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PRISON CAPACITY AND SENTENCING SEVERITY: A LOOK AT ILLINOIS, MICHIGAN, AND PENNSYLVANIA

Peter F. Nardulli

After a brief lull in the late seventies and early eighties, crime is once again a prime concern among a large number of Americans. More people are mentioning crime in periodic surveys of public problems than in the previous decade, and the 1982 governor's race in California may have been won at the eleventh hour by a strong law and order appeal. In the minds of many, criminal punishment is an integral part of the crime problem and society's efforts to combat it. It is viewed as both a real and a symbolic deterrent to crime, every bit as important as a mobile, effective police force. This has led to a reexamination of sentencing practices and a revision of sentencing codes, an increase in minimum punishments, and even new prison construction. Illinois, for example, moved from an indeterminate to a determinate sentencing code, abolished its parole board, and enacted Class X legislation providing more severe sentences for selected heinous crimes. More recently it has embarked upon a campaign to increase its state penal capacity. Indeed, a recent report of the Illinois Economic and Fiscal Commission shows that the Department of Corrections received 75 percent of all new capital project dollars for FY 1983 — in excess of \$80 million.

Many students of criminal courts have doubted the effectiveness of these reforms. They note the low visibility of most sentencing decisions and the vested interest of most criminal court practitioners in the status quo. Of particular concern are the long-established "going rates" for routine offenses on which county plea bargaining practices are based. To better understand the sentencing process — and improve our chances to reform it — we undertook a long-term comparative study of criminal courts. The focus of the present essay is on factors that affect sentencing severity. Such factors are, of course, of special interest to those concerned with increasing the deterrent effect of sentencing.

COUNTY CHARACTERISTICS

The criminal court study was conducted in nine counties in Illinois, Michigan, and Pennsylvania. The Illinois counties were DuPage, Peoria, and St. Clair; the Michigan counties were Oakland, Kalamazoo, and Saginaw; the Pennsylvania counties were Montgomery, Dauphin, and Erie. Three hundred inter-

views were conducted with judges, prosecutors, and defense attorneys yielding over 10,000 pages of transcripts. In addition, we collected extensive amounts of information on 7,500 criminal cases in the nine counties. These data, together with our observations, provided us with many insights into criminal court operations, as well as a means to test our ideas empirically.

The nine counties were selected to gauge the impact of important county differences on criminal court operations. One area of concern was socioeconomic welfare; another was the political views of the county's populace. We felt these were important because counties with deep social cleavages may sentence differently than more homogeneous and prosperous counties. Also, more politically conservative counties could be expected to sentence more severely than more liberal counties. To fulfill these criteria, we selected for each state one economically declining county (St. Clair, Saginaw, Erie), one autonomous county (Peoria, Kalamazoo, Dauphin), and one suburban ring county (DuPage, Oakland, Montgomery).

Table 1 reports data on some of the economic and political indicators we investigated. As expected, the ring counties in each state are the most prosperous — with per capita incomes hovering at about \$10,000 in 1979. The declining counties are far less so; per capita incomes stood at somewhat over \$6,500. Politically, DuPage and Dauphin counties appear to be the most conservative, followed by Peoria and Montgomery counties. The Michigan counties appear fairly moderate, while St. Clair and Erie counties are moderately liberal.

The nine counties also showed some important differences in crime rates and penal capacities. According to the FBI reports on violent personal crime rates (per 100,000 population) for the ten-year period preceding this study (1971-1980), Peoria and St. Clair counties have the highest rates; Kalamazoo and Dauphin counties are far lower. Two Michigan counties (Oakland and Saginaw) have fairly low personal offense rates, but two of the ring counties (DuPage and Montgomery) and Erie have the lowest.

