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ASSESSING THE IMPACT OF DETERMINATE SENTENCING AND PAROLE ABOLITION IN MAINE

Prepared by:

Dr. John H. Kramer
Dr. Frederick A. Hussey
Dr. Stephen P. Lagoy
Dr. Dan Katkin
Mr. C. Vance McLaughlin

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THE PENNSYLVANIA STATE UNIVERSITY
University Park, Pennsylvania

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CHAPTER I. CONTEXT AND SUBSTANCE OF REFORM IN MAINE

A. Introduction

In the early part of this century the movement to abandon the ancient practices of retributive justice in favor of scientific penology based on the rehabilitative ideal was hailed as one of the great humanitarian advances of modern civilization.[1] The burgeoning social sciences, mimicking the methods and assumptions of the established disciplines (such as biology and physics) in which empiricism and positivism were combining to unravel ancient mysteries of the universe,[2] advertised that human behavior could also be scientifically examined--and controlled.[3] Therapeutic justice was the darling of a sizable and influential group of intellectual, humanitarian, philanthropic, social-activist, utopian reformers[4] who crusaded against vengeance and retribution. Between 1899 and 1925, courts and administrative agencies in every state were vested with broad discretionary powers so that sentences could be tailored to fit the needs of each offender.[5] As recently as 1962

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1 See, for example, Dean Roscoe Pound's statement to the National Council of Juvenile Court Judges in 1950, cited in P.W. Alexander, "Constitutional Rights in the Juvenile Court." in M.K. Rosenbeim (ed.) Justice for the Child (New York: Free Press, 1962), p.92.

2 See D. Katkin, D. Hyman, and J.H. Kramer, Delinquency and the Juvenile Justice System (North Scituate, Mass.: Duxbury Press, 1976) pp. 33-34.

3 Ibid., pp. 33-56.

4 See, for example, O.W. Holmes, The Common Law, (ed.) M. Howe (Cambridge, Mass.: Belknap Press of Harvard University Press, 1963) p. 39.

5 By 1927, Felix Frankfurter and James Landis were able to conclude that individualized punishment had become the central element of American Justice; see, F. Frankfurter and J. Landis, The Business of the Supreme Court (New York: Macmillan, 1927) p. 249.

the American Law Institute's prestigious Model Penal Code reflected an unambivalent commitment to individualized sentences and therapeutic justice.[6]

The rehabilitative ideal has always been opposed as soft-hearted crook-coddling by some conservatives who conceptualized justice as the punishment of wrong. Rather suddenly in the past few years, however, a cohort of liberal reformers has emerged who also dissaprove of rehabilitating programs albeit for different reasons: they think that coerced treatment is inevitably ineffective,[7] and also that individualized sentencing has promoted the "evils" of: (1) excessively long sentences (until the offender is rehabilitated);[8] (2) psychological cruelty (anxiety and uncertainty) which inheres in incarceration for indefinite periods of time;[9] and (3) unjustifiable disparity in sentences resulting from discretionary power of judges and other public officials.[10] Until mid-1976 the influence of these "justice-model" proponents was limited to advisory commissions, and to the realm of professional and scholarly literature.[11] Since that

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[6]American Law Institute, Model Penal Code, Proposed Official Draft, 1962.

[7]See, R. Martinson, "What Works?- Questions and answers about prison reform," The Public Interest, Spring, 1974, pp. 22-54.

[8]For an exposition of this logic see In re Gault 367 U.S.1 (1967).

[9]American Friends Service Committee, Struggle for Justice. (New York: Hill & Wang, 1971).

[10]M.E. Frankel, Criminal Sentences: Law Without Order (New York: Hill & Wang, 1972).

[11]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections. (Washington, D.C.: U.S. GPO., 1967). Also, National Advisory Commission on Criminal Justice Standards and Goals: Corrections (Washington, D.C., U.S. GPO, 1973). Professional and scholarly literature is represented by the works of D. Gogel, " . . . We Are the Living Proof . . .": The Justice Model for Corrections, (Cincinnati: W.H. Anderson Pub. Co., 1975); A.M. Dershowitz, Fair and Certain Punishment. (New York: McGraw-Hill,1976); A. Von Hirsch, Doing Justice. (New York: Hill & Wang, 1976).

time it has begun to appear that lawmakers, frustrated by the intractability of crime rates and the growing fear of violence, might be ready to reinstate explicitly retributive justice.[12] A national trend towards "determinate sentencing" seems to be emerging in such diverse jurisdictions as California, Indiana, Minnesota, Oregon and Illinois.

Shortly before this widespread rethinking of the purposes of punishment had begun, the state of Maine had undertaken the recodification of its criminal law (which for two centuries theretofore had been a common law system). As part of this effort, a new and unique sentencing scheme was developed which seemed to some observers (primed, perhaps, to find evidence of the emerging "national trend") to be compatible with the ideology of determinate sentencing. Corrections Magazine, for example, reported that:

> The state of Maine discarded two concepts that once had been considered great reforms of the penal system. A new criminal code . . . abolished the indeterminate sentence and parole . . . Maine is believed to be the first state in the nation to have eliminated indeterminate sentences and parole from its criminal justice system. Under the new code, judges must sentence offenders to flat sentences.[13]

The purpose of the research reported in this paper has been to observe, record and analyze the implementation of Maine's new code. Primary attention has been focused on the code's impact on the day-to-day operations of the state's courts and correctional system. In order to do this, however, it was necessary first to determine with

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[12] Sentencing proposals in current vogue include developing councils, adopting (optional) sentencing guidelines based on past sentencing practices, appellate review of sentences, developing presumptive sentencing strategies based on concepts such as commensurate or "just deserts," developing "flat time" systems, particularly for the dangerous offender, or a combination of the above. The proposals vary in the degree of departure from present sentencing strategies and the degree to which discretion and disparity would be curtailed.

[13] Corrections Magazine, July/August, 1975, pp. 16 and 23.

as much precision as possible what the framers of the code hoped to accomplish; our efforts in this regard will be reviewed after a brief discussion of the setting and substance of the reforms in Maine.

B. The Setting for Reform

Maine is known for the beauty of its shore and woodlands. It is a large state with a small population: four times the size of Massachusetts with one-sixth the population. It has only six cities with populations in excess of 20,000, of which Portland (pop 65,116) is the largest. Four counties--Somerset, Aroostook, Piscataquis and Washington--comprise 60 percent of the state's land mass, but only 20 percent of its population. The rustic element of Maine's character is reflected in the observation that Greenville, the last outpost on Moosehead Lake, where the highway ends and 160 miles of wilderness to the Canadian border (and well beyond) begin, is only an hour and a half drive from Augusta, the capital.

Maine's citizens enjoy a reputation for directness, industry and Yankee civility. They think of themselves as ruggedly individualistic and are sometimes distrustful of outsiders.[14]

The state's political tradition is marked by inconsistencies. Though staunchly Republican (and generally conservative) through much of its history, the Democratic Party and progressive politicians have fared well in Maine in recent years. In 1954, there were 99,386 registered Democrats and 262,367 registered Republicans. In 1974,

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[14] Charles Zurhorst, "Here They Come Again," Maine Magazine, Vol. I, No. 5, July, 1977, (Editor and Publisher, John Buchanan), p. 34.

the number of registered Democrats had grown to 212,175, while the number of registered Republicans had decreased to 227,828.[15] In that year, the Maine voters elected a Democratic House of Representatives, a Republican Senate and the only independent governor in the nation.[16]

In the field of criminal justice, Maine's tradition has been relatively humane and progressive. Its correctional institutions are apparently free of racial tensions and brutality.[17] The influence of the rehabilitative ideal is reflected in the pre-code laws which gave considerable discretion to judges and the parole board to fashion indeterminate sentences. as well as in the fact that the state's prisons have been administered since the 1950's by a cabinet-level department of "Mental Health and Corrections." In the late 1960's and early 1970's, when social institutions were under widespread attack and prisons full of unrest and violence, an organization called The Statewide Correctional Alliance for Reform (S.C.A.R.), primarily an offender and ex-offender group, initiated litigation successfully challenging prison regulations on literature, the right of prisoners to assemble and the right of ex-prisoners to meet and "organize" inmates. SCAR also submitted eight prison reform bills to the legislature which tabled them and asked then Governor Kenneth

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15 Downeast Politics, James F. Horan, et al (Kendall/Hunt Publishing Company, Dubuque, Iowa, 1975), p. 4.

16 Ibid., p. 39.

17 This may be a tribute to the wise and humane administration of corrections in Maine, but it may also reflect demographic realities. Maine, after all, has comparatively few intensely anti-social aggressive offenders of the kind frequently associated with large, more urban states.

Curtis to study the problem of correctional reform. Approximately six months later, the governor created the Task Force on Corrections, several of whose members were SCAR officials. The comparatively radical report of this Task Force appears to have had little, if any influence, in the shaping of current reforms. It may be, however, that SCAR's activism was the catalyst necessary to precipitate action on a long-standing interest in codification of the criminal law. Legislative committees had been exploring the possibility of codification since 1963. But it was not until 1971 that a commission of influential citizens, supported by state and federal funds, undertook the task of reviewing and bringing order to the hundreds of separate, and often contradictory statutory enactments and common law principles, which had made up the state's criminal law for 150 years. That commission, with the aid of Sanford Fox, a professor at the Boston College School of Law and a nationally recognized expert on criminal law and the Model Penal Code, as well as an experienced legislative draftsman, prepared the code which the Maine Legislature adopted in 1975 and which is the basis of this study.

Although the focus of this research is primarily the impact of the sentencing provisions of the code on Maine's system of justice, it must be remembered that the Revision Commission's work was considerably more far reaching. In his introduction to the proposed code, Commission Chairman (and one-time Attorney General) Jon A. Lund, noted that,

> The bulk of the code is concerned not with the general principles of the sentencing system, but with the definition of offenses. The major impact of these provisions is in the direction of simplifying the law.[18]

The enormity of this task should not be underestimated. The job of developing the code entailed coming to grips with fundamental questions about the types of behavior that ought to be prohibited and about the conditions of culpability which justify the imposition of punishment. The work of the Revision Commission was obviously influenced by the Model Penal Code,[19] and it appears from the Commission's minutes and our interviews that the Commission's preliminary thinking about sentencing reflected the rehabilitative, individualized system prescribed by the M.P.C.[20]

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18 Title 17-A, M.R.S.A. Maine Criminal Code, 1977 Pamphlet, p. xxiv.

19 American Law Institute, Model Penal Code, Official Draft, 1962.

20 The Commission's early position was "that sentencing might simply be left to the Department of Mental Health and Corrections which would determine the length and type of sentence." Their strongly rehabilitative orientation can be seen in the statement of one of the Commissioners:

> At the start of our work, I feel that the Commission, without really any talk about it, thought that one of the reasons you were sent to prison was to be rehabilitated; there's no question of that.

In the beginning, the Commission had faith that the department was sufficiently expert to develop good rehabilitative programs and that sufficient funding was a possibility. As testimony to these ideas, plans were developed to submit a bill to the Legislature in 1973, as a trial balloon, and "to expose the judiciary to the new philosophy, acquaint the legislature with the direction in which this Commission is headed and provide experience to show when we bring in our bill," it will be the ultimate code.

Disenchantment with rehabilitative justice does not appear to have influenced the Commission's thinking until 1974. Commission members appear to have been aware of one major critique of individualized justice, The American Friends Service Committee, Struggle For Justice. A. von Hirsch, Doing Justice, D. Fogel, ". . . We Are The Living Proof," and A.M. Dershowitz, Fair and Certain Punishment, were being published just as the Commission completed its work and seem to have had little influence.[21] Commission members were aware, however, of strong public sentiment (particularly in rural parts of the state) for more severe punishments.[22] Furthermore, there was a

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21 This point is clearly reflected in minutes of the Revision Commission's March and April, 1974 meetings. Interviews with Commission members indicate a move away from treatment oriented programs but little agreement about what kind of scheme they should be moving towards.

