). Outraged that the perpetrator was a career criminal who under tougher laws would have been incarcerated the day of the murder,

Mike Reynolds, the victim's father, teamed up with Fifth Court of Appeals judge James Ardaiz to formulate a proposal for a California three strikes law (Vitiello, 1997, p. 411). The proposal went as follows: A person convicted of a serious or violent crime as defined by California statute is listed as having one strike. On the condition that a person has a first strike on record, a conviction for any subsequent felony would be deemed a second strike. Second strikers must serve twice the sentencing term that is listed for an offense and are ineligible for release until serving at least 80 percent of sentence. Finally, an additional felony conviction of any sort would constitute a third strike, earning the convict 25 years to life imprisonment, for which 80 percent of the sentencing term must be served (California Three Strikes and You're Out Criminal Sentencing Measure of 1994).

At first it seemed that the political climate needed to launch three strikes was absent. In California, the bill had two major interest groups on its side, the NRA (Zimring, Hawkins and Kamin, 2001) and the California Peace Officer's Association—a prison guard union that would benefit from prison expansion and had successfully supported candidates who voted for measures that increased corrections budgets (Macallair, 1994). However, when Bill Jones, a Fresno assemblyman, sponsored Reynolds and Ardaiz' draft in 1993, it quickly died in committee (Vitiello, 1997, p. 412). Although Reynolds claimed he would circumvent the legislature by way of public referendum, it seemed unlikely the initiative would succeed (Zimring et al., 2001, p. 4)

The tide changed after a child's murder breathed new life into the floundering initiative. On a haunting October day in 1993, a two-time violent felon abducted 12-year old Polly Klaas from her Petaluma home during a slumber party while her mother slept

(Zimring, 2001; Vitiello 1997; Gest, 2001). The kidnapper repeatedly raped Klaas over the course of a month before strangling her to death (Zimring, 2001). The brutal and dramatic murder would create the perceived social problem, for which immediate policy response was needed. The crime provided an enthralling story and received international media coverage as the public became consumed with Mr. Klaas' search for his daughter's body. There was repeated coverage on major news networks. There were publications in the *Washington Post*, *The New York Times* and other popular newspapers and magazines. The television show *America's Most Wanted* televised the Klaas' hunt for their missing daughter, and nightly news reports followed suit. From October 2009 to October 2010, ABC, CBS, and NBC referenced the Klaas story 28 times on their prime time national news programs (Vanderbilt Television News Archives, 2010), and the crime eventually received international attention (Wood, 2005, p. 5).

Media focus on Klaas' death occurred at a time that crime news coverage was increasing nationwide in all media forms (see section on TIS). In addition to Klaas' murder, the media also heavily covered the infamous crimes of Joe Refkin and paid much attention to the Menendez brothers' killing of their parents (Patterson, 1998, p. 60). The effect was a definition of crime as a rapidly increasing problem. The spike in crime coverage was particularly felt in the realm of television news. Television crime stories on the big three networks, ABC, CBS and NBC, doubled between 1992 and 1993, and would steadily and steeply increase for next few years, making it, by far the decades most popular television news subject (Center for Media and Public Affairs, 1997).

The rise in crime was not only a media-driven perception, however, as violent crime had shown steady increase since 1989 (BJS 2010). Even though violent crime

increased steadily between 1989 and 1993, U.S. violent crime rates began to decline the following year, a trend that continued through most of the millennium (Bureau of Justice Statistics, 2010). The crime drop was, however, too late to change public perception. While in the 1980s, at most 5 percent of Americans believed crime was the nation's biggest problem, by early 1994 more than 40 percent of Americans thought so (Patterson, 1998).

The focus on Klaas' murder had an immediate and measurable effect on support for Reynolds' three strikes proposal. A state-wide poll tallied months after Klass's death and her family's search for her body, said 84 percent of Californians supported the three strikes measure (Harrison, 1994). The crime and the media attention it garnered also came at a crucial political moment for the state's executive in chief, providing a booster shot for Gov. Pete Wilson's anemic ratings in the polls. In late 1993, Wilson's approval rating had sunk to 15 percentage points, and he was behind his challenger, Democrat candidate Kathleen Brown, by 17 percentage points (Jacobs 1994). To counter that problem, he had decided to make crime the major focus of his 1994 campaign.

Riding that month's wave of public anger and media attention, Gov. Wilson called for a special legislative session on crime and backed a three strikes solution to the problem during his State of the State Address, for which the Klaas family was camera ready (Gunnison and Lucas, 1994). And in March 1994, at Poly Klaas' funeral, he restated support for Mike Reynolds' version of the three strikes law (Zimring et al., 2001, p. 6). By springtime, after signing three strikes into law, Wilson had slashed Brown's 17-point lead in the polls to six and would, in the end, win reelection (De Lama 1994).

Despite the Bill's passage, Reynold's would push to have the bill also made law by popular referendum (Zimring et al., 2004).

Reynolds, like Gov. Wilson, was able to use Klaas' death for his political cause. When the child's body was found, the voices of Mike Reynolds and other crime victim advocates flooded the radio talk shows of California's most populous cities (Gest, 2001, p. 193-194). Reynolds, a true policy entrepreneur, was also able to attain and publicize Polly Klaas' father's signature on his ballot initiative (Vitiello, 1997, p. 412). The effect of Polly Klaas' death and her family's support was startling. Before the child's murder, there were but 20,000 signatures for Reynold's initiative, but after her body was found there were over 50,000 (Vitiello, 1997, p. 412). As result of Reynold's work, the three strikes initiative was passed by referendum after it was already signed into law. In California, a two-thirds majority in the state assembly is needed to repeal laws passed by referendum.

The governor's campaign and the ballot initiative triggered a reactionary transformation in the Democratic Party, which, following Clinton's example began to take a tougher stance on crime. Influencing the change were defeats of some longstanding Democrats in states and cities where crime was a dominant political issue. In November 1993, Virginia Gov. Mary Sue Terry, New Jersey Gov. James Florio and New York City Mayor David Dinkins, all Democrats, lost races in which the top campaign issues was crime (Lambro, 1993). These losses came a few years after Bush soundly defeated Dukakis with a campaign that successfully labeled the Democratic candidate as a criminal coddler (Peters, 2004, p. 414). Pretty soon, Democratic analysts began calling for a new stance on crime (Lambro, 1993), not just for California, but for the nation.

Quickly, high profile Democrats in the nation increased party support for three strikes. Among these party members, was President Clinton, who gave blessing in his State of the Union address for a three strikes federal law (Clinton, 1994). Back in California, Democrat gubernatorial challenger Kathleen Brown, in her battle with Wilson to define herself as a tough-on-crime candidate, also had given rhetorical support to three strikes legislation (Hamilton, 1994). As prominent candidates backed the legislation and media coverage of three strikes movements in other states increased, the proposal gained popularity. Indeed, the term “three strikes” eventually became so popular that by August 1994 half of states had introduced some sort of mandatory-sentence provision under the three strikes moniker, and half of these states did so with bipartisan support (Lambro, 1993).

**Summary of Three Strikes.** In the case study of three strikes, there is additional support for Kingdon’s contention that proposals do not open windows but factors in the political and problem streams do. Klaas’ murder and intense media coverage of both the homicide and other violent crimes helped draw focus to rising crime rates and existent proposals to fight the problem. In the political stream, Reynolds and other policy entrepreneurs used the attention given the crime problem to push for three strikes reform as did the NRA and the California peace Officer’s Union. Other major political factors included: overwhelming public support for three strikes; the California gubernatorial campaign, in which both contenders stated support for three strikes; and state pressure to appear tough on crime. The existence of similar pressures on a national level would eventually allow for the spread of three strikes legislation to the federal government and 26 states.

## **The Impacts of Sentencing Reform on Incarceration Rates**

Scholars differ in their opinion of sentencing reform's effect on incarceration rates. After reviewing reforms from the 1980s, many claim that sentencing reform legislation has sent offenders to terms that are longer than in most nations. These longer terms, they argue, have driven prison populations upward (Blumstein and Beck, 1999; Casper, 1984; Joyce, 1992; Mauer, 2001; Zimring and Hawkins, 1991; Tonry, 1991). Indeed, prison populations during the 1980s, the time in which early sentencing reform shifted into gear, more than doubled from about 400,000 inmates in 1980 to more than 1 million in 1989— from .2 percent of the overall U.S. population to .4 percent (BJS, 2010).

However, a Bureau of Justice Statistics study (Langan, 1991) notes that even though such reform movements have spawned tougher sentencing legislation, in practice, the average length of time to which convicts were sentenced did not increase between 1980 and 1986. The BJS study concludes that the lack of actual time-served increases in those years suggests that sentencing reform (with the exception of those reforms that coupled with the War on Drugs), had little, if any, effect on prison populations. Instead, the 1991 BJS study says spikes in the number of prison sentences granted per arrest and increased re-incarceration for parole violations explain most of the rise in prison populations (Langan, 1991).

However, the BJS study's linking of incarceration rates to arrests and parole violations could also be interpreted as resulting from sentencing reform. As mentioned in Chapter 3, one of sentencing reform's main aims— mandatory sentencing, sentencing guidelines and presumptive sentencing, in particular— was to strip judicial discretionary

power. Reform made it much more difficult for judges not to sentence offenders to prison upon convictions. Supporting the notion that sentencing reform lead to incarceration increases, a Cato Institute study (Kopel, 1994) concluded that about 60 percent of prison growth between 1974 and 1990 were due to prison commitments for convicts who would have in earlier times been sentenced to some sort of probation.

By focusing solely on the number of offenders sentenced under lengthier sentencing laws, the BJS study also ignores the intervening effects such laws can have on plea bargains. Several studies have noted that stiffer get-tough sentencing indirectly increases the ratio of incarcerations per arrests, as prosecutors use the threat of enhanced sentences to deter defendants from seeking trials and to motivate plea bargains (Lynch, 2011, Abrams, 2010, Stemen et al., 2006; McCoy, 1993). Examining the influence of sentencing reform on incarceration rates in this manner shows consistency with the BJS study's conclusion that the incarceration boom in the 1980s was the result of increased incarceration per arrest.

Similar conclusions can be drawn when examining the effect parole violations have had on prison populations. As mentioned in Chapter 3, one of the main tenets of determinate sentencing reform was to do away with the power of parole boards, which in the era of indeterminate sentencing were tasked with rehabilitative duties such as deciding when prisoners were ready for parole and helping them reintegrate into society. When reformers curbed parole board power, their duties shifted from reintegration and towards surveillance, which increased violations (Lynch, 2011; Caplan, 2006; Petersilia, 2003). Most offenders who have been re-incarcerated for violating parole or probation have not returned to prison or jail for new crimes. Instead, probationers and parolees

frequently return to prison for technical violations—failing to provide an address, employment or make parole appointments, for example (Lynch, 2011; Caplan, 2006; Langman, 2001). Before the determinate sentencing movement, indeterminate sentencing laws charged boards with preparing inmates for release and seeing that they developed plans for reintegration that parole officers would help them achieve. Arguably, the focus on percentage of ‘time served’ as the only source of release from prison and the stripping of reintegration parole programs within and outside of prisons have subsequently helped skyrocket the number parole violators returning to prison (Caplan, 2006).

While the BJS study could find little direct correlation between, sentencing reform and incarceration rates, a more recent and far more comprehensive 50-state study by Stemen et al.(2006) examines the combined effect of determinate sentencing (which focuses on when inmates are released) with sentencing enhancing measures such as mandatory sentencing or sentencing guidelines (which constrain both judicial discretion to demand prison time as well as how long a convict sentenced under the law will serve). Stemen et al. (2006, p. 150) determined that the combination of determinate and voluntary sentencing guidelines significantly increased prison populations and prison population *rates* in most states. Furthermore, states with more mandatory sentencing laws yielded higher incarceration levels than other states.

While early sentencing reforms impacted the contributions parole violations and prison sentences per arrest have had on rising prison populations, later reforms like TIS seem to have impacted the length of time served and imprisonment rates for violent crimes that the legislation sought to address. For example, Turner et al. (1999) concluded that VOI/TIS funds for increased prison construction raised admission rates for violent

crimes in 1996. A BJS report (1999) backed the Turner et al. study, noting that between 1990 and 1997, 50 percent of prison population growth was related to increases inmates admitted for violent offenses—the very sort of offenses TIS sought to address. Furthermore, between 1990 and 1997 most of the prison growth in incarcerated violent offenders was due to increases in sentence length. The 1999 BJS study said this increase resulted from TIS laws between 1994 and 1997 requiring state offenders to serve at least 85 percent of their sentence (Ditton and Wilson, 1999). After states adopted TIS legislation, the 1999 BJS report noted that “about 70 percent of prison admissions for a violent offense in 1997 were in TIS states.” Other studies note that because TIS reforms were implemented at a time when violent crimes were statistically on the decrease, the impact could be much more dramatic if or when violent crimes begin to increase again (Sabol et al., 2002).

Chapter 3 discussed the relationship that early release valves had on TIS reform. The chapter noted that a window for TIS reforms opened following high profile crimes by offenders who prisons released early due to inmate population control efforts. Once enacted, VOI/TIS grants helped new prison construction become the standard policy tool for alleviating prison overcrowding. Lynch (2011, p. 679) contends that TIS was too short lived to have a huge impact on admission rates and cites evidence suggesting that, before and after TIS, prison construction had become the *de rigueur* alternative for litigation stemming from prison overpopulation problems.

Among the sentencing reform strategies discussed in Chapter 3, a significant body of work suggests that Three Strikes is the measure least directly related to the nation’s prison boom (Zhang, Maxwell, Vaughn and Michael, 2009; Stemen et al., 2006; Shultz,

2000; Turner et al., 1999) in states that adopted such laws. There is a possible exception made for California, for which the studies' results were mixed (Schiraldi, Colburn and Lotke, 2004). One reason for the lack of impact was that many states that adopted three strikes laws already had habitual offender laws in place, making three strikes provisions superfluous (Stemen et. al., 2006). Furthermore, either due to law enforcement, prosecutor or judicial decisions, most states rarely enforced their three strikes laws. However, three strikes legislation can impact admission rates by pushing more defendants toward plea bargains (Stemen et al., 2006).

### **Impact on Crime.**

The key measure of crime policy is its impact on crime. Chapter 3 noted that many sentencing reform advocates believed tougher laws would help reduce crime by deterrence or incapacitation. As a result, there is a body of research that tries to determine whether sentencing reform, or the at least indirectly resulting incarceration increase, had deterrent or incapacitation effects on crime.

Incapacitation is the idea that crime reduction occurs when imprisonment bars inmates from endangering public safety. A few studies that focus on incapacitation look at the percentage of crimes that released offenders commit. The idea here is to calculate the crime reduction that would happen were those offenders in prison at the time of their crimes. For example, Owens (2009) examined incapacitation effects of decreases in sanctioning requirements after Maryland reduced the severity of sanctioning guidelines against 22-24 year olds with juvenile records by an average of 222 days. The study found these offenders committed an average of 1.4 to 1.6 serious crimes during the 222-day period in which they would have otherwise been imprisoned. Similarly, (Defina and

Hannon (2010), after conducting a regression on state level panel data from 1978 to 2003, concluded that communities do exhibit crime reducing benefits from having criminals locked up. However, where Owens (2009) focuses on the notion that a one year increase in the sentence of Maryland's offenders would reduce crime, Defina and Hannon approach their research more deeply by additional attention to the impact on crime once offenders return to their community. The authors conclude that the benefits of incapacitation quickly deteriorate once prisoners return to their community. The increases in crime, Defina and Hannon conclude, are the result of the criminogenic stigma of a felony record and the prison experience itself.

Among the studies searching for a deterrent effect is Zimring et al's (2001) research on California's three strikes law, which tested for conspicuous changes in felony reduction trends after the state enacted the law. They concluded that third strike sentences in California have no deterrent effect but found a small 2 percent crime reduction among individuals with second strike offenses. Building on Zimring's work, Helland and Taborak (2007) drew similar conclusions after comparing felony recidivism rates between individuals with offenses that were or could be sentenced as first strike and individuals with an offense that were or could be sentenced as a second strike. The study found a 20 percent drop in crimes among individuals with, or eligible for, a second strike offense. The Helland and Taborack study found that offenders with, or eligible for, a third strike had no reductions in crime. The authors conclude that the reduction in crime was not worth the financial costs of incarcerating third strike offenders for 20 years or more and recommended a shift of resources from prison to policing in order to focus more on the deterrent effect on punishment certainty as opposed to punishment severity.

Durlauf and Nagin (2010), after conducting an exhaustive review of the literature on sentencing enhancements and deterrence, conclude that though deterrence policies should comprise a portion of crime policy, there is little evidence that increases in severity of punishment has deterred crime. The authors agree with Helland and Taborrak's (2007) support for shifting prison funds to increase police presence, under the belief that visibility of police, not necessarily enforcement, would have a more certain impact on crime reduction. The authors also recommend the inclusion of psychological and sociological perspectives in deterrence based research and serious consideration of the fact that psychological and sociologically influenced research has shown incarceration to have criminogenic effects.

Literature supporting the notion that incarceration can be criminogenic, argue this idea from various points of view. Studies focusing on the effect of specific sentencing reform measures note that three strikes sentencing laws can have lethal consequences, including city homicide increases of 12 to 14 percent in the short term and 16 to percent in the long term when compared to cities without the law (Kovandzic, Sloan, and Vieraitis 2002). The authors employed a rational choice model to argue that offenders facing a third strike would kill witnesses or police during the commission of a lesser crime in an effort to avoid the steep legal penalty. There is also the notion that long-term incarceration is criminogenic because prisons are "schools for crime (Steffensmeier and Ulmer, 2005)" and that released offenders may harbor resentment toward society and become more deviant (Matsueda, 1992). Another argument is that criminal records can marginalize offenders to a deviant out-class, where their socialization leads them to reoffend (Bernburg and Krohn, 2003; Pager, 2007; Sampson and Laub, 1993). An

alternative theory holds that barriers to conventional resources (employment, housing, family) cause ex prisoners to seek alternative means of income and solace, i.e. property crimes and drugs (Western 2002; Western, Kling and Weiman, 2001; Nagin and Waldfogel, 1995; Freeman, 1996; Waldfogel, 1994;, Sampson and Laub, 1993). There is also the contention that though incarceration can reduce crime, the effect functions on a bell curve that prison population controls. In other words, incarceration reduces crime until prisons get crowded.