With respect to penal capacities we must consider both county jails and state facilities. Large county facilities may increase the likelihood that a judge will incarcerate marginal offenders. At the same time, county detention is often not appropriate because state law usually precludes county detention for more than a one- or two-year period. Data collected on the local jails in each of the counties show that all of the Michigan jails were built during the 1970s; only those in St. Clair County in Illinois and Erie County in Pennsylvania were

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Table 1
SELECTED MEASURES OF ENVIRONMENTAL AND STRUCTURAL CHARACTERISTICS

	DuPage (Ring)	Peoria (Autono- mous)	St. Clair (Declining)	Oakland (Ring)	Kalamazoo (Autono- mous)	Saginaw (Declining)	Montgomery (Ring)	Dauphin (Autono- mous)	Erie (Declining)
Per capita income, 1979	10,495	8,388	6,550	10,675	7,776	7,263	9,764	7,581	6,680
Public assistance recipients (per 100,000 population) February 1980	713	4,689	12,409	3,202	5,838	9,778	1,569	5,165	5,361
Average vote for conservative presidential candidate(s) in "ideological" elections (1960, 1972, 1968, 1964)	68%	55%	43%	53%	53%	51%	56%	60%	46%
Overall political categorization	Conser- vative	Conser- vative	Moderately liberal	Moderate	Moderate	Moderate	Moderately conser- vative	Conser- vative	Moderately liberal
Relative capacity of county jail (arrests for serious UCR crimes/jail spaces)	.15	.14	.28	.18	.29	.24	.10	.16	.24

built during that decade. The jails in DuPage and Dauphin counties were built during the 1950s. Peoria County's jail is over 65 years old, and Montgomery County's is over 120 years old. Not surprisingly, both Peoria and Montgomery counties, along with Oakland County, regularly house prisoners outside the county — at considerable cost.

Measuring relative capacities of jails can be tricky. Here relative capacity is defined as the percentage of all individuals arrested in 1980 for one of five serious offenses — murder, rape, robbery, assault, and burglary — that could be incarcerated in the county jail at one time. This measure, reported in row 4 of Table 1, shows some significant variation. Four counties have obviously larger capacities: Kalamazoo, St. Clair, Saginaw, and Erie; four others had somewhat lower capacities: Peoria, Dauphin, Oakland, and DuPage. Montgomery had clearly the smallest capacity.

At the state level, a number of further observations may be made. Michigan's institutions tend to be newer; almost three-quarters were built after 1950 and one quarter during the 1970s. Four of Pennsylvania's eight institutions were built before 1925, as were three of Illinois' ten.

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Another important dimension to state penal systems is their capacity. The criteria a judge uses for determining whether a defendant merits "state time" may vary with the relative capacity of state institutions as well as the extent of their utilization. The flow of prisoners to the state penal system may increase to fill the available spaces; it may slow once capacity is reached. Our data (Table 2) show that Michigan has distinctively greater capacity than either Illinois or Pennsylvania. This is true regardless of what measure is used. Michigan has more absolute capacity, more capacity per 100,000 population, and more capacity per 1979 arrests for serious UCR (Uniform Crime Rates) crimes, as designated by the Federal Bureau of Investigation. Illinois ranks consis-

Table 2
CAPACITY MEASURES OF STATE LEVEL ADULT CORRECTIONAL FACILITIES (1979)

	Illinois	Michigan	Pennsylvania
Confinement capacity (No. of prisoners who can be accommodated)	11,320	11,627	8,093
Capacity per 100,000 population	100.66	127.39	68.67
Capacity per adult arrest for serious UCR crimes (violent personal crime plus burglary)	.43	.62	.34
Proportion of capacity utilized (December 31, 1979)	.99	1.15	.91

Source: *Sourcebook of Crime Justice Statistics* — 1981, Table 1.68. Excludes community-based facilities. Information supplemented by inquiries to state correctional departments to insure comparability.

for other factors to affect sentencing levels. Where detention capacity exceeds these "core requirements," it becomes possible for other factors to play a role (i.e., they become unleashed). Thus social and political factors may only play a role where detention capacity is high.