> Judgments were made sometime after the first sentencing proposal that the whole thing would be rethought in the light of political realities. The straw that broke it all was the question of cost to implement the system. We had absolutely no reason to hope that we were going to be able to influence the legislature to commit the kind of resources that would be necessary to permit that flexible system to operate. We are talking about the present institutions, present staff both in numbers and their talent. This was pie-in-the-sky stuff. That kind of sentencing system we were planning would require cognate expenditures of hundreds of thousands of dollars immediately to upgrade the department's programs. Without that kind of commitment it was suicidal to enact that system. So, back to the drawing board.

22 Consider, for example, the following excerpt from the minutes of the Maine Revision Commission of March 14, 1974:

> There was general conversation about rural crime, the public's desire to increase punishment, and criticism of the courts' leniency and laxity. Lack of communication between the public-at-large and the courts, and between the legislature and the courts, accounts for some hostility. To present a criminal code which flies in the face of the philosophy of the legislature, dooms it. We do not want to find ourselves "on the shelf," and compromise from an ideal situation will therefore be advisable.

nearly uniform belief among Commission members that the public's dissatisfaction was a product, at least in part, of a "too-liberal" parole board.[23]

That is the context in which the sentencing provisions of Maine's code evolved. The substance of the sentencing scheme is set out below.

C. The Substance of Reform

Indeed, the centrality of the judiciary is perhaps the most unusual characteristic of the sentencing scheme established by Maine's new code. In traditional jurisdictions with indeterminate sentencing, judges have great discretion in imposing punishments, but actual time served is controlled to a considerable extent by

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[23] The following statement by Commission Member Daniel Lilly, a noted Portland Defense Attorney, is illustrative:

> . . . We decided that it (the parole board) was ridiculous. . .(just) ministers and do-gooders sitting around and deciding which prisoner. . .(should) get some consideration. The parole board interfered with the type of certainty that we were after too. You know, with those people there, it screwed everything up. Sentences changed quite a bit depending on what the parole board wanted. Now the only flexibility left is pardons or commutations. That's about it: pardons and commutations. We really went in and changed things substantially. (Interview, April 6, 1977).

Additional interviews with judges, revision commission members, and parole board members demonstrate that hostility to the parole board was widespread. It is interesting to note that parole board members were trying to respond to a traditional liberal criticism that parole decision making involves too much discretionary power. They attempted to reduce this discretion by presuming that inmates were entitled to liberty at the earliest possible release date unless good reason could be shown for further detention (cite to Parole Board Guidelines). It was reported that by 1973 both by members of the parole board and those in the Bureau of Corrections that approximately 97 to 98% were being released on the first appearance. Thus, it appears that the parole board's liberal position on the due process rights of inmates contributed to its eventual demise.

administrative agencies such as a parole board, or an adult authority.[24] In states where the abolition of indeterminate sentencing has occurred (such as Illinois, Indiana and California), attention has focused on a legislative model in which the code prescribes specific sentences for each offense.[25] Maine is unique in that its judges are empowered to impose fixed sentences limited only by statutory maxima without that traditionally provided by parole boards. The code establishes six categories of crime, prescribes the upper limits of the criminal sanction for each,[26] and provides no minimum. Class A crimes, for example, can result in a fixed period of imprisonment not to exceed 20 years; in a class B crime, the penalty is to be fixed at a period not to exceed 10 years; class C crimes can result in imprisonment for a fixed period not to exceed 5 years; class D crimes call for a definite period of less than one year; and class E crimes call for a definite period not to exceed 6 months. Prior to the revision, there were more than 60 sentencing provisions representing ad hoc judgments ". . . expressing the mood of the legislature at

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24 See, for example, H. Wechsler, "Sentencing, Correction, and the Model Penal Code," 109 University of Pa. Law Review, pp. 465-476 (1961).

25 See S. Lagoy, F. Hussey and J. Kramer, "An Assessment of Determinate Sentencing in the Four Pioneer States," Crime and Delinquency (October, 1978).

26 Class A through E are used to cover felonies and traditional misdemeanors, murder (defined in 17-A M.R.S.A. Section 201) is treated separately and generally includes "intentionally and knowingly causes the death of another human being." Section 201 does not include felony murder, which is a class A crime.

the time."[27] Other salient changes brought about by the new code include:

1. Minimum, unsuspendable sentences are established only for class A-D crimes against the person involving the use of a firearm.[28] Under any sentence in excess of 6 months, good time can be earned at the rate of 10 days per month and gain time at 2 days per month.[29]

2. Probation may be granted for any classified crime, unless one or more of the conditions limiting granting of probation obtains in the instant case.[30]

3. Sentences in excess of one year are deemed to be tentative and the Bureau of Corrections can ask that an inmate be resentenced as a result of the "department's evaluation of such person's progress toward a noncriminal way of life." In such cases the department must be ". . . satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character or physical or mental conditions of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offenders."[31]

4. Persons receiving probation may serve any portion of their probation in a designated institution, except if the offender

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27 M. Zarr "Sentencing," Maine Law Review, 28, Special Issue, 1976, p. 118.

28 17-A M.R.S.A. Section 1252 (5).

29 17-A M.R.S.A. Section 1253 (3).

30 17-A M.R.S.A. Section 1201 (1).

31 17-A M.R.S.A. Section 1154.

is sent to prison for an initial period it can only be for 120 days. (Also referred to as a Split Sentence.)[32]

5. The code eliminates the parole board as well as parole supervision.[33]

6. Persons sentenced to more than 20 years, or to life, may petition to be released after serving four-fifths of the sentence.[34]

D. The Intentions of the Revision Commission.

One cannot find an unambivalent commitment to any one correctional strategy in this sentencing scheme. There is no blueprint for a purposeful, integrated model of punishment either of the individualized type proposed by the Model Penal Code,[35] or of the determinate type forwarded by Fogel,[36] Dershowitz[37] and von Hirsch.[38] Maine has neither abandoned the rehabilitative ideal nor embraced the principle of determinate sentencing. Indeed, the sentencing provisions of Maine's criminal code have been fairly

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32 17-A M.R.S.A. Section 1203.

33 17-A M.R.S.A. Section 1254 (1) effectively eliminates the parole function by indicating that "An imprisoned person shall be unconditionally released and discharged upon the expiration of his sentence. . ." Subsection 3 acts to retain parole services for those who were sentenced prior to the new code but the parole function will be defunct once all of those inmates have been discharged from parole.

34 17-A M.R.S.A. Section 1254 (2).

35 American Law Institute, Model Penal Code, Proposed Official Draft, 1962.

36 D. Fogel, ". . . We Are the Living Proof. . .": The Justice Model for Corrections. Cincinnati: The W.H. Anderson Publishing Co., 1975.

37 A.M. Dershowitz, Fair and Certain Punishment. New York: McGraw-Hill, 1976.

38 A. von Hirsch, Doing Justice. New York: Hill and Wang, 1976.

characterized by one observer as "a masterpiece of breathtaking ambiguity."[39]

The chapter on sentencing begins with a listing of general purposes,[40] which turn out to be not only general but also inconsistent. Deterrence, incapacitation, rehabilitation, and retribution are all recognized as legitimate ends of punishment. Inequalities in sentences are deplored but individualization is encouraged. Parole is eliminated, but the possibility of reduced sentences is preserved.[41] Flat sentences are required, but the

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39 M. Zarr, "Sentencing," Maine Law Review, 28, Special Issue, 1976, p. 118.

40 17-A M.R.S.A. Section 1151. These purposes include:

(1) To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

(2) To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served;

(3) To minimize correctional experiences which serve to promote further criminality;

(4) To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

(5) To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

(6) To encourage differentiation among offenders with a view to a just individualization of sentences;

(7) To promote the development of correctional programs which elicit the cooperation of convicted persons; and

(8) To permit sentences which do not diminish the gravity of offenses.

41 17-A M.R.S.A. Section 1154.

discretionary powers of judges have been increased to an extent unknown in other American jurisdictions.[42]

That, of course, presents a substantial problem for the researcher. An assessment of the impact of legislation (or of any social policy) is aided by a clear understanding of its purposes and goals. Knowing what was intended guides the formation of hypotheses in much the same way that theory guides experimental investigations. Thus, we set out to determine if the Revision Commission could provide a less ambiguous statement of purposes than can be gleaned from the code itself. Our efforts in this direction included a review of the minutes of all commission meetings, and interviews with almost all members of the commission and with several prominent citizens who followed its activities and deliberations; we have also compiled a complete file of newspaper articles about the development of the code.

The analysis of this data discloses several themes:

1. The members of the commission had very differing attitudes about whether they had (or should have) abolished therapeutic justice. The abolition of parole and the invention of fixed sentences reflect a belief that rehabilitation has failed,[43] but there was widespread sentiment that

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[42] Generally, judges must at least specify a minimum and maximum term. Only in Maine can a judge operate within only maximum penalties, and they do so without administrative review.

[43] For example, Commission member Gerald Petrucelli expressed:

> . . . skepticism about the rehabilitative process in the sense that we don't know how to bring it about. We were for it, we aren't saying we shouldn't try to do it, but let's not kid ourselves that we are doing it.

individualization was necessary because some offenders are more amenable than others to living crime-free lives.[44]

2. The Revision Commission had no clear sense of how or even whether sentence lengths would ~~(or should) be influenced~~ by the new code.[45] There was no clear commitment to increasing the severity of punishments, but the widespread perception that the parole board was "too liberal" was a prominent concern.

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[44] Commission Vice-Chairperson Caroline Glassman told us that if rehabilitation were a failure, it was because it had never really been tried. In stressing the necessity of individualization, Glassman continued:

> I don't care if you have 25 kids, all of them having broken into and entered a home and all of them first offenders. Even if they'd all taken the same amount of goods, I wouldn't have any feeling at all that these kids should necessarily be treated the same way. . . Their names are different and what's going to work with one isn't going to work with another. . . The judge is the one that society looks to (to dispense justice). (April 6, 1977 interview.)

[45] The review of all Revision Commission minutes indicates that this issue was never directly addressed. In the Spring and Summer of 1972, commission members Lund and Skolnik argued that lengthy terms of incarceration were inherently undesirable. They conceded that the public would not permit very short maximum sentences (a recommendation of the Governor's Task Force), but argued that the possibility of early release could and should be protected in the commission's product. The argument was apparently successful. On July 21, 1972, the commission agreed unanimously that the code should contain no minimum sentences; it does not. The possibility that sentences would become longer under the proposed code was raised by Warden Mullaney on April 14, 1975, but does not appear to have been discussed extensively. Our interviews confirm the lack of attention to this issue.

3. Increasing the visibility of decision-making was a goal of the Revision Commission. There was virtual unanimity of support for the idea that the public should know where the responsibility for sentencing and releasing offenders resides.[46] Many members of the commission reported they thought that the division of sentencing power between judges and a parole authority creates a situation in which no one can be held responsible for the early release of dangerous offenders. The sentencing scheme adopted in Maine places all control over sentence length with judges. An irate citizenry now knows who to blame. The commission did not seem to explicitly anticipate the possibility that increased

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[46] Commission member Petrucelli told us that the Commission hoped "to set up a rationally ordered punishment system. . . (in which) things (would be) definable and visible both to defendants and the public."