More pertinent to later research that this paper can employ is the literature valuable to the development of Institutional Anomie Theory (IAT). Surprisingly, there has been very little IAT research done on the effects of incarceration on crime. However, Rosenfeld and Messner (2009), in an evaluation of the status of institutional anomie theory, suggest that mass incarceration is indicative of a society in which there is less of a collective interest in maintaining the interest of the individual. The implication, here, is that such incarceration-increasing policies are the result of increased market permeation of every day life and a highly anomic social order. Since high states of anomie and market permeation of everyday informal institutions such as family, education, and civic life are deemed by IAT to be criminogenic, then one can deduce that, from an IAT perspective, mass incarceration can be considered criminogenic as well. Some research points to a similar conclusion. For example, Clear (2008) concluded that the extraction of men and women from communities does damage to their family, labor markets, political and economic infrastructures. From an IAT perspective, this could mean a weakening of informal institutions such as families and civic groups to thwart the criminogenic effect of anomie.

**Summary of the impact of sentencing reform.** A review of the literature on the impacts of sentencing reform on incarceration, suggests that these policies have indeed contributed the nation's incarceration boom. However, the impact of sentencing reform may not be direct, as plea bargaining and a shift in parole from a rehabilitative role to a monitoring function may intervene to increase the number of commitments to prison per arrests.

If we are to conclude that sentencing reform has led to the dramatic prison population increase, then it is important to understand what the effect of incarceration has been on crime. Despite the precipitous drop in crime of the 1990s, the jury is still out as to whether this was the result of incarceration, as the economy, law enforcement presence, structural shifts in the crack-cocaine war, the aging of the population, and abortion have all been provided as alternative reasons (Levitt, 2004). Even studies that do point to incarceration as a reason for the decrease in crime, question whether the financial costs are worth it, while hypothesizing that the crime-reduction returns are diminishing.

Furthermore deeper bodies of work focus on the positive effect incarceration can have on crime once prisoner's return. These criminogenic impacts have been attributed to the stigma of a criminal record, being barred from resources, learning criminal ways of thinking while in prison, or through weakening of informal social institutions. Similar effects have been attributed to the War on Drugs, the subject matter of the next chapter.

## **CHAPTER 4**

### **The War on Drugs**

U.S drug laws have existed since the late 1800s in states and localities that sought to slow down sales of opium, cocaine and marijuana (Gray, 2001, p. 20). On a federal level, attempts to regulate drugs that are today outright illegal began with the Harrison Act of 1914, which aimed to prevent physicians from prescribing addictive drugs and, raised the maximum sentence for drug violations from two years to five, beginning a trend towards increasingly punitive drug policies (Boyum and Reuter, 2005, p. 5). The Johnson and Kennedy administrations saw the beginnings of increased national attention to street drugs that would erupt during the Nixon administration and again during the Reagan years. However, ideas mulled about in academic circles often followed a rehabilitative model. An example of the sort of policy ideas under discussion in the Johnson era proposal stream was a study by Vincent Dole and Marie Nyswander, which argued that administering doses of methadone satiates cravings for heroin but allows addicts to remain functional. The researchers reported that 40 percent of the addicts treated in this manner at a Chicago hospital either maintained employment or were in school, while all patients refrained from crime (Berquist 1966, p. A8).

The drug/crime issue came alive during the Johnson years partly because Republican presidential candidate Barry Goldwater (see Chapter 3) had campaigned on law and order, thereby pressuring Johnson to address crime after he won the election. The result was the 1968 Omnibus Crime Act, which among other things, sought new means of

combating increased drug use. Drug enforcement policy in the 1968 act focused less on punishing users than finding means to prevent the inflow of illegal drugs to the nation (Whitford, 1971). The commission had also taken a rehabilitative and prevention-oriented outlook towards the drug problem, as it had in other areas of crime policy, recommending increased medical and psychiatric services, improved housing, employment and welfare benefits, as well as decreases in the enforcement of drug policy as solutions (Gest, 2001).

### **Winds of War**

When Richard Nixon declared a “War on Drugs” in 1971 (Boyum and Reuter, 2005, p. 5; Gray, 2001, p. 27)), the phrase would stick, serving as a recruiting slogan under which future policy makers would enlist a host of tough, anti-drug policies. While Nixon presidential politics would help bring the War on Drugs unto the agenda, the war’s decisive turn towards a more punitive stance began during the Reagan years. The greatest drug policy changes during the Nixon years occurred in the proposal stream.

During Nixon’s presidency, illegal drug use among the country’s more educated young adults was perceived as an increasing problem. In 1967, only 5 percent of college students said they had tried marijuana, but that number jumped to 51 percent by 1971, according to Gallup Polls (Robinson, 2002). Similarly, in 1967 only one percent of college students interviewed said they had tried LSD or other hallucinogens, while by 1971 18 percent of the student body claimed they had tried the drug (Robinson, 2002).

As drug use increased, scholarly studies and media coverage focused on a perceived correlation between student drug use and campus protests, raising the urgency of addressing the drug problem because social upheaval among college students had

become a top issue (Shulman, 2008). By 1970 a national poll revealed that intensity of college protests had increased to one per day (College Protest Rate is One a Day: Poll, 1970). The issue of social upheaval in general was particular on the public mind due to Vietnam protests, campus riots, the civil rights movement and the assassinations of President John F. Kennedy, Robert Kennedy, Martin Luther King Jr. and Malcolm X. One influential article framing the problem of campus unrest as a drug issue was published in *The Journal of Health and Social Behavior*. Entitled, “the Hang-Loose ethic and the Spirit of drug Use (Suchman, 1968),” the article directly correlated drug (mostly marijuana) use and the likelihood of students who opposed the “traditional established order (Suchman, 1968, p. 146).” Nixon, speaking at South Dakota library dedication in 1969, expanded upon this sentiment, implying that a link between drugs and social upheaval was destroying society’s moral fabric.

*“We live in a deeply troubled and profoundly unsettled time. Drugs and crime, campus revolts, racial discord, draft resistance? On every hand we have old standards violated, old values discarded, old precepts ignored. A vocal minority of our young people are opting out in the process by which civilization maintains its continuity: the passing on of values from one generation to the next (Nixon, 1969, p. 316).”*

In addition to tying drugs to protest, the administration worked the link between the drug problem and street crime, which was also of increasing public concern. “Since addicts do not ordinarily hold jobs,” Nixon said in a speech before Congress, “they often turn to shoplifting, mugging, burglary, armed robbery and so on (Epstein, 1977, pp. 178-179).” A press release from the Nixon office went on to say that the total property costs to society that resulted from the need to continue heroin use was about \$18 billion annually (Epstein, 1977, p. 179).

The rhetorical attempts to correlate drugs to campus unrest and crime helped merge the political and problem streams related to drug policy. This was because while crime and campus unrests were important public opinion issues, drug use, at least in the early years of Nixon's presidency, was not. Americans during Nixon's first year in office had listed social control issues related to the young as the most important problem facing the nation (Gallup Polls, 1969, 1970, 1972, 1972a-h). Eventually, when grouped together, the social issues of campus protests, drugs, crime and the hippie movement were a far higher priority for Americans than Vietnam (Gallup Poll, 1969), an issue that the administration hoped to steer the public away from. Interestingly, a few months later, for the first time, "drug problems" made it to the top 10 concerns, ranking at number 5 (Gallup Poll, 1970).

Political factors that would influence the rise of the drug issue to the Nixon Administration's agenda included the Republican strategy of attacking the "criminal-coddling" elements of Johnson commission proposals, such as how the commission dealt with drug offenders, while calling for laws that would allow police with drug-related warrants to enter the premises of suspected offenders without warning. The provisions had little chance of making the final bill, but Republicans had successfully pressured Democrats to debate them. Because Democrats opposed these Republican wishes, an opportunity was created for the GOP to depict the left as soft on drugs (Baum, 1996). President Johnson's decision not to seek a second term would further open political space for tougher drug policies, and Nixon would exploit this space.

Media attention arguably enhanced the concern over drugs. In 1969 the big three news networks—ABC, NBC and CBS, ran 42 weekend national news stories related to

drug use; in 1970, 65 stories ran; and in 1971, there were 92 stories related to illegal drugs, more than double the number reported two years prior (Vanderbilt Television News Archive, 2010). Eventually, television news outlets also began linking drugs to crime. In 1969, no news stories during prime time on the big three television networks linked illegal drugs to other crimes. By 1971, six such stories ran, keeping a similar pace until 1974 when the Watergate scandal took prominence over other issues (Vanderbilt Television news Archive, 2010).

The Nixon administration also strove to keep the drug issue alive by pushing media networks to feature drug abuse issues in their non-news programming. To do so, the president orchestrated events in which he invited media producers and their clients to learn about the damaging effects of drug use, persuaded them to air shows with this theme in mind, and coached companies that purchased advertisement space on how they could use their leverage to pressure stations into airing anti-drug programming. As a result, 20 television programs promised to feature at least one show with an anti-drug theme (Johnson et al., 1996).

Though the problem and political streams merged to open a window to bring new policies to the agenda, solutions in the proposal stream to deal with the issues were still aligned with the principles of rehabilitation. As discussed on the section on sentencing reform, the proposal community had only softened up for get-tough legislation by the mid 1980s. By President Nixon's election, the dominant paradigm within criminal justice was still rehabilitative, even though proposals along the lines of a get-tough ideology were circulating.

Nixon-era drug laws thus reflected both a rehabilitative and get-tough mindset. For example, the 1970 Drug Abuse Prevention and Control Act eliminated mandatory minimum sentences for all drug charges as well as reducing maximum sentences for some (Peterson, 1985, p. 251). However, along with recommendations for reducing first-time drug user penalties, the administration recommended harsher sanctions against those “engaged in continual criminal enterprises and the dangerous special drug offender (Peterson, 1985, p. 251).” One tougher proposal, passed in the 1970 federal crime bill, recommended giving police with drug-related search warrants the right to enter a suspect’s home without notification so suspects would not have the opportunity to discard drug evidence (Baum, 1996, p. 6). Nixon also expanded upon Johnson-era policy by increasing funds for already existing rehabilitation and treatment programs, while including a huge budget increase for police presence and equipment under LEAA (Baum, 1966).

Many Nixon-era proposals would not become law until later policy windows would open. Among them was a proposal that would permit law enforcement to confiscate the monetary profits of criminal enterprises in the same way they previously confiscated illegal contraband (Baum, 1966), while another such proposal favored the use of military personnel in the drug war. Both of these proposals would become law during the Reagan administration (Baum, 1966).

In the years prior to Reagan’s election, drug use among young people in the United States was steadily rising, particularly among the young. From 1975 to 1979, the number of high-school seniors who said they had used illegal drugs within a one-year period climbed from about 45 percent in 1975 to 54 percent by 1979, while hovering

above 50 percent during the president's first two years in office (Johnston, O'Malley and Bachman, 1986, p. 47). Cocaine use, in particular, seemed to be escalating, as use among high school seniors rose from about five percent in 1975 to approximately 12 percent by 1980 (Johnston et al., 1986, p. 47).

While use among youth increased, several high-profile events drew attention to the drug issue immediately previous to and during the Reagan administration. These included: the 1980 arrest of musician Paul McCartney for marijuana use; the burns Richard Pryor suffered after freebasing cocaine in 1982; the 1982 overdose-induced death of John Belushi; and recurring drug scandals in football and baseball, including the death of NBA-draftee Len Bias. (Jensen, Gerber and Babcock, 1991). The latter, as this paper shall discuss, was the most influential in opening a drug policy window Bias's death, however, would not have opened this window were it not for several factors in the political stream.

At first the chances of a political window for new drug policy opening during the Reagan years seemed slim, as the GOP presidential campaign focused heavily on economic issues and gave little attention to illegal drugs (Kaiser, 1980, p. A1), a trend that continued in the administration's earliest years. Unlike Nixon, Reagan neither addressed the drug problem in his 1981 inauguration address nor in his 1981 and 1982 State of the Union addresses (Reagan, 1981, 1982), while public apathy toward issue matched Reagan's inattention to it. While general polls did not report drug use among the nation's "most important problems" in the years 1980 to 1984 (Gallup 1981, 1982, 1983 and 1984), a more narrow measure, Gallup's biggest problem facing public schools, did. From 1978 through 1985, drug use was ranked below insufficient discipline as the second

most important problem facing public schools, and by 1986 drug use rose to the number one issue in public schools (Elam and Brodinsky, 1989, p. 9) and the nation as a whole (Hawdon, 2002).

Several factors led to this change, among them rhetorical attention to the issue from Reagan (1981-1983), who increased references to drugs in 1982 and sharply increased them in 1983. This increase resulted from debates around the drug issue, including the Congressional crime bill debates that had led to the federal sentencing reform measures discussed earlier in this chapter. Adding more attention to the drug issue was Nancy Reagan's anti-drug campaign. With knowledge of how important the drug issue was to those concerned about public schools, the First Lady's campaign focused on youth drug abuse, an area where anti-drug parent groups had begun to organize, attract the ear of public policy elites and wield political influence (Baum, 1996).

These new groups began in small, local, southern-state PTA-type meetings during the late 1970s and directed much of their attention toward fighting head shop activities. But they would grow into national juggernauts comprised of thousands of members during the Reagan years (Baum, 1996). Among the groups were the Parents Resource Institute for Drug Education (PRIDE), Families in Action (FIA), and PRIDE offshoot National Federation of Parents for a Drug Free America (NFPDFA), which was headed by Pat Burch, wife of Republican Party Chairman Dean Burch (Baum, 1996). All of these groups were able to gain access to the ears of high-level cabinet members in the areas of drug policy. Such influence was seen in the funds these groups garnered by directly petitioning cabinet members and the fact that the Reagan Administration appointed

Ian McDonald— a physician, PRIDE member and general activist among parent groups— as head of the U.S Alcohol Drug Abuse and Mental Health Association (Baum, 1996).

Meanwhile, some scholars posit, media attention to the drug problem helped move the issue along in the political stream and, with popular opinion, helped open a window for Reagan's War on Drugs (Reeves and Campbell, 1994, p. 15). The topic of cocaine, in particular, was something towards which television news dedicated more time. Between 1961 and 1981, ABC, NBC and CBS dedicated an average of less than 20 television news stories per year on cocaine issues, despite slight but steady annual increases in coverage. By 1982, however, the average jumped to 30, and it increased steadily each subsequent year until 1986, in which the networks ran more than 140 news stories on cocaine (Reeves and Campbell, 1994).

Like media coverage, public concern over the drug issue sharply increased during the Reagan years. Between 1980 and 1984, economic concerns, not drug issues, were most important to Americans, according to Gallup (Sourcebook of criminal justice statistics Online, 2011; Gallup Polls, 1980, 1980a-b, 1981, 1981a-b, 1982, 1982a-d, 1983, 1983a-c, 1984, 1984a-b). By 1985 that changed, as drug abuse made it to Gallup's (1985) top ten national concerns during a Congressional election year, in which both parties highlighted the issue in their campaigns. Reagan in particular pushed his weight, providing political support to party members seeking Congressional seats by touting their records on fighting the drug war (Reeves and Campbell, 1994).

Thus, by 1985, major factors were at hand that could potentially open a political window for drug policy: it was an election year; drugs were the public's number one concern; media attention on the issue was high; and special interest parent groups had

organized, increased membership and received the administration's audience. However, news coverage of drugs in 1986 that doubled 1985's media coverage was largely due to a "seismic spike" of drug-related journalism in July, the month of Bias' death (Reeves and Campbell, 1994, p. 163). Correspondingly, in the early months of 1986, drugs had barely broken the top ten in "most important issue" in polls, as only about 2 percent of those polled ranked it as the nation's most important problem (Gallup, 1986). But in August, weeks after Bias' death, a New York Times/CBS Poll ranked drugs as among the most important issues facing the nation, with 13 percent of the population ranking it as the nation's most important problem (New York Times News Service, 1986)). After, the significant increase in public concern over drugs in 1986 following Bias' death, the trend would continue until it peaked in 1989, when 27 percent of those Gallup polled said it was the most important issue, way ahead any other national concern (Gallup, 1989).

In August, weeks after Bias's death, Reagan "formally" declared his drug war, calling for "a national crusade against drugs—a sustained, relentless effort to rid America of this scourge— by mobilizing every segment of society against drug abuse (Reagan, 1986)." That the type of policy he required were those in sync with the get-tough paradigm was made clear.

*"The proliferation of drugs has been a part of a crime epidemic that can be traced to, among other things, liberal judges who are unwilling to get tough with the criminal element in this society. We don't need a bunch of sociology majors on the bench. What we need are strong judges who will aggressively use their authority to protect our families, communities and way of life; judges who understand that punishing wrongdoers is our way of protecting the innocent; judges who do not hesitate to put criminals where they belong, behind bars (Reagan, 1986, p. A32)."*

On October 17, the resulting call for proposals from Democrats and Republicans alike would result in Congressional passage of the Anti-Drug Abuse Act of 1986. The effect of the sentencing reform movement was clearly seen. The law mandated punitive increases in mandatory minimums (Anti-Drug Abuse Act, 1986), reflecting a drug war trend that would continue to increase time served for drug offenses. In 1975, the average statutory state minimum for a possession conviction was 13 months; by 2002 it was 28 months; and minimum statutory sentences for sale or trafficking moved from an average of 25 months in 1975 to 41 months by 2002 (Stemen et. al., 2006, 105). The influence of parent organizations' battles against head shops that sold drug paraphernalia were also present, as the act expanded the definition of paraphernalia to include bongs and water pipes and prohibited their interstate transport (Anti-Drug Abuse Act, 1986). In terms of the movement towards the forfeiture of assets that had begun during the Nixon administration, the act expanded the right of law enforcers to seize all cash, assets, and property derived from criminal activity (Anti-Drug Abuse Act, 1986) and would provide a financial incentive for states and localities to step up their drug war efforts. The act also advanced the Nixon task force's recommendations for military intervention in the drug war, funded 'just-say-no' type education programs for youth, and provided substantial funding for sheriffs and police via the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (Baicker and Jacobson, 2007). The new grants replaced the LEAA block grants and now mandated that funds be used for the War on Drugs. With acknowledgment of the effect such laws would have on incarceration rates, the new law allotted \$96.5 million for federal prison construction (Anti-Drug Abuse Act, 1986).