The importance of detention capacity for understanding differences in sentencing severity is obviously not limited to its interrelationship with social and political factors, which are speculative in any event. It also has a direct effect upon severity.

The finding that is most striking is the distinctiveness of the Michigan counties. These differences can be attributed to the greater detention capacity of the Michigan penitentiary system — as well as to its medium security and decentralized orientation and, perhaps, its qualitative advantages. Moreover, the only within-state differences of any consequence are in Michigan. These can be explained with reference to differences in local detention capacity. Kalamazoo is the most punitive of the three Michigan counties, and it has the most detention capacity; Oakland is the lowest and has the least capacity.

Severity Levels Across the Three States: A Longer View

To insure that the results reported above were not a short-term phenomenon unique to our sample of cases, we examined some data on state incarceration rates (the number of people in state penal facilities per 100,000 population) for the period 1926 to 1980. These data (see Figure 3) confirm what the earlier analysis showed: Michigan sentences more severely than do Illinois and Pennsylvania; Illinois normally sentences somewhat more severely than Pennsylvania. These differences hold up even when controls for serious crimes and arrests for serious crimes are introduced.

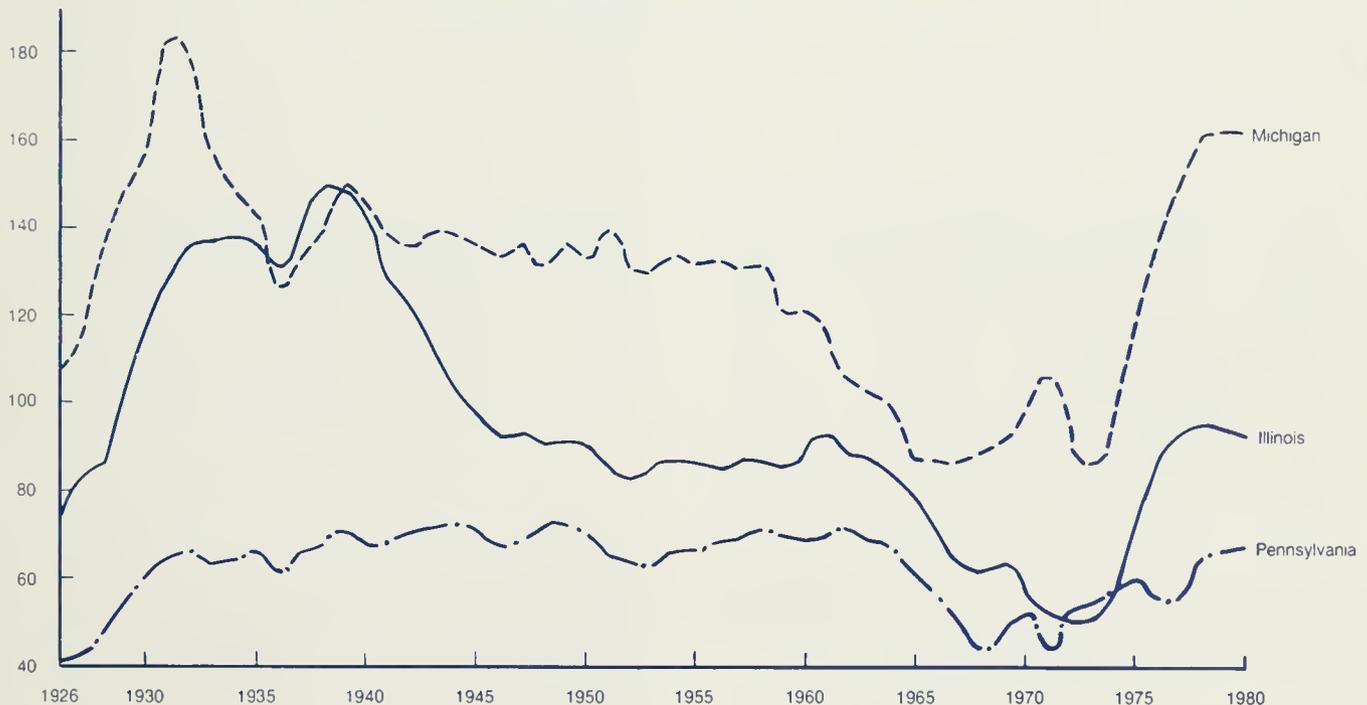
If examined carefully, these data also reveal some interesting insights into the role that penal facilities may play in statewide sentencing levels. The late 1960s and early 1970s saw great public concern over the crime problem, and there was much pressure on criminal court judges to sentence more severely. During the seventies, Michigan sharply increased the number of incarcerated defendants; Pennsylvania had only a modest increase; and Illinois lay somewhere in between.

