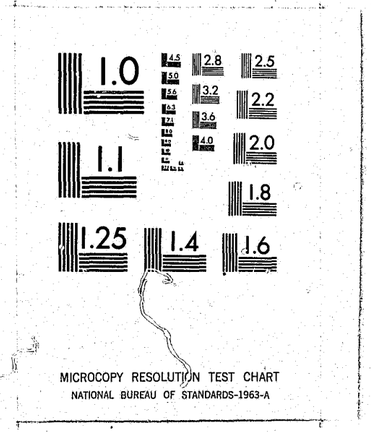

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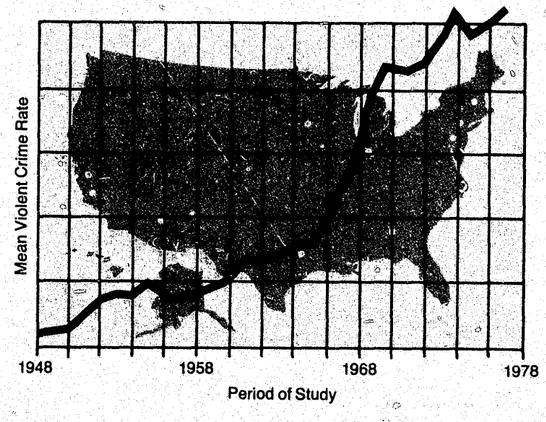
Governmental Responses to Crime

Legislative Responses to Crime: The Changing Content of Criminal Law



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Governmental Responses to Crime

Legislative Responses to Crime: The Changing Content of Criminal Law

Anne M. Heinz

June 1982

U.S. Department of Justice
National Institute of Justice

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ABSTRACT

Changing the law is one of the most direct ways by which governments respond to crime. In this volume quantitative indicators of changes in a variety of order maintenance statutes and ordinances are used to measure trends in criminalization, penalty severity, and discretion. The sources are enactments to state and city codes from 1948 to 1978 in the ten cities, and their respective states, which are the focus of the Governmental Responses to Crime project.

Chapter I sets out the conceptual framework and describes briefly the historial and comparative elements in the design. Chapter II describes the status of the content of laws in 1948 as a base for interpreting subsequent changes. Chapter III looks at the power of cities to legislate and examines some effects of those formal constraints on local action.

Chapter IV examines the volume of enactments over time. The increases, particularly in state revisions of order maintenance offenses, coincided with the placement of crime on the local political agenda. State attentiveness to revising personal and property offenses and city attentiveness to order maintenance provisions was much less frequent and more subject to local variations. City attentiveness was related to the amount of local power to legislate. The results of tests of the relationship between city council structure and volume were mixed.

Chapters V and VI report trends in the content of the revisions. Criminalization and penalty severity increased in major ways at the state level over time. Constraints on judicial and administrative discretion increased especially in the last years of the period. Because of the great variability across the cities in their rule-making power, the general pattern at the city level was unstable although the trend in substantive policy preferences was to criminalize.

In the concluding chapter we discuss the overall increase in the amount of law. However, within that general pattern, the quantity of law decreased with the reduction in administrative discretion. The more global responses involved in penal reform occurred after the more narrowly focused efforts at definitional change had been tried. The symbolic power of law to deter was thus supplemented by increasing the concrete power to punish.

ACKNOWLEDGMENTS

This Technical Report of the Governmental Responses to Crime Project represents the capstone of several years' collaboration between the authors and many other people. At one time or another, more than a hundred persons, ranging from undergraduate assistants to professional scholars, have worked together.

Much of the data on which this report is based was collected by our field directors who were in charge of the data collection in their own city. They were: Jack Tucker (Atlanta), Susan Greenblatt (Boston), Kenneth Mladenka (Houston), Harold Pepinsky and Philip Parnell (Indianapolis), Marlys McPherson (Minneapolis), Dorothy H. Guyot (Newark), David Graeven and Karl Schonborn (Oakland), Peter Cope Buffum (Philadelphia), John Stuart Hall and David L. Altheide (Phoenix) and Kenneth Aron Betsalel (San Jose). Without the tireless efforts of these field directors and their staff assistants, we would not possess the data on which this report is based.

The central staff in Evanston coordinated the field efforts, collected some of the data, managed the data base, and assisted in myriad ways during the data analysis. They made our work truly collaborative. In addition to the authors listed, our research associates were Janice Beecher, Michael Rich, Duane Swank, Lenore Alpert, Stephen C. Brooks Mark Fenster, David Kusinitz, Sarah-Kathryn McDonald David McDowell, Jack Moran, Delores Parmer, Marilyn Schramm, and Sharon Watson. Our secretarial staff, without whom all our word processing would have been for naught, included Elaine Hirsch, Barbara Israelite, Leonie Kowitt, Nita R. Lineberry, Brigitta Masselli, Ann Wood and Norma L. Wood.

Others, too have contributed to our thinking and have expedited our work. Our colleagues in the Center for Urban Affairs and Policy Research and the Department of Political Science at Northwestern provided us with intellectual stimulation as well as a comfortable environment in which to work. Ms. Marjorie Carpenter of the Northwestern University Interlibrary Loan Department helped us borrow thousands of reels of microfilmed newspapers, a project of unprecedented dimensions for her small staff. Ms. Mina Hohlen and other consultants at Vogelback Computing Center answered countless

questions.

One other group of individuals, most of whom we have never met, has aided our work in important ways. These are the local officials who helped our field directors secure access to data. Our staff rarely encountered a reluctant official from whom we sought information. It was far more common to find people who went out of their way to help us track down sometimes esoteric sets of information. A sizeable number of individuals also helped us by agreeing to be interviewed as "knowledgeables," shedding light on the patterns of the governmental process in their cities.

It is not uncommon for grantees to complain about bureaucratic nitpicking or meddling from their granting agencies. It is particularly important, therefore, for us to record here our very deep gratitude to the National Institute of Justice and to Dr. Richard Rau, our project monitor. Far from giving the common impression of a rule-bound bureaucracy, they were unflagging in their devotion to expediting our work, respecting at the same time our scholarly independence and integrity, even when disagreeing with some of our conclusions.

The list of persons who have given us aid and comfort is quite a long one. However, we make clear that what follows in this Technical Report is our reponsibility and that neither the National Institute of Justice nor any others should be saddled with its contents. We remain, however, very much in their debt.

Herbert Jacob
Evanston, Illinois

Robert L. Lineberry
Lawrence, Kansas

Anne M. Heinz
Evanston, Illinois

December 31, 1981

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PREFACE

This is one of three technical reports of the Governmental Responses to Crime Project. The project constituted an unprecedented opportunity to examine on a broad scale the ways in which local governments responded to crime. With much of the nation mesmerized by the specter of rising crime and with an apparently wide variety of programs seeking to contain it, such a study seemed propitious when it was begun in October 1978. The project sought to analyze policy responses to the rise of crime in American cities during the previous 31 years. Its principal research questions were:

What characterized the rise of crime in the United States during this period?

How did attentiveness to crime change over the period?

What were the connections between the structures and patterns of urban governments and their responses to crime?

How did the urban communities principal responses to crime change over time?

Our focus here is primarily, though not exclusively, on the local community. In the United States, local governments have always possessed the major responsibility for responding to crime. Police slowly evolved from the unpaid watch system of colonial times. At no point were state or national governments entrusted with substantial responsibility for policing. Despite a steady growth in federal expenditures on criminal justice, only 14.8 per cent of all criminal justice expenditures in 1978 were made by the federal government. An additional 29.7 per cent were made by states but 56 per cent came from local governments (Hindelang, Gottfredson, and Flanagan, 1981:7). Even elements of the system which are funded and managed by state and national officials are physically located in (and often influenced by) local communities. Our focus, though mainly on city governments, does not preclude investigations of some county, state and national responses to crime, though it is their implementations at the city level upon which we concentrate.

Our analysis does not attempt to study superficially all local communities. Rather we draw heavily upon intensive studies of ten American cities. We track their crime problems, their attentiveness to crime, their political and governmental processes, and the policies chosen by those processes. These ten cities are:

Atlanta, Georgia
Boston, Massachusetts
Houston, Texas
Indianapolis, Indiana
Minneapolis, Minnesota
Newark, New Jersey
Oakland, California
Philadelphia, Pennsylvania
Phoenix, Arizona
San Jose, California

These cities do not constitute a representative sample of American communities, but they represent a broad spectrum of American urban life. They represent distinct clusterings on particular dimensions of cities which are theoretically and practically interesting to us. Three cities, Newark, Atlanta, and Oakland, elected black mayors during the period. Three others, Minneapolis, Houston, and Philadelphia, are noted for their politically active police departments and two of these (Minneapolis and Philadelphia) elected police officials as mayor. Three cities (San Jose, Oakland, and Phoenix) are "reformed" local governments with a city manager plan, while the others are not.

Moreover, these ten cities vary considerably with respect to their fiscal strength. Many indices of fiscal conditions have been proposed in recent years (Schneider, 1975 Louis, 1975; Nathan and Adams, 1976; Bunce and Glickman, 1980). Regardless of the index used, the ten cities exhibit enormous diversity. Table 1 reports, for example, the scores from Harold Bunce and Norman Glickman's "needs index" for 58 cities with 1970 populations larger than 250,000 (Bunce and Glickman, 1980). This is probably the most influential of the various city ranking efforts, largely because it was developed to evaluate HUD's allocations of Community Development Block Grant moneys. The "needs index" is a factor score composed of more than 20 indicators of community age and decline, density, and poverty. As Table 1 indicates, the ten cities selected for this project anchor both ends of the spectrum, even though the site selections preceded the publication of the needs index. Newark is the worst-off American city by this calculation; Atlanta, Boston, and Oakland are among the twelve most distressed cities. At the other end of the ranking are three more of our ten cities, Phoenix, Indianapolis and San Jose, scoring as the three best-off cities among the 58. Minneapolis scored almost at the median. This index certainly documents the very wide range of cities studied by the Governmental Responses to Crime project.

Other indices, constructed for somewhat different

TABLE 1.1

NEED SCORES AND NEED RANKINGS, CITIES WITH POPULATIONS OVER 250,000

Rank	*City*	*Need Score*[a]	*Rank*	*City*	*Need Score*[a]
1	Newark	1.448	30	Kansas City	0.042
2	New Orleans	1.166	31	Los Angeles	0.017
3	St. Louis	1.022	32	Denver	−0.030
4	Cleveland	0.782	33	Fort Worth	−0.117
5	Birmingham	0.777	34	St. Paul	−0.134
6	Baltimore	0.764	35	Sacramento	−0.142
7	Washington	0.663	36	Portland	−0.160
8	Detroit	0.626	37	Columbus	−0.165
9	Atlanta	0.590	38	Toledo	−0.168
10	Boston	0.556	39	Baton Rouge	−0.178
11	Cincinnati	0.543	40	Long Beach	−0.202
12	Oakland	0.524	41	Seattle	−0.221
13	Chicago	0.521	42	Oklahoma City	−0.242
14	Buffalo	0.513	43	Dallas	−0.249
15	New York	0.507	44	Charlotte	−0.260
16	Philadelphia	0.495	45	Jacksonville	−0.331
17	Louisville	0.485	46	Houston	−0.356
18	Pittsburgh	0.484	47	Wichita	−0.363
19	San Antonio	0.467	48	Albuquerque	−0.365
20	Miami	0.459	49	Omaha	−0.389
21	Norfolk	0.341	50	Austin	−0.399
22	El Paso	0.322	51	Tucson	−0.435
23	Memphis	0.316	52	Honolulu	−0.476
24	Rochester	0.299	53	San Diego	−0.510
25	San Francisco	0.219	54	Tulsa	−0.517
26	Tampa	0.155	55	Nashville-Davidson	−0.556
27	Milwaukee	0.060	56	Phoenix	−0.564
28	Minneapolis	0.059	57	Indianapolis	−0.567
29	Akron	0.048	58	San Jose	−0.892

[a] The average need score for the population of the 483 metropolitan cities included in the needs analysis is zero. Large cities as a group are somewhat needier than average.