However, 1986 was not the final say in the drug war, as drugs would be a central theme in George H. Bush's 1988 political campaign and during his administration. Both

the Bush and Clinton administrations would continue the war that Nixon declared and Reagan defined, helping to increase incarceration rates.

**Summary of the Drug War.** The case study of the drug war above again demonstrates how political and problem stream factors are needed to get proposals on the agenda. While, proposals such as asset forfeiture, military use in the drug war and increased penalties for drug users were mulled over during the Nixon Administration, it took the rise of get tough to the agenda, highly publicized events such as Len Bias's death, and a politically compatible ideology during the Reagan years for the drug war to truly arrive. Also of note is a transformation in on-the-table policy alternatives. While Nixon era streams were rife with treatment and rehabilitation-styled proposals, they had conspicuously declined by the Reagan years, evidencing a true decrease in support for Mertonian type solutions in favor of ones based on individual responsibility, deterrence and incapacitation.

### **Impact of the drug war on incarceration**

Many argue that the drug war has been the most contributing factor to the rise in inmates. Much of that rise is due to drug arrests, which between 1980 and 2008 increased by 218%, from 581,000 to more than 1.8 million (King, 2008). The means by which studies say the drug war has contributed to incarceration increases include: an emphasis on forfeiture driven law enforcement, higher chances of conviction per arrest, lengthier sentences for drug crimes, and an increase in incarcerated African Americans.

Forfeiture reform had influenced the increase in drug arrest rates (Blumenson and Nilsen, 1998; Baicker and Jacobson, 2007). As mentioned in Chapter 3, forfeiture reform came about with the purpose of discouraging drug crimes by taking away the financial incentive of trafficking and sales. The new forfeiture laws would eventually incentivize

governments to increase drug arrests in order to fill their coffers (Baicker and Jacobson, 2007; Blumenson and Nilsen, 1998). In 1985 the U.S. Justice Department lured local and state sheriff and police to participate in federal drug arrests by promising them as much as an 80 percent share of forfeited goods. Since then, states and localities have extended their definition of forfeiture using the federal definitions as an example (Baicker and Jacobson 2007, p. 2113). Because states have implemented their own forfeiture laws and participated in federal arrests, their governments have cut funds usually allotted to law enforcement with the knowledge that law enforcement can generate their own funds by way of forfeitures. The result is a dependence on forfeiture for law enforcement revenue and subsequently an increase in drug-related arrests (Blumenson and Nilsen, 1998).

Higher chances of incarceration per drug arrest also increased the inmate population (Blumstein and Beck, 1999). In 1981, the year Reagan took office, two percent of drug arrests resulted in prison time. By 1992, the number was 10 percent. The increased chance of prison time per arrests suggest an influence of drug war sentencing reform measures that reduced judicial discretion, requiring judges to allocate prison sentences instead of probation or treatment.

As mentioned earlier, states have also specifically targeted drug offenders with mandatory sentencing and habitual offender laws such as three strikes requirements. The effect of these drug-focused, sentencing reforms has been studied by Stemen et al. (2006). Controlling for macro-criminological, political and sentencing reform variables, the researchers concluded that although increased enforcement (arrests) accounts for most of the drug war's effect on prison populations, statutory changes to drug laws have also contributed. Interestingly, although much of the anti-drug rhetoric was aimed at "drug pushers," higher minimum and maximum sentences for possession offences have had a

much greater effect on prison populations (Stemen et al., 2006). The numbers suggest a complete turn around in viewing drug-addiction as a crime issue as opposed to a medical concern.

The drug war has weighed most heavily on minorities, blacks in particular. While between 1976 and 1994 the number of whites arrested for drug crimes increased by 85 percent, blacks arrested for drug crimes in the U.S. quadrupled. The racial demographics of prison populations has led to criticism that the racist roots of drug policies in this country are very much present (Spohn, 2000). The results are ironic since liberal backing of sentencing reform was aimed at countering the harsher penalties African Americans and other minorities weathered in the penal system. To boot, there is considerable consensus that the drug war is failing in its ultimate goal of limiting or even reducing the inflow and use of drugs (Gray, 2001; Belenko, 2000).

### **Impact on Crime**

The literature on the effects of the drug war on crime differs on the directionality of its impact. However, the literature that suggests a negative impact sometimes suggests that this effect has been weak and not cost effective.

As mentioned earlier, the Nixon administration had argued that a drug war was necessary to reduce a spike in property and violent crimes, which addicts were committing in epidemic proportions. Some recent studies have set out to test the premise that increased incarceration of drug offenders has reduced property and violent crimes. One of these studies (Kuzeimko and Levitt, 2004) concludes that there is some evidence suggesting that increased drug enforcement since the 1980s has lead to decreased property and violent crimes by 1 to 3 percent. These results would imply that the budget-

breaking drug war, has accounted for a very small percentage of the 50 percent drop in crime experienced over the past decade (Bureau of Justice Statistics, 2010). Similar results were gleaned in a social disorganization model study of Miami neighborhood drug crimes (Martinez Jr., Rosenfeld, and Mares, 2008). The study's suggested that by eroding social networks and community institutions, increased drug use tended to increase violent crime. The authors recommended increased drug enforcement as a means of reducing the violence, but suggested that such enforcement measures would only be effective when coupled with treatment.

Other studies find a criminogenic effect. Spohn and Holleran (2002) researched 1,530 offenders in Kansas City, MS, concluding that drug offenders serving probation were far less likely to go back than drug offenders serving prison time. Sollars et al. (1994) argued that drug arrests have increased property crimes and Benson, Kim and Rasmussen (1998) point to a drug-war-influenced increase in violent and property crime rates. These studies conclude that increased enforcement of drug crimes drives the cost of illicit drugs upward, pressuring addicts to seek the income that can be acquired through property crimes. The studies also contend that increased resources toward drug enforcement steers funds and officers away from property and violent crimes, leading to a reduced chance of arrest for violent and property offenders and making such crimes a better gamble. Shepherd (2006) agrees with these conclusions, but says several other factors can contribute to the way increased incarceration of drug offenders can cause crime. Shepherd notes that the arrest of higher level trackers leaves behind a vacuum of power and enticing higher prices, which create turf wars as competitors try to capture the abandoned market. Second, pushing offenders out of the illegal drug trade can drive them

to other illegal money-making endeavors. Finally, prison overcrowding due to drug arrests pushes out violent and property offenders, who are returned to their communities to participate in new criminal activity. Miron and Zwiebel (1995) conclude that the high degree of risk (punishment) for distributing and supplying raises the price and street value of drugs. As a result, violence and other forms of black market justice become an acceptable overhead. Miron and Zwiebel go on to argue that because anti-trust laws do not affect trade in illegal drugs, large cartels are likely to monopolize the industry unpressured by competition to lower prices. The result is a high profitability that allows for all types of illegitimate behavior (crime) to maintain margins.

It is also plausible that the drive to more intensely enforce drug policy induces crime by intruding on harm reduction attempts by users. Cooper, Moore, Gruskin and Krieger (2005) conducted a quantitative study of addicts in programs aimed at weaning them off heroin and found that police crack downs intruded on this process, thereby curtailing beneficial effects.

More pertinent to this paper's final chapter, Mears (1998) has used social organization theory, which, as mentioned in Chapter 2, influenced institutional anomie theory, to argue that the increase in drug enforcement has made communities poor and more crime prone, African American communities in particular. Mears notes that high arrest rates in such communities deteriorates social organization by taking young black men and women from their families so that youth are left unsupervised to engage in criminal activity. Furthermore, she argues, incarceration limits the employment prospects of offenders, reinforcing the cycle of poverty in which many African American communities find themselves. The implication for institutional anomie theory is that drug

enforcement, by weakening family structures, can prevent the ability of those social institutions to ward off the criminogenic effects of the American dream.

**Summary of Drug War Impact.** The impact of the drug war, some contend, has led to reductions in crime, but those reductions have been rather small, hardly worth the cost of enforcement, or should be mitigated with treatment to reduce crime associated with drug use. Meanwhile, the possibility that the war may be indeed criminogenic, given recent research, seems plausible. Also plausible are damaging effects caused by taking mothers and fathers from their families in already impoverished communities. The effect on informal social institutions suggest that that drug war policies could be used as variable in research that employs institutional anomie theory, an issue which will be discussed in more detail in the next chapter.

## **CHAPTER 5**

### **Collateral Consequences**

The previous chapters used Kingdon's model of streams and windows as a lens through which to examine the problems, proposals and politics that landed get tough policies onto the agenda. Chapter 3 specifically focused on sentencing reform measures such as presumptive and mandatory sentencing, three strikes legislation, Truth in Sentencing, and the impact of these reforms. Chapter 4 focused on the agenda setting processes behind the War on Drugs, and the impacts of drug war policies. This chapter shall conduct a similar streams and windows analysis of collateral consequences. However, since there is yet any extensive empirical research on the impacts of collateral consequences, this chapter will employ a change in method. In the absence of existing studies, this chapter shall conduct its own regression analysis on collateral consequences effects on crime, using a model partly influenced by institutional anomie theory.

Collateral consequence policies had long existed before the Johnson Administration. For example, the fourteenth amendment to the Constitution explicitly gives states the right to deny franchise to persons who commit treason or other crimes. And states have long barred offenders from public office, certain contracts and benefits. Many states have also granted employers the right to deny offenders employment based on arrest or conviction records (Travis, 2002).

However, during the Johnson Administration, the attitudes of policy makers and criminal justice practitioners toward collateral consequences began to change, as a call to

bring such practices in line with rehabilitative aims began. Legislators, interest groups as well as state and national bar associations criticized policies that denied civil rights, employment and welfare access to offenders. Along with these criticisms came various recommendations. For example, the National Conference on Parole recommended ensuring a process for offenders to expunge their criminal records so that they may be ensured the rights granted other citizens (Pinard, 2002). During the Johnson administration, the President's Crime Commission suggested reevaluating various post-incarceration policies offenders face; and, during Gerald Ford's presidency, the National Advisory Commission on Corrections suggested eliminating the voter disqualification of felons in certain states. In step with this trend, many states began adopting legislation restoring civil rights to offenders upon completion of their sentences (Pinard, 2002). An intersection of politics and problems, however, would help bring a proposal paradigm from a tougher mindset, and these proposals would exponentially increase the nation's use of collateral consequences for more than three decades (Pinard, 2002).

The trend toward increases in such policies began after 1985 (Pinard, 2002). Several themes to be discussed in the following case studies provide insight into how these laws passed. They include a federalization of sex offender laws and a conservative ideological link between welfare reform, the drug war, and crime. Though the case studies do not provide a comprehensive view of the revitalization of collateral consequence policies as a form of punishment, analysis of the political, problem and proposal streams involved in these cases leads to a plausible narrative.

In deciphering how the get tough movement and the War on Drugs linked with welfare reform, we shall first examine welfare reform, for which a policy window opened

due to economic problems the nation was weathering throughout much of the 1970s. These problems came to a head in 1980, a presidential campaign year, when the GNP dropped by .2 percent; unemployment rose 7 to 9 percent; inflation increased from 6.9 percent to 10 percent; and the nation incurred its largest budget deficit in peacetime history by jumping 38 percent in four years (May, 1993). As a result, in 1980 the economy continued to be the dominant presidential campaign issue (May, 1993, p. 700). The political importance of economic problems in the 1970s had given rise to concern about how much the government was spending on welfare. Consequently, by 1976 a reported 62 percent of Americans believed the government spent too much on welfare, a 20 percent jump from 1974 (Davis and Smith, 1986). Backed by such polls, during his 1976 campaign for the Republican presidential nomination, Ronald Reagan focused on welfare reform, as did the media. In 1976 ABC, CBS and NBC ran 30 stories on welfare reform and increased their coverage to 38 news stories in 1977 (Vanderbilt Television Archives, 2010), Jimmy Carter's first year in office. Eventually, a perceived failure of the Carter administration to deal with the economy helped conservative alternatives based on trimming budgetary costs and welfare spending proliferate in the proposal stream. The increase in news coverage partly resulted from standard coverage of Congress, which was rampant with welfare reform bills (Congressional Budget Office, 1977). The fraud case of a Chicago "welfare queen" also generated coverage of the issue (Vanderbilt Television news Archives, 2010)," and politicians such as Reagan used the welfare queen image to push the idea that welfare created a criminogenic sense of dependency and entitlement. Due to pressure from Congress, public opinion and oppositional rhetoric, President Carter was made to address the issue by submitting proposals that cut some of

the “laggards” from Assistance to Families with Dependent Children and Food Stamp programs (Zald, 1985). The trend of policy attempts to reign in the costs associated with an expanding welfare state had begun.

With the economy an even more pressing issue in 1980 and public disfavor toward welfare overspending hovering close its 1977 peak (Davis and Smith 1986), Reagan made welfare reform part of his regular stump speech in his campaign against Carter in 1979 and 1980 (Clymer, 1979, p. SM6; Raines, 1980, p. 1; Raines, 1980A, p. 1; Lindsey, 1979). Once elected, Reagan kept the issue alive by mentioning it in almost everyone of his State of the Union addresses (1982, 1983, 1985, 1986, 1987, 1988). Eventually a policy window opened for welfare reform, resulting in passage of welfare retraction acts that, despite a lack of drastic cuts in federal spending, made strides toward reducing the rate at which welfare expenditures had been expanding. Furthermore, the rise of welfare reform to the agenda would inspire a new wave of right-winged Congressional leaders who hoped to do away with many Johnson-era Great Society policies (Zuckerman, 2000, p. 588).

Because welfare had already been on the agenda by the time Reagan became president, the opening of crime policy windows in the 1980s (see section on sentencing reform and drug war above) paved the way for collateral consequence proposals at the nexus of get-tough crime policy and welfare reform. Such proposals helped create the perception that policy makers were helping to reduce budgetary spending (denying welfare benefits to drug offenders cost little to enforce and could be seen as reducing welfare rolls) while addressing three areas of public concern: drugs, crime and welfare expansion. Furthermore, the proposals were ideologically compatible with the Reagan

administration's decision to address the demand side (users) in the drug war and attack the criminogenic elements of welfare policy through deterrent-minded solutions. Finally, civic penalties were construed as a get-tough alternative to incarceration for drug users that during an era of high deficits would neither increase the budget for prison expansion nor treatment centers. In short, a bridge dug policy, welfare retraction, and get-tough had begun to take shape. This sentiment is echoed by the following quote from Sen. Phil Gramm R(TX).

*"The real drug 'kingpin' is the user. It is the casual users who create the profits. But we can't put them all in prison; there isn't any room in the jails. We have to use disincentives such as the civil penalties already in the House bill (Mohr, 1988a)."*

With these political factors affecting the sort of alternatives brought toward the floor, House proposals in 1986, 1987 and 1988 included: the eviction of public housing tenants convicted of drug crimes; the forfeiture of leases belonging to public housing tenants suspected of drug crimes; the denial of AFDC benefits to those with drug convictions; the revocation of federal student aid for applicants convicted of drug crimes; and the denial of drivers licenses to persons convicted of drug crimes (Wicker, 1988, Mohr, 1988b, ). Though all of these proposals would not pass during the Reagan administration they would circulate in proposal streams long enough to resurface in later years.

Helping to keep the issue of collateral consequence for drug offenders alive was Jack Kemp, who after a failed bid for the Republican presidential nomination in 1988 was appointed secretary of Housing and Urban Development. As Housing Secretary, Kemp pushed to expand the definition of public housing, from which drug offenders now

could be evicted or denied admission, to include private housing that fell under the Section 8 subsidies program (Berke, 1989). Kemp also pushed to evict tenants who were arrested or suspected of drug crimes regardless of whether they were convicted (Johnson, 1989). Kemp's media-covered public housing activities would help keep public attention on the link between welfare issues and crime policy alive long enough for the issues to be relevant in the next presidential election, ideologically merging in a way that would open a window for increased collateral consequences. A look at the Clinton campaign's emphasis on crime and welfare and his presidential rhetoric concerning both provides some understanding of how this window opened.

Bill Clinton's presidential campaign attempted to redefine the Democratic platform so as to steal certain bread and butter issues from the Republicans (Riker, 1984). Polsky (1997) has convincingly argued that this was a necessary maneuver because the Reagan administration had created a new dominant "political regime" based on a narrative of get-tough policy and small government ideals. For the most part, the public believed this narrative and political challengers would have to adapt their platforms to fit it (Polsky, 1997, pp. 153-166). This was evident in the issues of welfare, drugs and crime. Whereas public opinion polls had long viewed Republicans as more capable of dealing with crime, Clinton showed Democratic "toughness" and made strides toward neutralizing the GOP advantage on the issue when he temporarily bypassed a campaign stop in New Hampshire to attend an Arkansas execution of a brain-damaged man convicted of murdering a police officer (Holan, 2004). The move highlighted Clinton's support for the death penalty and certified his tough-on-crime credentials (Marion, 1997). Support for the death penalty had been increasing since 1977, and by 1992 the vast

majority of Americans, 77 percent, supported it (Gallup, 2010). The GOP's support for the death penalty was consequently a Republican strength, particularly in the previous election, in which George H. Bush was able to brand Massachusetts Gov. Michael Dukakis' anti-capital punishment stance as "soft on crime (Holan, 2004, p. 96)." Once Clinton stole Republican thunder and won the election, he maintained his get-tough credibility through support for such policies as the federal three strikes law, Truth in Sentencing, the death penalty for homicides involving drugs or the slaying of police officers, and increased police presence (Marion, 1997).