Data on prison construction suggest a reason for these different responses to the public clamor for "get tough" measures. Michigan built six new penal institutions during this period; Illinois built two; and Pennsylvania, none. While we cannot draw any firm conclusions from this — only an experimental design could do that — the data do suggest that judges and prosecutors may have been wrongfully bearing the brunt of public dissatisfaction with the sentencing of criminals. They seem perfectly willing to fill up the penal facilities if the executive and legislative branches provide the space, at least during periods of high concern with crime.

CONCLUSIONS

The analysis presented here suggests that a strong relationship exists between penal capacities and sentencing severity in states and counties. While an experimental design would be required to resolve the issue conclusively, it appears that the supply of prisoners will increase to meet the available number of beds — at least during times of great public concern with crime. However, if the Michigan experience holds true elsewhere, it may be that capacity levels are not the only important factor. A decentralized state penal system with a large number of medium security prisons also seems to encourage commitments. Judges may be less hesitant to

Figure 3
STATE INCARCERATION RATES, 1926-80
(Incarcerated Defendants per 100,000 Population)



utilized a form of diversion for felony cases during the time this study was conducted.

SEVERITY: A MORE RIGOROUS EXAMINATION

The data in Figure 1 are raw numbers which do not control for either differences in offense seriousness or the criminal records of the defendants, both of which are primary determinants of sentences. Moreover, since the data ignore the *length* of incarceration, they are only crude indicators of sentencing severity. Fortunately, multivariate statistical techniques exist which allow us to control for these factors while simultaneously examining differences in sentence length across counties.

The results of this analysis are shown in Figure 2; it reveals that important differences exist. The most significant of these are across states. The Michigan cases received much more severe sentences than those from either of the other two states — about eight months more overall. There is no significant difference between Illinois and Pennsylvania when offense and criminal records are controlled. At the county level Michigan again shows some statistically significant differences. Kalamazoo County is more severe than both Oakland and Saginaw counties, and Saginaw County is more severe than Oakland County. No meaningful differences exist across the other counties.

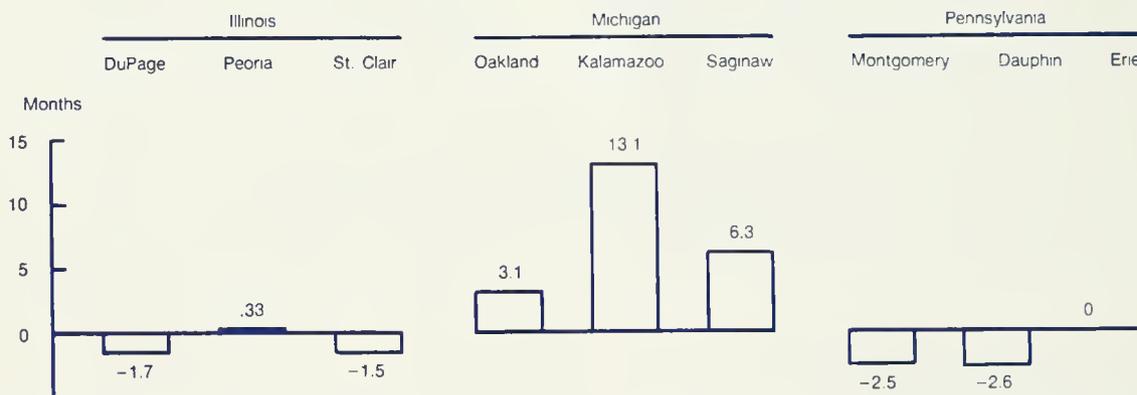
may well be countering one another, leading to inconclusive results. Second, other factors may be constraining the impact of the social and political factors. This suggests that the relationship between contextual and socio-political factors and sentencing is more complex than initially contemplated.