Source: Bunce and Glickman (1980: 525)

purposes, array large cities in different ways, but confirm the "spread" of our cities on various dimensions. Two of these indices are reported in Table 2. One is Nathan and Adams' (1976) ranking of central city "hardship", the degree to which the central city is disadvantaged in relationship to its suburbs. Another is Arthur Louis's (1975) popularized and often-cited ranking of the quality of life among 50 large cities. His assessments represent the average ranking of 24 separate indicators ranging from parkland to Who's Who listings from the city. The third and final index, listed in Table 3, is particularly useful for our purposes, because it is the only one to provide rankings at two points in time. Fossett and Nathan (1981) developed an "urban condition index" score for large cities in 1960 and 1970. Among our cities Boston and Newark rank as the most distressed while San Jose and Phoenix were relatively well off in both years.

All of these indices demonstrate that our ten cities vary widely as places to live, work, or govern. In comparison with other large American cities, these ten communities are not concentrated in a narrow band with respect to key variables. They provide us with ample variations in key socioeconomic dimensions, regional location, and the overall measures of the quality of urban life.

The period of our study was chosen to capture the years when reported crime rose rapidly in the United States. The year 1948 was selected as the beginning point because by then most of the temporary dislocations caused by World War II had passed and the nation was electing its first post World War II, post FDR president. The year 1978 was chosen to mark the end of a decade of federal grants from the Law Enforcement Assistance Administration and because it was the most recent year for which data could be obtained during the time that the study was funded.

There are, of course, countless ways in which governments can respond to crime or to perceptions of it. Just as all governments cannot be encompassed in a single research enterprise, neither can all possible responses. Varying responses to crime have been debated with considerable fervor and are tinged with ideological content. Some have advocated policy responses designed to attack the purported "root causes" of crime, such as poverty, discrimination, and breakdowns in family structure. Other strategies center around reforming or reinforcing traditional law enforcement institutions. These include expanding police forces, manipulating their behavior, experimenting with new parole and penal systems, and somehow "toughening" the punishment of offenders. Such strategies are intended to increase apprehension rates of offenders and to deter additional criminal acts. More recently, a whole new

TABLE 1.2

RANKINGS OF GRC CITIES ON CENTRAL CITY HARDSHIP INDEX AND "WORST AMERICAN CITY" INDEX

	Nathan-Adams Ranking of Central City Hardship (55 cities ranked)[a]			Louis Ranking of "Worst American City" (50 cities ranked)		
	City	Rank	Hardship Score	City	Rank	Score
Most Disadvantaged ↓	Newark	1	422	Newark	1	41.6
	Atlanta	7	226	Philadelphia	12	31.0
	Philadelphia	14	205	Atlanta	15	30.0
	Boston	15	198	Boston	17	29.6
	San Jose	18	181	Houston	23	27.4
	Minneapolis	32	131	Oakland	25	25.9
	Indianapolis	36	124	Phoenix	30	23.3
	Houston	46	93	Indianapolis	35	20.6
Least Disadvantaged ↓	Phoenix	47	85	Minnapolis	43	18.8
				San Jose	47	15.6

Sources: Nathan and Adams (1976: 51-52); Louis (1975: 71).

[a]Oakland was not included.

TABLE 1.3

FOSSET-NATHAN URBAN CONDITIONS INDEX

Most Disadvantaged ↑

CITY	1960 SCORE	1970 SCORE
Boston	201.0	193.2
Newark	196.3	207.0
Philadelphia	166.2	168.5
Minneapolis	144.5	154.7
Oakland	120.7	106.6
Atlanta	70.7	67.0
Houston	40.2	27.7
San Jose	27.7	13.3
Phoenix	9.8	18.5

↓ Least Disadvantaged

Source: Fossett and Nathan (forthcoming, Table 1). Indianapolis is not included in this ranking.

battery of crime control and prevention policies have been advocated, some of which involve "target hardening" or "environmental design" (see, e.g., Angel, 1968) or enlisting neighborhoods in social control processes.

Clearly, if a single research project investigated every policy taken in the name of crime reduction, a panoply of social programs as well as the criminal justice system could be included. A war on poverty may be urged (and was urged by some people) to remove one of the causes of crime, as can a host of other social programs. Our resources, however, required us to distinguish between proximate and distal responses to crime. By proximate responses, we mean those policies whose adoptions are urged primarily because of their assumed links with the crime problem. An increase in police manpower, a change in sentencing procedures, or a police reorganization is normally advocated because of its putative impact on offenders or potential offenders. Distal responses, on the other hand, may have intended impacts on crime claimed by supporters, but crime reduction is only one among a large number of objectives. Reduction in youth unemployment, for example, might achieve a number of policy goals, only one of which is to deter juvenile delinquency.

There is one other crucial distinction between proximate and distal responses to crime. The theory underlying proximate responses implies a relatively simple causal chain, while that underlying distal responses is quite complex. Changing from two- to one-man patrol cars, for example, is justified as spreading the police over a broader catchment area for responding to service calls. Schemes to cut unemployment, reduce poverty, or reverse family disintegration depend upon much more complex causal webs if they are ultimately to have an impact upon crime. Moreover, the adoption of such meliorative policies is the result of different political strategies and they require different resources.

Already we have drawn some boundaries around our inquiry into governmental responses to crime. Our focus is a particular time period, 1948-78. Our locus is a set of American cities. Our particular concern is with proximate rather than distal responses. Last, we concentrate on governmental responses rather than on the responses of families, firms, or neighborhoods.

Even with these four limitations, there is a large research agenda. The research task required collection of a very substantial amount of both qualitative and quantitative data from individual communities. This information went well beyond census data and information available from other secondary sources. Insofar as possible, we secured quantitative annualized information. These primary source materials were supplemented with historical and contextual information about the cities themselves. To provide reliable

and comparable information from a number of cities, many of the resources of the Governmental Responses to Crime project were spent in the field. We had the good fortune of being able to employ as field directors an exceptionally able group of social scientists. Under our direction, they collected the data upon which this report is based.

Details of the site selection process, data collection and management are available in the Final Administrative Report of the Governmental Responses to Crime project. Much of the data will be deposited with the Inter-University Consortium for Political and Social Research at the University of Michigan.

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Chapter I

MEASURING THE POLICY CONTENT OF LEGISLATIVE RESPONSES TO CRIME

A. Changing the Law

One of the most important -- but also most neglected -- policy responses to crime is changing the law and ordinances. Of all the common responses to crime, "changing the law" is perhaps as common as "get tough on criminals." For instance, with grim regularity, each assassination or assassination attempt has been followed by calls for stricter laws regulating the availability of firearms (Violence Commission, 1968; Garner and Clancy, 1979). Another example of the uses of law reform arises from contemporary social movements. The American feminist movement of the 1970s developed as one of its bellweather political issues the treatment of rape. Included have been requests for changes in the definitions of penalties for rape to reflect changing views of women (Brownmiller, 1975: 375, ff.). Finally, getting tough on crime has often carried with it recommendations for revisions that would produce harsher penalties. Yet much more scholarly attention has been focused on changes in police responses than in the decisions which define criminal behavior and assess punishments.

The rest of this project has focused on the city as the unit of analysis because of the centrality of the city in the responses to crime. However, the ability of the city to respond by changing the law is limited to some large degree by the formal relations between the city and state As a result in this part of the study our attention shifts to the relationship between the city and its state legislature rather than the city as an independent unit.

Legislative bodies, whether the state legislature or city council, control the formal definitions and sanctions of crime. Therefore, they have the potential to make very visible responses to crime. A careful examination of these outputs will show whether more retributive policies were enacted (e.g., more severe penalties) and whether legislatures have criminalized or decriminalized particular kinds of behavior during this period of rising national concern with crime. It will also show changes in the level of legislative involvement in criminal law policy making. In the realm of "there ought to be a law," we would expect that there would be a general trend to expand the scope of the law by always adding new prohibitions. But the converse may also be true. Decriminalization, i.e., removing the criminal sanctions from

acts that have been considered offensive in the past but have gained a certain measure of acceptability (e.g., smoking marijuana), are also possible responses.

Only a limited amount of attention has been paid to changes in the actual content of criminal law. Donald Black (1976) has proposed a set of propositions about the relationship between social complexity and the growth of law. Although he offers no operational definitions, he proposes that an expanded quantity of law could be identified by the "number and scope of prohibitions, obligations, and other standards to which people are subject and by the rate of legislation litigation, and adjudication" (1976: 3). Our study takes up the challenge to compare the amount of law across time and place.

A variety of studies have looked at the antecedents of specific law reforms. Two recent reviews of the literature on the sources of criminal law legislation have identified some general patterns. Hagan (1980) describes two perspectives, one of which views law as the product of a social consensus on values and the other, which looks at law as the product of conflict among different social or ecomonic groups in the society. The literature reviews are useful in identifying the different methods that have been used (Galliher 1980). Thus two studies may look at the same reform and explain it in terms of the personalities of the actors (Roby, 1969; Bonnie and Whitebread, 1974) or the instrumental needs of the agencies which enforce the provisions (Lindesmith, 1967). Or, the explantion may focus on the competing values among different social or ecomonic groups (Vann Woodward 1957; Brownmiller 1975; Musto, 1973) or more specifically on local constituencies (Berk, et al., 1975 Heinz, et al., 1969). Thus the important role of organized groups in the legislative process, the media, and triggering events have been described in numerous studies.

Of particular interest has been the work describing the dissemination of ideas for changing the law across state legislatures. This research suggests that aside from regional, economic, and political explanations, the availability of a reform proposal and the knowledge that other states have already enacted similar reforms explains the adoption process (Walker, 1969; Gray, 1973).

While most previous analyses have been case studies, Berk and his associates provide a quantitative as well as qualitative description of the legislative process Our work builds on Berk's methods but focuses on the developing content of the law in order to see if the call for changing the law has resulted in changing policy directions in legislative responses to crime.

Virtually all of the research on the sources of change as well as its substance have looked at changes at the state

level. Few if any studies exist which examine the role of the city in defining crimes. Some work has been done on the criminal procedural consequences of local definitions (Comment, Minnesota Law Review, 1951-2; Comment, Northwestern Law Review, 1973). There has been virtually none, however, on the policy content of such local action Vann Woodward's (1957) study of segregation laws is an exception. For an examination of the political organization of legislatures, probably the most comprehensive study is the Eulau and Prewitt (1973) work on California city councils. It develops many interesting themes about the polictical realities of the councillor role but does relatively little in terms of the consequences for policy.