Clinton also moved to the right in his rhetoric on welfare reform, calling for the "end of welfare as we know it (Polsky, 1997, p. 158)." Meanwhile, public opinion polls showed high-level support for proposals aimed at decreasing dependency by transitioning welfare recipients to work or some sort of vocational training (Zuckerman, 2000, 589). When a window opened for welfare reform, Congress, now dominated by Contract-with-America Republicans, pushed the administration more to the right in debates over the issue. Among the proposals that would pass in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) were those that the Senate had brought up during the Reagan administration, including measures favored by Sen. Gramm to deny Food Stamp and Temporary Assistance to Needy Families aid to those with felony drug possession, use, or distribution convictions (Mohr, 1988). States were allowed to modify or revoke the TANF ban; but by 2002, 27 states had implemented it. Clinton also linked crime to welfare reform that year by proposing a "one-strike-your out policy" for people found to have drugs in public housing (Pollack, Danziger, Sefeldt and Jayakody, 2002, pp. 1-7).

While the war on drugs, the get tough movement and a move for welfare reform would create punitive policies addressing offenders outside of prison walls, a series of post-incarceration policies directed at sex offenders would cast a wider net of restrictions. Much like the move of three strikes toward the national agenda, the spread of collateral consequence sex offender laws was triggered by sensational crimes that galvanized policy entrepreneurs to push for laws in certain states that found their way to the U.S. Congress and launched legislative changes throughout the nation.

The crimes that would place the issue in the national spotlight occurred in Washington State and Minnesota. The Washington case occurred in 1989, when recidivist sex offender Earl Shriner kidnapped and sexually abused a six year-old child, whose name authorities never released. In the same year in Minnesota, an anonymous man kidnapped 11-year-old Jacob Wetterling, whose parents founded the Jacob Wetterling foundation, a child kidnapping and sex abuse policy interest group (Logan, 2003, p. 1287). In Minnesota, the Wetterling Foundation helped propose and push for sex offenders to be registered on a law enforcement database after their terms were served; and a law based on this proposal was passed in 1990, a gubernatorial campaign year (Logan, 2003). Similar legislation passed in Washington State, where the use of sex offender registration was nothing new. Like in Washington State, localities in California had passed laws requiring sex offenders to register with law enforcement since the 1920s, and several other states and localities had followed suit. But before the Minnesota and Washington cases, the vast majority of states had no such laws (Logan, 2008).

U.S. Representative Davis Duremberger (R-Min), riding the wave of media attention directed toward events in Minnesota, launched the movement to enact such

legislation on a national scale by proposing a law that would create an interstate registration database for sex offenders. Duremberger's proposal initially failed, but he kept trying. In 1993 he received backing from his House counterpart Rep. Jim Ranstand (R-Min), who proposed similar legislation and received support from the Jacob Wetterling foundation (Associated Press, 1991). As both houses debated the bills, Washington State legislators in the U.S. House and Senate proposed expanding the bill to include a provision that communities be notified when sex offenders lived close. The community notification amendment was modeled after the Washington law that had passed in 1990. Though the House passed the community notification proposal the Senate did not, requiring a joint House committee to deliberate the notification issue. The joint committee omitted the notification requirement, but pressure to pass it came quickly in 1994, when problem and political streams opened a window for passage of both the notification and registration laws (Logan, 2008).

The most pressing of these factors occurred after the joint committee opted not to support the registration provision when a recidivist sex offender neighbor murdered seven-year-old Meghan Kanka in New Jersey. The Kanka murder drew instant national press coverage the year after Polly Klaas' murder and the search for her body had drawn international attention (Logan, 2002). Meanwhile, the law was also affected by the same stream factors that had opened a window for passage of three strikes reform and Truth in Sentencing, including: a president who had campaigned on being tough on crime and lobbied in support of the bill; a violent crime rate that had been on the rise; unprecedented media attention to crime; and a nationwide platform change by

Democrats, who strove to show they could be just as tough on crime as Republicans (See section on three strikes in Chapter 3).

As a result of these factors, Congress passed the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act in 1994. The act required states to adopt its tenets if they wished to avoid a ten percent loss of Byrne Formula grants. The bill's provisions subjected violent sex offenders to life time registration, mandated persons convicted of other sex offense categories to register for 10 years registration, and encouraged participating states to develop a means by which their communities could notify residents when sex offenders lived close (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 1994). The community notification provision of the act was voluntary until 1996, when Meghan's Law mandated it (Wood, 2005). In later years, Congress broadened the category of offenders requiring lifetime registration, created a national FBI database of registered sex offenders, and made the national registry available to the public via the internet.

The move to deny drug offenders welfare benefits and to require sex offender registration set post-incarceration standards for subsequent years. The rise to the agenda of welfare reform collateral sanctions in the 1980s would end the trend toward proposals that aimed to roll back some of the damages collateral sanctions caused (Travis, 2002, p. 18). Following the example of Congress, states began to increase their collateral sanctions, barring many offenders from teaching, child care, medical work, law enforcement, care for the elderly, bar associations and other positions. A study comparing state increases in statutory collateral consequences between 1986 and 1996 found that by 1996: three more states added restrictions of the right of felons to vote; three more states

restricted the parental rights of felons; one more state added a felony conviction as grounds for divorce; and two more states restricted felons' rights to public office (Olivares and Burton, 1996). While the same study conducted in 1986 concluded that collateral consequences were generally decreasing, the 1996 follow-up noted that many states had increased collateral consequences during the ten-year gap, and no state had reduced them (Olivares and Burton, 1996).

Making criminal histories of sex offenders available on the internet had spillover effect in other areas of criminal policy. These laws began a trend to help create a cyber infrastructure to access the backgrounds of all persons with criminal records, not merely sex offenders. Advances in cyber technology, which made databases on criminal records far more expansive and easier to access, greatly facilitated the trend. Accompanying this technological transformation were Congressional policies that funded state development of criminal records databases. The Brady Gun Bill, for example, funded creation of a national criminal records database so that gun retailers could request background checks on potential customers (Katel, 2009). And in 2000, Congress provided additional funding so that states could upload records of serious felonies, mental disability and domestic violence into the FBI database (Stern, 2007). The rise of these databases has spawned thousands of private vendors that specialize in uncovering personal information, criminal history data included. Most employers, it has been estimated use a vendor of this sort to conduct employment background checks (SEARCH 2005, pp. 7-8).

Congress expanded the extent of information available to such vendors in 1998, by amending the Fair Credit Reporting Act (FCRA). The act regulates what information the vendors can access and the procedures they can use to attain it. Previous to 1999, the

FCRA limited such companies to credit and criminal arrest and conviction information dating back seven years. In 1998, however, Congress amended the FCRA to exclude arrests leading to convictions from the seven-year limit. In other words, credit information vendors could henceforth potentially access an offender's criminal history information for the rest of his/her life (Fair Credit Reporting Act of 1998). The FCRA standards have been adopted by most states with the exception of a few, California for example, that have opted to keep the seven-year limitation on conviction record access (Investigative Consumer Reporting Agencies Act, 2002). Coupled with increased access to affordable online computers, the act facilitated the ability to employers to implement collateral consequences against job seekers with criminal records.

The number of background checks being conducted for employment purposes has also increased due to case rulings enforcing the concept of negligent hiring and to transformative events like the September 11 terrorist attacks of 2001, which lead to policies barring persons with certain criminal histories from working in the transportation sector. States have also made it more prohibitive for person's with criminal records to find jobs, by barring them from certain sectors. Ohio, for example prohibits persons with criminal records from licensure in the following fields:

*“accountants, architects, athletic trainers, audiologists, barbers, motor vehicle dealers, chiropractors, counselors, credit service organizations, dentists and dental hygienists, dietitians, emergency medical service workers, engineers and surveyors, fireworks exhibitors, hearing aid dealers, horse race workers, insurance administrators, insurance agents, livestock brokers/dealers, liquor license, lottery sales agents, therapists, salvage dealers, nurses, occupational therapists, opticians, optometrists, pharmacists, physical therapists, physicians, physician assistants, precious metal dealers, private investigators, real estate appraisers, real estate brokers, respiratory care professionals, school employees, security guards, social workers, speech pathologists, telephone solicitors, and veterinarians. (Freisthler and Godsey 2004, p. 537) ”*

### **Summary of Collateral Consequences.**

The advent of collateral consequence policies to the agenda is reflected in case studies involving the linkage of welfare reform, drug war and get tough ideology as well as the emphasis on post-incarceration sanctions triggered by the spread of sex offender laws. In the first case, a conservative push to retract Johnson's Great Society programs stirred in the proposal stream during the Carter administration. Headway for welfare retraction was made viable in the problem stream by serious economic issues during the Carter years, including a drop in GNP, inflation and rising unemployment rates. The media focused on this problem and played particular attention to welfare reform proposals. In the political stream, public opinion polls showed support for welfare reform, and Ronald Reagan focused on the issue both during his failed bid for the Republican presidential nomination in 1976 as well as his successful campaign against Carter in 1980. With a Republican platform based on shrinking government, and a window for get tough measures and the drug war opening, existent proposals to deny welfare benefits to drug offenders were able to slip through, as they were perceived as shrinking welfare expenses, while still fighting crime and drugs.

The rise of new sex offender laws to the agenda followed a similar pattern to three strikes legislation in California. In the case of sex offender legislation, sensational murders in two states galvanized interest groups to support registration and notification proposals during political campaign years. Such proposals had existed in other states, but they spread nationally when Congressional representatives from both Washington and Minnesota used the public attention to the crimes in both states, as well as the murders of Polly Klaas in California and Meghan Kanka in New Jersey, to pass proposals that had

failed in previous years. Factors in the problem stream that helped open a window included the murders and abductions discussed above, and an increase in violent crime rates, and unprecedented media coverage of child sex crimes. A window opened when these problems merged with political stream factors, which included the move of Democrats to the right on crime policy, candidate Clinton's get tough campaign, and President Clintons lobbying for the law. The rise of both these types of collateral sanction policies would eventually lead to a spillover of collateral sanctions on federal and state levels.

More pertinent to this chapter, the collateral consequence policies marked an about-face from the Mertonian ideal of strengthening ties to society by way of welfare and economic support. By internally ostracizing those with conviction records from certain social opportunities, collateral sanctions and the get tough principle as a whole did away with Mertonian crime policy. However, the overarching aim of these collateral consequence policies was to reduce crime and increase public safety. The following section attempts to see whether they in fact did that.

### **Impact of Collateral Consequences**

About 630,000 Americans, 95 percent of the prison population, are to be released each year (Petersilia, 2003). Collateral consequence barring access to an array of opportunities, including welfare, employment and housing, will affect a large portion of these offenders as well as the many other Americans with criminal records. There is currently no extant research on the effect of state collateral consequences on crime. As such, this paper shall have to conduct its own research to test for effects. As discussed in the introductory chapter the theory influencing this research will be institutional anomie

theory (IAT). IAT will be employed for several reasons. First, the logic behind IAT would seem to justify collateral consequences as a variable that causes crime. Second, while other fields of macro-criminology, social organization theory, for example, could also justify collateral consequences as a criminogenic variable, IAT has never guided public policy. A well structured study on collateral consequences could arguably help send fresh ideas into the proposal stream. Messner and Rosenfeld (2001) suggest the freshness of their approach when they contend that policy implications of IAT would involve taking from both conservative and liberal ideologies. While Mertonian policies of the Johnson and Kennedy era have fought crime by trying to expand opportunities available to the poor, IAT introduces the caveat that providing such opportunity can be criminogenic if family, polity, churches and schools are not stable enough to mitigate against the effects of the American Dream. While Republican rhetoric has often focused on the importance of family and churches as instillers of morality, strengthening of such informal institutions has not been a weapon in the conservative crime-fighting arsenal for the past 30 years. In short, IAT-based policy could plausibly bridge conservative and liberal ideologies—a welcome policy opportunity in an era of partisanship and political gridlock. We shall begin our research by briefly reintroducing some of the key components of IAT reviewed in Chapter 2, followed by a literature review of empirical IAT literature, a discussion of how IAT relates to collateral consequences and a formulation of a general hypothesis. Following that, we shall examine key variables, describe how these variables shall be measured and conduct an OLS regression analysis that tests for the relationship between collateral consequences and crime.

## **Key components of Institutional Anomie Theory (IAT)**

The American Dream can be described as an ideal that encourages rugged individual competition for limited resources in order to achieve monetary success. As discussed in Chapter 2, IAT focuses on the pressures the American Dream can exert to create a “get it by any means” attitude on citizenry that can lead to crime. The American Dream exerts pressure through a market ideology that can penetrate all aspects of life (Messner and Rosenfeld 2001, p. 70). Informal institutions mitigate this pressure by functioning as instillers of means values. For example, families can shelter members from the pressures of the American Dream, while participating in the polity through civic duties can reemphasize the notion that one is part of a community greater than oneself. Finally, educational institutions can indoctrinate students in a wide array of moral values—loyalty to the country, team work, the importance of not cheating, and so forth (2001, p. 70). Messner and Rosenfeld, note however, that economic logic of the market can, via processes of “accommodation, devaluation and penetration,” weaken the value-instilling functions of these institutions, thereby hindering their ability to reduce crime (2001, p. 70). When the economy dominates these institutions, they cease to regulate desires and instead become re-enforcers of ideology based on rugged individualism and attainment of success by any means. In studying causes for crime, IAT focuses on a balance of power between informal social institutions and the market. The ideal conditions for reducing crime, therefore, are when social institutions and the economy are strong. However, a strong economy and weak social institutions can lead to high crime rates, as it could symbolize a dominance of the economic logic over social institutions (2001, pp. 103-108). This economic logic, without value enhancement, could lead to an

end-justifies-the-means attitude; and this logic can be applied to all types of wants, not just monetary. Subsequently the anomic pressures of the American dream can be applied to both property and violent crimes (2001, p. 78).

### **IAT Literature**

The empirical literature on IAT is not prolific, but is steadily growing through studies that have focused on property and violent crimes (Bejjeregard and Cochran, 2008; Shoepfer and Piquero, 2004; Maume & Lee, 2003; Pratt and Godsey, 2003; Savolainen, 2000; Piquero and Leeper-Piquero, 1998; Messner and Rosenfeld, 1997; Hannon and Defronzo, 1998; Chamlin and Cochran, 1995).

Chamlin and Cochran (1995) were the first to conduct an empirical test of IAT. The authors tested for IAT effects by hypothesizing that a strong economy could only reduce profit –motivated state crime when social institutions were also strengthened (1995, p. 415). The study used the percentage of families below the poverty level as measure of the economy. In measures of social institutions, the authors used the ratio of state divorce to marriage rates as a measure of family; church membership rates; and percentage of voters in Congressional contests as measure of polity (1995, p. 415). To measure the interplay between the economy and social institutions, the authors multiplied the measurement of poverty by the measure of each social institutional variable. Subsequently, interaction variables included poverty rate X state divorce rates; poverty rates X church membership rates and poverty rates X state congressional voter rates. The results of their analysis suggested that the effects of poverty on property crime depended on the ability of social institutions to mitigate the criminogenic impact of poverty. Building on Chamlin and Cochran's work, Piquero and Lee-Piquero (1998) also used

interactive terms to test the multiplicative effects of poverty and social institution strength on property crimes. Their results varied according to their measures of education and whether the dependent variable was property or violent crime.

Messner and Rosenfeld (1997) would conduct their own test of IAT on a cross-national level to test for effects on homicide rates. To measure the effect of the economy on social institutions, the authors employed a “decommodification index,” which accounts for the relative level of funds nations spend on entitlements such as welfare and social security. Decommodification spending, the authors contend, shifts time that a nation’s populace would otherwise use on economic concerns to non-economic concerns like family, church, schools and polity. The decommodification index, Messner and Rosenfeld add, measures the willingness of nations to mitigate against the effects of the economy on social institutions, ensuring the somewhat equitable balance between economic and non-economic institutions needed to reduce crime. The results of their analysis imply a negative relationship between social support spending and crime (1997, pp. 104-108).

Savolainen (2000) tried to combine the interactive effects of Chamlin and Cochran’s model while testing for cross-sectional homicide rates as Messner and Rosenfeld had. Savolainen saw value in studying nation states as opposed to U.S. states because nation states have more distinct cultures and provide more variance in levels of anomie (1997, pp. 1024-1026). Maume and Lee (2003) expand on IAT homicide research by testing for the effect of income inequality on the ability of social institutions to mitigate against county homicide rates. Their results suggested that weak social

institutions do mitigate income inequality's positive effect on homicide and instrumental homicide (2003, p. 1137).

In summary, IAT empirical studies have employed national and state levels of analysis while testing for both property and violent crimes. Measures of balance of power between economic and non-economic institutions have included a decommodification index (essential a measure of relative budgetary levels of welfare and social security spending) and interaction variables comprised of poverty levels and proxies for social institution strength. We shall now discuss how collateral consequences could be deemed a viable variable in the IAT model.

### **Collateral Consequences and IAT**

As mentioned earlier, collateral consequences are civil penalties that can negatively affect the re-entry of those with criminal records. Collateral consequences bar or limit offender access to employment, trade licensing, education, housing and other welfare benefits. In short, they bar access to legitimate economic opportunity. Though no research has pointed toward a significant positive relationship between collateral consequences and crime, the logic behind IAT would seem to imply a correlation. As discussed in chapter 2, it is this paper's contention that collateral consequences can erode some informal social institutions. For example, parents who are barred from gainful employment may have to work multiple jobs to make ends meet for their children. Having to work so many hours arguably creates a state of underemployment, which in turn allows such parents less time to instill means values in their children who become more susceptible to a get-it-by-any means cultural ethos. Messner and Rosenfeld (2001) note that the institutions of family and education are closely related. For example if a

family is denied access to welfare benefits such as food stamps due to a drug conviction, parents may spend more time away from home in pursuit of money. With parents away, children can become truants, eroding the ability of schools to instill means values in them. Those same parents, being occupied with concerns about money, may work seven days per week and have less time to take their children to church, reducing the ability of another means value institution to ward against criminogenic effects. As discussed in Chapter 2, the implication here is that collateral consequences can lead to overall increases in *crime*, not simply recidivism, as families, and by extension, communities, can be affected.