Consider also the following excerpts from minutes of meetings of the Commission:

> Society will blame the judge if the sentence is regarded as inadequate, which led to the question of community pressure on a judge. . . The sense of public security must nevertheless be satisfied, and the decision of punishment must be made by a responsible visible authority. A sentencing board is not as visible as a judge (July 21, 1972).
>
> Public interest must not be disregarded. The public looks to someone to be sure an offender is not released too soon (February 1, 1973).
>
> A noticeable inclination toward giving. . . (courts) discretion (has) developed. The public's concern with invisible authority was emphasized; the feeling being that a judge is visible, and the Bureau of Corrections less so. We should find a way to impart more information to the public, which does not understand, for instance, that "five to ten years," really mean 3.8 years (August 15, 1974).
>
> Various ways were explored of making the sentence visible, the actual time served known to the public (September 16, 1974).

discretion for judges combined with the abolition of the parole authority might result in increased disparity in punishments.[47]

4. The Revision Commission apparently hoped to increase the certainty associated with criminal punishment.[48] The scheme they developed (unlike the just-deserts/fixed sentence schemes proposed in the professional literature) does nothing to increase certainty in advance of the imposition of sentences. The range of punishments which can be imposed upon an offender in Maine is as great (or greater) than in other jurisdictions. After sentencing, however, an offender

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47 Minutes of meetings of the Commission indicate that the issue of disparity was rarely raised, and was never discussed beyond the level of platitudes about the hope that it could be minimized. One Commission member commented that:

> To eliminate disparity, we would have to turn to a presumptive model . . . in the Dershowitz sense. This state won't budge for awhile. There is no concern for disparity in the press and until there is a ground swell of public opinion, no change. That may take ten years.

48 Commission member Lilly told interviewers that the term certainty had two meanings to the Revision Commission:

> Prisoners would know when they are getting out and the public will know that 10 years means about, well closer to 10 years than it use to. It still can't mean 10 years because I guess the penal institutions need to dangle these good-time days to keep everybody happy, or everybody quiet, or whatever. But you know, before we use to have the split sentence. Five to 10, which really meant the guy got out in 3 years or something like that. But the public couldn't understand that and didn't know what the hell was going on. Now there's certainty from two angles. One, the defendant certainly ought to have more certainty than he had before, and the public ought to be dealt with maybe more candidly. Ten years means 10 years minus good time which can be computed.

is presumed to be able to tell almost to the day how long he will be incarcerated. There are policies, however, which provide for good-time,[49] work-release,[50] reduced sentences,[51] appellate review,[52] commutations,[53] and pardons.[54] To date the number of people processed to release has been insufficient to determine whether the requirement of fixed sentences has actually produced release dates that are known in advance or whether discretion continues to operate.

E. Research Issues

The issues selected for study in this research project were derived in part from professional and scholarly work in the field of penology and from the intentions and expectations of Maine's Revision Commission. Similarly, the issues of certainty and visibility were selected for study because of their local interest. More specifically, the research problems to which this research report is addressed are:

1. How has the code affected the severity of sentences?
   a. Has the use of incarceration (as compared to probation or other alternatives) become more or less frequent?

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49 17-A M.R.S.A. Section 1253 (3).

50 17-A M.R.S.A. Section 1152 (4).

51 17-A M.R.S.A. Section 1154.

52 Maine Rules of Court (St. Paul, Minn.: West Publishing Co., 1976) pp. 413-414; and 17-A M.R.S.A. sections 2141 and 2142.

53 17-A M.R.S.A. Section 2165.

54 17-A M.R.S.A. Sections 2163 and 2164.

b. Has the length of incarceration (time actually served) increased, decreased, or stayed the same?

2. Has disparity in sentencing increased, decreased, or stayed the same?

3. Has certainty actually been increased? Can an offender or the public tell at the time of sentencing what actual time served will turn out to be? What are the effects of good time, appellate review, resentencing, commutations and pardons.

4. What has been the impact of increasing visibility of vesting all sentencing power in the judiciary.

In the following chapters the design and methods developed to secure reliable and valid data will be discussed. In Chapter III we will present our findings about the issues of severity, disparity and certainty. The visibility issue, because it is not subject to analysis by hard data and because of its special significance as a causal agent in altering sentencing patterns will receive separate treatment in the concluding chapter.

CHAPTER II. METHODOLOGY

A. Design Considerations

As might be expected, there was no pre-existing computation of data from which the answers to any of the research questions could be derived; nor was there any central source from which official records could be obtained. To answer questions about the impact of the code on the severity, certainty, visibility, and consistency of punishments it was necessary to establish two bodies of data (for purposes of making comparisons), one about the current operations of Maine's criminal justice system ("post-code") and one about conditions before promulgation of the code ("pre-code"). The data about court dispositions (including probation, community programs, split sentences and minimum and maximum terms of incarceration) are kept in the 16 Superior Courts located across the state. Data about inmates and the actual time they served had to be garnered from files at each of the state's institutions. This involved tedious and time-consuming collection procedures. To reduce these problems to manageable proportions it was necessary to construct samples which would restrict the number of years, counties and offenses to be studied.

1. Sampling by Years. Time and funding constraints were such that it was only possible to collect data for one year after the enactment of the code. The first sampling decision to be made involved the number of pre-code years for which data should be collected. We were advised by the Bureau of Corrections that good data existed only for the last five years. It seemed undesirable

to go back further than that in any event because differences in social conditions might be sufficiently large to render the pre-code and post-code periods incomparable. In essence, we were concerned about what social scientists refer to as the effects of history.

Collecting data for all five years before the code would have been prohibitively time consuming; and moreover, it was decided that two years of pre-code data would be sufficient. The year immediately preceding the adoption of the new code was excluded because it was felt that the activities of judges and correctional officials during a period of imminent reform and revision might be unrepresentative. We finally decided to collect data for the fifth (May, 1971 - April, 1972) and third (May, 1973 - April, 1974) years before the code. This choice was made in part to provide congruence between this study and a recidivism study being conducted by Maine's State Planning Agency and the Bureau of Corrections.

2. Sampling by Counties. The fact that Maine is a large state and that its court records are kept in 16 widely dispersed county seats required that a sample of counties be drawn.

In selecting sample counties we were guided by two crucial decision criteria. First, we wanted to select courts that processed the greatest number of cases. In Maine, it is not uncommon for some county superior courts (located in each of Maine's 16 counties) to handle very few cases.[1] The second criterion utilized was

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[1] Ranking of counties by Superior Court cases entered during 1975: (1) Cumberland* 1107; (2) York 536; (3) Pennobscot* 513; (4) Kennebec* 509; (5) Androscoggin* 442; (6) Aroostook* 356;

the quality of the records kept by the court. We were helped in assessing the quality of court records by the Administrative Office of the Courts. Therefore, a non-random selection of four counties was made and court data was collected on every person convicted in those counties during the sample years. The four counties were: (1) Cumberland, (Portland) because it has the largest population and court caseload and because its record keeping is good; (2) Aroostook, because it represents a significant proportion of the rural population of Maine and has the sixth largest criminal caseload in the state; (3) Oxford, because it adds a small rural population in the western part of the state and because it has good records; and (4) Pennobscot, because it has the second largest criminal caseload in the state. After collecting data from these four counties we became concerned that our case numbers were not large enough to be sufficiently illustrative or to permit all the statistical analyses we'd hoped to perform. Therefore, we collected data in two additional counties (with the fourth and fifth highest criminal caseloads), Kennebec and Androscoggin. Unfortunately, the addition of the latter two counties still failed to provide a sufficiently large number of pre-code felony cases. Therefore,

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(7) Hancock 258; (8) Knox 207; (9) Washington 159; (10) Oxford* 152; (11) Lincoln 139; (12) Somerset 128; (13) Sagadahoc 114; (14) Piscataquis 104; (15) Waldo 98; (16) Franklin 72.

* Indicates counties in our sample.

in January, 1978, we returned to collect data for all six counties for two additional years (May, 1970 - April, 1971, and May, 1972 - April, 1973).[2]

Unlike these widely dispersed court records, prison records are maintained in the state's two correctional institutions; therefore, we were able to collect corrections data on all inmates (without regard to county of origin) for each of the sample years. Thus, the data base was sufficiently large to permit reasonable statistical analyses, without the additional sampling necessary for the court data. The data base is summarized on the following page.

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[2] The numbers of cases collected in each county are presented below:

Number of cases collected for each County Pre and Post-Code

	Pre-Code		Post-Code	
County	No.	Percent	No.	Percent
Androscoggin	359	13.7	114	11.9
Aroostook	463	17.7	134	14.0
Cumberland	646	24.6	200	20.9
Kennebec	447	17.0	184	19.2
Oxford	94	3.6	89	9.3
Pennobscot	611	23.3	236	24.6
Total	2620	99.9	957	99.9

Court Records: May 1970 - April 1971
May 1971 - April 1972
May 1972 - April 1973
May 1973 - April 1974
May 1976 - August 1977

Corrections Records:
May 1971 - April 1972
May 1973 - April 1974
May 1976 - April 1977

3. Sampling by Offense Class. Initially we had hoped to compare pre and post-code sentences on matched offenses; that is, sentences for burglary pre-code with sentences for burglary post-code, rape sentences pre-code with rape sentences post-code, etc. Unfortunately, the numbers of cases for most offenses (particularly post-code) were too small to permit statistical analysis. Consequently we were compelled to collapse cells and deal with pre and post-code sentences for classes of offenses. Maine's new code lists five such classes (A through E). Class D and E offenses carry maximum penalties of less than one year incarceration.[3] Because of their essentially minor nature, and the fact that class D and E offenses[4] are ordinarily adjudicated in the state's 34 District Courts (a widely dispersed petit judiciary of restricted jurisdiction), it was decided to limit our inquiry

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[3] Although the distinction between felony and misdemeanor is not made by the code, the sanctions for class D and E are equivalent to those traditionally provided for misdemeanors.

[4] Structure of Maine's Criminal Courts: (Continued on next page.)

to the impact of the code on the processing of class A-C offenses.[5] The one offense for which pre and post-code comparisons were possible was burglary. Where appropriate we will present that data.

B. Issues in the Coding and Analysis of Data

1. Changes in Offense Definition. As was indicated in Chapter I, Maine revised its sentencing procedures, not as the primary focus for reform, but as part and parcel of the creation of a criminal code. Until the code was implemented in 1976, definitions of criminal behavior had evolved through periodic

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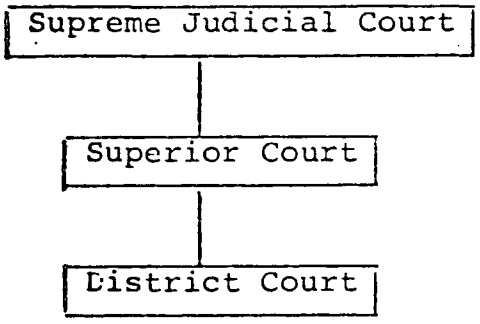
4 Structure of Maine's Criminal Courts: (continued)



The Supreme Judicial Court ("The Law Court") is Maine's highest court and consists of a Chief Justice and six associate justices. The Supreme Judicial Court functions as the appellate court for state courts, in both criminal and civil actions. The Superior Court is the general trial court of Maine, with jurisdiction in criminal cases of a felony status and in serious civil cases. The 16 Superior Courts also hear appeals from the state's 34 District Courts, which have original jurisdiction in traffic violation, misdemeanor, and minor civil cases. James F. Horen et al, Downeast Politics (Kendall/Hunt Publishing Company, 1975, Dubuque, Iowa), p. 164.