B. A Policy Typology

Substantive and penalty changes may be described in terms that will allow comparisons across offense categories. Such a scheme concentrates on how the benefits and sanctions of each change are distributed. In some changes the targets of the revisions are not difficult to determine. Increasing the severity of the penalty provisions or prohibiting public marches; the order-desiring public is the intended beneficiary while the convicted or potential offender receives the negative sanctions. In other cases it is more difficult to determine because a single change may encompass a number of different issues. We will discuss two dimensions of a policy typology: who determines the allocation of benefits and who are the intended beneficiaries of the decision.

Building on the work of Lowi (1964), Salisbury and Heinz (1968), and others, I examine the relationship between different kinds of crime policy and the arena in which those decisions are made -- the legislative process. We used a typology which divides the content of public policy into two general categories, depending on the decision costs associated with the adoption of each issue in the legislative arena. The two general types are <u>allocative</u>, which confers benefits directly, and <u>structural</u>, which establishes the structures or rules for future allocations. Structural decisions involve a delegation of authority to others, such as a subcommittee, the corporation counsel's office, or an administrative agency. Allocative decisions, on the other hand, put the authority to make decisions in the hands of the decision-making group itself -- the legislature, in this case.

Since most criminal law includes prohibitions, we would say that it is primarily allocative policy. The legislature takes upon itself the job of defining what is acceptable behavior and what is unacceptable behavior. Thus, it is the legislature which states that you cannot walk in public while drunk; that you cannot take possessions from someone using force or fear; you cannot possess drugs.

Allocative policy can be broken down into two subcategories, depending on who the beneficiaries of the policy are. For example, many of the criminal law examples that we will be examining are designed to address the needs of two groups -- the society at large which feels the need for protection and the offender who behaves in the proscribed manner. The prohibitions take benefits (e.g., liberty) away from some (the offender) while conferring benefits on others (safety for the public). This type of decision we have labeled redistributive. Rapists, drunks, and burglars are directly affected; the public is at least indirectly affected. To some extent it is like a zero-sum game -- in redistributive decisions some people will win at the expense of others. Moving from a policy of gun licensing to outright prohibition would be classified according to this scheme as a shift toward redistributive policy on the grounds that gun owners had lost out to those wishing to control the number of guns in public hands.

A second type of allocative policy distributes benefits (or prohibitions) more broadly. Labeled distributive, this type of policy in its pure form, would spread the values among the competing groups. It would be less clear who were the losers and winners or, from a somewhat different perspective, the values are spread across a number of different groups Distributive policy is probably somewhat less common in the criminal law -- the us-them approach (insider-outsider or conventional-deviant) is the most basic formulation. Black (1976) has suggested such a pattern in his distinctions between various mechanisms of social control. Nevertheless, as we see issues becoming more complicated, and as the social dynamics of crime become more visible, it is quite likely that a more varied group of interests will surface. Thus, victims, as distinguished from the public or the state, have become indentifiable groups. We have victim surveys to determine the volume of crime; we have victim compensation programs: and, in the recent rape reform legislation we see growing attention to the concerns of the victim. One result of changes in rape laws has been the definition of the criminal offense so that the victim's rights are more carefully identified and protected. As such, the rape reforms are an example of the policy consequences of adding a third element to the distribution of social values: the rights of victims are added to those of defendants and society.

There are two types of structural decisions which we can identify in the criminal law. Structural decisions set down the rules by which future decisions are made. Two examples of structural decisions are the use of indeterminate sentencing and classification schemes for offenses. Indeterminate sentencing delegates to courts and Departments of Corrections the more precise length of time an offender will serve. The legislature specifies such penalties as "ten years to life" or "up to five years." The legislature provides the range within

which the other agencies will make decisions. The classification schemes which some legislatures have used when rewriting the criminal codes set up broad sentencing categories and fit each felony or misdemeanor into one of these categories. Thus, there may be five classes of felony and five or misdemeanors. Each class has a penalty associated with it. Different elements of an offense may then be assigned to a different class (e.g., armed robbery may be a first class felony but robbery a second class one; aggravated sexual assault may be a first class felony while sexual assault may be second or third class). It is up to the courts then to determine which offense classification is appropriate and, in many jurisdictions, up to the Department of Corrections or Parole Board, to determine how much time an offender will in fact serve. The legislature thereby removes itself from the sanctioning process -- it sets up the framework within which the other agencies operate. Such provisions would be classified as regulatory policy.

A quite different approach involves the use of mandatory minimum sentences and determinate sentencing which involve the legislature in determining quite directly the amount of time to be served in any particular conviction. Such sentencing reforms we would classify as adoptions of redistributive rather than regulatory policy. Such sentencing changes would be classified as redistributive rather than regulatory since the legislature takes more sentencing responsibility for itself rather than delegating it to others.

A second kind of structural decision that legislatures make is self-regulatory: it involves the delegation to others not only the distribution of benefits but also the rules by which the distribution takes place. For example, firearms regulations may give to the National Rifle Association or to target ranges the authority to determine the requirements for licensing gun owners Since much of the criminal law involves the public determination of the allocation of values, it is unlikely that we would find much self-regulatory policy being made. Nevertheless, we may find some issues which for a time produce such changes.

The conceptual typology that has just been outlined posits that the content of the policy will be affected both by the decision costs of the legislative body (that is, how difficult it is to obtain the information and a winning coalition) and the extent to which the interest groups seeking policy changes offer similar or conflicting policy recommendations. The pattern in the demand for solutions looks quite different when victim groups differentiate themselves from the traditional prosecution-oriented groups testifying in the legislature. With growing fragmentation in the solutions the groups propose, the tendency, we would expect would be to provide some benefits to each of the competing groups.

This typology serves some heuristic purposes in the study. It allows comparative descriptions of trends in a variety of criminal law issues. Also, the focus on who decides who will be rewarded (and penalized) is at the heart of one of the major trends in recent criminal law legislation. The rise of legislative, as distinguished from administrative or judicial, initiatives in setting sentencing policy signals not just a change in penal philosophy but an important shift in the policy-making process. The typology, like many, is difficult to apply at the level of individual enactments. We have not attempted a systematic operationalization of all of its elements. Instead, it is used to suggest the comparative trends in policy directions across different issues and different legislative bodies.

C. Dimensions of Legal Change

We looked at the policy content and volume of changes in the city codes of the ten cities in the Governmental Responses to Crime project as well as their respective states. We identified 11 offenses which were regulated at both the city level as ordinance violations and in the state criminal codes. The content of these offenses serve as the basic data source for the comparative and historical examination of the interplay between state and local legislative responses to crime. A more detailed presentation of the design and construction of measures is available in the Tech Appendix.

Penal sanctions may be imposed for violations of probably thousands of different acts in any given jurisdiction. State penal codes run hundreds of pages long and cover everything from homicide to one's drinking habits, entertainment, and efforts to protect oneself from personal attack. The penalties that may be imposed vary from the death penalty to minimal fines. Within this enormous range there are a variety of ways in which a legislature may make changes that would serve as responses to crime. The first order of legislative business would be to decide what dimensions of crime were problems needing attention. "Getting tough" may mean increasing the severity of penalties that may be imposed either by raising the maxima or by reducing the discretion to impose the minima. The number of offenses that are recorded may be affected by the number of acts that are defined as offenses. Thus drug arrests will go down, other things being equal, if the criminal sanctions are removed from marijuana possession. Disorderly conduct arrests may go down if police discretion to use their own definitions of offensive people is restricted. On the other hand the number of such arrests may go up if the statutes or ordinances add provisions defining drug addiction as an offense. Further, a change in the definition of one offense may affect (or at least be designed to affect) the rate of commission of other offenses. One of the major arguments used

by proponents of gun control is that making it more difficult to obtain guns will reduce the number of guns in circulation which will, in turn, reduce the number of homicides and robberies. Discouraging drug use through steeper penalties or more stringent regulation of drug sales is often proposed as a means of controlling that portion of property crime committed to obtain money to buy drugs. Thus, there may be only an indirect connection between the section of the code that is revised and the perceived crime problem. Legislative efforts to address robbery and burglary may well be located in the narcotics and disorderly conduct sections of the code.

The study includes examples of both the serious felonies and the seemingly more minor order maintenance offenses. Table 1.1 lays out the offenses drawn from each city and state code. The bulk of the attention is given to order maintenance for two reasons. First, as discussed in more detail in Chapter IV in the context of the volume of enactments, comparatively speaking state legislatures have revised their felony provisions very rarely while giving considerable attention to matters of order maintenance. As a result we focused on "where the action is" -- drugs, guns, disorderly conduct, and the like As has just been suggested, however, order maintenance offenses are not entirely divorced from the more common notions of crime. Some aspects of these offenses included significant penalties. Some jurisdictions have provided 50 year prison sentences and mandatory prison terms for violations of gun and drug sections. Even for disorderly conduct some provisions have permitted lengthy prison sentences as options. In addition, in these penalty provisions we are able to trace the directions of legislative penal policy. With the exception of the death penalty, which was not an option for order maintenance offenses, the study includes a discussion of changing theories about the utility of various criminal sanctions. In fact, one of the major issues that emerges in the study is the decreased discretion in sentencing that legislatures have been granting court and corrections agencies.

The preceding discussion does not suggest that order maintenance offenses describe the sum total of legislative concern with crime. Rather, we make the more modest assumption that these offenses are not unrelated to the more commonly discussed crime categories. Further, since many of the legislative actions affected the more minor offenses, they are a useful focus.

The second reason for emphasizing order maintenance offenses is that they are important in their own right. While we were unable to find complete enough data over time to make systematic analyses of the subject, the Uniform Crime Report Part II offenses which include all of the provisions in the study, account for a large portion of the total arrests of any police department. As an example, when the new Indianapolis police chief was faced with meeting the city's vice and

TABLE 1.1

OFFENSES FROM STATE AND CITY CODES USED TO TRACE CHANGING CONTENT OF THE LAW

OFFENSE CATEGORIES	STATE CODES	CITY CODES
PERSONAL/PROPERTY		
	Rape	
	Robbery	
	Burglary	
ORDER MAINTENANCE		
Public Order	Disorderly conduct	Disorderly conduct
		Loitering
		Vagrancy
Morality	Heroin	Heroin
	Marijuana	Marijuana
	Other narcotics	Other narcotics
		Public drunkenness
		Prostitution
		Gambling
Public safety	Firearms	Firearms
	Weapons	Weapons

juvenile delinquency problems (defined as the major crime problems at that time) he ordered the department to crack down, using the city's disorderly conduct and gambling ordinances (Pepinsky and Parnell, 1980).

Our study of legislative policy making centers on order maintenance provisions. Changes in selected violent and property felonies are treated as a separate data set, are presented in the chapter on legislative attentiveness to crime as a comparison with the state and city order maintenance provisions.

The study is historical in that it looks at all changes in definition and penalty for the 31 year period from 1948 to 1978 in each of the jurisdictions, thereby making multiple time series available. The study is also comparative. Comparison are made in devlopments in ten large American cities and the nine states in which they are located. Also, comparisons are made between two cities located in the same state (California), thus controlling for the effects of state laws governing local powers and criminal offenses. Comparisons are also made between patterns in city and state code reforms. Finally, comparisons are made between attentiveness to order maintenance and personal or property offenses in state codes.

1. Dependent Variables. Changes in the law may involve modifications in the definition of or the penalty for, an offense. To measure the content of offenses we identified three elements that define a given set of circumstances as an offense. The three are who does what, and under what conditions. Thus, a definition of an offense describes an act, which consists of a behavior conducted in a particular setting or context, and with appropriate resources. We developed a unique set of descriptors for each offense to address pertinent elements in the definition. As an example, a convicted felon (who) may not possess a handgun (what) anywhere in Minnesota (where). And, no one may carry a handgun in public (where) without a license (with what) in California. We used these definitions to measure the content of offenses and the directions of change. This approach to a quantitative study of the content of law is consistent with the proposals Black (1976) makes for studies of the growth of law.