Conflicting influences are best illustrated in the non-Michigan counties. For instance, social strains and the severity of the crime problem in DuPage and Montgomery counties led us to expect lenient sentences; however, both have very conservative political leanings, which would lead to more severe sentencing expectations. St. Clair County has a similar problem. While it is a moderately liberal county, it has a severe crime problem and serious social cleavages.

Despite the problems which these conflicting influences doubtless cause, they cannot entirely account for the confusing picture that we have been shown. As noted earlier, Peoria County has consistently more punitive expectations, yet is relatively lenient. Moreover, while the social and political characteristics of the Michigan counties fairly consistently yield moderate expectations, they sentence relatively severely. Some of this can be clarified through the second explanation made earlier: the possibility that some other factor constrains the impact of these influences.

The best candidate for this "other factor" is detention capacity, both local and state. Detention capacity could

Figure 2
RESULTS OF ANALYSIS OF COVARIANCE FOR MINIMUM MONTHS OF CONFINEMENT



The small number of counties and the limited amount of variation on some important variables prevents a thorough testing of some of the propositions discussed earlier. Nevertheless, two general conclusions seem justified. First, there appears to be less within-state variance than we expected, especially along social and political lines. Second, the role of penal capacities appears to play an important role in determining severity levels.

An examination of some social and political influences presents a confusing picture. We had expected that the level of social strains would put DuPage and Montgomery counties in the lenient category, and Peoria, St. Clair, and Dauphin counties in the severe category. In fact, all sentenced at about the same level. The influence of the crime problem is similarly plagued. Even Peoria County, which falls in the severe category in each of the three socio-political categories (social stress, political ideology, and severity of crime problem) does not hand out sentences that are distinctively severe.

A number of things may be confounding our expectations; two seem most likely. First, conflicting influences in a county

constrain the impact of such influences because it can affect sentencing levels directly, thereby confounding the interpretation of other influences. Thus higher detention capacity can lead to higher "going rates," regardless of other factors. It strengthens the prosecutor's bargaining position and provides decision makers with more flexibility. At the same time, if local space is unavailable, marginal offenders may not receive any time at all. These problems prevent a meaningful examination of the impact of contextual and socio-political factors. They may have a discernable effect only where "all other factors" are equal.

The level of detention capacity may be intertwined with socio-political factors in even more subtle ways. Certain levels of detention capacity (beds per population, beds per arrest) may be required to "unleash" these factors. Thus, even if we control for detention capacity, we may find that socio-political factors play a role only in counties with relatively high capacity levels. Every county, regardless of its makeup, may have a hard core of cases which requires incarceration. If this core exhausts detention capacity, there is little room

tently behind Michigan, while Pennsylvania has the lowest capacity. Despite these capacity figures, the data on utilization reveal a totally different picture.

Pennsylvania has the lowest capacity and the lowest utilization; Michigan has the highest capacity and the highest utilization. This overutilization led to a court ruling which held that Michigan's entire adult penal system violated constitutional standards, as did selected prisons in Illinois. Pennsylvania was one of only thirteen states in 1982 which did not have any type of pending litigation concerning its state penal system.