5 Class A offenses include Aggravated Arson, Rape, Aggravated Robbery.
Class B offenses include Robbery, Arson, Aggravated Assault.
Class C offenses include Burglary, Perjury, Theft by deception ($1,000-$5,000).

statutory enactments and case law. The Revision Commission's primary responsibility was to create a rational and consistent compilation of criminal offenses. The commission utilized the Model Penal Code as a guide, thus the old statutory and case law definitions of crime changed considerably. The impact of this on our study is obvious: changes in the definitions of criminal behavior complicated pre and post-code comparisons. Fortunately, this proved to be less problematic for class A-C crimes than for comparatively petty offenses.

Prior to the beginning of this project, the Maine Department of Mental Health and Corrections, in conjunction with the Restitution Project of the Albany School of Criminal Justice had developed, and was using in their own data collection activities, a conversion table to group pre-code offenses into post-code crime classes. But there are pre-code offenses for which there is no corollary in the new code and vice versa. This caused two methodological problems. First, some data were lost because offenses of a relatively serious nature pre-code (e.g. possession of a small amount of cannabis) were diminished to minor offenses post-code. Therefore, these might not (if below class C) show up in the data collection process. The second problem is that the coding system designed by the bureau requires discretionary coding decisions. For example, post-code burglary is coded a class B offense when it results in injury or involves an occupied dwelling, but is coded a class C offense when it involves any non-occupied structure. Pre-code, the offense severity was

delimited by whether the offenses occurred in the nighttime or daytime. By using the post-code as its standard the Department, in effect, eliminated this pre-code distinction in the corrections data.[6]

2. Selection of Offenses for Study. Maine's historical distinction of misdemeanor and felony offenses, even though class A through C crimes have penalties corresponding to "felony" penalties, and class D and E crimes correspond to what was previously misdemeanors. The importance of sanctioning differences between class A through C offenses versus class D and E is that class D and E offenses are punishable by fines, probation, and sanctions of less than one year in a local jail. For purposes of this study it was felt that these misdemeanor offenses involved sanctions less important from a national perspective than the felony offenses, therefore, we opted for studying sentencing and outcome data for class A through C offenders only. The reader should note that in some cases offenses were downgraded in terms of seriousness such that they would have been a felony pre-code, but were classified as a "misdemeanor" by the code. These offenses would not be represented in our analysis. A side benefit, and a significant part in our decisionmaking, was that class D and E offenses

[6] In coding the court data we maintained the distinction between daytime and nighttime burglary for pre-code data in order to determine whether the distinction actually influenced sentencing decisions. Interestingly the proportion given probation for burglary in nighttime was 44.7, while for daytime burglary the proportion was 48.1. Therefore, the legal distinction seemed to have little or no influence on sentencing decisions.

judicially come under the jurisdiction of the District Court whose records are both more geographically dispersed, making them costly to study, and they are in general of questionable accuracy depending on the record keeping of the clerk.

One methodological problem is to assess the impact of those receiving the longer sentences pre-code and who have not been released by the parole board. Our concern is that these cases in our sample for which we have release dates may represent those serving shorter periods of time, and may not represent those serving time in general.

The problem applies only to sentences to the Maine State Prison, because all sentences to the Maine Correctional Center pre-code were 0 to 36 months. Since the last time for which we sampled was April 1974, any sentence to the Correctional Center had reached the maximum "out" date by April 1977, and therefore, barring incomplete data in the files, or files not locatable, we should have final release information on all correctional center offenders.

The data indicates that there are 45 cases at the Maine Correctional Center (MCC) for which we were unable to obtain outcome data and 31 at the Maine State Prison (MSP). While the loss of cases at MCC is regrettable, it does not pose a severe validity problem because there is no reason to expect that missing MCC cases are systematically different from those in our sample. However, the missing prison cases require further exploration.

There were a total of 31 cases for which we had no follow-up data at the prison. Five of the 31 were for offenses such as possession of methamphetamine, incest, and attempting to utter

which are class D offenses, and therefore not a part of our discussion. Of the 26 remaining cases, 5 had maximum release dates prior to January 1978 (when we performed our final search of institutional records , however, either because the files were incomplete or were not locatable in the institution data on release was not available. As was true of the MCC cases, there is no reason to expect that loss of these five cases presents a validity problem.

Of the remaining 21 cases, 4 were life sentences for murder which are not part of the offense class system and are not analyzed as part of our study either, pre or post-code. This leaves us with 17 cases for which we do not have outcome data and which are apparently still serving time in the state prison. Two of these are class A; 10 class B and 5 class C. This information suggests that we must be cautious in our interpretations of pre-code correctional data because those serving the longer time have not been released, thereby causing the means and medians to reflect slightly low estimates of time served pre-code.

A second biasing factor in our pre-code data is the liability that offenders released on parole may be reincarcerated. While we have attempted to collect this data, numerous offenders in our sample have not been discharged from parole and may be reincarcerated currently or in the future. While it is impossible to place any estimates on this, it is important for the reader to keep in mind while examining the corrections data.

3. Calculating Time Served. Because the project is of relatively short duration, and is ending before it is possible for sentences of longer than two years to expire, we have developed a

strategy for approximating the length of sentence actually served. In calculating time served for sentences under the code we have projected time served by subtracting good time from the flat sentence given. As it happens the institutions calculated good time by multiplying 12 (good days) by the number of months of the sentence and subtracting the result from the original sentence. We have adopted the same strategy in calculating time served (projected) under the code.[7] Therefore, any reference to institutional time under the code refers to a projection based on this calculation.

4. Short-term Followup. One potentially significant flaw in the research is that thus far we have only followed sentencing for slightly over a year and correctional outcomes for only one year. This one-year followup is too short to derive conclusions about long-term outcomes. Judges, correctional officials, the governor (through executive clemency) are still developing the acceptable (normative) responses to the code. Thus, first-year data may very well not correspond to future data. For example, this project will feed back data on judicial sentencing and thus may facilitate comparisons among judges and may thus generate pressure for reform. All this suggests that we must be cautious in extrapolating from the first year's post-code data to future outcomes.

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[7] The Maine Legislature has enacted legislation which requires that the institution evaluate the inmate at the end of each month and determine the appropriate good time award rather than the awarding of the good time at entrance. Future analysis of the post-code will require an adjustment in the calculation of good time to reflect this change.

Moreover, when we publish our data we will become another variable in the equation that may, to an indeterminable degree, cause change.

C. Issues in the Quality and Characteristics of the Data

1. Investigation Restrictions. The scope of this investigation was restricted by the absence of considerable data in the court records and by the racial, sexual and socio-economic homogeneity of the corrections samples.

Court records contained no information about race, occupation, or age. Thus, it was impossible to study the effect of any of these variables on sentencing. An effort was made to deduce the sex of offenders from their names. The technique was generally reliable, but the number of female offenders (only 59 post-code for all classes of offenses) was too small to permit statistical analysis. The court records contained information about the number of final charges in each case. The vast majority of cases involved only one charge (94.5 percent pre-code and 78.7 percent post-code). It was decided to delete the small number of multiple offenders from the sample because: 1) multiple offenders were systematically treated more harshly than single offenders; 2) the proportions of multiple offenders in the pre and post-code samples were strikingly different (e.g. 12.7 percent of those incarcerated at MSP pre-code, and 35.6 percent post-code); 3) coding problems were generated by the impossibility of knowing which offense accounts for what part of the sentence; and 4) the number of cases was too small to permit independent analysis.[8]

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[8] Similar data was found in the prison records, and was deleted for similar reasons.

The prison records were much more complete. The variation among cases was so limited, however, that meaningful analysis was severely restricted. Sex, for example, while a potentially significant variable, is impossible to utilize in the analysis because the small number of incarcerated female offenders (1 pre-code and 6 post-code), makes comparisons impossible. Race, furthermore, is scarcely a variable among Maine's prison population (the institutions have been between 97 percent and 98.9 percent white during all sample years).

These disclaimers should not be taken as a denigration of the data which was obtained and which proved amenable to statistical analysis. Court records contained valuable information about the disposition of cases, the sentences imposed, and the identity of judges. Prison records provide data about time actually served, the age of offenders and their number of prior adult incarcerations. The analysis of this data, presented in the following chapter, forms the basis for our conclusions about the impact of Maine's new criminal code.

CHAPTER III. DATA ANALYSIS

A. Introduction

Chapters I and II reviewed the central issues that provide the conceptual basis of our study, and outlined the research design and methodology of the study. The data presented and analyzed in this chapter addresses two important penological questions:

(1) How has the code affected the severity of sentences?

(2) Has disparity in sentences increased, decreased, or stayed the same?

B. The Research Questions

1. How Has The Code Affected The Severity Of Sentences?

Our research focused on three issues related to sentence severity: a) the frequency (pre and post-code) with which incarceration (as opposed to community treatment) was used; b) the length of incarceration; and c) "just proportionality," that is, the relationship between sentence severity and offense severity in the pre and post-code periods.

a. The use of incarceration has become less frequent.

The data presented in Table 1 and graphically highlighted in Figure 1 shows that the likelihood of incarceration has decreased with a concomitant greater use of probation. Interestingly, this change is most evident in the treatment of class A and class B offenders. In the pre-code period, class C offenders were much more likely to receive probation than either class A or class B offenders;

Table 1

Distribution of Sentences

	Pre-Code		Post-Code	
	No.	Percent	No.	Percent
Class A				
Incarceration and Split Sentences *	63	77.7	19	65.5
Probation	15	18.5	10	34.5
Fine	3	3.7	0	--
Total	81	99.9	29	100.0
Class B				
Incarceration and Split Sentences	206	67.3	56	51.8
Probation	90	29.4	45	41.7
Fine	10	3.3	7	6.5
Total	306	100.0	108	100.0
Class C				
Incarceration and Split Sentences	505	54.2	159	52.3
Probation	378	40.6	129	42.4
Fine	48	5.2	16	5.3
Total	931	100.0	304	100.0

* It was decided to present the data with split sentences and sentences of incarceration combined because the issue addressed in this table is whether an offender was institutionalized. The fact that a condition of probation was attached or that the time served was comparatively short (the usual characteristics of a split sentence) in no way diminishes the reality that an individual's punishment included a term of imprisonment.

It is interesting to note that the use of split sentences has increased under the new code, particularly for class B offenders (7.8% of offenders received splits pre-code compared to 22.2% post-code).

in the post-code period, the likelihood of being put on probation is roughly the same for all three classes of offenders. While this data does not "prove" that sentences in Maine are less severe post-code than they were pre-code, it seems clear (ceteris paribus) that there are a sizeable number of class A and class B offenders on the streets who would have been incarcerated in the pre-code period.

b. The length of incarceration has become shorter for class B and C offenders, but longer for class A offenders.

Table 2 shows that median sentence length[1] has increased for class A offenders, but has decreased for class B and C offenders.

Table 2.