We identified four variables which allow us to trace changes in the content of the law across different jurisdictions. First, we examined the scope of the definitions of each offense as they existed in 1948 and then in 1978. The scope consists of the number of acts which are included in an offense. It is thus a measure of the specificity of the law itself.

Second, for each change in the law's definition, we looked at its effect on criminalization. The number of people who could be prosecuted may increase (a criminalization) or

decrease (a decriminalization) as a result of any change. Adding further requirements to the licensing procedure for obtaining a gun would be a criminalization; it would also add to the quantity of law. Removing small amounts of marijuana from the definition of drug possession would be a decriminalization; changing the definition of loitering from an activity in any public place to activity only in public streets and throughways would be a decriminalization. These latter two would reduce the quantity of law in a community.

Third, changes in penalty provisions may result in increases or decreases in the overall severity of the criminal sanction Severity may be affected by changes in the maximum or minimum penalties provided as well as the procedures by which penalties which ar imposed. Reducing the discretion of the judicial and administrative agencies not only gives legislatures a more active role in sentencing but has the intent of increasing the severity of the overall sentencing patterns in a jurisdiction. Thus, calls for determinate sentencing have come both from those who want a "tougher" stand on crime as well as those who want more certainty in order to reduce sentencing disparities.

Fourth, we have looked at the volume of enactments. Our measure of enactment activity looks at how frequently legislatures enacted code changes. Assuming that enactments occur when legislatures can "afford" to take action (i.e., the political costs are not too high) and that the number of changes reflect the degree of concern about the targeted problem, the volume of enactments is a useful measure of political concern.

2. Independent Variables. The route from changes in the scope of the problem (crime) to adoption of solutions (new definitions or change in penalties) is not necessarily direct. Statements in the press about the need for stiffer gun control laws have not always been followed by new laws. Changing perceptions about the problems of crime and the availability of solutions will affect legislators' willingness to make changes in the laws. Constraints such as court decisions or the state's definition of the legal authority of cities to act may well structure legislative initiatives. Also, different states and cities may put different priorities on the utility of revision laws. We have examined three independent variables to help explain the pattern of changes in the law.

First, the adoption of municipal or state code reforms is a function of the political context in which the legislative body exists. By "context" we mean traditions, norms, and rules which encourage or discourage the use of the legislative process as a policy response to a perceived problem. Some jurisdictions frequently use the route of passing a law to address public issues. Others may only rarely change the formal rules by which the society is governed. Various efforts

have been made along that line to look at the reasons for what reformers have called legislative effectiveness (Citizens Conference on State Legislatures, 1971) and even the relationship between legislative productivity and political culture (e.g., Sharkansky, 1969). Other research has attempted to assess the relationship between legislative productivity and policy content (Grumm, 1971). We have examined the size of the city's legislative body and its representational base (district of at-large) as two measures of organizational rules.

The passage of law appears to depend to some degree on whether the jurisdiction considers passing laws a useful public exercise. Enactments may be useful, for example, because they are intended to structure people's behavior. Enactments may also be a symbolic statement of public concern with a problem. These intents are probably quite different from the problem-solving response and represent instead some benefits to the legislators. These benefits might, for example, assist legislators in their electoral aims. For example, recent changes in prostitution and pornography ordinances in Minneapolis were in large part the result of the changing fortunes of mayoral candidates seeking to develop a political issue (McPherson, 1980b).

The second type of independent variable is the attentiveness to the problems of crime. To some degree legislative responses are due to a climate of concern about crime. When crime is highly visible we expect that the state and local legislatures will act Attentiveness, in the legislative arena, means the passage of some enactment. In this study legislative attentiveness is operationalized as the volume of enactments. Thus resolutions decrying some crime-related issue or calling for gun control are not included. Also not included are the number of bills which are introduced not passed. This latter is an important caveat since a legislature may spend considerable time in committee and in full debate discussing bills which are then defeated. Heinz, Gettleman, and Seeskin (1969) suggest that a rather different picture of the legislative process might emerge were one to focus on bills introduced rather than passed. Unfortunately, the practical difficulties of data collection precluded their inclusion As justification, it is useful to put a threshold on legislative concern. In this case we exclude those proposals that do not receive sufficient support to be adopted. We have located legislative attentiveness in the policy agenda process by looking at the volume of enactments compared with the importance of crime as public policy issue for city officials.

The third independent variable is the presence of external constraints on the power of legislatures to act. These constraints are typically imposed by other actors in the legal system. Court interpretations, e.g., those hol[illegible] such offenses as vagrancy unconstitutionally vague, no doubt affect

the development of the law. A legislature may respond by repealing these offense provisions entirely or it may enact revisions to fit the constitutional requirements. In April, 1968, Chicago hastily revised its disorderly conduct provisions after an adverse Supreme Court ruling in order to be prepared, as local officials described it, to handle political disruptions that might develop during the August Democratic convention (Chicago Daily News, March 20 to April 10, 1968).

A second type of constraint on legislative responses at the local level involves the legal status of the city to define offenses. One of the questions we need to consider is whether the states have delegated to the city the authority to define offenses in the process of regulating local affairs. Clearly, defining offenses is primarily a state function, but cities are also involved in the process. Thus, local officials may want to regulate the availability of guns, even if state legislatures have not. Or, as the preceding example of Chicago's move to reinstate a disorderly conduct ordinance suggests, some cities went to considerable lengths to maintain their local enforcement options. If the cities have no formal power there may be little they can do.

The formal division of authority between city and state has been a long-standing issue. The notion that the city is a creature of the state is derived from republican and liberal reformist thought in 19th century America (Frug, 1980; Hartog, 1981). This has contributed to an image of the powerlessness of cities to control their own affairs. Home rule provisions designed to reduce the absolute power of the state have been described by some as ineffective (Frug, 1980) although others have argued that at least some versions have provided considerable local discretion (Vanlandingham, 1968; Minnesota Law Review, 1951-2). These patterns change over time. The legal status of cities has changed during this period in several jurisdictions included in our study. While this makes the analysis more complicated, it also allows a more systematic examination of the effects of the formal rules on the state and local relations.

D. Legislative Responses to Crime: Some Hypotheses

The plea that is often heard in response to the question "what can be done to stop the rise of crime?" is that the laws should be strengthened and penalties revised. Our purpose in this volume is to examine the extent ot which state legislatures and city coucils have answered that plea. We have concentrated on several offenses which involve problems of public disorder, private morality, and public safety. Both cities and states are likely to regulate these offenses so that we may compare the responses at both levels.

We have described four variables which measure the content of policy changes. These include the changing scope of the offense definitions, trends in criminalization and decriminalization, changing patterns in penalty severity, and the volume of enactments. With these variables we are able to trace developments from 1948 to 1978 in the content of offenses and compare the changes made by cities and their respective states.

We have also described three background variable which will be used to explain the developments in the law at the city and state level. These include the political context, external constraints, and the place of crime on the political agenda.

We developed several hypotheses about the patterns that we would find among the major variables. In stating proposed relationships we summarize the directions of the inquiry.

1. Several hypotheses are pertinent to scope. The scope of law would increase over time as part of a developmental trend toward greater specificity and differentiation (Black, 1976). Encouraged to redefine offenses both because of court decisions ruling existing provisions unconstitutionally vague and because of the process of targeting responses to address particular crime problems, legislatures would expand the scope by increasing its specificity. An alternative hypothesis is that the scope would decrease over time as legislatures removed the broad sweep of vaguely defined status offenses but did not provide alternative formulations.

2. We expect the volume of change to vary with the placement of crime on the agenda and the seriousness of the crime problem. As the perceived severity of the problem increases, we would expect increased legislative concern and, hence, an increase in volume. We may also expect that the volume is negatively related to the existing scope. There may be a process of "catch-up" or regression toward the mean. Jurisdictions with narrow scope would rush to make additions in order to join the mainstream. Or, scope and volume may be positively related on the grounds that specificity is a function of the number of additions that have been made.

We hypothesized that changes in home rule provisions which increased local power to act would be followed by increased city legislative activity. Further the opportunity for greater constituency input, measured by larger council size and district-based elections, would be associated with a greater number of city code changes.

3. We would expect increased criminalization to be positively related, like volume, to the changing scope of the crime problems and their placement on the political agenda. Such a formulation is suggested by the examples of gun control as a response to violence and reformulated disorderly conduct

provision to meet concerns about political demonstrations. To the extent that increasing criminalization is also a function of increasing specificity in the definitions of offenses, we would expect that scope would be positively related to criminalization. To increase the scope of the offense would by definition be associated with criminalization. The converse, however, is not necessarily the case. A jurisdiction may not alter the number of acts that it defines but increase significantly the number of people affected. Thus, if a state increased the number of requirements for obtaining a permit to purchase a gun we would consider the change a criminalization although the total scope of the offense was unchanged since a permit had previously been required.

4. Penalties, too, have changed over time. As an outgrowth of a more punitive model of crime control, we might expect that severity would increase over time, especially in relation to the increased prominence of crime on the political agenda. Changing penalties is an important symbolic effort.

These hypotheses have been based on developments within the criminal law and use the policy content and volume as dependent variables. We also identified three types of background variables which structure changes in the law. The external constraints which govern the delegation of authority to define law may well determine the extent to which local jurisdictions become active. In particular, the home rule provisions among American states vary considerably. We thus hypothesize that legal responses to crime are affected by formal rules.

The political context in which the state legislatures and city councils operate will affect the value placed on passing laws and the interest in enacting new formulations to deter offensive behavior. There will be variations in the speed with which policy innovations are adopted. The variations will be based in part on the availability of a solution that has been adopted by other states to which decision makers turn for ideas.

Finally we have looked briefly at the relationship between policy content and attentiveness to crime problems, particularly the place of crime on the political agenda. If crime becomes an election issue we would expect to see changes in the code as evidence of legislators' attentiveness.

E. Conceptualizing Changes in the Law

We may summarize the procedures that we developed by recapping the description of the data base and the basic concepts that we have used to describe the changes in the law. We examined the city ordinances and state statutes governing 11

offenses for the ten cities and their respective states. We coded the definitions of the offenses in 1948 and 1978 according to sets of descriptors that had been empirically derived. For each change in offense from 1948 to 1978 we coded whether the effect resulted in a criminalization of decriminalization and if the change made the penalty options more or less severe. From these data we generated four indices. First, the volume of enactments consisted of the number of dates upon which a change in an offense definition or penalty took place. Second, the scope of the offense included the total number of descriptors that were included in an offense definition in 1948 and 1978. Third the cumulative net criminalization index measured the accumulated changes in the penalty provisions. It measured the increases and decreases in the overall severity of the penalty provisions It incorporated decreased judicial and administrative sentencing discretion as an increase in penalty severity.

The general model that we have used assumes that trends in the content of legal codes are a function of a variety of conditions. The simple relationship between the identification of a problem and the adoption of a solution needs further specification. It includes the internal dynamics of the processes of policy change, the formal rules governing the legal authority to enact laws, the local political context, and the availability of policy options. We provide that here through a comparative and longitudinal analysis of changing definitions of the criminal law.