Sentencing Predictions

The social and political differences across the nine counties led us to a number of expectations concerning sentencing levels. Thus we felt that sentencing levels in a heterogeneous county — especially one suffering from some economic malaise or where crime is highly concentrated in a major city or among an identifiable population group — may be more severe than in prosperous suburban counties with no severe crime problems. Peoria, St. Clair, and Dauphin counties are in this category, because they all have fairly high crime levels, especially in their major city. Moreover, the county's minorities are also highly concentrated in the major city.

Finally, blacks made up over half of the court system's felony defendants (as represented in our case samples) in all three counties. DuPage and Montgomery counties are categorized as more lenient because of their homogeneous population and their low, diffuse crime levels. The other counties have one or more moderating influences which lead us to classify them in the middle.

As for political ideology, it would seem that if judges try to reflect the views of their constituents, those in more conservative counties are more likely to sentence similar defendants charged with similar offenses more severely. The same may be true for the impact of the crime problem factor. In counties where crime is a serious problem, judges may feel more compelled to sentence severely than do judges in counties with minimal crime problems. For example, Peoria County's high rate of crime and its strong political conservatism both lead to the prediction that judges will hand down severe sentences. The political conservatism factor in DuPage and Montgomery counties suggests severe sentences but the low level of serious crime leads to a prediction of lenient sentences.

The predictions concerning the impact of local jail capacity follow the data presented earlier: lenient in Montgomery County and severe in Kalamazoo, St. Clair, Saginaw, and Erie counties. With respect to state penal facilities the Michigan counties seem to enjoy a distinct advantage over those in Illinois and Pennsylvania. The capacity of the Michigan system is the largest by any measure. In addition it has a newer, more decentralized penitentiary system oriented to less serious offenders. This is expected to increase the attractiveness of penitentiary commitments to Michigan judges, especially with respect to the more plentiful, marginal offender.

Sentencing Patterns

Before turning to our analysis of severity, it will be useful first to examine overall sentencing patterns. Our concern is with five basic sentence forms: a penitentiary commitment, a jail term, probation, diversion, and monetary punishment (restitution or a fine). Probation is by far the most common of these, accounting for close to half of all sentences. Penitentiary and jail sentences are each used in roughly 20 percent

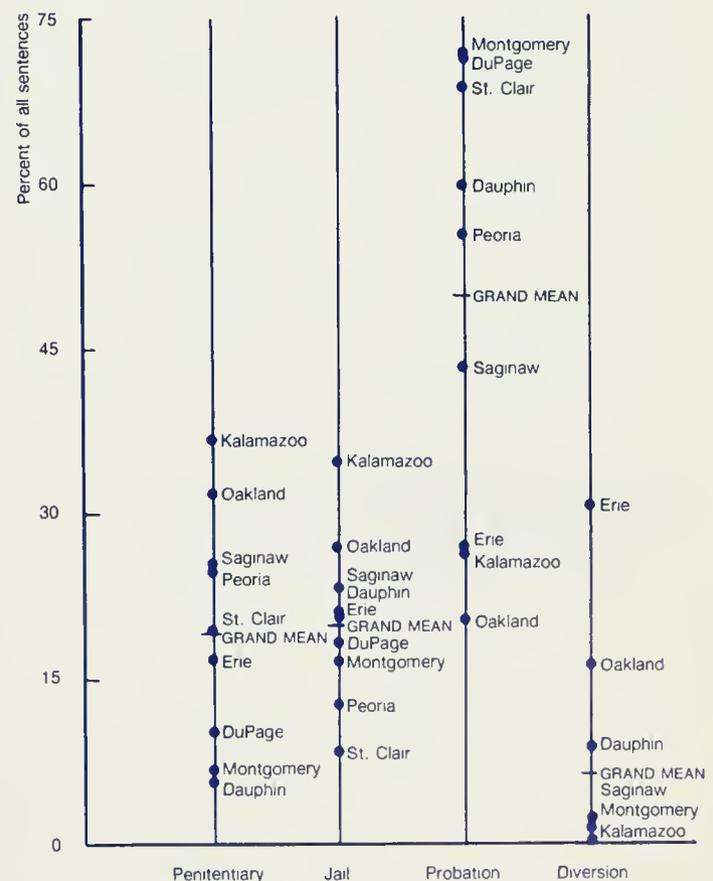
of all cases, while diversion and money punishments account for the remaining 10 percent of the cases.