Sentence Lengths (in months)
Actual Time Served Pre-Code
Projected Time Served Post-Code

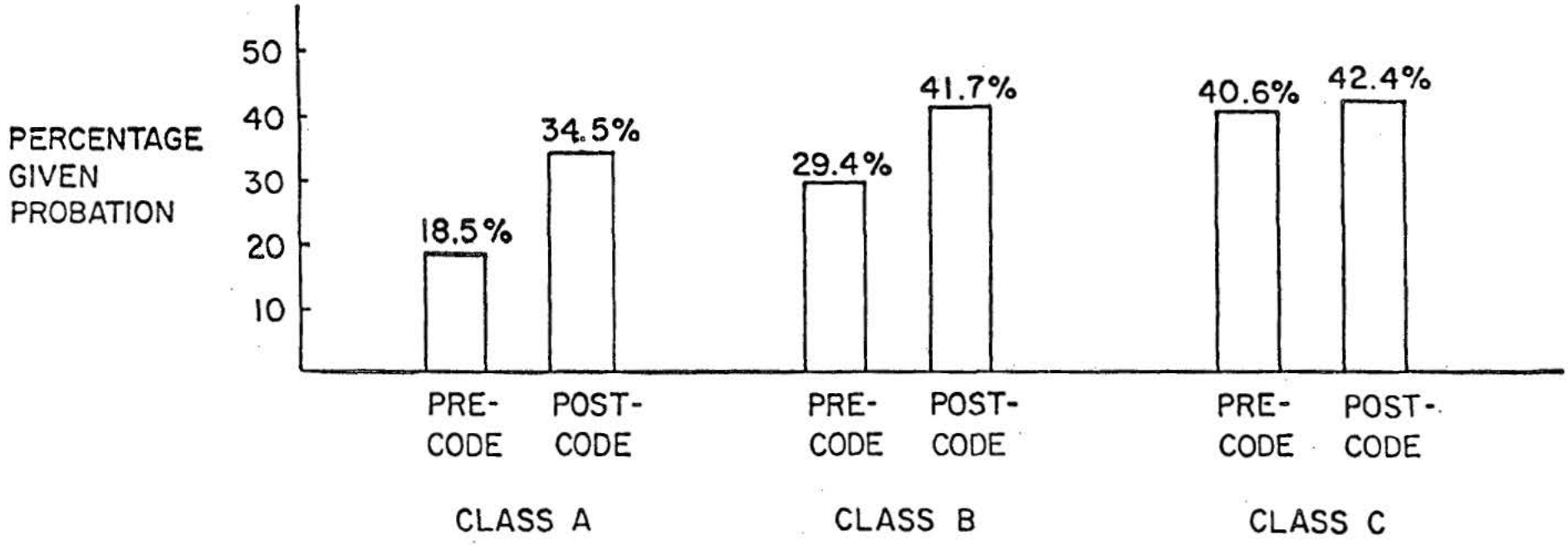
Class		Median	(n)	Magnitude of Change
A	Pre-Code	23.6	20	19% Increase
	Post-Code	28.1	17	
B	Pre-Code	10.5	132	22.9% Reduction
	Post-Code	9.1	67	
C*	Pre-Code	8.9	279	20.2% Reduction
	Post-Code	7.1	106	

* The one offense which occurred with sufficient frequency to allow pre and post-code comparisons was burglary. The data on pre and post-code sentence lengths for burglary is compatible for class C offenses generally. The median sentence is down from 9 months to 7.1 months, a reduction of 21 percent.

FIGURE 1

PRE AND POST-CODE COMPARISONS OF THE PERCENTAGE OF CASES IN WHICH PROBATION WAS GRANTED FOR CLASS A, B AND C OFFENSES

PRE AND POST-CODE COMPARISONS OF THE PERCENTAGE



c. Conclusion

Criminal punishments have become generally less severe in Maine since the enactment of the new criminal code. There is no language in the code which mandates a reduction in sentence severity; and it does not appear that the Revision Commission anticipated or desired such a reduction. Therefore, it seems unreasonable to conclude that the code is causally responsible for the increased use of probation for all classes of offenders or for the reduced lengths of incarceration for class B and C offenders. The enactment of the new code, by shifting sentencing authority into the exclusive control of the judges, has precipitated a significant change in the severity of punishments. In other words, there has been a clear (but unintended) change in the behavior of Maine's criminal justice system; it seems unlikely that this change would have occurred without the promulgation of the new code, but the code is only the occasion for change, not the direct cause of it.

2. Has Disparity In Sentences Increased, Decreased Or Remained The Same?

In Chapter I, we asserted that the Revision Commission did not explicitly anticipate the possibility that increased

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1 Median sentence lengths were selected because unlike mean sentence lengths, they are unaffected by extreme scores. However, for interested readers, mean sentence lengths are: class A, 26.8 months pre-code, 34.8 months post-code; class B, 15.5 months pre-code, 16.5 months post-code; class C, 12.5 months pre-code, 8.9 months post-code. These scores are influenced by changes in the distribution of sentences which will be discussed in section 2 (on disparity).

discretion for judges combined with the abolition of parole might result in increased disparity in punishments. There is reason to fear, however, that that is exactly what has happened.

The data indicates: 1) that the total variance among sentences has increased under the new code and 2) that this variation is not explained by such presumably relevant variables as offense severity, number of offenses, prior incarceration, or age. There is evidence of substantial (and inexplicable) variation in the sentencing practices of different judges which tends to confirm the hypothesis that disparity (unjustifiable variance) in punishments has increased.

a. Variation Among Sentences Has Increased.

There are two indicators of increased variation (and by implication disparity) in the imposition of criminal sentences in Maine: one involves the granting of probation, and the other involves the lengths of sentences of incarceration.

Table 3 shows that offense severity (as legislatively defined) was more important as a determinant of the granting of probation before the enactment of the new code. More than a third of class A offenders currently receive probation while 57.6 percent of (definitionally) less serious class C offenders are incarcerated.

Table 3*

Percentage of Convictions Resulting In Probation Pre and Post-Code by Offense Class

Offense Class	A	B	C
Pre-Code	18.5	29.4	40.6
Post-Code	34.5	41.7	42.4

* The data in this table is the same as that presented in Table 1. The format has been altered to highlight its relationship to the disparity issue.

Table 4 shows that there is more variation in sentence lengths in the post-code period than in the pre-code period. This is reflected in increased standard deviations for all classes of offenses, particularly the more serious ones.

Table 4

Mean Sentence Lengths* and Standard Deviations for Class A, B and C offenses Pre and Post-Code (in Months)

	Pre-Code		Post-Code	
Class	Mean	S.D.	Mean	S.D.
A	24.8	14.8	34.8	33.6
B	15.5	12.3	17.9	20.6
C	12.5	8.7	9.3	8.9

* Computed as actual time served pre-code and projected time served post-code.

The significance of the changes in standard deviations (which measure variance) can best be appreciated through visual inspection of the actual distributions of sentence lengths. These are presented for each class of offense in the figures on pages 41 through 45.

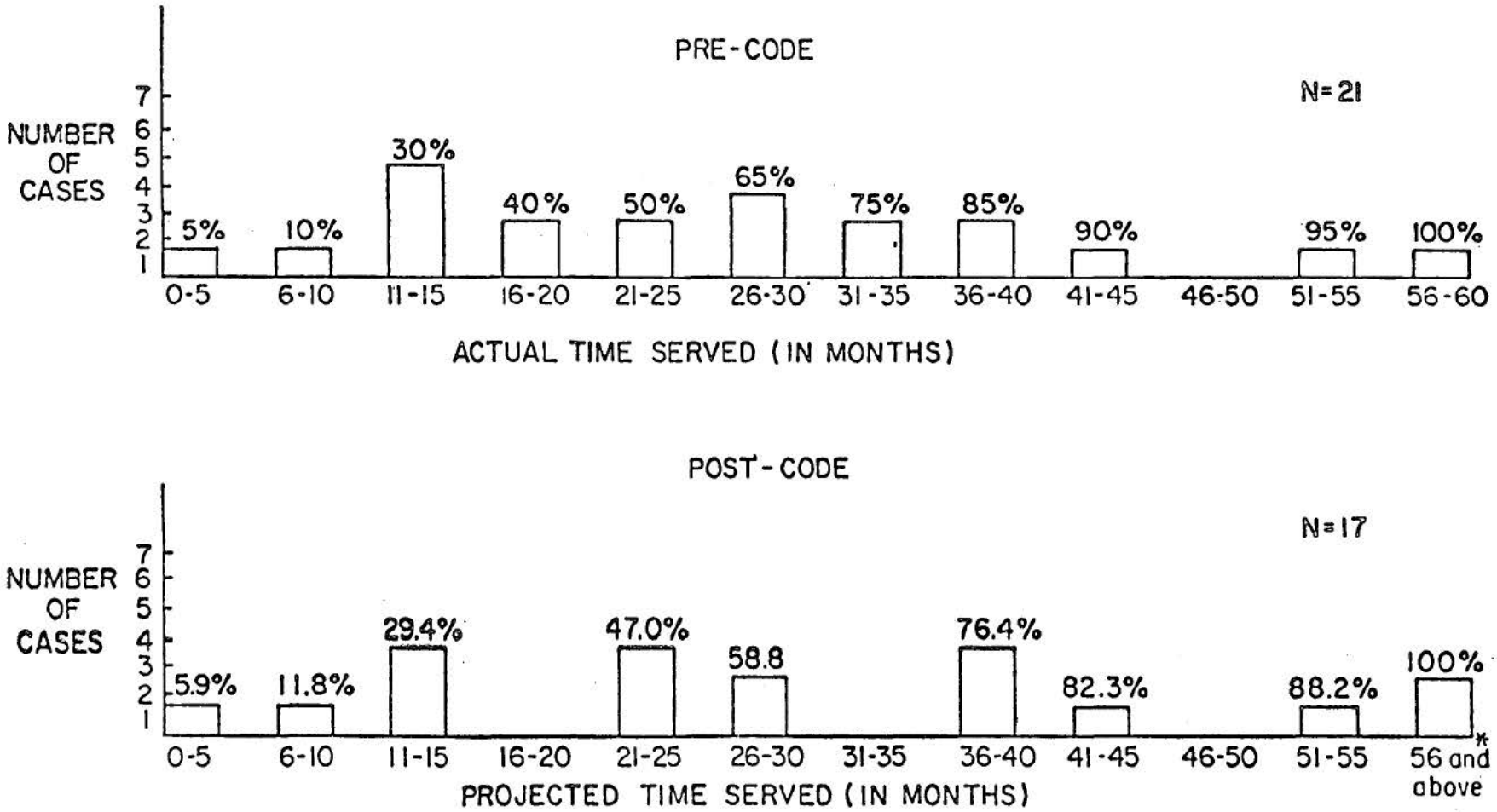
Figure 2 shows that the distribution of sentence lengths for class A offenders pre and post-code is remarkably

unchanged . . . except for one case. The greatly increased standard deviation for class A offenders is entirely attributable to a single sentence of 145 months (72 months longer than the next longest sentence). If this case were deleted from the sample, the standard deviation for class A offenders post-code would be 18.6 (much closer to the 14.8 standard deviation among the pre-code cases). For purposes of this discussion, the most important thing to note is that the range of sentences for class A offenses has increased considerably: the pre-code range was 0 (18.5% got probation) to 57 months incarceration; the post-code range was 0 (34.5% got probation) to 145 months incarceration.

Figure 3 has two immediately apparent characteristics: the greatly increased use of very short sentences post-code (which speaks to the severity issue) and the greatly increased range of sentences (0-60 months pre-code; 0-109 months post-code). The magnitude of these changes in the distribution of punishments among class B offenders is reflected in two comparisons: 1) pre-code 9.1 percent of all cases resulting in incarceration involved deprivations of liberty for 5 months or less; post-code 36.4 percent of the cases resulted in such short sentences; 2) pre-code, only 3.6 percent of the cases involved sentences of more than 45 months, post-code 9.0 percent of the cases resulted in longer periods of incarceration.