Chapter II

CONTENT OF ORDER MAINTENANCE OFFENSES IN 1948

A. Introduction

In order to provide a context for examining legislative changes in the content of the law we took a sounding or cross-sectional view of the substantive content of state and municipal provisions as they existed in 1948. Such information provides a base against which to consider subsequent developments. The description of conditions in 1948 provides a set of boundaries within which to describe trends.

We had expected that the move toward code reform would be sparked at least in part by the condition of the pre-existing code. Thus, cities with relatively detailed codes, specifying a broad range of acts as offenses, would be less likely to use legal changes as a response to perceived crime problems than ones whose codes were less comprehensive. Table 2.1 lays out the rankings of city and state codes in 1948. The cities distributed themselves into roughly three groups in terms of the scope or variety of acts that were regulated in 1948. Atlanta and Phoenix stand out at the head of the list with the broadest scope. At the opposite end, were Boston, Newark Philadelphia, and Indianapolis whose codes covered relatively few of the offenses in our study. In the middle group were the two California cities (Oakland and San Jose), Minneapolis, and Houston. The groupings, while rough, show the wide variation among codes at that time in their attentiveness to defining offenses. Much of the range was due to variations in the number of offenses that a city addressed in any fashion at all. Thus, at one extreme the Atlanta and Phoenix codes included at least some regulation of virtually all 11 offenses. At the other extreme Philadelphia ordinances included only a minimal provision for one offense and Boston included only five. In 1948 only three cities had vagrancy provisions. Two (Minneapolis and Philadelphia) did not include loitering. Drugs, public drunkenness, and weapons were also often absent from local codes Their absence does not mean that these acts were unregulated. State regulation would still pertain. Rather, these were matters on which some city codes were silent. At the other end of the continuum, all cities included at least some regulation of gambling throughout the whole period.

Another way of illustrating the range across cities is to look at the proportion of the issues describing the offenses that cities included in their provisions. Operationally the proportion is derived by summing the number of descriptors that

Table 2.1 Scope[a] of offense definitions[b] in 1948

Jurisdiction	City ordinances: descriptors specified		State codes: descriptors specified		
	per cent[c]	rank		per cent[d]	rank
Atlanta	58	1	Georgia	71	7
Phoenix	55	2	Arizona	65	9
Minneapolis	39	4	Minnesota	68	8
Houston	39	4	Texas	77	3
Oakland	39	4	California	76	4
San Jose	30	6	California	76	4
Indianapolis	25	7.5	Indiana	72	6
Newark	25	7.5	New Jersey	85	1
Boston	16	9	Massachusetts	80	2
Philadelphia	3	10	Pennsylvania	75	5

[a]Proportion of potential descriptors mentioned in ordinance or statute language

[b]Includes 11 offenses for cities; 6 offenses for states

[c]Mean per cent = 33; range = 3 to 58

[d]Mean per cent = 75; range = 65 to 85

a city code included and dividing by the total number of descriptors that we specified (138 for all the offenses combined). Atlanta's code, with the greatest scope, covered 58% of the maximum while at the other end, Philadelphia's covered 3%. The mean for the ten cities was 33%. For purposes of comparison, at the state level the mean scope for all the offenses in 1948 was 74%. The summary proportions tell us two things. First, the cities did not, on the whole, focus a great deal of attention on defining the multiple facets of the offenses we studied. Instead, defining offenses has been a state more than a local task.

B. Models of State Domination of Offense Definitions

Two examples of the scope of city and state code coverage in 1948 illustrate the model of state control.

1. Indianapolis. At the beginning of our period the Indianapolis code was one of the narrowest in terms of scope of any of the ten cities. It contained no regulation at all of drugs or public drunkenness and the variety of behaviors covered for the other offenses was quite limited. The only exceptions were rather broad loitering and disorderly conduct provisions. Included is a classic example of the status offense:

> ...It shall be unlawful for any vagrant, mendicant, begger, prostitute or criminal or person known or reputed to be such, to loiter at any place in this city... sect. 10-1010 1951 code.

The disorderly conduct section was written in similar terms, covering a wide variety of offensive acts that might take place anywhere in the city, including private buildings and land. Thus while the city code specifies comparatively few issues related to our study, what was present provided a fairly wide enforcement mechanism for maintaining the public order.

The coverage in the state code was quite extensive. While there was little regulation of firearms and disorderly conduct there was considerable attention to drugs. The comparison of the two codes in 1948 showed that for the offenses coded in common, the city contributed little independent scope that might be used by local enforcement efforts. At the beginning of our period, then, the relationship between the two fit the model of state domination with little local action on these matters.

2. Boston. The history of state and local relations in Boston has been uneasy with the city politicians needing to seek state authority to deal with most local affairs (Greenblatt, 1980). The relationship helps explain the

relative level of concern expressed in the two codes in 1948. The scope of the state code ranked second only to New Jersey in 1948. Particularly extensive was the state's regulation of firearms. Massachusetts made it more difficult than any other state in the study to obtain a gun without violating the law. Drugs also were extensively regulated. Disorderly conduct, on the other hand, had a relatively narrow scope in terms of the variety of acts that were prohibited, although it included a number of status offenses.

The Boston code contained references to only five of the eleven offenses in our study in 1948. The offenses that were included had an extremely narrow scope. Disorderly conduct in the city was a problem of offensive behavior in the street markets and on the streets and other public grounds, primarily parks. Some of the provisions date back to 1701. The only locations over which the code provided control were "within the market limits," "in the Common, Public Garden or other public grounds of the city," or "in any street or other public place." The city thus claimed a concern over a relatively limited area of the city. Not covered was behavior on private property or, presumably, public buildings. The attention to conditions in the streets, parks, and market places was consistent with case law interpreting the state constitution and statutes specifying home rule powers in effect until 1966.

The penalty for violating the disorderly conduct ordinance in 1948 was a fine of up to 20 dollars. There was no provision for imprisonment. The penalty provision, while minimal in comparison with other cities in our study, was the maximum permitted by Massachusetts statute (ch. 40, sect. 21). The code thus gave little discretion in imposing sanctions. While in Atlanta fines, labor and incarceration were all available for use in sentencing, in Boston a small fine was the only kind of penalty that was permitted.

Boston's loitering provisions had a similarly narrow focus, both in terms of the acts themselves and the context of the acts, particularly the location. Loitering was not defined as a violation except on the streets of the city. Within the constraints of regulating only limited locations of the city, Boston might have defined broadly or narrowly the kinds of behavior it felt were offensive/harmful. For example, they might have set up a number of prohibitions concerning types of public disorder -- demonstrations, marches, or failure to disperse after a police request. Boston chose not to. In fact Boston explicitly protected the rights of free speech.

> No person shall saunter or loiter in a street...but nothing in this section shall be construed to curtail, abridge, or limit the right or opportunity of any person to exercise the right of peaceful persuasion. . .Ch.29, sect. 36 (passed, 1850)

> No permit shall be required nor shall this ordinance operate to affect, interfere with or in any way abridge the right of persons on the streets to carry or display non-commercial show cards, placards or signs or to distribute non-commercial handbills cards, circulars or papers other than newspapers. Chapter 29, sect. 37 (passed, 1942)

The Boston loitering ordinance is notable then, for its narrow coverage. Its exemption of political activities is limited only by the requirement that the actions be "peaceful." Such explicit protections are unique among the ten cities and are consistent with the image of Boston as the land of Sam Adams and Henry Thoreau. The content of the loitering provision remained the same throughout the period of our study. The penalty that could be imposed also remained the same, a maximum of 20 dollars.

Boston's code contained no vagrancy provisions beyond the descriptions of sleeping in the market place. Missing are some of the more colorful provisions found in other cities, such as Atlanta or Phoenix, which are directed at those who did not have any visible means of support and might be found in public.

The treatment of morality offenses in the Boston code was similar to that of the public order offenses: minimal penalties and limited coverage.

Boston's gambling provisions were contained in two sections of the code dating from 1701 and 1785. They were general prohibitions against playing games of chance or locating such games or equipment on streets or in parks. The maximum penalty throughout the period was 20 dollars. There was some attention to licensing coin-operated amusement devices. The license procedure, in its minimal form, was a revenue device. It provided no city basis for controlling or prohibiting gambling in many of its permutations. In Commonwealth v. Wolbarst (319 Mass. 291, 65 NE2d 552) which sets out some of the case law on preemption, there is reference to the fact that the state had preempted the field of gambling. Unless the city wished to become involved by the use of its order maintenance authority, Boston's coverage of gambling in

the public view may be as far as it could go, at least until the changes in home rule in 1966.

The Boston code regulated firearms and weapons in 1948. It included a provision prohibiting firing a "cannon, gun, fowling-piece or firearm within the city limits." The penalty thoughout the period was a maximum fine of 20 dollars. It is interesting that the code did not, as it did for other offenses, limit the coverage to the market places or parks. For firearms the order maintenance function extended beyond the sidewalks.

The Boston code is thus useful as an historical document but for information about what behaviors were defined as crimes one needed to look at the state code. It was at the state level that the largest legislative response to crime had been made by 1948.

Boston and Indianapolis in 1948 show one extreme in which the definition of offensive behavior is primarily a state function. City officials often did not have an option of invoking city ordinances to regulate behavior. Instead, the provisions in the state codes set the limits for enforcement.

C. Models of City Participation in Offense Definitions

A second model exists of city-state code provisions that deserves mention. It consists of the state and city both defining crimes. Aside from showing varieties of local color, in the second model the interest at the city level in defining local offenses comes through clearly.

1. Law as an Instrument of Social Control: Atlanta. The Atlanta Code in 1948 had the broadest scope of the ten cities. It contained regulations covering more acts than any other city. Only one other city (Phoenix) included regulations on a similar range offenses. Being drunk in public, being black and sitting with whites in a theatre being a vagrant, obstructing public throughways, soliciting for prostitution, gambling involving pinball machines and lotteries, using drugs, running an opium den, carrying firearms without paying a license fee, selling firearms without keeping proper records: all were prohibited by local ordinance in 1948. The broad scope at that time was in keeping with the minimal constraints placed on local action by the state courts and legislature.

The enthusiasm at the local level for defining offenses was not matched at the state level. The coverage at the state level ranked seventh out of nine states. When the coverage provided by the two codes was combined, Atlanta was one of the

most highly regulated jurisdictions in our study. Coverage at the local level accounted to some significant degree for that ranking. Disorderly conduct in particular received more attention at the local level that at the state. To summarize, in Georgia there was considerable delegation of authority to regulate local affairs, a situation of which Atlanta took full advantage.

2. Law as an Instrument of Social Control: Houston. The scope of offense definitions in the Texas state code ranked third among the nine states in 1948. The state included a broad range of acts within its definition of disorderly conduct. Its coverage of drugs was moderately comprehensive but its coverage of firearms and weapons was modest at most. The coverage at the city level was similarly broad and showed the same emphases. The Houston code in 1948 provided that one could not fight in public or play cards, look "goo goo eyes" at a girl or show a "nigger shooter," or let adolescents play pinballs. Problems of public order were the first priority. Maintaining private morality was also a major concern. Gambling and prostitution were elaborated in considerable detail although public drunkenness was absent entirely and drug provisions included only regulation of opium dens. While the city code gave considerable attention to public order and morality offenses, the issue of public safety, seen in firearms and weapons provisions, was a minor concern at the local level.