This paper contends that, according to Messner and Rosenfeld's reasoning, collateral consequences would also reflect a general domination of the economy at all levels of society. Messner and Rosenfeld suggest this in their discussion of decommodification and mass incarceration.

As mentioned in Chapter 3's impact section, Messner and Rosenfeld (2009) suggest mass incarceration exists in societies where there is less collective interest in maintaining individual interests. They conclude, therefore, that incarceration-increasing policies result from increased market permeation of everyday life and high states of anomie, which are both criminogenic. Collateral consequences, which according to Foucault could be perceived as an extension of the "technologies of punishment" beyond the walls of the prison system, are in many ways a form of externalized incarceration, with barriers to reentry that function like "invisible" prison bars (Travis, 2005). If collateral consequences are an extension of the mass incarceration system, then according to Messner and Rosenfeld's logic, much like mass incarceration, collateral consequences

would suggest less state interest over individual interest, higher states of anomie and permeation of the economy in everyday life.

As noted, Messner and Rosenfeld argue that decommodification, measured by the percentage of budget a state dedicates to welfare spending, indicates that state's willingness to subsidize citizenry participation in non-economic endeavors. It could then be argued that high levels of collateral consequences that bar access to welfare benefits occur in nations that do not display such interest in the individual's need to engage in non-economic activity because the drive for bare subsistence and economic needs regulates most behavior. How behavior is regulated will of course depend on the type of collateral consequence, and this model will implement those collateral consequences that bar access to employment or welfare. A review of the relationship between welfare, employment, and crime should therefore prove helpful.

**Employment.** The link between employment and crime has been thoroughly explored. Steven Raphael and Rudolph Winter-Ebmer (2001) employ OLS regression to conclude that a positive relationship between unemployment and property crime rates exists. Raphael and Winter-Ebmer root their theory in a rational choice model, arguing that in an economic climate where the access to resources from legal employment is scarce, actors make due by choosing a life of "illegal employment (2001, p. 262)." Like Raphael and Winter-Ebmer's study, Jeffrey Grogger (1998) also applies a rational choice model to study the effects of employment on crime. In Grogger's model, agents, valuing leisure and consumption, make choices based on whether employment or crime maximizes these values (1998, p. 750). Grogger notes that lower wage jobs, which provide little leeway for consuming and leisure, are the most likely sources of legal

employment for the young and contribute towards higher youth crime rates (1998, p. 787). Another study by Grogger (1995) explores the relationship between arrest records and unemployment. He finds that men with arrest records generally earn less than those without arrest records (Grogger, 1995, p. 51). If Winter Ebmer's contention that those with insufficient income seek illegitimate income is true, the lower income among those with arrest records may explain high recidivism rates.

Anomie-based studies have also observed a strong link between employment, or underemployment, and crime. Agreeing with Merton's, Lance Hannon and James Defronzo, conclude that the nation's emphasis on economic success and rugged individualism encourages a "get it by any means" attitude among those with lower incomes (1998, p. 370). Subsequently, feeling underemployed can create a sense of anomie and can be criminogenic. Like Merton, Hannon and Defronzo propose reducing economic plight through welfare benefits to prevent crime (1998, p. 384).

As works from variety of criminological fields show ties to a negative relationship between crime and unemployment or underemployment, one could infer that public policies barring access to employment can be criminogenic. Bushway et al. (2007) have explored this association, claiming a positive relationship between decreased access to employment among those with criminal records and a return to crime. It is this study's contention that similar results could also be expected of policies that indirectly bar access to employment— laws restricting the use of a vehicle to go to work or policies that deny trade licenses, for example.

Again, the logic of the IAT model suggests the impact of collateral consequences barring access to employment would spread further than the recidivism of those who are

denied access. A lack of income among traditional bread winners could mean a turn toward illegitimate means of income, which in turn could weaken a family's ability to model legitimate means behavior. Furthermore the incarceration of parents who commit crimes as a way to earn income when jobs are unattainable could mean a lack of supervision for children, which can spread criminal behavior in communities prone to high incarceration rates.

**Welfare.** The literature linking low levels of welfare and crime is vast, but there is debate about whether the relationship is positive or negative. Much of the microeconomic literature has suggested that increases in welfare benefits actually increase crime rates. As mentioned in earlier chapters, Wilson (1995) was among the most influential of such thinkers, arguing that welfare dependency discourages individuals from seeking legitimate employment, thereby encouraging illegitimate employment as a means for income. Katz (1994) adds that because welfare recipients will not attain free welfare services once income reaches a certain level, they will seek illegitimate forms of employment, ones hidden from official income measures, to boost income levels while maintaining benefits. And Rothard (1978, p. 154), in a Malthusian fashion, concludes that welfare support for children born out of wedlock encourages teen pregnancy and discourages marriage, two criminogenic impediments to escaping poverty.

However, the microeconomic perspective that welfare benefits increase crime is also contradicted by the numerous studies contending the opposite is true (DeFronzo, 1983, Devine, Sheley, and Smith, 1988; Fiala and LaFree, 1988; Grant and Martinez, 1997;; Messner, 1986; Rosenfeld, 1986; and Zhang, 1997). There is certainly less debate over the issue within the Durkheimian camps. The Durkheim-influenced social

disorganization perspective argues that welfare benefits can preserve family and community social controls and norms, while pulling such benefits can lead to the disruption of family and culture that can trigger crime. This theory was backed by a study of 406 large urbanized counties that tested whether the affects of changes in AFDC benefits were related to crime rates. According to the study, increases in AFDC benefits did indeed have that effect (Hannon and Defronzo, 1998).

From the IAT and Mertonian (strain) perspectives, social spending on welfare is repeatedly used as a variable that leads to decreases in crime. From the strain perspective, welfare creates opportunity structures for the poor to achieve the American Dream, thereby closing the anomic gap between our cultural penchant for material success and our ability to achieve them (Merton, 1938). From an IAT perspective, the percentage of a government's budget spent on welfare defines that government's commitment to provide its citizenry time they can commit to non-economic institutions like family, education and polity (Messner and Rosenfeld, 2006). Subsequently, as in the case of education and employment, it can be argued from a plurality of criminological theoretical perspectives that policies that bar access to welfare benefits can be criminogenic. Intuition suggests a negative relationship between policies that bar access to certain economic benefits and recidivism. In other words, if an offender is blocked from legitimate employment or welfare opportunities, he may seek illegitimate means of attaining it. However, the question asked at the beginning of this chapter is broader in focus. The question is whether policies barring offenders from privileges and needs such as employment, housing, education and welfare, can contribute to "crime," not merely recidivism. Though the dependent variable may indeed include crimes committed by recidivists,

crimes from many other offenders may also be included— including those affected by the erosion of non-economic institutions.

Some research outside of the IAT canon supports this notion. Gaynes (2005), for example, has done important research on the effect incarceration can have on the children of inmates. About 1.5 million prison inmates have children under age 18 and more than 10 million children have had a parent who has been incarcerated. Having an incarcerated parent significantly increases a child's chance of juvenile delinquency and, subsequently, adulthood crimes (Mukamal, 2007). Deducing from these studies, one can also hypothesize those collateral consequence policies that trigger recidivism can also trigger crime among the children of recidivists, leading to overall increases in crime.

Other scholars contend that the criminogenic affect of arrest and convictions spread far beyond the families of offenders. Clear (2008) concludes that incarceration triggers crime throughout the communities of offenders by negatively impacting the “ability of families to function, labor markets and political and economic infrastructures.” Clear's points seem particularly pertinent to IAT, as the deterioration of families and polity institutions are key IAT variables.

Reviewing the sections above, the literature suggests several IAT and collateral consequence variables should correlate with violent and property crimes. IAT variables can include proxies for social institutions such as schools, churches and families; while collateral consequence variables can include policies that bar access to welfare and employment. Furthermore, the literature review above suggests that overall state unemployment and welfare rates are important variables, as well. Other control variables associated with the literature, however, will be needed to improve model strength.

**Control Variables.** Several control variables consistent with IAT literature will be added. These will include: a measure of decommodification (Messner and Rosenfeld, 2006), population, age, relative poverty, black population (Chamlin and Cochran, 1995), personal income, and urban density. We shall discuss each of these variables.

As mentioned above, Messner and Rosenfeld's measure of decommodification focused on the budgetary percentage nations committed to welfare spending. This study shall therefore employ a welfare spending variable as a proxy for decommodification. As Messner and Rosenfeld measured decommodification by looking at the commitment nation states made to its population in terms of budget percentage dedicated to welfare, this study shall look at the percentage of state budgets dedicated to welfare spending.

Some debate exists over whether relative or absolute poverty is more powerful a predictor. Those who argue that relative poverty is a stronger predictive variable employ measures of income inequality as independent variables and justify their use through theories associated with relative deprivation. The gist of the argument here is that more profound contrasts in material wealth between haves and have-nots makes the predicament of the poor shine forth more brightly, leading to frustration which in turn leads to the aggression associated with violent crime. Others who employ income inequality as a variable use an anomie-based model supporting the notion that crime is more determined by the increasing gap between rich and poor than it is by weak purchasing power. Some argue that such disruptions of social cohesion expand gaps between haves and have-nots and that this disruption leads to criminogenic anomie (Kennedy, Kawachi, Prothrow-Stith, Lochner and Gupta, 1998). As such, relative deprivation shall be used. However, there is also the suggestion in IAT that general

improvements in overall income can help reduce crime rates. It is for this reason that Merton, Messner and Rosenfeld have recommended welfare increases as a means of reducing crime. Higher per capita incomes, particularly when coupled with stronger informal institutions, should also make a good control variable.

Structural independent variables such as age are of import, too. Though there is some spirited debate (Hirschi and Gottfredson, 1985; Greenberg, 1983) over why teens and young adults are more likely to engage in crime than those who are older, the notion that age is one of the strongest variables related to crime is generally agreed on in criminology (Freeman, 1996; Shavit and Rattner, 1988; Farrington, 1986). Backing up the theoretical evidence is a 15-state, FBI study of prisoners released in 1994 (Langan and Levin, 2002a, p. 7). The study records age as a significant factor in determining whether prisoners would be rearrested within a three-year period. Released prisoners under age 18 were 80 percent more likely to be rearrested. Comparatively, those 45 and older had a 45 percent chance of rearrest (Langan and Levin, 2002a, p. 7). One seeking a theoretical explanation for the high prevalence of crime among younger people can look as far back as the 17<sup>th</sup> century writings of Thomas Hobbes (1957, 195), who argued that younger people are more susceptible to crime because they are less likely to have undergone the full process of socialization prevalent among their older counterparts. This may partly explain the higher crime rates among society's younger folk, but, as mentioned above, the youth argument can also follow an economic model. Thus, in an approach similar to Grogger's, Richard B. Freeman (1996, p. 40) argues that youth are highly represented among unskilled workers, who in turn have increasingly undergone a

decline in real wages and are therefore more susceptible to criminal activity. Table 5.1, below, provides insight into the relationship between age and crime.

Table 5.1. Rate of recidivism within a three-year period of prisoners from 15 states\* released in 1999 (U.S. Bureau of Justice Statistics (Langan and Lavin, 2002a).

		Percent of released prisoners who, within 3 years, were -			
Prisoner Characteristic	Percent of all released prisoners	Re-arrested	Reconvicted <sup>a</sup>	Returned to prison with a new prison sentence <sup>b</sup>	Returned to prison with or without a new prison sentence <sup>c</sup>
Age at Release					
14-17	0.3	82.1	55.7	38.6	56.6
18-24	21.0	75.4	52.0	30.2	52.0
25-29	22.8	70.5	50.1	26.9	52.5
30-34	22.7	68.8	48.8	25.9	54.8
35-39	16.2	66.2	46.3	24.0	52.0
40-44	9.4	58.4	38.0	18.3	50.0
45 or older	7.6	45.3	29.7	16.9	40.9
No. of released prisoners	272,111	272,111	260,226	254,720	227,788

<sup>a</sup> Because of missing data Ohio was excluded from these figures

<sup>b</sup> Because of missing data, Ohio and Virginia were excluded

<sup>c</sup> Because of missing data, Arizona, Virginia, Delaware, Maryland New Jersey, Ohio were excluded.

\* States in the study are Arizona, Delaware, California, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Virginia.

As a young age tends to be a common trait among prisoners, so is being black (Figure 5.1). Three percent of the U.S. black population was incarcerated at the end of 2004, compared to less than one-half percent of the white population (Bureau of Justice Statistics 2005a).

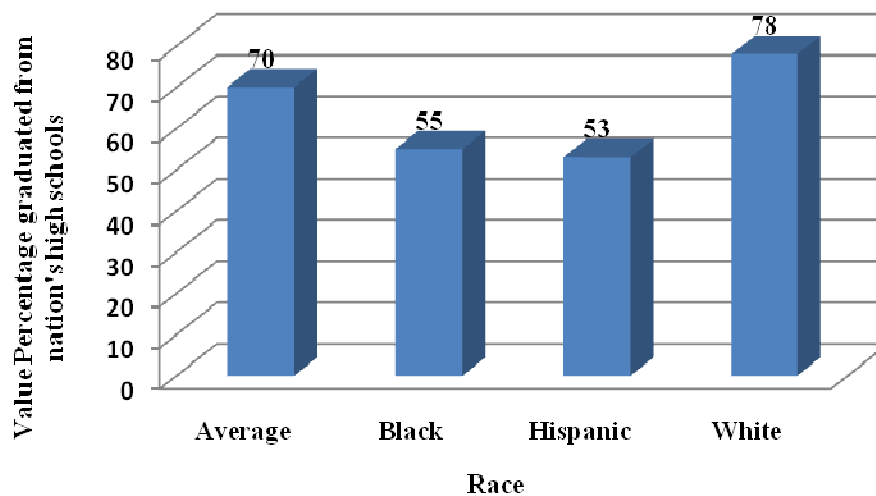


Figure 5.1. U.S. high school graduation rates by race (Statistics compiled by Manhattan Institute for Policy Research (2003)).

The use of race as an independent variable affecting crime poses considerable empirical and normative concerns. There is the danger of implying that particular races or ethnic groups are intrinsically more prone to crime. Furthermore, using race as a variable may lead to ignoring the various ways in which structure, dominant culture, subculture, identity and other factors contribute to the high prevalence of crime among blacks. Also, it is argued that the higher crime rate among minorities suggested by the high prison population of blacks are not a true representation of how much more total crime blacks commit than other ethnic and racial groups, but rather the types of crimes they commit.

After all, African Americans are more affected by policies that direct large amount of resources to stopping certain types of crimes, such as the War on Drugs (Sampson and Lauritsen, 1997, p. 311). Perhaps shedding more light on the relationship between race and crime, as Robert J. Sampson and Janet L. Lauritsen point out, is the fact that blacks, due to structural reasons, are more likely to be poor (1997, p. 332). Furthermore, a study of high school dropout rates in 1998 defined the graduation rate among blacks to be 58%. compared to a graduation rate for whites of 78%. As discussed above, there is a relationship between education and wage levels, which increase the likelihood of crime. Therefore, the connection between race and crime may arguably be due in part to the fact that blacks are overrepresented among lower wage earners and high school dropouts.

There is another compelling theory among those who use ethnicity or race as an independent variable leading to crime. This is the notion that nation states have difficulty dealing with diversity issues. For example, Hamman and Quigley (1982, pp. 206-207), in a comparison of nation states, conclude that there is a significant, positive relationship between ethnic and linguistic heterogeneity and homicide rates. The authors note that criminal activity is far less concentrated between groups of different ethnicities and culture but within these groups. The authors posit two theoretical reasons for this fact. The first is the psychosocial explanation of displaced aggression. Members of minority groups become frustrated with their status in society relative to dominant culture groups and begin to act it out within their own group. The theory can be compared to parents who deal harshly with their children after a rough day at the office. The second theory is that assimilation of minority cultures into dominant national cultures often results in the deterioration of traditional means of ensuring order within a community, leading to

higher intra-group crime. Under both perspectives, theories of diversity seem to have a stronger theoretical base than those that directly associate crime with the intrinsic nature of particular racial groups.

Another variable common to macro-social studies that employ anomie-type theories of crime such as social disorganization and strain theory is urban density (Li and Rainwater 2005, Wirth, 1938; Agnew, 1992, 1999). This body of literature argues that population density either due the strain it causes informal institutions to regulate deviant behavior, the ability of law enforcement to control such a large population, or the chances that deviants can collectivize around peers with similar values generally have a positive impact on crime rates (Pratt, 2005).

In summary, the literature points to several variables related to crime. These include government, welfare support, age, population black, informal social institutional strength, per-capita income, urban density and this paper's introductory variable, policies that bar economic (employment and/or welfare reentry).

However, literature reviews on the effects of get-tough polices in Chapters 3 and 4 also imply a relationship between get tough policies and crime. Subsequently proxies for the effect of get-tough ideology and intensity should also be employed in the study.

## **Hypotheses**

**Main Hypothesis.** There is a positive relationship between state public policies that bar the legal, economic reintegration of persons with criminal records and state crime rates. As these public policy barriers increase state crime rates increase.

**Other Hypotheses.** From a review of the literature, I also expect the following to be true of the relationship between my independent control variables and the dependent variable state crime rates.

a. There is a negative relationship between the percentage of young people in a state population and state crime rates. As the age of a population decreases, crime increases.

b. There is a positive relationship between population black and crime. As each state's black population increases, crime increases.

d. There is a negative relationship between education rates and crime. As a state's education rate increases, state crime decreases.

e. There is a positive relationship between get tough policies and crime. As state get tough policies increase, crime increases.

f. There is a positive relationship between get-tough political ideology and crime. As get-tough political ideology intensifies, so does crime.

g. There is a negative relationship between decommodification and crime. As state welfare benefits increase, crime decreases.

h. There is a positive relationship between economic inequality and crime. As a states level of income inequality decreases, crime decreases.

i. There is a positive relationship between urban density and crime. As urban density increases, so does crime.

j. There is a negative relationship between personal income and crime. As personal income increases, crime decreases.

k. There is a negative relationship between the strength of informal social institutions and crime. As families, schools, and churches get stronger, crime decreases.

l. There is a positive relationship between underemployment and crime. As underemployment increases, crime does, too.