FIGURE 2

DISTRIBUTION OF SENTENCE LENGTHS FOR CLASS A OFFENSES PRE- AND POST-CODE (CUMULATIVE PERCENTAGES)

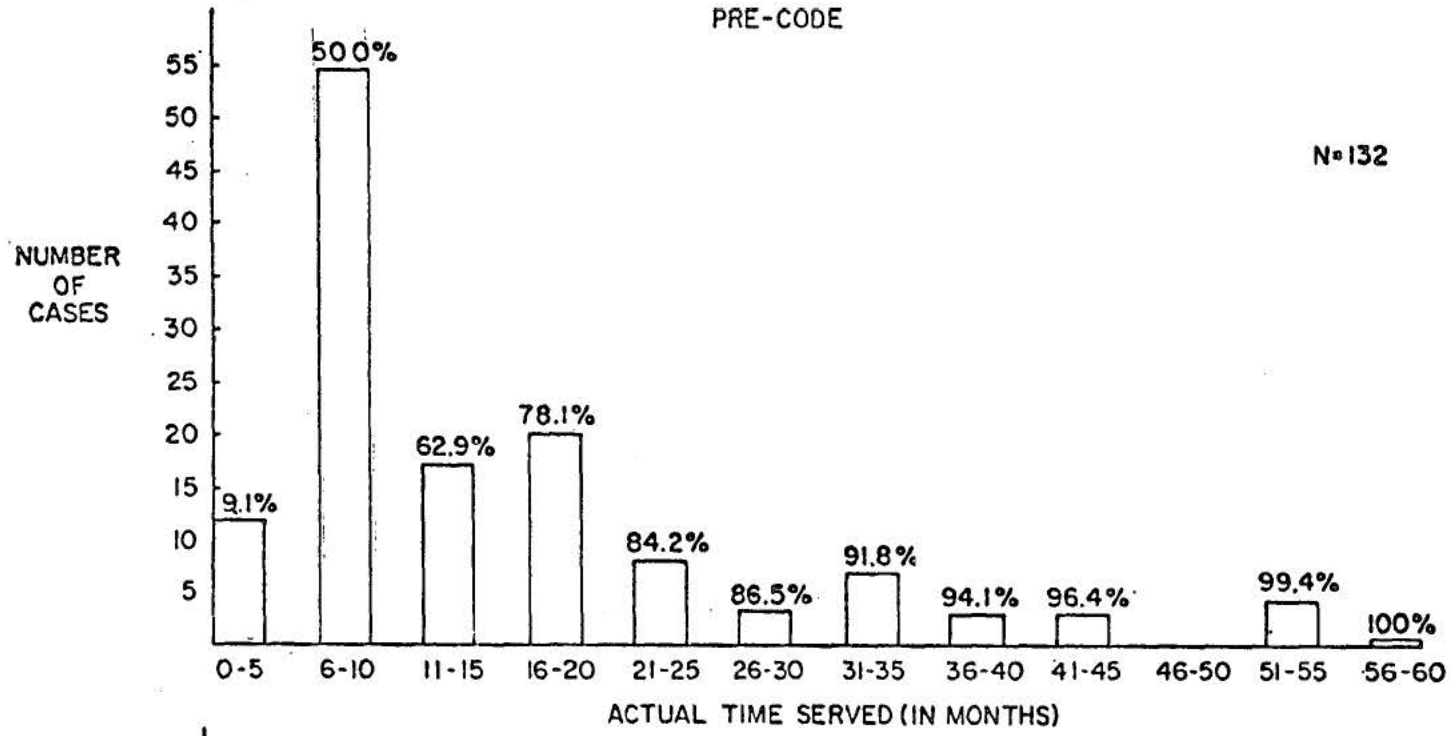


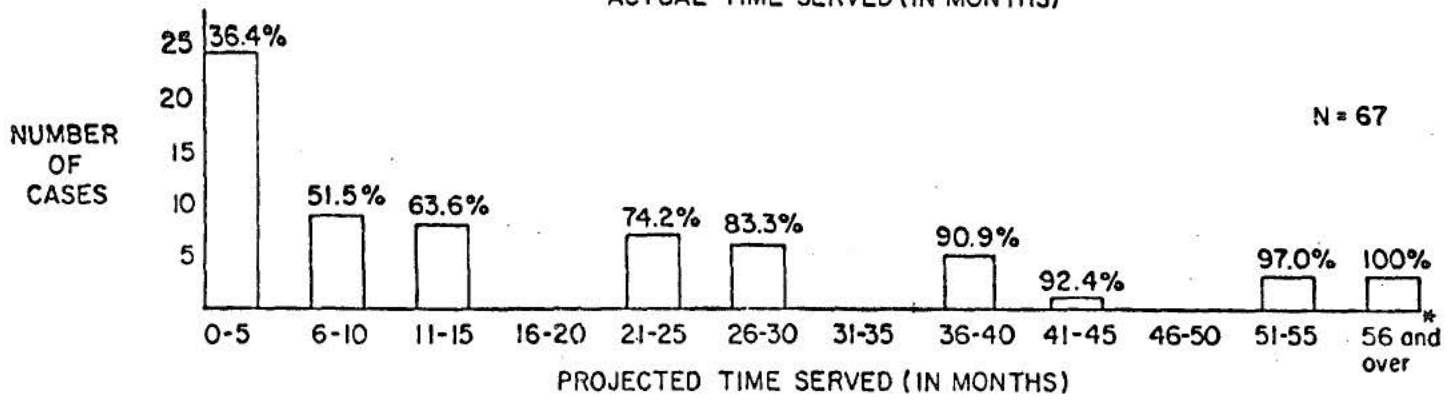
* PROJECTED TIME SERVED FOR THESE TWO CASES WAS ACTUALLY 75 AND 145 MONTH

FIGURE 3

DISTRIBUTION OF SENTENCE LENGTHS FOR CLASS B OFFENSES
PRE- AND POST-CODE
(CUMULATIVE PERCENTAGES)

PRE-CODE





* PROJECTED TIME SERVED FOR THESE 3 CASES WERE ACTUALLY 65, 73 AND 109

FIGURE 4

DISTRIBUTION OF SENTENCE LENGTHS FOR CLASS C OFFENSES
PRE- AND POST-CODE
(CUMULATIVE PERCENTAGES)

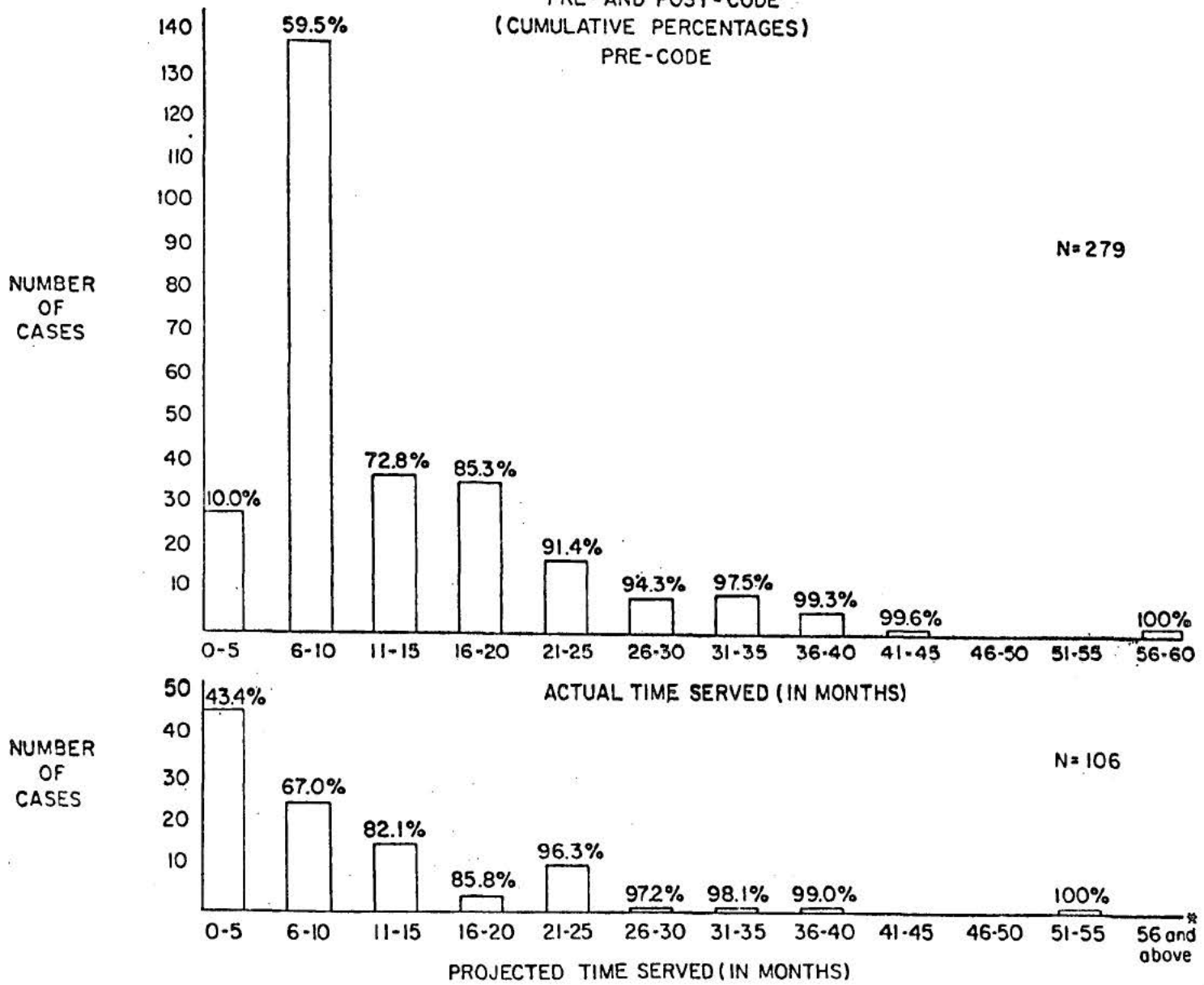


Table 5 presents the quartile distribution of the time served pre-code and projected time served post-code. The quartile distributions reinforce our conclusions derived from the histograms. For each of the offense classes, but more emphatically for class B and C, the first quartile (25 percent of the scores are below the score) is dramatically lower post-code than pre-code. However, the third quartiles are inconsistent and suggest some rather interesting differences for each offense class. For class A, the third quartile score is 36 months both pre-code and post-code, for class B, post-code it is higher, for class C it is lower. For class B the third quartile is 18 months pre-code and a considerably higher 25.56 months post-code. Third quartile scores for class C offenses, however, are in the opposite direction of those for class B offenses with third quartile being 16 months pre-code and a lower figure of 12.25 post-code. Overall, these quartile scores clearly emphasize the tendency for frequent short sentences post-code when compared to pre-code and that for the most populous category, class C, there is a sizeable decline in the number of months accounting for three/fourths of the cases. Moreover, for the class B offenders the time difference of from 8.1 for the median and 25.56 for the third quartile is a range of almost 16 months in which only a fourth of the sentences reside. This same figure precode is 7.5 months. This certainly suggests that there is greater disparity under the new code.

TABLE 5

Quartile Scores (in months) Pre and Post Code by Offense Class

Class A

Precode		Postcode	
First Quartile	13.0	First Quartile	10.38
Second Quartile	23.6	Second Quartile	28.1
Third Quartile	36.0	Third Quartile	36.0

Class B

Precode		Postcode	
First Quartile	8.0	First Quartile	2.0
Second Quartile	10.5	Second Quartile	8.1
Third Quartile	18.0	Third Quartile	25.56

Class C

Precode		Postcode	
First Quartile	7.0	First Quartile	2.78
Second Quartile	8.9	Second Quartile	7.1
Third Quartile	16.0	Third Quartile	12.25

Figure 4 shows that the variance among class C offenders is virtually unchanged except that the preponderance of cases (43.4%) fall in the 0-5 month category post-code as opposed to the 6-10 month category pre-code (49.5%).

b. Very Little of the Variance in the Distribution of Sentences (7.9%) Pre and (20.5%) Post-Code Can Be explained By Relevant Variables.

Variance in the distribution of sentences is not problematic if it results from efforts to differentiate punishments according to rational criteria. Sentencing disparity, an evil much discussed in criminological literature, exists only if the differing treatment of offenders can not be accounted for by variables generally recognized as legitimate.