By combining the coverage at the state and local level in 1948 we found that the city made a modest independent contribution to the total coverage. The city's additions were most notable in the disorderly conduction sections. Because public safety coverage at both levels was minimal, we might expect to see more activity in that field at one level or the other. After all, at one point Houston was called the "murder capital of the world," and Dallas was the unfortunate location of the John F. Kennedy assassination. The analysis of subsequent developments in Houston (Chapter V) suggests that the broad scope in 1948 did not presage great interest either at the state or local level in using public regulation to address problems of crime.

D. City Initiatives in Writing Law

Having discussed the variety in local codes the next step involves pairing the cities with their respective states to see whether the scope at the city level may be explained in light of the comprehensiveness at the state level. We can address this issue most directly by looking at the offense definitions in city and state law both seperately and jointly. Table 2.2 presents relevant findings for the six offenses which we coded at both the city and state level. We combined the scope of both city and state provisions by counting the number of

Table 2.2 Total scope[a] of offenses[b] in 1948

Jurisdiction	City scope[c]	State scope[d]	Total scope[e]	City contribution to total scope[f]
Atlanta	47%	71%	81%	8%
Phoenix	61	65	82	15
Minneapolis	47	68	75	7
Houston	27	77	81	4
Oakland	48	76	82	6
San Jose	24	76	79	3
Indianapolis	20	72	76	4
Newark	17	85	89	4
Boston	14	80	80	0
Philadelphia	0	75	75	0

[a]Proportion of total n of descriptors mentioned in ordinance or statute language
[b]Includes the six offenses coded in both cith and state laws.
[c]Mean per cent = 31; range = 0 to 61
[d]Mean per cent = 75; range = 65 to 85
[e]Mean per cent = 80; range = 75 to 89
[f]Mean per cent = 5; range = 0 to 15

descriptors included in either code to measure the total scope. It shows variety of acts for which a person may be convicted whether for a violation of a city ordinance or state law. It should be remembered that the total scope is not some ideal or normative measure but rather an empirical description of the substantive issues or dimensions of the offenses in our study.

There was some variation across jurisdictions in the scope of the definitions of offenses. The total scope ranged from 75 per cent (59 of 79 descriptors) in Philadelphia Minneapolis, to 89 per cent (70/79) in Newark. The range tells us that there was some variation across states in the definitions of problems associated with maintaining public order. Marching in a demonstration along a city street, failing to disperse when ordered to do so, or failing to register a pistol properly would be a violation of either or both city and state codes depending on the jurisdiction. Nevertheless, we should note that the variation occurred within a fairly narrow range of acts.

Taking the total scope one step further to see the extent to which city codes made separate contributions to the definitions regulating behavior within a city we found considerable variation Almost twenty percent of the scope of the offenses in Phoenix were defined only in the city code. In Atlanta, thirteen percent came from the city code. On the other hand, the city contribution particularly in the northeastern cities such as Philadelphia and Boston was negligible.

The variation in the local contribution points to differing roles for cities as sources of offense definitions. The cities which made the most independent contribution to the scope in 1948 were the ones which had the most extensive city codes. Conversely the cities with the narrowest scope made the least contribution. Such a statement may appear trivial since on its face it would seem likely that the greater scope at the local level would mean by definition that the city was defining more acts as offenses. However, it does not necessarily follow that the greater scope at the local level would expand the combined scope since the city might only be repeating what was already specified in the state law. For a city, such a position is not necessarily wholly symbolic. By making offensive behavior a city violation the city would have, if it desired, greater discretion in enforcement since either state or city code could be invoked. Less severe city penalties and less stringent standards for prosecution would make local codes a potentially useful tool even where they were not specifying any new offenses (Northwestern Law Review, 1973; Minnesota Law Review, 1951-2). Alternatively, the city with the narrowest scope might save its effort to define as offenses only those aspects that were not set out by the state. However, our findings suggest that those cities which gave more attention to offense definitions were also the ones which provided more

unique provisions (i.e , provisions located in the city but not the state codes).

Comparatively cities with the broadest scope in 1948 were located in states with relatively narrow scope for the same offenses. Conversely the cities with the narrower scope were located in states with broader coverage. Philadelphia is an exception. Its ordinances contributed nothing but the state's attention was also relatively low. Such a finding suggests that in 1948 there was some degree of consensus in what the boundaries for illegal behavior were in large cities. What was in question was who would regulate them.

In the next chapter we address that issue in light of the formal relationships between city and state.

Chapter III

THE POWER OF CITIES

A. Introduction

In the preceding chapter different patterns for the relationship between city and state were outlined as they existed in 1948. In this chapter we examine the formal rules which specify the amount of power a city has to define local offenses. The answer is neither straightforward nor permanent. While the matter may seem to have little that is problematic, in fact it is a dimension on which both at the level of formal rules and political reality there is some degree of dispute. The investigation took us to state constitutions, statutory provisions, and state court cases. Both the variability and the changes that took place allow us to make observations about the ways in which the structures of government affect policy content. In addition, since two cities were located within the state there is the opportunity to observe two sets of local responses operating within the same set of state regulations. Thus the research design allows several kinds of comparisons to show the strength of such formal rules in regulating the degree of local attentiveness.

B. Some Theories About the Power of Cities

The idea that the city is a creature of the state "which breathed into it the breath of life " (Dillon quoted in Frug, 1980) is a formulation of late 19th century thought. This principle structures current thinking about how much power cities have to control their own affairs. However, recent research has suggested that alternative solutions to state dominance are available. Hartog (1981) has described how New York City after the Revolutionary War increasingly went to the state legislature for approval for its own actions although earlier it had acted on its own. He found, for example, that the city felt it necessary to seek permission from the state legislature to enact an ordinance regulating smoking in livery stables and lighting fires on boats that were docked in the city harbor (Hartog, 1981). Hartog interprets such moves by the city as voluntary acts rather than ones which were forced upon it by a strong state legislature or which were required by existing law. What is interesting is that the city <u>voluntarily</u> sought legitimation, acting only after receiving explicit state approval. Today, the city's powerlessness, in a legal sense, in taken as a given:

> Today, these ideas constrict our own actions, not only through our continued reliance on the legal status of the cities they helped create but through their influence on our ability to think about changing the city as an institution. Our ideas make the current status of the city seem such a natural and inevitable fracture of modern society that any attempt to find, as a matter of law a 'local' function to be protected from state control, or to find, as a political matter, a way to decentralize real power to cities, seems defeated from the start. (Frug, 1980, 1121)

Frug concludes that state grants of home rule power have been failures. "...in accord with the liberal view, the interests of the state and the individual have been upheld at the expense of city power, even in the face of supposedly restrictive constitutional amendments" (Frug, 1980: 1117).

C. City Powers to Act: A Study of Comparative Laws

Analyses such as Frug's suggest that contemporary American cities, operating within a paradigm of strong state control, have taken few steps to regulate their own affairs. However, in the preceding chapter we showed variation in the extent to which cities have taken up the challenge. One explanation for that variation is the degree of authority granted to the cities by their respective states. We examined the working relationships that developed between city and state in the different jurisdictions.

Of particular interest are those cities whose legal status changed during the course of our period. While the great bulk of home rule initiatives had occurred by 1930, the legal status of four cities (Boston, Newark, Philadelphia, and Indianapolis) changed significantly sometime after 1948, through state constitutional revisions. The state court for two others, (Oakland and San Jose) took a somewhat different direction in the 1970s in its interpretation of what constituted "municipal" affairs. Contained within the design is the opportunity to assess the implementation of the formal rules which would give more power to cities.

Four of the cities, Indianapolis, Boston, Newark, and Philadelphia quite clearly had very limited authority to act in 1948. For example, Boston had the right to regulate municipal affairs but through court interpretations the scope of that authority was severely limited in terms of the places (public streets, sidewalks, markets, and public parks) and behaviors (snow removal, gas mains, etc.) that the city might address. Not surprisingly, the codes in these three cities had the narrowest scope in 1948.

In contrast, Atlanta, Phoenix, and Minneapolis had considerable authority to act. We based this categorization on the general trend of statutory language and court decisions within each state. The codes in these three cities were quite broad in scope. Thus, the extent to which a city was active in the field in 1948 was determined to some large degree by its role in relation to the state. It is not a trivial point to note that cities used the power that they had. While historical causes for the development of city-state relations may be problematic, our study of codes in 1948 suggests that the "universal" acceptance of the city as the creature of the state does not necessarily mean that all cities were powerless. On the other hand power is a relative term. We are not suggesting that any city approached exclusive authority. Instead, given the tools, some cities gave fairly broad scope to the definition of offensive behavior in their jurisdiction.

1 Indianapolis: Changing the Rules. The analysis of the Indianapolis code is of particular interest because the city's governmental structure was revamped in 1970 to provide for a metropolitan form of government -- Unigov. Its purpose was to expand the authority of the city in order to provide more comprehensive planning capability and to be able to take more responsibility for addressing local problems. We would expect that such a change in the formal government relations, with the delegation of a considerable degree of autonomy to the city, would lead to an increase in the scope for the local code as Indianapolis sought to define for itself the offenses that were matters of local concern. In 1948 the city code defined few offenses. We would expect to see an expanded scope in the code in 1978 and an increase in the number of changes after Unigov was put in place. Tracing the developments in the local code in Indianapolis provides useful opportunity to look at the effects of changes in the formal decision-making rules on the content of local policy.

In a move that was consistent with the structural changes included in Unigov, the Indiana state code made a significant change in direction in its delegation of authority to cities in 1971. Prior to that time the state had followed to some large degree what has come to be known as the Dillon Rule which was articulated around the turn of the century and which put the city totally at the mercy of the state. The Dillon Rule, which was part of the agenda of the urban reformers, attempted to remove as much authority as possible from the allegedly corrupt and ill-managed cities. In a recent article Frug (1980) has laid out some of the historical underpinnings of Dillon's influential writings. The description of the city as the creature of the state was a product of that period. In 1971 the state revised its statutes using language which allowed much more generous interpretation of the powers delegated to local governments. In an analysis of the change, a 1974 Indiana Law Journal article argued that even if city ordinances

duplicated or expanded the coverage of state statutes the ordinances could now coexist Such a position amounted to a significant revision in city-state relations.

However, in 1976 the state supreme court gave a rather different view of the revision. It struck down an Indianapolis ordinance covering resisting arrest because the court felt that

> an impermissable conflict between a city ordinance and a criminal law of the state will exist whenever the ordinance contradicts, duplicates alters, amends, modifies or extends the subject matter of the statute. Indianapolis v Sablica, 342 N.E. 2d 853 (Indiana Supreme Court, 1976)

The court's interpretation hardly served as encouragement to cities attempting to exercise local authority.

Yet another chapter in the evolving definition of the power of the cities was written in 1980, after our period ended but included here because it suggests the legislative as contrasted to court, interpretations. In an act that became effective in September, 1981, the legislature added a new Home Rule chapter to its code. In an interpretation provided by the drafting commission the legislature adopted the view that the state was delegating to local units all the power necessary to run their governments. The new provision

> maintains local authority to establish units to preserve public peace and order and may provide facilities and equipment to do so...(the city) may regulate conduct, or the use or possession of property that might endanger the public health, safety, or welfare (Indiana code, 1980)

What is particularly interesting is the rather emphatic statement with which this interpretation is given:

> The intent of the Commission is to settle once and for all that the policy of the state to grant to these units... all the powers that they need for the effective operation of government on the local level. (Code, 1980)

The explicitness of the statement suggests that the 1980 interpretation had not been universally accepted. The 1976 court case points to one of the sources of opposition: the state courts.

