

**Martin A. Levin, *Urban Politics and the Criminal Courts*.** Chicago: University of Chicago Press, 1977. 332 pp. \$20.00.

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At the beginning of *Urban Politics and the Criminal Courts* Martin A. Levin quotes Holmes's famous dictum that "the life of the law has not been logic; it has been experience." Nothing could epitomize better Levin's fine, sharp analysis of the behavior of criminal courts. Taking two distinctive cities with contrasting political cultures and methods of judicial selection, Levin offers a comparative study of criminal courts that "deals with the behavioral, political, and de facto organizational relationships in these courts rather than with the formal legal ones alone" (p. 3).

*Urban Politics and the Criminal Courts* is divided into two main sections. The first analyzes the political systems, judicial selection procedures, criminal court processes, and decisionmaking patterns in Minneapolis and Pittsburgh. Though similar in size, those cities differ in social class and political character. Minneapolis is a middle-class city with a diversified economy whose inhabitants are drawn from northern European and Scandinavian stock. With a strong civil service system, a weak mayor-council form of government, and nonpartisan elections, Minneapolis is an archetype of good government. Pittsburgh, on the other hand, seems to be synonymous with patronage. Highly industrialized, with immigrants from southern and eastern Europe, it is one of the few remaining instances of a citywide political machine, whose highly centralized and well controlled organization makes most governmental appointments.

Against this comparative background, Levin studies the operation of lower criminal courts. Relying on observations, interviews, and extensive statistical analyses of case dispositions, he offers evidence that challenges many of the popular conceptions about the administration of criminal justice in particular and judicial behavior in general. Among these are the assumptions that: criminal courts are typical, predictable institutions; the prosecutor dominates court processes, often to the exclusion of the judge; merit selection procedures yield a superior quality of judges and justice; public defenders are inferior to privately retained counsel; delay is a bothersome inefficiency

inflicted on unwilling courtroom actors; and criminal courts apply formal legal principles in an objective and detached fashion. Though many of these assumptions have been challenged in other and earlier works (Blumberg, 1967; Cole, 1973; Jacob, 1973), Levin challenges each of them in a clear and persuasive manner. Admittedly, sweeping generalizations call for additional scrutiny, but *Urban Politics and the Criminal Courts* constitutes an impressive first step.

Levin's study invites comparison with a variety of theoretical schemes that have been advanced to explain urban politics, judicial behavior, the purposes of criminal law, and the operation of the criminal justice system. For instance, he asserts that "there probably is no such thing as a typical criminal court" (p. 2). Like the study by Eisenstein and Jacob of criminal court processes in Chicago, Baltimore, and Detroit (1977), his analysis demonstrates the idiosyncratic nature of criminal justice. Pointing out that Pittsburgh's highly political judges are more particularistic and pragmatic than their "society-oriented" counterparts in Minneapolis, the author demonstrates that those orientations also affect sentencing. Criminal defendants in Pittsburgh, for example, are more likely to receive lenient sentences than their counterparts in Minneapolis.

How do such differences, and the corollary caution against generalizing from a single criminal court system, square with some of the dominant theories about power and crime? In order to answer the question "who governs?" social scientists studied urban patterns and structures of power to identify the source of influence and authority. Pluralists held that power, or the potential for it, was distributed throughout the social and political order; elite theorists argued that influence was concentrated in a decidedly undemocratic fashion. Leading theories about crime parallel this controversy. Conflict theorists assume that power is concentrated and assert that both the definition of crime and the administration of criminal law help to solidify the positions of power, privilege, and prestige that accompany such concentration. In contrast, consensus theorists hold that definitions of crime represent values that are widely shared. Criminal law processes symbolize those values and reinforce the community's sense of identity.

Levin's assertion that there is no such thing as a typical criminal court and his implicit exhortation to pay close attention to differences and variations among court systems challenge both elitist and conflict persuasions. If these theories presuppose a centralized, influential, all-encompassing power

structure, then might we not expect considerable similarity in criminal court processes? Do the pervasive differences refute a marxist interpretation?

Such a conclusion may be premature, however, in light of Levin's finding that criminal defendants were uniformly "poor and powerless" in both Minneapolis and Pittsburgh, despite the differences in judicial perspective and sentencing pattern (p. 60). Given the overwhelming emphasis on visible crimes in most criminal codes, it is not surprising that Levin found that most convicted felons were from the lower socioeconomic strata. In spite of the challenge that atypical courts offer to elitist/conflict perspectives, typical criminal defendants serve to remind us that court processes may inadvertently offer support to conflict models.

In contrast to studies that advance explicitly political theories about the distribution of power in criminal law and justice, much of the recent literature looks to organization theory for illumination. Attention focuses on plea bargaining and on the political pressures that compel courtroom personnel to barter rather than fight. Rejecting traditional, legalistic interpretations and dismissing the adversary model of criminal proceedings, analysts look at criminal justice as just another meeting ground of poverty and bureaucracy, to use Lawrence Mohr's term (1976:621). But Mohr points out that court processes might be more appropriately considered in terms of choice rather than as examples of organizational behavior (1976). Though this distinction may appear to be merely semantic, it is critical if decisionmaking groups within a given organization are subject to alternating pressures and exhibit contrasting "modes of choice" over time.

Though Levin does not specifically test such a proposition, his analysis seems to illustrate the heuristic value of a decision theory approach. Looking at criminal processes in Pittsburgh and Minneapolis, Levin points out that courts face two key decisions: caseload management and sentencing. He demonstrates that judges exercise considerable authority over both and stresses that social background, recruitment, and political culture affect their decisions. (Ironically, Levin observes that those effects are contrary to expected patterns of influence.) Explaining that organizational pressures do not always override other influences, Levin finds that plea bargaining does not necessarily predominate. Of perhaps greater interest is his insistence that single organizations (such as a court) exhibit far

more diversity in decision processes and outputs than previously assumed. All of this suggests that students of criminal justice need to direct more attention to decision processes and to be less respectful of organizational or jurisdictional boundaries.