In many instances more than one form of punishment is meted out. For example, all county jail sentences were accompanied by some term of probation (30%), a fine (21%), a combination of probation and a fine (17%), or some other form of punishment (32%). Fifty-five percent of all probation cases were also given a fine, while another 4 percent were given some other form of punishment, usually a term of probation to be completed after being released.

An examination of Figure 1 reveals that the basic pattern does not characterize all counties. It reports the proportion of sentenced cases in each of four basic sentencing forms by county, along with the proportion for all nine counties (the grand mean). It should be noted that the money category is not included because of a lack of variance across counties.

Several observations can be made on the basis of Figure 1. First, in two Michigan counties, Kalamazoo and Oakland, the penitentiary commitment is the modal form of punishment, followed by jail confinement. Dauphin, Montgomery, and DuPage counties are the least likely to send defendants to the penitentiary, while they are among the most likely to use probation (along with St. Clair County). Peoria and St. Clair counties are the least likely to use the local jail. Oakland, Kalamazoo, and Erie counties are the least likely to use probation. Oakland and Erie, however, employ diversion far more than the other counties. None of the Illinois counties

Figure 1
THE DISTRIBUTION OF
BASIC SENTENCE FORMS BY COUNTY



send marginal offenders to such facilities than to large, fortress-like, maximum security prisons.

Despite the clarity of these results, we should be careful in interpreting them. While more and better penal capacity may increase sentence severity, it is not clear that more severe sentences will "solve" the crime problem. Most criminals do not get caught, and it seems that the danger of incarceration is remote to most who are contemplating criminal acts. Offenders are certainly less likely to commit criminal offenses while they are incarcerated but whether they emerge rehabilitated or merely better schooled in the ways of crime is an open question. This last point is important when decisions about new prison construction are being made.

Most criminal practitioners view repeat offenders as belonging to one of two categories — "losers" or "bad guys." Losers are people who seem to drift aimlessly from one bad situation to another and appear unable or unwilling to exert much control over their lives. While they are not considered particularly dangerous to the community, they may have a high nuisance value. "Bad guys," on the other hand, are hostile to society and purposely and continually flaunt the law.

One of the reasons for the low rate of incarceration reported earlier is that many convicted defendants are either first offenders or losers. While some of these individuals may turn into "bad guys" later, most agree that incarceration would not be beneficial to them at the present. Restitution, supervised probation, fines, work release, and diversion seem more

appropriate and are much less costly. Costs per inmate for a new medium security prison range from \$40,000 to \$50,000; maximum security costs are in the \$67,000 to \$80,000 range.

Whenever the expansion of penal facilities is being considered, especially at the state level, it must be remembered that the distinctions among defendants may be lost in the rush to fill available spaces. While many will argue that there is a vast reservoir of "bad guys" who should be in prison, we must consider the very real possibility that a large number of marginal offenders would be imprisoned as well. Although incapacitation may be a legitimate sentencing goal, this would be a very costly way of dealing with such offenders. Moreover, if they emerged as better criminals, this policy would exacerbate the crime problem in the long run. In addition, these enhanced capacities may "unleash" influences that are kept at bay by a lack of excess capacity.

As we have seen, despite considerable socioeconomic and political differences across the six Illinois and Pennsylvania counties, there are virtually no sentencing differentials across them (when offense and criminal records are controlled). In other words, equals are being treated equally. The existence of excess state penal capacity may lead some counties to incarcerate certain classes of offenders who are not being incarcerated elsewhere, thereby giving rise to sentencing disparities across the state.



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