Thus Indianapolis is useful in our study for two reasons. It provides an opportunity to observe the effects of the introduction of an experiment in metropolitan government. It allows us to observe the impact of the controversy surrounding the state legislative attempts to redefine the delegation of

powers to the cities.

By 1978 the Indianapolis code remained relatively undifferentiated, the city having made few revisions after the rule changes were put in place.

2. Oakland and San Jose: Two Different Views of the Same State Rules. If the directions taken by the cities are to some large degree a function of the rules set by the state, then we would expect to see considerable similarity between the two cities, Oakland and San Jose, reflecting the policy perspectives at the state level Instead, the direction of change in the two cities was dramatically different. Oakland made changes which resulted in a marked criminalization in the 1950s. After a lull, the city then made numerous modest changes starting in the late 1960s. Like Oakland, San Jose seemed to increase its attention to crime definition in the later period. However, in contrast, San Jose decriminalized behavior, although the direction of the trend is not as clear cut as it is with Oakland. The increased tempo of changes in both cities may have been a response to the improved climate for local initiatives created at the state level. On the other hand, the different directions taken in the two cities suggest that the content of the changes was a function of local conditions. The comparison between the two cities suggests that the formal rules defining the limits of local initiatives affected the volume but not the direction or content of policy changes.

While both cities gave most of their attention to morality offenses, in San Jose that meant regulating public drunkenness while in Oakland, it meant gambling. It is interesting that in the face of the Black Panther activity in Oakland, and shooting of Chicanos in San Jose and the periods of violent union problems in both cities, the attentiveness to defining public disorder and safety did not take a higher priority (Graeven, Schonborn, and Ferguson, 1980 Betsalel, 1980). In both cities gun regulation decreased during the period. While in Philadelphia and Minneapolis there were strong local initiatives to provide gun restrictions in the face of lenient state provision, San Jose and Oakland took no such action. Further analysis of California home rule cases suggests that at least a good argument could be made that the state legislature had not preempted the field, thus leaving open the option for local initiatives. There was the greatest contrast between the two cities in their changes in public order offenses. While Oakland expanded significantly the scope of loitering and disorderly conduct provisions, San Jose removed most of its coverage of such offenses. The two cities thus took quite different actions resulting in very different codes when viewed in 1978. While both had moderately comprehensive coverage in 1948, by 1978 Oakland was tied for first while San Jose ranked eighth out of the ten cities. The different patterns suggest

that the content of local codes reflect not only the effects of state priorities but also local ones.

3. Gun Control: Three Stories of City Leadership in High Cost Decisions. The gun control issue has troubled American politics for a long time (Kates, 1979 Violence Commission, 1968). The controversies surrounding it and the reported strength of the organized groups involved make it a politically expensive issue for politicians to address. We have some examples of the difficult and complex histories of the uses of law reform in these struggles.

a. Philadelphia. The attention to firearms and weapons control in the state and local codes shows a mixed pattern. At the beginning of the period the city had few firearms or weapons provisions. In 1948 most adults in Philadelphia could buy and/or own any sort of firearm they wished with no governmental restraints. The state provisions included no need to register as an owner or to register the gun. To buy any firearm, one needed only to fill out an application with the seller, identifying oneself and the firearm, and then waiting 48 hours before picking the gun up. Only if the firearm were a handgun and if one wanted to carry it while it was loaded and concealed did a person need a license which could be obtained from the police department for a 15 cent fee. The license would be issued:

> if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a firearm and that he is a suitable person to be so licensed. (Code, sect. 4628 (f)).

Assuming one could convince the police that one's reasons for needing the weapon were "proper," one could carry the gun for a year, after which time the license needed to be renewed. Members of the police, military, target clubs, and hunters and fishermen were exempted from even these licensing procedures. The only categories of people who could not get such a license were aliens, those convicted of a violent crime, those under 18, "habitual drunkards," and those "of unsound mind." (Ch. 18, sect. 4628 (g), subsequently, 6110).

These licensing regulations which were all defined in the state statutes, remained essentially unchanged throughout the period. While their scope was rather broad, the limitations placed on the types of weapons, the conditions under which licensing could be avoided altogether, and the ease with which a license could be obtained, meant that the government agencies had relatively little control over the availability of guns The provisions were primarily regulatory, using broad sets of rules with relatively few outright prohibitions.

In 1968 however, the state took a somewhat different approach by targeting specific problem situations for more stringent regulations. Thus, a person needed a license to carry any firearm, rifle, or shotgun "at any time upon the public streets or upon any public property in a city of the first class." [i.e., Philadelphia] The provision passed on June 30, 1968, increased the coverage extending the license requirement to carrying any firearm regardless of whether it was concealed or loaded. However, the more stringent requirements affected only the largest city in the state -- Philadelphia. In all other places the carrying provision applied only if state or local officials declared a public emergency. With racial and war-related riots becoming common-place, Pennsylvania's approach to gun control is interesting. Seven months before, in November, 1967, there had been a student demonstration in Philadelphia which turned into a melee due in part to police intervention strategies (Buffum and Sagi, 1980). With the application only to emergencies, large cities, and visible displays, the target of the change seemed to be urban riots. Singling out the largest city also suggests that even this response was not overwhelmingly popular, being a compromise passed to help law enforcement in Philadelphia while not seriously limiting gun availability.

The only other change in Pennsylvania's coverage came in 1974. At that time the state legislature passed a preemption statute saying local governments could not pass more restrictive gun control provisions than were in force in state statutes. This provision, which was a procedural change affecting the constraints on local initiatives, played an important part in Philadelphia's efforts to control guns. The city's efforts were not unanimously supported in local and state political and criminal justice circles. While Rizzo was Commissioner, law and order concerns may have led to increased attention to gun control (the volume of arrests went up sharply from 1967-1971 and then tailed off). On the other hand, for a Mayor who sported pearl-handled pistols, the issue of gun control may have been less pressing than it was for the Police Commissioner (Buffum and Sagi, 1980). In addition, the 1965 ordinance was being challenged in the courts as early as 1970 when a local court ruled the ordinance unconstitutional. That decision was later over-ruled on procedural grounds [(Commonwealth v. Ray, 218 Pa. Super. 72, 272 A2d 275 (1970), vacated on other grounds, 448 Pa. 307, 292 A2d 410 (1972)]. With such political and legal clouds hanging over the city ordinance it is not too surprising that police made fewer weapons arrests. Finally, in a decision the state Supreme Court refused to review, the Commonwealth Court (Schneck v City of Philadelphia 383 A2d 227, 34 Pa. Cmwlth. 96, 1978) invalidated the 1965 ordinance on the grounds that the more lenient 1933 state provision should prevail. Left standing at the local level was the carrying prohibition. The court decision used the preemption provision added to the state firearms statute in 1974 to remove the local initiative Such

a decision is consistent with the view we outlined earlier that the state legislature was unwilling to delegate authority to municipalities. While Philadelphia did not develop its own provisions for many of the offenses we studied, when it did, the state legislature and courts gave little encouragement. Gun control may well test intergovernmental relations in ways that other, perhaps less controversial, issues may not. By the 1978 endpoint the net effect of the changes at the city and state level was to put the firearms coverage at approximately the same point it was in 1948.

b. Phoenix. The state coverage of firearms and weapons was minimal, both in terms of the scope as well as the volume of enactments. Throughout the period the state coverage of firearms was the narrowest of the nine states in our study. Further, it passed the fewest changes of any state. Provisions in two enactments point to the possible reasons for the lack of attention. In 1953 the state added a subsection to a provision about the sale or gift to minors that indicates an aversion to one of the recent policy directions used in many jurisdictions, firearms registration:

> Nothing in this section shall be construed to require reporting sales or firearms, nor shall registration of firearms or firearms sales be required. (Chapter 31, sect. 13-3109(B)) AZ. Criminal Code (added, Laws, 1953)

Then, in 1970, lest local jurisdictions seek to enter the field the legislature adopted a provision which emphasized the priority of state action:

> Ordinances of any political subdivision of this state relating to the possession, carrying, sale and use of firearms in this state shall not be in conflict with this chapter. (Chapter.31,sect.13-3108. Added, Laws, 1970.)

What makes this provision distinctive is its emphasis, since conflict with state law had always constrained local action. In conjunction with the 1953 addition which made an affirmative statement against registration, the section on local conflicts seems to limit significantly a city's attempt to move beyond the rather limited state provisions. At the state level, the firearms prohibitions covered carrying concealed firearms, and the sale, possession, or manufacture of prohibited weapons, including automatics, and sawed-off rifles and shotguns. No state regulations exist to regulate the distribution of firearms or to regulate their possession.

In the 1977 revision of the criminal code the firearms sections were substantially rewritten, affecting a wide range of descriptors. The direction of the changes was to

criminalize, although the introduction of further exemptions in who may carry weapons made the net impact modest. The change strengthened the sale and possession prohibitions and the enumeration of firearms. At the same time the revised penalty provisions in the criminal code introduced determinate sentences. Finally in 1978 a minor rewriting took place which increased the protections for those wishing to use firearms for sport and reduced the maximum for the more minor aspects of the offense from one year to four month's incarceration.

Paralleling the rather limited attention to gun control at the state level was the minimal attention provided at the city level. As in the state code, the Phoenix firearms provisions throughout much of the period covered a rather narrow range of acts and were particularly limited in the attention to regulatory (as contrasted with prohibitive) provisions. The firearms sections were revised three times. Until 1960 the "shoot 'em up" vision of the wild west was incorporated in the code by prohibiting discharging firearms:

> in any saloon, dance house, store or other public house or business house in the city. (Code, 1939, sect. 4181.)

The 1962 code carried some significant revisions, considering the state's limited interest in the area of regulating arms sales. In 1962 firearms dealers were required to register, to provide a list of their inventory, their shipments, and their sales (Code 1962 sects.16-1 to 4). However, paralleling popular sentiment in the city, Chief Paul Blubaum (1964-1968) was vocal in his opposition to firearms registration (Hall and Altheide, 1980).

In 1978 the Phoenix City Council repealed the gun seller provisions.

c. Minneapolis. As of 1948 Minnesota had made relatively little effort to control access to firearms. Particularly in the mid 1970s the state developed some regulatory procedures. In 1975 the state adopted a permit procedure regulating the carrying of handguns and prohibited the sale of Saturday night specials. Two years later the state added the requirement of a permit to transfer as well as to carry handguns. The permit systems involved police checks on criminal records and provided reasons for rejecting a permit application. The state's provisions were not the most stringent in our set of states but indicated some concern with limiting possession of firearms. At least there was a concern to prohibit possession from groups thought most likely to "abuse" the right -- felons, drug offenders, and the like.

An interesting twist in the Minnesota firearms policy for

our study of local initiatives was added in 1976. The state enacted a preemption clause giving it priority in setting firearms policy while exempting more stringent local regulations for cities "of the first class," (i.e., Minneapolis, St. Paul and Duluth). Thus Minnesota took a position opposite that of Pennsylvania, which explicitly preempted more stringent local provisions, thereby wiping out Philadelphia's considerably more restrictive sections.