A stepwise regression analysis was performed to determine how much of the variance in the distribution of sentence lengths could be explained by the following variables: offense severity, number of offenses, prior incarceration, age, education, and socio-economic status (indicated by occupation).[2] This analysis (presented in Tables 5 and 6) reveals that: 1) offense severity explains much more of the variance in the post-code than the pre-code distribution

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[2] SES often explains a substantial amount of variance in sentencing studies, but is not generally recognized as a legitimate basis for the imposition of differing punishments. Race and sex also frequently correlates with sentence, but can hardly be called legitimate variables. As mentioned in Chapter II, race and sex are irrelevant in this study because they were not noted in court records and the institutional population was composed almost entirely of white males.

Table 6

Stepwise Regression of Sentence Lengths, Pre-Code Against Relevant Variables (in months)

Step Number	Variable	Multiple R	Multiple R^2	Increase in R^2	Simple R	F Value at Entrance
1	Prior Incarceration	.20	.041	.04	.20	17.3
2	Age at Admission	.26	.067	.026	.188	14.7
3	Last Grade Completed	.27	.073	.006	.124	10.7
4	Usual Occupation	.276	.076	.003	.075	8.34
5	Offense Class	.281	.079	.003	.07	6.89
6	No. of Conviction Offenses	.281	.079	.000	.008	5.73

Table 7

Stepwise Regression of Sentence Lengths Post-Code Against Relevant Variables (in months)

Step Number	Variable	Multiple R	Multiple R^2	Increase in R^2	Simple R	F Value at Entrance
1	Offense Class	.390	.152	.152	.390	49.42
2	Prior Incarceration	.428	.183	.031	.147	30.72
3	No. of Conviction Offenses	.443	.196	.013	.125	22.23
4	Age at Admission	.450	.203	.007	.145	17.310
5	Usual Occupation	.452	.205	.002	.06	13.951
6	Last Grade Completed	.452	.205	.000	.03	11.586

of sentences (up from .3% pre-code to 15.2% post-code) and 2) the total amount of variance explained by all these variables is small both pre-code (7.9%) and post-code (20.5%). Legislative ranking of offenses has become more important since the codification of the code which is presumably compatible with the intent of the legislature. But most of the variance is still inexplicable by rational criteria.

The increased importance of offense severity is of particular interest because of its relevance to the doctrine of just proportionality (let the punishment fit the crime) which is experiencing a renaissance both in criminological literature,[3] and in several American jurisdictions.[4] Maine's Revision Commission was not of a single mind about the importance of this principle and (unsurprisingly) there is evidence which suggests that the principle of proportionality in punishments has not been strengthened very much (if at all) in the post-code period. Table 7 shows that offense severity is less important now than before in determining who will be placed on probation. In the post-code period, all classes of offenders have an almost equal chance of getting probation; pre-code, more serious offenders were much more likely to be incarcerated.

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[3] See, for example, footnotes 36, 37 and 38 in Chapter I.

[4] Notably California, Illinois, Indiana, Minnesota and Arizona.

Table 8

The Granting of Probation for Each Class of Offense Pre and Post-Code (in percent)

Class	Pre-Code	(n)	Post-Code	(n)
A	18.5%	(15)	34.5%	(10)
B	24.9%	(90)	41.7%	(45)
C	40.6%	(378)	42.4%	(129)

Table 8 reflects the existence of consistent differences in sentence length by offense class, particularly post-code (Pearson's r pre-code is .07; post-code it is .39). Nevertheless, it must be noted that substantial percentages of class A offenders received (and continue to receive) less severe punishments than many class B and C offenders. This is particularly noticeable for sentence lengths of between 11 and 20 months. The major difference is that class A offenders rarely get the very short sentences which have become more popular for class B and C offenders in the post-code period.

The overlapping distribution of sentence lengths is such that their variance cannot be explained by rational-legal criteria. There is reason to believe that much of the post-code variance[5] is attributable to judge-to-judge differences.[6]

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[5] It is quite likely that judge-to-judge differences were of great consequence in the pre-code period as well, but this discussion focuses on the causes of disparity under the current law.

[6] See Hogarth, John, Sentencing as a Human Process (Toronto, Canada: University of Toronto Press, 1971), for an excellent study of judicial sentencing.

Table 9

Sentence Lengths: Cumulative Percentages for Class A, B and C Offenses

Months Served*	Pre-Code			Post-Code		
	A	B	C	A	B	C
0-5	5.0	9.1	10.0	6.3	36.4	42.6
6-10	10.0	50.0	59.4	12.5	51.5	65.7
11-15	30.0	62.9	72.8	31.3	63.6	80.6
16-20	40.0	78.1	85.3	31.3	63.6	84.3
21-25	50.0	84.2	91.4	50.0	74.2	94.4
26-30	65.0	86.5	94.3	62.5	83.3	95.4
31-35	75.0	91.8	97.5	62.5	83.3	96.3
36-40	85.0	94.1	99.3	81.3	90.9	97.2
41-45	90.0	96.4	99.6	87.5	92.4	97.2
46-50	90.0	96.4	99.6	87.5	92.4	97.2
50 and above	100.0	100.0	100.0	100.0	100.0	100.0

* Post-code this reflects projected time served.

c. Judicial Discretion and Disparity.

Twentieth century penology has been dominated by indeterminate sentencing. Virtually all jurisdictions have vested the judiciary with broad power to fashion individual punishments. The current antipathy to indeterminate sentences is based in large measure on the recurring observation that judicial discretion precipitates unjustifiable disparity.[7]

[7] See footnotes 36-38, Chapter I.

Maine, however, has actually increased the discretionary power of its judiciary. The range of sentences available for each class of offense has been increased, and the parole board (which exerted a leveling influence) has been abolished. No sentencing guidelines have been developed by the legislature or by the state's judges. For all those reasons, it would be reasonable to anticipate that disparity in the sentencing practices of Maine's judges would explain much of the variance in sentence lengths.

The number of class A and B offenders is too small to allow statistical analysis by committing judge; Table 9 presents projected time served data for those judges who processed 5 or more class C offenders post-code.

Table 10
Projected Time Served Post-Code for Class C Offenders by Judge

Judge	$\bar{X}$	Median	SD	N
1	3.3	3.5	2.6	5
2	7.7	4.2	8.0	11
3	8.7	6.1	6.6	10
4	8.6	6.8	5.6	7
5	10.9	7.6	12.3	11
6	15.0	13.6	8.5	11

It is possible that there are differences in offender characteristics or the specific circumstances which account for these judge-to-judge differences. In an attempt to establish whether there might be hidden consistency in

judicial behavior, a decision board consisting of two hypothetical cases (one burglary, the other aggravated assault) was administered to 7 Superior Court Judges. The range of sentences imposed in the hypothetical burglary case extended from 0 (probation) to 24 months incarceration. In the hypothetical aggravated assault case, the range was 0 (probation) to 42 months. Maine's judges do not appear to be guided by uniform sentencing standards.

d. Conclusion.

The variance among sentence lengths post-code is greater than pre-code; this is attributable to increase in the range of sentences post-code (there are a few very long class A sentences, and a few very long class B sentences). This same factor, the existence of a small number of very long sentences has resulted in offense severity becoming a comparatively important explanation of post-code variance. Still, most of the variance in the distribution of sentence lengths pre or post-code cannot be explained by rational-legal criteria. Differences in the sentencing behavior of judges appears to account for much of the variance. Although it was not the intent of sentencing reform in Maine to reduce disparity it is still important from a national perspective to assess it. It appears from our limited data that disparity has increased.

3. Has Certainty Actually Been Increased? In penological literature "certainty is often presented as the opposite of disparity and discretion." When critics of the status quo such as Dershowitz, Frankel, or Von Hirsch advocate more certainty in punishment they mean that the range of permissible sentences should be narrowed and individualization discouraged. Presumptive sentences, much discussed in recent years, would give all robbers the same sentence, all rapist the same sentence, all car thieves the same sentence, plus or minus a small amount of recognition of aggravating or mitigating circumstances. The term "certainty" has a different meaning in Maine.

The Revision Commission did not intend to make sentences more predictable in advance of sentencing but only after. The discretionary power of Maine's judges is such that an offender convicted of a Class B offense is subject to any punishment between probation and ten years imprisonment. The data presented in section 2 above shows that variance in time served has increased. Hence it can be concluded that certainty about punishments has decreased.

The type of certainty with which the Revision Commission was concerned is reflected in comments from commission members to the effect that "inmates and the public should know that a 10 year sentence means about 10 years." There is a paradoxical quality to this which must be noted. The Revision Commission was concerned that indefinite sentences combined with parole decision making left everyone uncertain about sentence lengths in the pre-code period. Yet simultaneously the parole board came under wide-spread attack precisely because it was too predictable. The vast majority of

offenders (estimates run as high as 98%) were released as soon as they became eligible for parole. The public may not have known what a ten year sentence really meant, but inmates and correctional officials surely did or easily could have. Thus, the concern about certainty in Maine must be seen as a political as well as a penological issue.

Nevertheless, the Revision Commission was content to think that they had increased certainty in sentences. Did they? Our calculations of projected time served have all been built on the assumption that judicially imposed sentences will be mitigated only by good time which is predictably 12 days a month. Thus, a juridicially imposed 10 year sentence means about six years incarceration. These calculations assume that judicially imposed sentences will not be undone by any other agency. The abolition of the parole board confirms that this is what the Revision Commission intended. There are, however, several potential "loopholes" in the law: sentences can be shortened by the committing court (resentencing), by a higher court (Appellate Review), or by the executive branch (commutations and pardons). The impact of these "loopholes" can not be assessed at this early date. The new sentencing system has not been in effect long enough to determine whether inmates will be able to find ways to shorten their sentences. What little is currently known about resentencing, appellate review, commutations and pardons is presented below.

a. Resentencing

Maine's code provides that sentences in excess of one year are deemed "tentative" and that the court may resentence an inmate upon a petition by the Department of Mental Health and Corrections

based on its evaluation of the inmate's "progress toward a non-criminal way of life (17-A M.R.S.A. section 1154)." Zalman has speculated that the statute forms the basis of a quasi-parole release process to be administered by the corrections department and the judge.[8] However, there are serious questions concerning section 1154's constitutionality. Two recent decisions of the Superior Court held that resentencing is an unconstitutional usurpation of the executive pardoning power, State v. Abbott (1978). York County Criminal Action, Docket Numbers 67-564 through 67-567; State v. Green (1978). York County Criminal Action, Docket Numbers 76-545, 76-573, .76-574). The Law Court has not yet addressed this issue, but as of this writing, no inmate has been resentenced.

b. Appellate Review.

Maine's Rules of Court provide that criminal sentences of imprisonment are subject to review by an appellate division of the supreme judicial court. The appellate division is empowered to review any sentence of one year or more to the Maine State Prison,

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[8] M. Zalman, "A Commission Model of Sentencing," 53 Notre Dame Lawyer 266, 272 (1977). Also see M. Zarr, "Sentencing," 28 Maine Law Review -17, 143-147 (1976).

the Maine Correctional Center or any county jail[9] and may "amend the judgment by ordering substituted therefore a different appropriate sentence or sentences or any other disposition of the case which could have been made at the time of the imposition of the sentence or sentences under review."[10]

In practice, the appellate division has had little impact on sentences thus far. Although the appellate division receives numerous petitions for review (in excess of 100 petitions during 1977), sentence reductions are extremely rare[11] and sentence enhancements have been thus far nonexistent.