Levin devotes the second half of his book to the policy implications of his comparison, which can be summarized by considering three key concepts: rationality, disparity, and politics. Rationality is often equated with order and efficiency, an emphasis on logic as opposed to emotion. In organization theory, rationality is often synonymous with exhortations to follow the orthodox and less humanistic schools of public administration.

*Urban Politics and the Criminal Courts* illustrates the limitations of such a restrictive concept of rationality and implicitly suggests that we would be well advised to pay attention to factors that seem irrational, both in defining and implementing policy—especially when seeking to reform. Levin points out, for instance, that it is a mistake to perceive court delay as an obstacle externally imposed upon efficiency-conscious courtroom personnel. If delay is, instead, a deliberate stratagem adopted by those personnel to advance or facilitate their work, then efforts to streamline court processes and achieve greater efficiency are likely to encounter resistance. Court personnel might find administrative reforms irrational in a very real, if unorthodox, use of that term. Traditional concepts of rationality thus offer a limited basis for effective administrative reform of the courts.

Similar policy implications flow from one's conception of the orientation of criminal defendants. Current controversy in criminal law focuses on sanction policy, on the competing merits of retribution, deterrence, incapacitation, and rehabilitation. If deterrence were given priority, then evidence challenging its fundamental assumptions would be highly significant. Given the foundation of classical deterrence in the economic calculus of Bentham and Beccaria, which portrays man as essentially rational, it is obvious that Levin's assessment of the typical criminal as an amateur who commits crime "in a relatively unplanned, inept, episodic manner" (p. 61) argues strongly against a deterrent policy. (In any case, Levin argues that court practices and policies are inherently limited as instruments of crime control.)

A related issue is that of disparity. Efforts to make the criminal law an effective deterrent are often accompanied by

sentences that are fixed, presumptive, or informed by guidelines. These sentencing policies assume that criminal penalties need to be more uniform, predictable, and certain if deterrent objectives are to be realized. An emphasis on deterrence, however, is not the only stimulant to current rejection of indeterminate sentencing. Inherent in most proposals to restrict the sentencing discretion of courts is a strong antipathy to sentencing disparities. Marvin Frankel, for instance, argues that such disparities constitute one of the major obstacles to a realization of the ideal of "equal justice for all" (1973).

Levin finds that sentencing practices vary considerably both between and within courts. Like Hogarth (1971), who pointed out that Canadian magistrates were consistent sentencers within their individualized sanction philosophies, Levin suggests that disparities reflect particular decision contexts and not necessarily discrimination. Demonstrating that political culture and social background do seem to exert some influence on judicial behavior, he argues that sentencing is indeed highly discretionary but that it does not necessarily follow that judges are "arbitrary and capricious" (p. 3).

In many respects the concept of disparity is as elusive as that of rationality. Although it may be true that basic legal goals are "rarely identified and operationalized" (Feeley, 1976), it nonetheless appears that the concept of disparity has lent itself to peculiar interpretations. The mere fact of differences in sentence, for example, is often regarded as nefarious, and disparities are frequently assumed to reflect pervasive, underlying discrimination. But if one values federalism or decentralized, local control, these disparities may be regarded not only as inevitable but also as desirable.

Couple this with the emphasis on individualized justice that permeates our legal system and complements (and complicates!) our search for equity, and it is not hard to appreciate the ensuing policy implications. Following Levin, I would be loathe to assume that disparities were always irrational and more cautious in advocating sentencing reforms directed toward their elimination. The remedy may otherwise prove far more dysfunctional than the initial problem.

Throughout Levin's analysis of apolitical municipal government in Minneapolis and the party machine in Pittsburgh, one is struck by the pervasive concern with politics that seems to dominate policy in both court administration and criminal justice. Although merit selection is frequently advanced as a means to "remove politics" from the judicial process, Levin

demonstrates that politically appointed judges do not necessarily dispense justice in a harsh and prejudiced fashion. Though Levin contrasts the "judicial" and "administrative" court systems of Minneapolis and Pittsburgh, he takes pains to point out that political influence is not synonymous with partisanship, nor apolitical objectivity with merit selection. The members of bar associations are just as political as those of parties. Implicit in Levin's analysis, then, is the contention that narrow conceptions of politics, unrealistic assessments of professional associations, and uncritical acceptance of the tenets of "good government" constitute a limited basis for policy decisions.

*Urban Politics and the Criminal Courts* is an astute analysis that contains echoes of James Q. Wilson's "new realism" (1975), Herbert Packer's assessment of sanction purpose and philosophy (1968), Norval Morris's correctional and criminal law reform schemes (1974; Morris and Hawkins, 1977), and Leslie Wilkins's emphasis on enlightened self-interest (1973). Students of urban politics would be well advised to look to Levin's book for a fascinating and rigorous, yet readable, case study of alternative political systems. Public law scholars can also learn from Levin's critical analysis of judicial decisionmaking and his perceptive scrutiny of court operations. Public policy and criminal justice authorities should attend to Levin's analysis and policy proposals, in both of which he calls attention to several points that are often lost or obscured in the current frenzy to improve our crime control efforts. Of particular consequence are his vivid reminder of the critical role of the judge, his challenge to popular notions of plea bargaining, his astute recognition of the influence of vested interests in bureaucratic politics, and his perceptive analyses of rationality, disparity, and politics. Some criminologists may be less than enthusiastic about his "realpolitik" policy orientation, but those faced with the challenge of either explaining or directing the present system of criminal justice will appreciate the clarity and incisiveness of this formidable first step.

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