### **Dependent variable measurement**

The measure for the dependent variable state crime rates will be the those statistics on violent and property crime rates/per 100,000 population in each of the 50 states compiled by the Federal Bureau of Investigation in their *2007 Uniform Crime Report*. The FBI defines violent crime as the offenses of murder, forcible rape, robbery, and aggravated assault. Property crimes are offenses of burglary, larceny-theft, and motor vehicle theft. Offense totals are based on all data received from reporting agencies and estimates for unreported areas (FBI, 2008). Use of the 2007 date would allow for at least a four-year lag time between all independent variables and the dependent variable. The decision to employ a four-year lag, concerns with the UCR crime rate measurement, and issues surrounding ecological fallacy are problems with the dependent variable that deserve more attention.

The use of time lags and the appropriate length of lagged time between independent and dependent variables should be addressed. Lagged dependent variables are often used to make certain that the dependent variable result from the independent variables, and, therefore occurs after them. For example, if a person's underemployment is to lead to a crime, then it would be assumed that the crime occurred after that person became unemployed and not before. Therefore, to ensure that the crimes measured occurred after the independent variables and not before, dependent variables of crime are

often measured using data of crime rates at least one year after the independent variables (Wadsworth 2005, 356).

A four-year lag has been used by studies employing models of a similar theoretical logic to this one. Markowitz, Bellair and Liska and Liui (2001) have conducted a test of social disorganization theory, a theory that employs the strength of non-economic institutions as variables, to test for the effects of neighborhood cohesion on crime in various British neighborhoods. The results suggest that social disorder leads to fear and then crime, and that the links in this process can take time-- as the dependent variable was measured with a four-year lag. Similarly, a study on the effects of scholastic underachievement in crime rates in France, concluded that high school students would begin engaging in violent crimes resulting from their lack of educational skills about four years later. The study argued this time period marked the transition of the youth in the study to young adulthood, a life stage when their low skill set would marginalize them to low-income employment sectors and make them more crime prone (Gillis 2004, 1314-1315). Because this study assumes that collateral consequences can have an effect on eventual crime committed by children of offenders, then a similar time lag seems appropriate.

This study sees several other reasons for employing at least a four-year time lag. If collateral consequences are to have an impact on crime rates, they could do so in many ways, but this study posits two major pathways are likely. The first pathway acts directly on the offender who, being barred from reentry through roadblocks to work, welfare and so forth, recidivates. Studies show that most recidivism, measured as a self-reported arrest for a new crime, occurs within 3 years of the release date from prison (Uggen,

2000). The second pathway would include the effect of collateral-consequence-induced recidivism or mere social marginalization on the families, communities and states of which such persons with criminal records are members. These ripple effects would arguably take time, and a four-year lag therefore seems plausible.

The next area of concern in the dependent variable is related to the UCR data collection methods. UCR violent and property crimes account for those that are reported to police, and therefore do not account for those crimes that are not reported to law enforcement (Jargowsky and Park, 2009). Furthermore, the reporting of crime data to the FBI is voluntary, meaning that police underreporting can compromise the data (Maltz and Tagonski, 2002). Nonetheless, UCR data is one of the most widely used in criminology, and this study will be no exception.

The final area of concern regards the relationship between the independent variables and the dependent variable. This is the issue of “ecological fallacy,” which occurs when individual level phenomena, crimes for example, are explained through aggregate data (King, 1997). It is important therefore, when analyzing these results to only assume an explanation of the relationship between the aggregate independent variables and aggregate crime rates. In other words, if states with high underemployment rates, low welfare rates, and high levels of collateral consequences generally have higher crime rates, it does not mean that individuals in those states have a higher chance of committing crime.

### **Independent variable measurements**

a. For the measure of get-tough policy intensity used each state drug arrest rates per 100,000 population for the year 2000 as established by the FBI’s *Uniform Crime*

*Report* (2001) and each state's corrections budget spending for 2000, as established by the National Association of State Budget Officers (2001). I employed the drug arrests in each state as listed by the FBI *Uniform Crime Report* and each state's population as determined by 2000 U.S. Census (2001) to arrive at a drug arrest per-thousand ratio. The use of drug arrest rates as measure of Get Tough intensity is implied in Chapter 4, which noted the significant affect drug arrests have had on rising incarceration rates and perhaps crime. As the previous chapter's have suggested, get-tough policy seems to be correlated with political ideology. Our third get-tough measure is subsequently percentage of Republicans in each state's House of Representatives, which was determined by looking at House membership of Republicans as stated by the 2000 US Census (2001 a)

b. For the measure of racial diversity, I shall use the 2000 U.S. Census (2001b) measure of the percentage of black residents in each state.

c. For a measurement of youth, I shall use the each state's age 15-24 population gathered by the 2000 US Census (2001c).

d. As a measure of decommodification, I used the percentage of each state's budget spent on welfare as determined by the U.S. Census Bureau's (2001d) Annual Survey of Government Finances.

e. The study measured absolute income and relative income inequality. To measure income inequality in each of the 50 states I employed the widely used Gini index as calculated by the 2000 US Census (2001e). A Gini index score of 'zero' measures perfect equality (all persons having equal income), while a score of '1' measures perfect inequality (where one person posses all the income and the rest of the population zero. As

measure of absolute income I used the 2000 U.S. Census' measurement of personal income per capita (2001f).

f. The non-economic institutions used in this study will include schools, churches and families. As a measure of schools, I used the 2000 state high school graduation rate as documented by the National Center for Labor Statistics (2001). To measure church strength, I employed the Glenmary statistics (Jones et al., 2001) on state church attendance rates in the year 2000. As a measure of family strength, I used the percentage of family's headed by married couples, as documented in the 2000 U.S. Census (2001g).

g. The independent variable of the main hypothesis is state public policy barriers to economic reentry. To measure this variable I shall use the Legal Action Center's Report Card (2002) for public policy roadblocks to the reintegration of those with criminal records. Looking at laws on the books in 2000, the LAC hired a team of policy analysts and legal and statistical experts to examine laws that serve as "'roadblocks,' unfair or counterproductive barriers— in the areas of employment, public assistance and food stamps, access to criminal records, voting, public housing, adoptive and foster parenting, and drivers' licenses." The team then ranked state public policies that addressed each category using a range of zero to ten. In this case, zero represents policies that create the most roadblocks to reentry and ten the most. To focus solely on economic roadblocks, I only included roadblocks related to income. I created two different indexes after. One of these indexes only focuses such on barriers to employment (hiring, employer access to criminal records, trade licenses and driver's licenses). The second index included all those variables in the first, but also included roadblocks to TANF and housing benefits.

h. As a measure of urban density I used the 2000 U.S Census' total urban population per state in tens of thousands (2001h).

i. For the measure of underemployment I shall employ the Bureau of Labor Statistics U-6 figures (2003). 2003 was the earliest year available such data on the state level, but it allows for at least a four year lag with the dependent variable. The U-6 statistics measures each state's total unemployed, plus all marginally attached workers, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers.

### **Methodology**

I employ cross-sectional OLS regression analyses to test the cumulative and, for non-economic institution variables, interactive effects of the independent variables on state crime rates. The model is not a full test of IAT because there is no direct measure of anomie or the degree to which the logic of the economy has dominated all levels of society. For this reason, scholars employing IAT theory models have claimed that their works have only been "partial" tests of the theory (Chamlin and Cochran, 1995; Savoleinen 2000). The lack of a direct measurement for anomie can weaken the relationship between independent and dependent variables, while the sample size (50 U.S. states) is small. Some statistical literature recommend a somewhat looser standard for significance (the .10 level) when sample sizes are small and effects are weak (Sotirovic, 2003; Agresti, 1990, Iyengar and Kinder, 1987; McClave, Dietrich and Sincich, 1997). Therefore, the models in this study will employ the .10 level of significance.

Before each independent variable is to make it to the final OLS regression model, however, it must be tested for multicollinearity. Two independent variables are said to be multicollinear if they have a Pearson's Correlation Coefficient that approaches 1.0, which means the two variables have a perfect relationship, or, in other words, measures the same thing. Using variables that are multicollinear are a violation of OLS regression because it leads to weighing in too heavily on one measure. In this study, those variables containing a PCC of .7 or more will be deemed multicollinear.

### Diagnostics and Results

**Multicollinearity.** When conducting bivariate correlation analysis on the independent variables, no pair of variables exhibited multicollinearity (See Appendix b.). Some, however, came closer to our .7 standard of multicollinearity than others. Our measures of urban density and per capita income had a Pearson's correlation coefficient of .658, a testament to the wealth generated in urban areas when compared to rural areas. However, because none of these variables exceed the .7 standard, they were all used in the regression.

Table 5.2. Regression model testing effects of collateral consequences and other control variables on crime rates.

	Coefficients <sup>a</sup>		t	Signif.
	Unstandardized Coefficients	Standardized Coefficients		
	B	Std. Error		
(Constant)	4390.022	3497.440	1.255	0.218
Underemployment rates	11855.541	5912.925	0.190	2.005 0.053***
Drug war	-.341	0.182	-.176	-1.879 0.069***

(Table 5.2 continued)

Black population	28.262	11.847	.305	2.386	0.023**
Urban density	43.251	9.539	.729	4.534	0.000*
Gini index	819.085	3892.573	.022	.210	.835
Percentage married	76.00	45.762	.220	1.661	.106
Personal income per capita	-.114	.033	-.520	-3.414	0.002*
GOP in State House	-10.511	6.653	-.182	-1.580	0.123
Employment roadblocks	42.102	117.334	.281	2.429	0.021**
High school graduation	-2969.366	1303.080	-.281	-2.279	0.029**
State corrections budget	-243.731	105.713	-.274	-2.306	0.027**
Decommodification	-39.407	19.445	-.207	-2.027	0.051***
Young population	-10641.66	9986.259	-.153	-1.066	0.294
Church attendance	-1.772	.778	-.265	-2.276	0.029**

\*Significant at the .01 level

\*\* Significant at the .05 level

\*\*\* Significant at the .1 level

<sup>a</sup> Dependent variable: total violent plus property crime in 2007.

Table 5.2, includes all control variables and a collateral consequence variable that only counted roadblock policies directly related to employment. After subtracting those policy barriers scored that were not highly related to employment (franchise, public housing, and right to adopt, for example), but including those policies that hindered offender hiring (permitting employer access to criminal records, allowing employers to deny jobs based on arrest or criminal records, allowing easy public access to criminal records, and barring offenders from trade licenses and drivers licenses), the barriers were significant and lead to a relatively strong model, explaining almost 70 percent of the variance between the independent variable and state violent and property crime rates (Table 5.3). Ten out of the 13 control variables were significant in the model. The

measures for non-economic institutions were partly significant, with church attendance and high school graduation rates showing significance at the .05 level (Table 5.2). The study's measure of family approached significance at the .1 level, but was short of the proverbial mark. The measures of get tough climate, also showed mixed results, with state correction spending showing significance at the .05 level, drug arrest rates showing significance at the .1 level, but Republicans in the State House (our proxy for conservative ideology) falling shy of significance at the .1 level.

Table 5.3. Model Summary (includes employment barriers to reentry).

R	R Square	Adjusted R Square	Standard of Error of the Estimate
0.885	0.784	.695	493.51669

The model was tested again employing a collateral consequence variable that also included roadblocks to welfare acquisition. This resulted in a slightly weaker model (see Table 5.4) without significant results for the collateral consequences variable. However, underemployment, the drug war, black population, urban density, per capita income, the percentage of population black, high school graduation rate, church attendance, and the percentage of state budgets spent on corrections were all significant (Table 5.5).

Table 5.4. Model Summary (includes employment and welfare barriers to reentry).

R	R Square	Adjusted R Square	Standard of Error of the Estimate
0.874	0.764	.666	516.08590

Table 5.5. Additive relationship between control variables, including roadblocks to employment and welfare, and the dependent variable state violent plus property crime rates.

	Coefficients <sup>a</sup>		T	Signif.
	Unstandardized Coefficients	Standardized Coefficients		
	B	Std. Error		
(Constant)	5689.763	3585.113	1.587	0.122
Underemployment rates	11562.073	6191.015	0.185	1.868
Drug war	-0.371	0.190	-0.191	-1.956
Black population	27.233	12.430	0.294	2.191
Urban density	38.008	9.490	0.640	4.005.00
Gini index	1143.000	4091.568	0.031	0.279
Percentage married	53.121	46.933	.154	1.132
Personal income per capita	-0.120	0.035	-0.546	-3.429
GOP in state House	-7.766	6.776	-0.134	-1.146
Employment and welfare barriers to reentry	18.712	11.868	0.171	1.577
High school graduation	-3017.455	1364.150	-0.285	-2.212
Decommodification	-38.067	20.372	-0.200	-1.869
Young population	-9421.139	10561.802	-0.136	-0.892
State corrections budget	-178.841	103.798	-0.201	-1.723
Church attendance	-1.805	0.817	-0.270	-2.211

\* Significance at the .01 level

\*\* Significance at the .05 level

\*\*\* Significance at the .1 level

This study also tested multicollinearity in the final regression (Table 5.6). This time, the study employed tolerance and variance inflation factor (VIF) values to measure multicollinearity in each independent variable. The tolerance measures the percentage of the variable that cannot be explained by other predictors. Therefore, the smaller the

tolerance the greater chance of multicollinearity. Any tolerance less than .10 is suspect of multicollinearity. The VIF, on the other hand, measures an inverse of the tolerance.

Therefore, VIF's with values greater than 10 are suspect. A reading of table 5.5 suggests that none of the variables, by VIF and tolerance standards, are multicollinear (UCLA).

Table 5.6. OLS regression unstandardized coefficients, beta and significance for 50 states.

Model	Collinearity Statistics	
	Tolerance	VIF
Underemployment rates*	.711	1.40
Drug war	.724	1.38
Black population	.389	2.57
Urban density	.246	4.06
Gini index	.587	1.70
Percentage married	.361	2.74
Personal income per capita	.274	3.75
Employment roadblocks	.475	2.10
High school graduation	.419	2.38
Decommodification	.607	1.64
Young population	.307	3.25
Church attendance	.469	2.13
State Corrections budget	.449	2.22

\* See Codebook in Appendix A. for descriptions of each variable

Looking once again at Table 5.2, one can see the following relationships between the independent variables and the dependent variable.

- For every one-unit increase in the independent variable underemployment (measured by the Department of Labor's U-6 statistic), crime increases by 11,855 units.

Thus, as underemployment increases, so does crime.

- For every one unit of increase in drug arrest rates, crime decreased by .341 units.

Thus, as drug arrest increase crime decreases.

- For every one unit increase in a state's black population, crime increases by 28.6 units. Thus the number of blacks in a state's population has a positive impact on crime rates.

- For every one unit increase in urban density, crime increases by 43.251 units.

Thus as a state gets more densely populated, it tends to get more crime.

- For every one-unit increase in the Gini index independent variable per, crime increases by 819.09 units. Thus, as income inequality increases, crime increases.

- For every one unit increase in married households, crime increases by 76 units, suggesting a curiously positive albeit non-significant relationship between marriage rates and crime.

- For every one increase in the independent variable, state per capita income, the dependent variable decreases by .114 units. Thus, as per capita income increases, crime decreases.

- For every one unit increase in state House of Representatives+ Republicans, crime decreases by 10.5 units. Thus, as a state gets more conservative, it's crime rates tend to decrease.

- For every one unit increase in the independent variable, employment policy roadblocks to reentry, crime increases by 42 units. Thus, as collateral consequences affecting the employment accessibility to offenders increase, crime increases as well.
- For every one unit of increase in the independent variable, percentage of students graduated from high school, the dependent variable decreases by almost 3,000 units. Thus, as high school graduation rates increase crime rates decrease.
- For every unit increase in the percentage of a state's corrections spending relative to its other expenditures, crime decreases by 243.7 units, meaning that as state corrections spending increases, crime decreases.
- As the percentage of a state's welfare expenditures compared to its other expenditures increases by one unit, crime decreases by 39.4 units. Thus, as corrections spending increases, crime decreases.
- For every unit increase in young population, crime decreases by 10,641 units, suggesting, strangely albeit without significance, that as youthful populations increase crime decreases.
- For every one unit increase in church attendance, crime decreases by 1.78 units. Thus as church attendance increases, crime decreases.

The relationships just stated do not represent comparable measurements of the relationship strength between each of the independent variables and the dependent variable crime. A measure of strength difference can be found by measuring the absolute value of the beta, which functions as a standard deviation. The closer the absolute value of the beta approaches 1.0, the stronger it is.

Therefore, among those relationships that were significant, Table 5.2 shows that the strongest relationship between an independent variable and the dependent variable is .729, which measures the strength of the relationship between urban density and crime. For every one standard deviation unit in urban density, crime increases by .729 standard deviation units. The second strongest relationship between the independent and dependent variables was between per capita income and crime. For every unit of the standard deviation unit increase in per capita income, crime decreases by .520 standard deviation units. Population black had a beta of .305, while the independent variable of most concern to this inquiry, employment roadblocks to reentry, had the fourth strongest affect on crime rates in this model. For every one standard deviation unit in employment roadblocks to reentry, crime increased by .281 standard deviation units. This was the same level of strength, albeit a different directionality, as the relationship between high school graduation rates and crime. The significant measures for non-economic institutions and collateral consequences were of similar strength to corrections spending on their impact on crime, while the drug war elicited a relatively weak impact.

The weakest relationships between single independent variables and the dependent variable stemmed from measures of income inequality (Gini index) and youthful population. For every one standard deviation unit increase in income inequality, crime increased by .022 standard deviation units; while for every standard deviation unit increase in youthful population, crime decreased by .153 standard deviation units. Not only was the relationship comparatively weak, it was also not statistically significant and strangely in a different direction than this study had hypothesized. A review of the youth population data in each state suggest that lack of strength may result from lack of

variation, as the population percentages were similar for most states. The directionality may therefore be heavily influenced by other independent variables in the model.