In section 2 above, we pointed out that disparity in sentence lengths has increased in Maine, and that a small number of very long sentences account for much of the variance. The existence of such extreme sentences may generate pressure for the appellate division to correct "inequities," and may thus result in greater exercise of the review power.[12]

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[9]This power was recently increased by the Legislature. Prior to 1977 appellate review was limited to offenders sentenced to the Maine State Prison. See Chapter 510, Public Law, 1977.

[10]17 M.R.S.A. sections 2141-2142. The appellate division may increase as well as decrease the original sentence, but the offender must be given an opportunity to be heard.

[11]See "Court Cuts Sentence of Sailor for Kidnap, Rape," Portland Press Herald, April 26, 1978.

[12]See M. Frankel, Criminal Sentences Law Without Order (New York: Hill and Wang, 1976).

Thus, while there is little evidence which suggests that appellate review has diluted the ostensible certainty of the code, it has the potential of doing so and therefore bears close scrutiny in the future.

c. Commutations and Pardons

Executive clemency is another alternative under Maine law by which sentences, once imposed, may be altered considerably. The constitution of Maine empowers the Governor "to grant reprieves, commutations and pardons."[13] Statutory enactments allow for considerable flexibility in the exercise of that power. In fact, the Governor is vested by statute with authority strikingly reminiscent of the traditional parole decision making power. Specifically, the Governor may grant a pardon "upon such conditions and with such restrictions under such limitations as he deems proper."[14] If an offender thus pardoned violates the conditions of his pardon, another statute provides that he shall be "arrested and detained until the case can be examined by the Governor."[15] Finally, a third statute provides that if the Governor finds that the offender has in fact violated the conditions of his pardon, "the Governor shall order him to be remanded and confined for the unexpired term of the sentence."[16]

Unlike resentencing and appellate review, executive clemency is a familiar practice which was fairly common prior to the enactment

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[13]Constitution of Maine, Article V, part 1, section 11.

[14]17-A M.R.S.A., section 2163.

[15]17-A M.R.S.A., section 2164.

[16]17-A M.R.S.A., section 2165.

of the new code. Therefore, if pressure mounts for the reduction of severe sentences there may be recourse to increased use of commutations and pardons. This trend is not currently evident but there are two extenuating circumstances: 1) between November, 1976, and August, 1977, no executive clemency decisions were rendered because the Pardons Board was being reconstituted; and 2) because offenders with relatively long sentences (those who are most likely to petition for clemency) would not have done so during the relatively short duration of this study.[17]

4. Summary

What we see, then, is that: 1) the severity of punishments in Maine has decreased without any explicit statutory requirement; 2) that disparity in sentences has remained a substantial problem despite some desire to limit it; and 3) that sufficient flexibility still exists in the system so that judicially imposed sentences may be less fixed and certain than the Revision Commission intended. In the next chapter, we will discuss the relationship between the new code and the sentencing practices it has generated.

[17] We were able to collect data about the use of pardons and commutations pre-code, so a data base does exist from which pre- and post-code comparisons can eventually be made.

Chapter IV. Summary and Conclusions

There has been a substantial change in the severity and distribution of criminal punishments in Maine. Probation is being used much more frequently for Class A and B offenses, and class B and C offenders receive very short terms of imprisonment (5 months or less) much more frequently than in the pre-code period. A small number of offenders have been incarcerated for very long periods. Post-code sentencing can be characterized as generally less severe but also more disparate than pre-code sentencing. But why? Increased disparity was certainly not desired by the Revision Commission, nor is there any evidence which suggests that they hoped to produce a reduction in sentence severity. Certainly nothing in the language of the code mandates these changes. How, then, can these unintended consequences of reform be explained?

The explanation towards which we are inclined is that the increased authority and visibility of the judiciary has resulted in a social psychological pressure towards moderation. The abolition of the parole board with a concomitant vesting of all sentencing power in the state's judges is the new code's unique innovation. Maine is the only American jurisdiction in which individual judges have near total control over the time an offender will serve.[1] We believe that the burden of this responsibility (the knowledge that excessive punishments cannot easily be mitigated) induces an attitude of caution and moderation. One

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[1] Good time provisions and the possibility of appellate review and executive clemency are all that keep the judge's power from being absolute.

reputedly conservative judge put it this way: every judge knows that putting a man in prison, while it may be necessary for society, is no good for the man; and no judge wants to go home at night feeling that he might as well be a "butcher."

In this chapter, we will elaborate on this explanation of causality. First, we will examine (and discuss) other plausible explanations of the observed changes in sentencing behavior. Then we will discuss our conclusion that the decreased severity of sentences and the increased disparity among them (albeit unintended) are consequences of the code's effort to make sentencing decisions more visible.

A. Alternative Explanations

Our body of data is divided into two parts:- pre- and post-code. The pre-code data, in particular, is an amalgam of cases which occurred over a long period of time. It may be that there is a trend towards diminished severity which would be evident if the pre-code data were examined on a year to year basis; and that the post-code statistics are considerably more similar to those of the recent pre-code period than to those of the more distant past.

Our correctional data consists of all offenders incarcerated between May 1971 and April 1972 and between May 1973 and April 1974. In Chapter I, we reported that parole decisions, in particular, had become more lenient during that period of time. It is possible that offenders incarcerated in 1971 and 1972 served more time before parole than offenders incarcerated in 1973 or 1974. If data existed for each of the pre-code years, a year-by-year analysis might reveal a trend which is obscured by our having

collapsed pre-code sentences together. It is plausible to speculate that punishments might have become less severe between 1971 (the heyday of the Nixon Administration's war on crime and a period of comparative social unrest) and the calmer days of the mid 1970's. If such a trend could be documented, then it might be argued that the apparent correlation between the promulgation of Maine's new code and reduced sentence severity is coincidental. In other words, that the severity of punishments would have diminished even in the absence of the new code. Continued research, by completing the data bank for the pre-code period, would permit such analysis.

For the sake of argument let us assume the existence of such a trend. It could be attributed only to the liberalism of the parole board which rose to ascendency during Governor Curtis' administration, and which routinely released inmates at their earliest parole eligibility date. In that case, however, the new code, having abolished the parole board and vested all sentencing power in the judiciary, ought to have precipitated a reversal of the trend. A trend analysis cannot explain why judges are now imposing shorter sentences than the minimums they imposed under the old scheme of indeterminate sentencing.[2] Nor why the use of probation has become more common.

[2]Pre-code there was no minimum sentence to Maine Correctional Center; they were all 0 to 36 months. De facto this ordinarily proved to be approximately 9 months regardless of severity of offense.

Taken together the evidence suggests that Maine's criminal justice system has been changed beyond the parameters explained by the abolition of the parole board. The judges, vested with power greater than that enjoyed by their brethren in any other American jurisdiction, aware of the fact that the hardships they impose can not easily be mitigated, and assured that their decisions are visible matters of public record, seem to have become considerably less punitive.

B. Responsibility Diffusion: The Social Psychological Explanation

The changes in the pattern of criminal sentencing identified by this research seem neither accidental nor completely attributable to the increased visibility of decison-making. Indeed, the growing fear of crime, combined with widespread sentiment that the criminal justice system is too lenient[3] and that dangerous offenders are put back on the street too quickly, might lead one to anticipate that increased visibility of decision-making would produce harsher sentences. The fact that sentencing authority was vested in a comparatively conservative group (at least in comparison to the "permissive" parole board) would reinforce the expectation that sentence severity might increase under the new code. Yet the actual results are diametrically opposed to that expectation.

The mechanism at work seems to be a principle of social psychology sometimes called responsibility diffusion. A body of empirical literature exists which describes a tendency for

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[3] M. J. Hindelang, M.R. Gottfredson, C.S. Dunn, and N. Parisi, Sourcebook of Criminal Justice Statistics - 1976 (Washington, D.C. U.S. G.P.O., 1977), p. 325.

individuals to behave more cautiously in situations in which they have total authority than in situations in which responsibility is shared.[4] Extrapolating from that principle it seems reasonable to conclude that judges will be more cautious (lenient; reluctant to impose great hardships) where they have complete sentencing authority than when that authority is shared with a parole board.

The ambiance of sentence decision making seems to have changed. A judge in Maine is in the unique position of being entirely responsible for the time each offender will serve. He can no longer impose a minimum and maximum sentence and then rest easy knowing that the final determination will be made by others. where else. He must make the decision alone, and he must live with himself after he has made it.

Defense attorneys have long had an intuitive understanding of responsibility diffusion. Clarence Darrow, for example, was very deliberate about placing the decision to execute Loeb and Leopold with a single judge instead of a jury. It would be too easy, he told colleagues, to let twelve people share the responsibility, a single man would have a harder time killing those two boys.[5] We believe that the same principle is at work in Maine in less dramatic cases. Individual judges are keenly aware of their undivided responsibility; and being reasonable men they are opting to exercise it with caution.

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[4]R.E. Rogers, Organization Theory (Boston: Allyn and Bacon, Inc., 1975) pp. 129-131.

[5]M. Levin, Compulsion, (New York: Simon and Schuster, 1956).

It will be interesting to see whether the trends identified in this research report continue. It is possible that the changes in criminal sentencing which we have described will prove temporary. Over time judges will become more familiar, and perhaps even more aware of the types of sentences imposed by their brethren. The short sentences which are so popular may prove eventually to be products of uncertainty induced by a transition in sentencing practices. It is even possible that this report will generate pressure toward increased sentencing severity.

If the utilization of probation remains common and short sentences continue to be the mode over the next few years, then Maine will have demonstrated that the severity of criminal sentences can be reduced (even unintentionally) by a system of undivided sentencing authority. There is a serious question as to whether Maine's sentencing reform will result in long term diminishing of sentence severity. Already the legislature has enacted legislation reducing by approximately 8 percent the amount of good time an offender can receive. Such changes as this suggest that this report must be taken as a very preliminary appraisal of changes in sentencing and time served in Maine.

APPENDIX A

COURT DATA COLLECTION INSTRUMENT

Superior Court Data Form

ID No.: _____ | 1-4 _____

County: Cumberland 1 | 5 _____
Oxford 2
Pennobscot 3
Aroostook 4

Docket No.: _____ | 6-13 _____

Judge's Name: _____ | 14-23 _____

Judge's Code: _____ | 24-26 _____

Offender's Name: _____ | 27-36 _____

Sex: Male 1 _____ | 37 _____
Female 2 _____

Relevant Code: Old Code 1 _____ | 38 _____
New Code 2
Chose New Code 3

Date of Sentencing: _____ _____ | 39-42 _____
MM YY

Number of Initial Charges: _____ | 43-44 _____

Initial Charges: 1 _____ | 45-47 _____
2 _____ | 48-50 _____
3 _____ | 51-53 _____
4 _____ | 54-56 _____

Pleas to initial charges:

1. Not Guilty = 1 Guilty = 2 No Contest = 3 _____ | 57 _____
2. " " " _____ | 58 _____
3. " " " _____ | 59 _____
4. " " " _____ | 60 _____

Number of final charges: _____ | 61-62 _____

Final Charge: 1 _____ | 63-65 _____
2 _____ | 66-68 _____
3 _____ | 69-71 _____
4 _____ | 72-74 _____

If no change, 9's in Columns 61-74.

Pleas to final charge:

1. Not Guilty = 1 Guilty = 2 No Contest = 3 _____ | 75 _____
2. " " " _____ | 76 _____
3. " " " _____ | 77 _____
4. " " " _____ | 78 _____

APPENDIX B

CORRECTIONAL DATA COLLECTION INSTRUMENT

FACE SHEET A

MAINE BUREAU OF CORRECTIONS

SEC 1 — 01 MSP 02 MCC 05 MYC

SEC 2

SEC 3

SEC 4 — DOCKET SHEET

SEC 5