

## PREFACE

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In the minds of many Americans, the word *sentencing* evokes an image of a solemn and slightly mysterious process in which a wise, fair, and impartial judge determines the appropriate sentence for each offender who has been convicted of a crime. In this view, the judge deliberately fashions a sentence that reflects the facts and circumstances of the case, the background and blameworthiness of the offender, and the judge's own philosophy of punishment. The judge uses his discretion to choose from a continuum of sanctions that range from life imprisonment or possibly death at one end to probation at the other, with many different sanctions in between. According to this view, the sentences meted out by judges are appropriate, unbiased, and just.

The reality of the sentencing process is somewhat different. The sentences imposed on offenders convicted of crimes in state and federal courts are the result of a collaborative exercise involving legislators and criminal justice officials other than the judge. The judge plays a significant and highly visible role in the process, but other officials play important supporting roles. In some jurisdictions, the judge retains discretion to tailor sentences to fit individuals and their crimes, whereas in other jurisdictions the judge's options are constrained by sentencing guidelines that prohibit consideration of the offender's background characteristics or by mandatory minimum sentencing statutes that dictate the sentence to be imposed. The sentences that result from this process may not reflect a coherent philosophy of punishment or a reasoned assessment of crime seriousness and offender culpability. Similarly situated offenders convicted of comparable crimes may be sentenced differently, offenders convicted of different crimes may get the same sentence, and the sentence imposed may depend on the offender's race, ethnicity, gender, or social class.

The sentencing reforms enacted in the past 30 years were designed to ameliorate these problems. They were designed to bring order to a system of

sentencing characterized as irrational, lawless, and desperately in need of improvement (Frankel 1972a). Reformers challenged the principles underlying the indeterminate sentence and called for changes designed to curb discretion, reduce disparity and discrimination, and achieve proportionality and parsimony in sentencing. A number of states adopted determinate sentencing policies that offered judges a limited range of sentencing options and included enhancements for use of a weapon, presence of a prior criminal record, or infliction of serious injury. Other states and the federal government adopted sentence guidelines that incorporated crime seriousness and prior criminal record into a sentencing grid that judges were to use in determining the appropriate sentence. Other reforms enacted at both the federal and state level included mandatory minimum penalties for certain types of offenses, three-strikes-and-you're-out laws that mandated long prison terms for repeat offenders, and truth-in-sentencing statutes that required offenders to serve a larger portion of the sentence before being released.

Although the reforms enacted in the past three decades did transform the sentencing process in the United States, the degree to which they improved the process is debatable. Advocates of sentencing reform contend that the changes enacted in the past three decades have resulted in more punitive, more effective, and fairer sentence outcomes. Critics of the sentencing reform movement assert that although sentences today are definitely harsher than they were in the past, attempts to structure the sentencing process and constrain judicial discretion did not produce the predicted reduction in crime or eliminate unwarranted disparities in sentencing.

This book provides a comprehensive overview of the sentencing process in the United States. We begin with a discussion of the goals or purposes of sentencing. Chapter 1 explores the meaning of *punishment* and describes and analyzes the different justifications for punishment: retribution, deterrence, incapacitation, rehabilitation, and restoration. This chapter also explains how each theoretical perspective would answer the question, "Why do we punish those who violate the law?" We then discuss the allocation or distribution of punishment, that is, according to each theory, who should be punished and how much should they be punished? Using hypothetical cases, we show that the different theoretical perspectives would not necessarily produce the same sentence outcomes.

Chapter 2 focuses on the options available to the judge at sentencing and the sentencing process. We discuss the death penalty, incarceration, and the

alternatives to incarceration: probation, boot camps, house arrest and electronic monitoring, community service, and monetary penalties. We explain that a jail or prison sentence is an option in most cases and that imprisonment is required by mandatory minimum sentencing statutes for certain types of offenders and certain types of crimes. We discuss the differences between indeterminate and determinate sentences and provide a brief introduction to presumptive sentencing guidelines. We also explain that the sentences imposed on offenders actually result from a collaborative exercise that involves decision makers other than the judge. We show how sentences are shaped by decisions made by state legislators, prosecutors, jurors, corrections officials, and appellate court judges.

In Chapter 3 our focus shifts to the judge. We contend that decisions made by legislators and other criminal justice officials limit the judge's options and constrain her discretion, but the ultimate responsibility for determining the sentence rests with the judge. We discuss the findings of studies that attempt to explain how judges decide, that is, how judges arrive at the appropriate punishment for criminal offenders. We acknowledge that the key determinants of sentences are the seriousness of the offense and the offender's prior criminal record, but we contend that the characteristics of the offender, the victim, and the case also play a role. We also discuss the results of research examining the relationship between judges' background characteristics and their sentencing decisions. We ask whether women judges, black judges, and Hispanic judges dispense a different kind of justice.

Chapters 4 and 5 examine disparity and discrimination in sentencing. We begin by noting that there are important differences between disparity and discrimination and by illustrating that both disparity and discrimination can take different forms. In Chapter 4 we present evidence of gender disparity in sentencing and discuss the results of research designed to determine whether these disparities reflect discrimination in favor of women. We explain that the question of whether female offenders should be treated the same as male offenders has generated controversy, and we discuss the explanations proffered for the more lenient treatment of female offenders. In Chapter 5 we discuss the results of research on racial and ethnic disparities in sentencing. We demonstrate that racial minorities are substantially more likely than whites to be locked up in state and federal prisons, and we examine the various explanations for this disproportionality. We also discuss the effect of race on the imposition of the death penalty. We conclude that gender and race or ethnicity continue to influence the sentences that judges impose.

In Chapters 6 and 7 our focus shifts to the sentencing reform movement and its impact. In Chapter 6 we explore the motivations of those who lobbied for sentencing reform, and we describe the changes in sentencing policies and practices that have occurred since the mid-1970s. We focus on determinate sentencing and sentencing guidelines, mandatory minimum sentencing statutes, three-strikes-and-you're-out laws, and truth-in-sentencing laws. We explain what each reform was designed to do, and we discuss the degree to which the reforms have resulted in compliance or circumvention. We also discuss recent Supreme Court decisions on sentencing guidelines and determinate sentencing, which many commentators believe have reshaped sentencing in the United States.

In Chapter 7 we examine the impact of the sentencing reform movement. We attempt to determine whether the sentencing reforms enacted in the past 30 years have resulted in more punitive, more effective, and fairer sentence outcomes. We begin by exploring the degree to which the changes in sentencing policy have resulted in more punitive sentences. We ask whether offenders today are being sentenced to prison at higher rates and for longer periods of time than they were in the past. We then focus on whether the sentencing reforms, which were based on the argument that more punitive penalties would deter and incapacitate would-be offenders and that crime rates would therefore fall, have led to the predicted reduction in crime. Finally, we ask whether sentences today are fairer or more equitable than they were in the past—whether there is less disparity and gender or racial bias today than there was 30 years ago.