Conversely, in support of earlier hypotheses, Model 5.2 suggests that two of the non-economic institution variables this paper associates with IAT (education levels and church attendance) help reduce crime rates. However, since the model is additive and does not test for interactive terms, it does not necessarily support IAT. To be more precise, a partial test of IAT theory as it relates to collateral consequences, would hypothesize that collateral consequence policies are criminogenic because they weaken the ability of non-economic institutions to ward off the criminogenic impacts of the American Dream. Subsequently, any model testing such a hypothesis would have to look at the manner that collateral consequence policies interact with non-economic institutions. To do this, I added multiplicative interactive terms to the previous model to see whether employment barriers X family, employment barriers X church, or employment barriers X education were of significance and increased the overall strength of the model.

Before creating the interactive terms, I centered variables that were to be included in the interactive model by subtracting their means from each variable. This method reduces chances of collinearity resulting from the weight of the interactive terms when combined with the independent variables of which they are comprised (Cohen, Cohen, West and Aiken, 2003). After adding all of the interactive terms to the model, I then tested for the effects of each. As shown in Table 5.7, in neither of the interactive models were interaction terms significant; and model strength, when compared to the additive model that included employment roadblocks, was reduced.

The results suggest that if collateral consequences do help reduce crime it is not necessarily due the way that they erode the strength of non-economic institutions. It is plausible that this paper's assumption that collateral consequences reflected the lack of collective interest in the individual, and therefore high anomic states and permeation of the economy in everyday life, may be false. Rather, collateral consequences may represent both a lack of caring for individual offenders and a simultaneous willingness to protect the general public. Barring a drug or violent offender from workplaces, it could be argued, protects employees from violence or negligence due to drug abuse. The results of the interactive terms model also lead one to ponder the way that the recidivism of offenders, due to collateral consequences, may strengthen non-economic institutions as opposed to weakening them. A family with a parent who is a violent substance abuser may actually benefit from the loss of that parent due to incarceration. These varied possible outcomes for the interaction of collateral consequences with non-economic institutions may explain the results documented in Table 5.7 (see end of chapter).

### **Summary of Collateral Consequence Impact**

Beta analysis points towards a positive significant relationship between barriers to reentry and crime, specifically those laws that bar offenders from attaining employment. As the nation contends with the huge swath of released American offenders, the results are of importance to policy makers seeking to reduce the ballooning costs of incarceration.

The tests also show strength for some of the variables derived from IAT, particularly for the non-economic institutions of schools and churches. However, the tests do not show support for collateral consequences as an IAT variable, because our variable

for barriers to reentry, when used in interactive terms with our non-economic institution variables, showed no significance. It is curious, however, that an increase in model strength was found when isolating the interactive terms for collateral consequences and family. Also curious was the unexpected direction of the relationship between increased state marriage rates and crime, as our model suggested the crime rate rise when married couples increase. This does not only seem to go against a major premise of IAT, but against the posited directionality of an established variable in criminology. Marriage is a key variable in studies that examine crime as a response to the life course (Sampson, Laub and Wimer, 2006). The best explanation this study can give for the odd results is that state marriage rates are correlated with divorce rates (Jensen, 2002, 63), which are associated with rises in crime. It is perhaps for this reason that Chamlin and Cochran (1995), in their partial test of IAT, employed ratio of marriage to divorce, not marriage, as their measure of family strength. Any future attempts to duplicate this study should therefore employ Chamlin and Cochran's measure.

Still, because the collateral consequence variables proved strong in various OLS regression tests, there is support for further empirical research on the effect of policies that bar the economic reentry of person's with criminal records in society. If collateral consequences are indeed associated with increased crime, then they can only contribute to budget-breaking incarceration rates. The results also suggest that although get-tough measures (high drug arrest rates and heavy spending on corrections) can help reduce crime, punishing offenders after they have served their sentence has the opposite impact. As an increasing number of Americans are released from prison each year, policy makers may want to consider reducing their barriers to reentry in an effort

to improve public safety, and hopefully, reduce the crime that can lead to financially costly incarceration rates.

Table 5.7. Model test for collateral consequence and non-economic institution interactive terms.

	Sig.	Sig.	Sig.	Sig.
Underemployment rates2000	***.084	***.076	***.070	***.070
Drug war	.306	.283	.284	.299
Black population	** .046	** .042	** .034	** .032
Urban density	*.000	*.000	*.000	*.000
Gini index	.841	.767	.769	.811
Percentage married	.179	.176	.145	.155
Personal income per capita	** .037	** .018	** .031	** .017
Percent GOP in State House	.180	.176	.187	.164
Employment roadblocks	** .010	** .008	** .007	** .008
High school graduation	** .048	** .033	** .021	.019
State corrections budget	** .018	** .015	** .016	** .014
Decommodification	***.073	*** .063	***.071	*** .058
Young population	.629	.557	.553	.578
Church attendance	***.067	***.062	.065	*** .055
Church attendance X Employment roadblocks	.758		.821	
High school graduation X Employment roadblocks	.805	.941		
% married X employment roadblocks	.680			.725
Adjusted R square	.647	.665	.666	.666

\* Significant at the .01 level

\*\* Significant at the .05 level

\*\*\* Significant at the .1 level.

## **CHAPTER 6**

### **Conclusion**

This paper has reviewed the problems, politics, and proposals associated with the rise of get-tough policies and examined the impact these policies have had on crime and incarceration rates. When reviewing the agenda setting process involved in the rise of sentencing reform and the War on Drugs, several of Kingdon's themes remained consistent.

First among these is Kingdon's notion that new proposals are not created to respond to new problems. Rather, proposals that have been circulating for some time are brought to the agenda when politics and problems merge to open a space. This was evident in the case study of early sentencing reform, during which high crime rates, interest group pressure, public pressure to change sentencing structure, and presidential politics merged to open a window for reform policies that had been circulating since the early 1970s. Similarly, in another case study, a three strikes proposal born in 1988 did not arrive to the agenda until 1994, when a problem stream (catalyzed by the murder of the child Polly Klaas) merged with the political stream (comprised of factors such as the organization of policy entrepreneur Michael Reynolds, the mobilization of interest groups such as the National Rifle Association, public opinion, and gubernatorial as well as presidential elections) to open a window. The theme continued with the asset forfeiture, which was proposed during the Nixon era, but leaped onto the national agenda when a drug war window opened in the Reagan years.

Kingdon's contention that ideology wields significant impact in the proposal stream also holds true. Though early sentencing reform had bipartisan support, the crime policies of the past 30 years have been increasingly more right-winged. And while Democrats have joined in the get tough rhetoric, their support is indicative of a right-winged shift in their political platform. This fact was particularly evident during the Clinton era, when, as the sections on three strikes and collateral consequences have shown, Democrats supported policies aimed at welfare recalcitrance and getting tough on crime in order to steal Republican thunder on those issues. The ideology that guided the get-tough movement was rooted in conservative visions of rugged individualism and personal responsibility. It was therefore not a stretch for policy makers to embrace individual-level crime theories that focused on deterrence to stop individual-level decisions to commit crime. This shift from macro-social to micro-economic views of crime was echoed in President Reagan's speeches when he described the need to do away with "sociology majors on the bench (1986)." Finally, as suggested in Chapter 5, the proliferation of collateral consequence policies in the 1990s can be viewed as ideologically driven by conservative values based on punitive crime policies and welfare state shrinkage.

Kingdon's belief that problems rise to government's agenda by way of sensational events is another recurrent theme in the agenda setting case studies. The murders of Polly Klaas, Meghan Kanka as well as the politicization of Willie Horton's murder and Len Bias's overdose were all symbolic events that helped pave the path for the journey of get tough policies to the agenda.

However, the case studies do not support Kingdon's notion that the media has a relatively low impact on agenda setting. Instead the opposite seemed to be true. In the preceding chapters' case studies, the arrival of sentencing reform, the drug war and collateral consequences to the agenda were all marked by spikes in media coverage of those issues. It is uncertain from the studies, however, whether public opinion and policy makers drove media coverage or vice versa. The directional effects of media on the agenda setting process is indeed ripe for further research, particularly when considering the increasingly politicized communications atmosphere, which may affect streams and window dynamics in a far different way than they did at the time of Kingdon's seminal work.

Kingdon (2001) has argued that policy makers tend to have more impact on the media than the media does on politicians. But the recent politicization of news may grant political blogs or networks such as Fox or MSNBC more leverage to pressure policy makers into taking certain courses of action (Sweetser, Golan and Wanta, 2008). Such leverage may also be affected by the relationship between politicized media and their audience. The politicization of the media has resulted in publics that seek out news markets with which they feel ideologically compatible (Bennett and Iyengar, 2008). As the media has become more politicized, so has public perception of media bias (Coe et al., 2010), a factor that could arguably tilt the balance of power in favor of candidates or policy makers. The events following a *New York Times* front page story of an extra-marital affair involving then presidential candidate, Sen. John McCain (Ruttenberg et. al, 2008), illustrates this point. McCain's campaign was able to portray the senator as the victim of slanted, liberal, media attacks and leverage the story on his affair toward

increased campaign contributions (Bumiller, 2008). On other hand, some posit that the ability of public officials to manipulate constituents through the media may be thwarted because an increasing number of Americans ignore the news due to perceptions of bias (Bennet and Yengar, 2008). Consequently, many Americans ignore relevant issues whether the news coverage of it is political or not (Bennet and Iyengar, 2008). The question of whether today's media plays less or more of a role in agenda setting is thus still up for debate.

While the case studies lend support to Kingdon's streams and windows model, our review of the impacts get tough policies have had on crime and incarceration yielded some consistent results. A review of the literature on sentencing reform's incarceration impacts, suggests these policies have helped propel the prison population increase. The literature suggests that the impact of sentencing reform may not be direct, as plea bargaining and a parole role shift from rehabilitation to monitoring may function to indirectly help spike the number of prison commitments per arrest.

Despite the 1990's crime plunge, there is still debate over whether incarceration, the economy, law enforcement presence, structural shifts in the crack-cocaine war, the aging of the population, or even abortion have driven the decrease (Levitt, 2004). Even studies that conclude the incarceration boom decreased crime, question whether the financial costs are worth it, while hypothesizing that the crime-reduction returns are diminishing. Still, other bodies of work have focused on the effect incarceration can have on crime once prisoner's return due to stigma, being barred from resources, learning criminal ways of thinking while in prison, or through weakening of informal social institutions.

The literature studying the impact of the drug war comes to like-minded conclusions. One perspective is that the drug war has led to reductions in crime by increasing drug arrest rates from upward of 580,000 in 1988 to 1.7 billion in 2008 (Uniform Crime Report 2009). This perspective is supported by Chapter 5's regression analysis, which suggests a negative relationship between drug arrests and crime. On the other hand, some of the research reviewed in Chapter 3 argues that the drug war may be criminogenic, and cites many plausible reasons as to why. What is indisputable is that the financial cost of the war is astronomical, as, at the national level, drug enforcement is projected at \$26.2 billion for fiscal year 2012 (Office of National Drug Control Policy, 2010).

When compared to drug arrests, Chapter 5's research suggest that collateral consequences are far more damaging to public safety. Reintegrating the unprecedented number of Americans with criminal records is made more difficult than ever due to skyrocketing releases. It is estimated that about 700,000 people are released from American prisons ever year, an additional 12 million from jails. These contribute to the approximately 47 million Americans who possess criminal records. It is also possible that the number of offenders in society may continue to increase, making collateral consequences more pertinent.

As mentioned in Chapter 2, Kingdon (2002) cited the importance of problem definition as key to determining if and how policy makers will respond. Jeremy Travis applies this observation of Kingdon's to collateral consequences, noting how defining collateral consequences as a civil issue as opposed to a criminal justice one, has kept

them and the subsequent means through which they have been adopted away from the attention of traditional criminal justice policy makers and scholars.

*“... these punishments typically take effect outside of the traditional sentencing framework— in other words, are imposed by operation of law rather than by decision of the sentencing judge—they are not considered part of the practice or jurisprudence of sentencing. Through judicial interpretation, legislative fiat, and legal classification, these forms of punishment have been defined as “civil” rather than criminal in nature, as “disabilities” rather than punishments, as the “collateral consequences” of criminal convictions rather than the direct results. Because they have been defined as something other than criminal punishment, scholars, legislators, criminal justice officials, and legal analysts have failed to incorporate them into the debates over sentencing policy that have realigned our criminal justice system over the past quarter century. ... Although these criminal punishments look like typical legislative enactments, winding their way through the committee process, passage by majority vote, and approval by the executive, their legislative life cycle often follows an unusual course. Unlike sentencing statutes, they are not typically considered by judiciary committees. They are often added as riders to other, major pieces of legislation, and therefore are given scant attention in the public debate over the main event. They are typically not codified with other criminal sanctions. Some exist in the netherworld of the host legislation to which they were attached. Some exist under a separate heading of civil disabilities (Travis 2002, pp. 16-17).*

Several factors make the collateral consequences of today different, and more problematic, than those of the past: First, as mentioned above, due to the rise in incarceration these policies affect more people. Second, while the number of Americans with criminal records is increasing, collateral consequence policies have also substantially increased (Travis 2002). Third, because of eased access to criminal background information and incentive to look it up, employers, welfare institutions and government agencies are more likely to impose the collateral consequences on the books (SEARCH 2005, 7-8). The fourth reason was hypothesized at the beginning of this paper and was substantiated by the research conducted at the end of Chapter 5. That research

suggests that a continued implementation of collateral consequence policies, particularly those barring access to employment, can have a positive impact on crime.

Kurlycheck and Bushway (2006) have conducted empirical research that supplements the findings of Chapter 5's study with recommendations for policy alternatives. The study analyzed data from a group of about 13,000 males born in Philadelphia in 1958 and compared the population who were arrested by the age of 18 to the population that was not. The study found that the men arrested at age 18, with zero arrests seven years after the fact, had chances of committing a new crime that "began to approximate" the population of men who had never been arrested. Coupled with the test of collateral consequence policies from Chapter 6, the policy implications are that 1) reducing collateral consequence barriers to employment can improve public safety and 2) employer property and personal safety can be better secured if employment barriers are waived after seven years. Similar conclusions can be drawn about welfare benefits and crime.

While the results of the Chapter 6 study suggest negative relationships between collateral consequences policies and crime and non-economic institutions and crime, the study's interactive terms did not support IAT theory. There can be many reasons for this, including the lack of a measure for anomie, the use of state categorical variables as opposed to cities, or the lack of a destructive collateral consequence effect on non-economic institutions. However, it is possible that other macro-social theories including social organization theory can also lead to models in which categorical consequence variables can be tested. It would also be interesting to see what impacts collateral consequences have on the recidivism of offenders. The Pew Center for Public Policy

(2011) has recently released a study of recidivism rates in most states that could serve as an excellent dependent variable in a regression test of collateral consequence effects. Such research on collateral consequences is currently pertinent because dynamics in the three streams are swinging the policy pendulum from Get Tough to reentry.

As noted, problems surrounding the issue of reentry include the unprecedented number of prisoners being released. Furthermore, as the nation weathers a deep recession, states are finding it unfeasible to pay the median \$40,000 per inmate, per year, necessary to keep offenders imprisoned (Petersilia 2009). Also problematic is the fact that, on average, 66 percent of prisoners return within three years (Langan and Levin 2002), accounting for about 20 percent of arrests. Without some way to stop their return, the prison population could be unmanageable.

In the political stream, public opinion no longer evokes as strong of a “get-tough” strain as it once did. A look at responses to the General Social Survey (2010) reveals this trend. Since 1972, the national survey has asked respondents whether they feel courts in their communities are too harsh or lenient in their treatment of convicted offenders. In tow with a then rising get-tough movement, between 1972 and 1982 the number of respondents contending that courts treated convicts too leniently rose from 73 to 90 percent. After peaking in 1982, that number remained stable throughout the 1990s, ranging between about 80 and 90 percent. Since 1998, however, there has been steady shift in American public opinion, with an increasing number stating that the criminal justice system is too punitive. Since 1998, the number of Americans claiming that courts needed to be harsher with criminals has steadily declined each year. By 2006, the most recent year for which this information has been published, the number of Americans who

responded that courts were not sufficiently tough declined to 68 percent, the lowest number since the GSS began asking the question (General Social Survey 2010).

Furthermore, there is now more public support for policies based on addressing the “root cause” of crime. In 1994, about 51 percent of Americans thought social programs focused on education and job training was the best way to address crime, while 42 percent favored more police, prisons and judges. By 2003, only 29 percent favored the get-tough approach while 69 percent favored a root-causes focus on crime (Gallup 2004).

While get-tough support is declining, concern over economic issues (Gallup 2010) such as state spending is high. Moreover, reducing corrections spending by replacing prison terms with community-based reentry and rehabilitation programs and sound policies such as the reduction of collateral consequences (options that are less expensive than prisons) is in tune with the concern of Americans over government spending (Petersillia 2001).

Another factor in the political stream is the rhetorical attention policymakers are giving to reentry issues. Between 1969 and 1999, not one U.S. president made public mention of the reentry issue. But by 2000, as the number of prisoners released began to raise, that changed. In his final year in office, Clinton made public reference to the importance of reentry five times. George W. Bush had four speeches in which he cited the importance of reentry, describing such efforts as the “Christian thing to do (Public Papers of the President of the United States). The Obama campaign also addressed the issue by claiming that mass incarceration was at crisis proportions and that reentry programs would reduce recidivism. After just more than one year in office, President

Barrack Obama had mentioned reentry twice in town hall meetings, where he claimed a focus on reentry is integral to crime reduction (Obama, 2010).

As public opinion and presidential rhetoric has helped generate political capital for reentry proposals, there has also been much group organization and mobilization surrounding the issue. Organizations like the Sentencing Project (2011), the Open Society Policy Center (2011), the Legal Action Center (2011) and a host of civil rights organizations have lobbied Congress for alternatives to incarceration. The proposals, much more in the mindset of the rehabilitative paradigm, have been stirring quietly in academic and interest group circles for years (Travis 2002).

Because mass incarceration is increasingly a financially unbearable problem and concerns over economic issues have eroded the political solvency of expensive get-tough solutions, there has been a call for proposals that, rather than emphasizing tougher punishment for offenders, focus on developing ways to reintegrate them— to turn them into taxpayers rather than tax burdens. These proposals have come from academics, offender rights activists and public policy think tanks in communication even while the get-tough movement was peaking. The proposals in many ways turn back to a Johnson-era emphasis on root causes and revive the role of parole as a rehabilitative apparatus (Travis 2002). With prison no longer a financially available option, calls for proposals on how to keep these former offenders off the streets and productive are increasing rapidly (Vera Institute of Justice, 2010).

Though such alternatives substantially reduce corrections costs, they permit offenders to serve sentences in communities where they consequently increase the concentration of persons with criminal records. Among the most frequently used of such

alternatives are those modeled after California's Proposition 36, which sentences first and second time drug offenders to community rehabilitation programs. Since California's adoption of the law in 2001, four states have followed suit. Other states have taken proposition 36's emphasis on incarceration alternatives and expanded community supervision sentencing laws to non-drug offenses. Project HOPE in Hawaii, for example, sentences offenders who are at high risk for recidivism to intensely-monitored probation programs that enforce swift, certain, but relatively mild punishments, for violations.

As another means of reducing inmate populations, states are eliminating mandatory incarceration time for parole or probation violations that are technical rather than criminal, reducing the percentage of inmates returning to prison for parole violations. Finally, many states are extending early release to more inmates on the condition that they participate in certain rehabilitation and reentry projects (King 2009). All of these factors contribute to the rising number of persons with criminal records who are no longer incarcerated and are seeking social reintegration.

However, reintegrating offenders is no easy task. The most common profile of an American prisoner is that he is male, black or Hispanic; possesses less than a high school education; and is relatively unskilled as a worker (Cnaan, Draine, Frazier and Sinha 2008). As a result, most of the incarcerated masses have faced racial and economic obstacles to social integration before their experiences with the criminal justice system. It has also been argued convincingly that jails and prisons serve as factories for criminal behavior, worsening the problems of socialization inmates before "doing time" (Cnaan et al., 2008). In light of these facts, the paper makes several concluding policy recommendations.

First, job-training and substance abuse treatment must be available to prisoners. In short, some of the same programs types that pervaded during the rehabilitation/ indeterminate sentencing era should be re-implemented. Though this paper's research did not test for the effects of work skills or drug treatment programs on recidivism or crime, it seems logical that if collateral consequence policies that marginalize ex-offenders to the low-wage market have a positive impact on crime, then so would other factors that impede chances of gainful employment, such as life-coping skills (provided in drug treatment programs) or work skills.

Second, judges or parole boards should be tasked with supervising offenders from the time of sentence throughout incarceration and throughout reentry. The ultimate goal would not be to punish the offender but to transform him/her into a productive member of the community. As part of this more holistic approach, collateral consequences should be included in an offender's sentence, and, like sentences, should eventually end. As a result, once an offender serves punishment, he will not have to face barriers that will hinder his and his family's economic opportunities. Petersilia (2001) notes that most other OECD countries have similar policies and cites the United Kingdom's Rehabilitation of Offenders Act, which allows some criminal convictions to disappear from background checks seven to 10 years after the conviction. After this statutory time has elapsed, offenders are permitted to answer "no," when asked whether they have ever been convicted of a crime. A similar model could be employed in the U.S. And while laws that allow for eventual expunging of criminal records are of help, the criminogenic affect of collateral consequences can be mitigated through the repeal of laws that create

across-the-board bans on employment and trade licenses for persons with criminal records.

Third, though the result's of Chapter 6's OLS regression suggest that a heavy emphasis on corrections decreases crimes, a repeal of many of the punitive elements of sentencing reform and the drug war should be reconsidered, if only for the extremely damaging effects such policies have had on African American communities.

Finally, new criminal justice policies should take non-economic institutions into account as an erosion of their strength may indeed be criminogenic. Such policies would seem to be in touch with the platforms of conservative and liberals alike. While community support has long been a staple of liberal crime policy, the strengthening of values through families and churches has long been a staple of Republican rhetoric. The bipartisan possibilities for such types of policy would facilitate a transition from getting tough to getting smart.

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## Appendices

### Appendix A: Codebook

*Variable name:* “Underemployment rates” (total unemployed, plus all marginally attached workers, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers, as defined by the Bureau of Labor Statistics (2003).

*Source:* <http://www.bls.gov/lau/stalt03.htm>

*Dates:* 2003 (first year this statistic was made available at the state level of analysis).

*Level of measurement:* ratio

*Variable name:* “Drug war” (Drug possession and use arrest rate per 100,000 persons in a state’s population as established by the FBI’s *Uniform Crime Report* (2001).

*Source:* <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2000/00sec4.pdf>

*Dates:* 2000

*Level of measurement:* ratio

*Variable name:* “Black population 2000”

*Description:* The percentage of blacks in each state’s population

*Source:* U.S. Department of Commerce; U.S. Census Bureau (2001b), Census Data 2000

*Date:* 2000

*Level of measurement:* ratio

*Variable name:* “Urban density” (Total urban population per state in tens of thousands as determined by the 2000 U.S. Census (2001h)

*Source:* <http://www.census.gov/geo/www/ua/uauinfo.html#lists>

*Level of measurement:* ratio

*Date:* 2000

*Variable name:* “Gini index” (Measures income inequality through an index value between 0 and 1, with 0 indicating perfectly equal distribution of wealth and 1 indicating the possession of all wealth by one person as dictated by the 2000 U.S. Census (2001e).

*Source:*

[http://www.census.gov/hhes/www/income/publications/ACS%20inequality%20report%202000-2005\\_v2.pdf](http://www.census.gov/hhes/www/income/publications/ACS%20inequality%20report%202000-2005_v2.pdf)

*Date:* 2000

*Variable name:* “Personal income per capita” (Personal income per capita, current dollars, as determined by 2000 U.S Census (2001f))

*Source:* <http://www.census.gov/statab/freq/00s0727.txt>

*Dates:* 2000

*Level of measurement:* ratio

*Variable name:* “Percentage married” (Households married 2000 (percentage of state households that were headed by a married couple as established by the 2000 U.S. Census (2001g)

Source: <http://www.census.gov/prod/2001pubs/c2kbr01-8.pdf>

Date: 2000

Level of measurement: ratio

*Variable name:* “GOP in state House.” (Percentage of Republicans in each state’s House of Representatives. Determined by looking at House membership of Republicans as stated by the 2000 US Census (2001a) and then calculating their percentage).

Source: <https://www.census.gov/compendia/statab/2010/tables/10s0401.xls#Data!A1>

Date: 2000

Level of measurement: ratio

*Variable Name:* “Employment roadblocks” (Quantifies the number of roadblocks to the economic reentry to society for those with criminal records based on an index compiled by the Legal Action Center (2002). The Index compiled categories the LAC considers important for reentry. Categories include those state public policies that address access to employment, driver’s licenses, public assistance, records, voting, housing and public assistance. To determine scores the LAC examined 27 different kind of laws and practices, addressing the categories mentioned above, in each state. Scores for each policy category range from zero to 10. Since there are six categories, the lowest total score a state can receive is zero and the highest a 60).

Dates: Between the fall of 2001 and the summer of 2002.

Level of measurement: ratio

*Variable name:* “High school graduation”(Percent of population 25 years and over who completed high school as determined by the 20001 US Census (2003).

Source: <http://www.census.gov/prod/2003pubs/c2kbr-24.pdf>

Level of measurement: ratio

Dates: 2000

*Variable name:* “Decommodification” (percentage of state budget spent on welfare as determined by the Us Census Bureau’s (2001d )Annual Survey of Government Finances).

Source: [http://www.census.gov/govs/state/historical\\_data\\_2000.html](http://www.census.gov/govs/state/historical_data_2000.html)

Date: 2000

Level of Measurement: ratio

*Variable name:* “Young population”

Description: Percentage of total population between ages 15 and 14 in year 2000 as determined by U.S. Census (2001c)

Source: <http://www.census.gov/population/www/projections/files/SummaryTabB1.pdf>

Date: 2000

Level of measurement: ratio

*Variable name:* “State Corrections Budget:” (The percentage of each state budget spent on corrections as established by National Association of State Budget Officers (2001). Source:<http://www.nasbo.org/Publications/StateExpenditureReport/StateExpenditureReportArchives/tabid/107/Default.aspx>

Date: 2000

Level of Measurement: ratio

*Variable name:* “Church attendance” Church attendance rates in 2000 as established by Glenmary statistics.

Source: Jones, D. Doty, S. Grammich, C. Horsch, J.E. Houseal, R., Lynn, M., Marcum, J.P, Sanchagrin, K.M. & Taylor, R.H. (2001). *Religious Congregations & Membership in the United States 2000: An Enumeration by Region, State and County Based on Data Reported for 149 Religious Bodies*. Nashville, TN. Glenmary Research Center.

Date: 2000

Level of measurement: ratio

*Variable name:* State

Description: Each category is a U.S. state

Level of Measurement: Nominal

Coding specifications: Each state is abbreviated. The abbreviation go as follows:

Alabama (AL), Alaska(AK), Arizona (AZ), Arkansas-(AR), California (CA), Colorado (CO), Connecticut (CT), Delaware (DE), Florida (FL), Georgia (GA), Hawaii (HI), Idaho (ID), Illinois (IL), Indiana (IN), Iowa (IW), Kamas (KS), Kentucky, (KY), Louisiana (La), Maine (ME), Maryland (MD), Massachusetts (MA), Michigan (MN), Minnesota (MSTA) , Mississippi (MSPI), Montana (Mnt), Missouri (Msr), Nebraska (Nka), Nevada (NV), New Hampshire (NH), New Jersey (NJ), New Mexixo (NM), New York (NY), North Carolina (NC), North Dakota (ND), Ohio (OH), Oklahoma (OK), Oregon (OR), Pennsylvania (PN), Rhode Island (RI), South Carolina (SC), South Dakota (SD), Tennessee (TE), Texas (TX), Utah (UT), Vermont (VT), Virginia (VA), Washington (WA), West Virgina (WV), Wisconsin (WI), Wyoming (WY).

*Variable name:* crime

Description: 2007 *Uniform Crime Reports* for violent and property crimes per 100,000 population. Violent crimes include murder, forcible rape, robbery, and aggravated assault. Property crimes include burglary, larceny-theft, and motor vehicle theft.

Source: [http://www.fbi.gov/ucr/Cius\\_06/06crime/06c2\\_13.pdf](http://www.fbi.gov/ucr/Cius_06/06crime/06c2_13.pdf) Table 5: Index of Crime by State, 2003

Date: 2003

## Appendix B: Multicollinearity Tests:

Table A.1 Underemployment multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	1		50
Drug war	.137	.341	50
Black pop.	.238	.097	50
Urban density	-.041	.778	50
Gini Index	.086	.555	50
Percent households married	-.249	.082	50
Personal income	-.160	.267	50
Republicans in State House	-.222	.126	50
Employment barriers	.048	.742	50
High school graduation rate	-.286	.044	50
Corrections budget	.137	.334	50
Welfare	-.177	.219	50
Young population	.017	.905	50
Church attendance	-.065	.653	50

Table A.2 Drug War multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	.137	.341	50
Drug war	1		50
Black pop.	-.154	.286	50
Urban density	-.330	.019	50
Gini Index	-.032	.825	50
Percent households married	.090	.534	50
Personal income	-.285	.045	50
Republicans in State House	-.093	.523	50
Employment barriers	-.084	.560	50
High school graduation rate	.139	.337	50
Corrections budget	-.232	.105	50
Decommodification	.106	.463	50
Young population	-.018	.903	50
Church attendance	-.089	.541	50

Table A.3 Black population multicollinearity tests

High school graduation	Pearson's correlation	Sig.	N
Underemployment	.238	.096	50
Drug war	-.154	.286	50
Black population	1		50
Urban density	.013	.931	50
Gini Index	.185	.198	50
Percent households married	-.434	.002	50
Personal income	-.041	.658	50
Republicans in State House	-.383	.007	50
Employment barriers	.218	.129	50
High school graduation rate	-.494	.000	50
Corrections budget	.281	.048	50
Decommodification	.106	.463	50
Young population	-.121	.404	50
Church attendance	.382	.006	50

Table A.4 Urban density multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.041	.778	50
Drug war	-.330	.019	50
Black pop.	.013	.931	50
Urban density	1		50
Gini Index	.258	.070	50
Percent households married	-.245	.087	50
Personal income	.658	.000	50
Republicans in State House	-.130	.372	50
Employment barriers	-.411	.003	50
High school graduation rate	-.260	.324	50
Corrections budget	.518	.000	50
Decommodification	-.121	.402	50
Young population	-.180	.212	50
Church attendance	.009	.950	50

Table A.5 Multicollinearity tests for Gini index

	Pearson's correlation	Sig.	N
Underemployment	-.086	.555	50
Drug war	-.032	.825	50
Black pop.	.185	.198	50
Urban density	.259	.070	50
Gini Index	1		50
Percent households married	-.278	.50	50
Personal income	.224	.118	50
Republicans in State House	-.203	.163	50
Employment barriers	-.096	.506	50
High school graduation rate	-.324	.022	50
Corrections budget	.133	.359	50
Decommodification	.300	.034	50
Young population	-.369	.008	50
Church attendance	.136	.346	50

Table A.6 Percent of married couples multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.249	.082	50
Drug war	.090	.534	50
Black pop.	-.434	.002	50
Urban density	-.245	.087	50
Gini Index	-.278	.050	50
Percent households married	1		50
Personal income	-.326	.021	50
Republicans in State House	.570	-.115	50
Employment barriers	.002	-.395	50
High school graduation rate	.415	-.004	50
Corrections budget	-.199	.291	50
Decommodification	-.286	.044	50
Young population	.601	-.541	50
Church attendance	-.006	-.071	50

Table A.7 Personal income multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.160	.267	50
Drug war	-.285	.045	50
Black pop.	-.041	.778	50
Urban density	.658	.000	50
Gini Index	.224	.118	50
Percent households married	-.326	.570	50
Personal income	1		50
Republicans in State House	-.115	.432	50
Employment barriers	-.395	.005	50
High school graduation rate	-.004	.980	50
Corrections budget	.291	-.013	50
Decommodification	.100	.040	50
Young population	-.541	.303	50
Church attendance	-.071	-.218	50

Table A.8 Republicans in State House multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.222	.126	50
Drug war	-.093	.523	50
Black pop.	-.383	.007	50
Urban density	-.130	.372	50
Gini Index	-.203	.163	50
Percent households married	.570	.000	50
Personal income	-.115	.432	50
Republicans in State House	1		50
Employment barriers	.224	.122	50
High school graduation rate	.284	.048	50
Corrections budget	-.013	.931	50
Decommodification	-.420	.003	50
Young population	.303	.034	50
Church attendance	-.218	.133	50

Table A.9 Index of reentry roadblocks multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	.048	.742	50
Drug war	-.084	.560	50
Black pop.	.218	.129	50
Urban density	-.411	.003	50
Gini Index	-.096	-.324	50
Percent households married	.002	.415	50
Personal income	-.395	.005	50
Republicans in State House	.224	.122	50
Employment barriers	1		50
High school graduation rate	-.055	.705	50
Corrections budget	.195	.245	50
Decommodification	-.103	.477	50
Young population	.133	.358	50
Church attendance	.007	.959	50

Table A.10 High school graduation rate multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.286	.044	50
Drug war	.139	.337	50
Black pop.	-.494	.281	50
Urban density	-.260	.518	50
Gini Index	-.324	.133	50
Percent households married	.415	.003	50
Personal income	-.004	.980	50
Republicans in State House	.284	.048	50
Employment barriers	-.055	.705	50
High school graduation rate	1		50
Corrections budget	-.245	.086	50
Decommodification	-.074	.609	50
Young population	.179	.212	50
Church attendance	.146	.313	50

Table A.11 Corrections budget multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	.137	.344	50
Drug war	-.232	.105	50
Black pop.	.281	.048	50
Urban density	.518	.000	50
Gini Index	.133	.359	50
Percent households married	-.199	.166	50
Personal income	.291	.040	50
Republicans in State House	-.013	.931	50
Employment barriers	.195	.175	50
High school graduation rate	-.245	.086	50
Corrections budget	1		50
Decommodification	-.181	.209	50
Young population	-.036	.803	50
Church attendance	.016	.910	50

Table A.12 Decommodification multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.098	.500	50
Drug war	.106	.463	50
Black pop.	.150	.298	50
Urban density	-.121	.402	50
Gini Index	.300	.034	50
Percent households married	-.286	.044	50
Personal income	.100	.489	50
Republicans in State House	-.420	.003	50
Employment barriers	-.103	.477	50
High school graduation rate	-.074	.609	50
Corrections budget	-.181	.209	50
Decommodification	1		50
Young population	.275	.053	50
Church attendance	-.051	.724	50

Table A.13 Young population multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	.017	.905	50
Drug war	-.018	.903	50
Black pop.	-.121	.404	50
Urban density	-.180	.212	50
Gini Index	-.369	.008	50
Percent households married	.601	.000	50
Personal income	-.541	.000	50
Republicans in State House	.303	.034	50
Employment barriers	.133	.358	50
High school graduation rate	.179	.212	50
Corrections budget	-.036	.803	50
Decommodification	.275	.053	50
Young population	1		50
Church attendance	.275	.053	50

Table A.14 Church attendance multicollinearity tests

	Pearson's correlation	Sig.	N
Underemployment	-.065	.653	50
Drug war	-.089	.541	50
Black pop.	.382	.006	50
Urban density	.009	.950	50
Gini Index	.136	.346	50
Percent households married	-.006	.968	50
Personal income	-.071	.625	50
Republicans in State House	-.218	.133	50
Employment barriers	.007	.959	50
High school graduation rate	.146	.313	50
Corrections budget	.016	.910	50
Decommodification	.176	.220	50
Young population	.275	.053	50
Church attendance	1		50