The second episode, in 1967, has further relevance for our study in that the precipitating event was a white tavern owner's killing a black patron with a handgun (McPherson, 1980a). According to reports at the time the owner had been in trouble before for using his gun without good reason. The following year the city council adopted a relatively stringent firearm registration ordinance The city's action came seven years before the Minnesota legislature passed its more lenient provision. It was thus the local unit which took the initiative in the matter. Again, in 1974 the city adopted provisions prohibiting the sale of "Saturday night specials" -- a year before the state acted. Finally, in 1976, the state ratified Minneapolis' right to take the initiative in developing a more stringent policy than was in effect for the state as a whole.

On one level the actions at the local and state levels amount to an ackowledgement of the different political realities (and crime problems) in the urban areas in a largely rural state. Further, they suggest that in Minnesota the meaning of local control of municipal affairs is rather more tolerant of local policy initiatives than, say, Pennsylvania or perhaps Massachusetts where local efforts, to the extent that they have been made, were rebuffed. The ability of the city to adopt policy changes which responded rather directly to local crime problems suggests among other things the salience of these issues on the political agenda. It seems not coincidental that a former police lieutenant, Charles Stenvig, was able to parlay the "law and order" issue into a mayoral victory in 1969.

The issue of preemption is policy-specific. Further, we can see in Minnesota that while the city may exist as merely "the creature of the state," the city also serves as the source of policies that are subsequently adopted by the state.

4. Atlanta: Local Ordinances as Mechanisms for Social Control. Atlanta's regulation of disorderly conduct reflected some of the on-going social and political concerns in the city. During the 1940s, prior to the beginning of our study, the Atlanta City Council had added sections to the disorderly conduct provisions, which formally legitimized segregation of public parks and "places of public assembly."

66-027. Proprietors of places of public assembly to allot separate seats to be occupied by white and colored persons--

> It shall be the duty of the proprietor or person in charge of any place of public assembly, where attendence of both races is permitted, to allot different sections or portions of the place of assembly to be occupied by white people and different sections or portions to be occupied by colored people. The proprietor or person in charge of such place of public assembly shall be charged with the duty and responsibility of seating white people in portions allotted to white people and colored people in portions alloted to colored people only (February 21, 1945).

The provision for racial segregation of public facilities remained in the municipal code until 1965. C. Vann Woodward (1957), in his study of segregation laws, notes that it was local ordinances like Atlanta's that provided the authoritative base for segregation policies during the first half of the century .

In 1949 the city addressed racial issues of a different sort. In an enactment directed at groups like the Ku Klux Klan, the city council added a strong prohibition against "masked and hooded men and organizations": no person "while masked, shall be on or in any public place in the City," (sect 64-1423(3)). It was an unusual enactment for city codes in that it included a detailed statement of purpose and listed some of the groups who endorsed the restrictions.

> Church, civic and other public bodies within the Atlanta Community have been increasingly alarmed and have expressed their alarm in a growing volume of protests against the activities of masked and hooded men and oganizatins. Recently, the Fulton County Grand Jurors Association has added its protest to that of others who have voiced their gravest concern at the challenge presented by masked and hooded organizations to the law and safety of the community.
>
> The Mayor and General Council expressly declare that public appearances, especially in automobiles, of men who are masked or hooded and unidentifiable, threaten the supremacy of law and cannot be permitted in Atlanta. The city herein exercises its police power to protect its citizens from intimidation, the public from crime by

masked and hooded persons, and to give to its police the fullest opportunity to detect, apprehend, and bring to justice violators of the law. (Section 66-1423, enacted May 2, 1949; Cumulative Supplement to the Atlanta Code).

Two years later the Georgia General Assembly adopted an Anti-Mask law using a statement of purpose similar to Atlanta's. The Georgia statute went beyond Atlanta's to prohibit not just public movement of those with masks but also their presence on private property, at meetings, as well as their burning crosses (sec. 26-53A, adopted 1951, Acts). Woodward (1957: 142-143) interprets such changes as evidence that some in the South were making an effort to initiate social change. Given the sensitivity of racial issues, it is interesting to note that the ordinance and Act were sufficiently sweeping in their coverage to suggest that the Klan had little support with which to moderate the proposed changes.

Atlanta moved first with its anti-Klan provision. Thus the city was not merely following the lead of the state code. To the extent that the Klan was a "rural" problem and/or Atlanta was more moderate, perhaps it was easier for the city to act than for the state, thus explaining the sequence of city and state changes. From a law enforcement perspective the enactments were necessary because without such a section what the Klan was doing was not in violation of the law -- riding in a car in costume was not, by itself, defined as a crime. While passage of the anti-Klan provision does not suggest by itself whether this section was implemented, it is an example of the uses of code revisions to respond to a social problem The change suggests the power to define the issue as a crime problem.

The Atlanta code was again revised during the turmoil over civil rights in 1965 to include substantially more severe penalty provisions for violations of the disorderly conduct provisions. At the same time, the disorderly conduct section was rewritten, removing the segregated parks and public assembly provisions. To the extent that the code no longer covered these actions, the change had the effect of decriminalizing behavior. A year later the loitering section was revised to include several order maintenance provisions.

D. Conclusions

We have analyzed the structural relationship between city and state to see the effects of changes in the powers of a city to define local offenses. Newark (1951), Philadelphia (1952 and 1968), Boston (1966), and Indianapolis (1971) all received substantial grants of authority to control local affairs during the years of our study. The most direct test of the effects of such restructuring is whether the city expanded the scope of the local codes after a city gained some local control.

Philadelphia expanded its scope more than any other city in terms of the raw number of descriptors added by 1978. Its experience supports the idea that the new structure increased the ability of local officials to act. In Philadelphia we also saw a clear example of the dangers to local actors of taking initiatives which run counter to state-wide policy. Exercising its authority to regulate local affairs, the city enacted a rather stringent gun control provision in 1965. After court cases had failed, the state subsequently intervened with state legislation to preempt the firearms regulation field altogether. The interplay focuses attention on the complex relationships involved.

In Minneapolis we found a similar development but with a different ending: Minneapolis, like Philadelphia passed a gun control provision that was significantly more stringent than the state's. The state's reaction was to pass a preemption clause (as did Pennsylvania) but with an exemption for the largest cities. In the two examples we found a similar situation of the city taking the initiative in the face of state inaction. It also points out that preemption arguments have been used to assert the state's specific substantive policy preferences rather than simply refining the relations between state and local governments. The different results suggests the uneasy relationship that currently exist between city and state.

The other three cities which gained significant home rule authority made few changes in their codes to expand the scope of local authority. Although it may be too soon to tell, Indianapolis showed a net decrease in the scope of its code. Newark's code remained at the same level even after more than 25 years of experience. Boston's code remained essentially unchanged thirteen years after the state's voters amended the constitution to grant considerable authority to cities. The evidence is mixed at best: changing the formal structural relationship between city and state did not uniformly produce major changes in the attentiveness cities gave to defining offenses. We may note that cities whose home rule status

changed during the period no longer formed a discrete cluster at the bottom of the scale in scope in 1978. However the change in the groupings during the period was due to two other cities, Houston and San Jose, joining the ranks of those whose city codes gave very limited attention to offense definitions.

The Texas approach to home rule has been described as a model for providing local control over local affairs (Vanlandingham, 1968). In 1948 Houston's code was, indeed, one of the more extensive among the ten. However, after that time the state's coverage decreased, leading us to expect that the city might pick up the slack. Instead, the city's code also had a narrower scope in 1978 than 1948. The major trend in Houston's (and Texas') code was to remove the archaic forms but not to chart new areas of concern. The city had the authority to act but did not exercise it.

The comparison of two cities in the same state allows a further test of the structural relationship between city and state. California had provided a rather broad grant authority to local governments as far back as 1914 (Vanlandingham, 1968). However, until the late 1960s that authority had been variously interpreted by the state courts so that city officials would have had some considerable uncertainty about whether a proposed course of action would be supported by the courts. Since that time there has been a more consistent pattern with the court deciding in favor of local option

The two California cities, Oakland and San Jose, operated under the same structural relationships to the state In 1948 the two city codes were both moderately broad in scope although Oakland gave considerably more attention to offense definition than San Jose. What is most striking about the two city codes is what happened after 1948. Oakland significantly expanded the scope of its code, particularly in the public order offenses. In contrast, San Jose cut back its coverage. The very different patterns in the two cities within the same state suggests that the determination of local policy responses may be constrained by the formal rules of city government but that local preferences also played a determinative role in the direction of changes.

Putting together the different strands of evidence regarding the development of intergovernmental relations, we would conclude that information about a city's formal status within a state is important information although the local political context within which the cities operate served to interpret the mandate in different ways. Cities have indeed been constrained by the limited scope of their authority. On the one hand, some cities for a variety of reasons did not exercise all the discretion that was available to them. On the other hand, particularly in issues where the state took a relatively weak position, cities with the power to act took the initiative by enacting stronger measures reflecting a local but

not state-wide consensus.

Chapter IV

LEGISLATIVE ATTENTIVENESS TO CRIME
VOLUME OF ENACTMENTS

The next step in the analysis of changes in the law is to look at the volume of enactment activity in the different jurisdictions. We are interested in the number of changes for two reasons. First as a continuation of the analysis of the developmental patterns of law reform we wanted to know if jurisdictions with less scope were, in a sense, playing catch-up with the others. If so then they should be the ones with the most activity, either with revisions of the entire code or with piece-by-piece modifications. The second reason is that the timing and frequency of changes locates periods of particular interest in changing the law.

A. Scope as a Predictor of Legislative Attentiveness

Among the top four states in terms of scope in 1948, three were in the top four in volume. Table 4.1 gives the relevant comparisons. At the other end the three with the least scope in 1948 were in the bottom half of the rankings for volume although each ranked at least one place higher in volume than in scope at the beginning of the period Thus the pattern was contrary to what we had expected: there was some tendency for those states with broader scope to make more changes.

At the city level the analysis of volume shows two groups of cities: those which paid some considerable attention to their code provisions and those which infrequently carried out such reviews. Atlanta and Minneapolis stand out as active cities, the remaining eight, by and large, rarely enacted revisions. Atlanta, whose code had the broadest scope in 1948 also led the cities in the number of revisions. Minneapolis, which was one of the group of cities with a moderately broad scope in 1948, was also active.

Atlanta and Minneapolis ranked second and third (behind Phoenix) in 1948 in terms of the independent contributions they made to the total definitions of order maintenance offenses in their states. The definition of the same type of offenses in their respective states was, in 1948, relatively narrow in scope. Putting these relationships together, the cities that were most active were the ones that had carved out an independent role for themselves. They were located in jurisdictions where the state had taken relatively few

TABLE 4.1

ENACTMENT RATES FOR CITIES AND STATES, 1948-1978
FOR ORDER MAINTENANCE OFFENSES

	SCOPE RANKING IN 1948[a]	TOTAL VOLUME OF ENACTMENTS	VOLUME OF ENACTMENTS PER OFFENSE CATEGORY[b]	ANNUAL VOLUME OF ENACTMENTS PER OFFENSE CATEGORY[c]
Atlanta	1	59	5.36	.17
GA	7	39	6.50	.21
Phoenix	2	16	1.45	.05
AZ	9	34	5.67	.18
Minneapolis	4	42	3.82	.12
MN	8	43	7.17	.23
Houston	4	11	1.00	.03
TX	3	25	4.17	.13
Oakland	4	15	1.36	.04
CA	4	64	10.67	.34
San Jose	6	22	2.00	.06
Indianapolis	7.5	8	.73	.02
IN	6	48	8.00	.26
Newark	7.5	15	1.36	.04
NJ	1	60	10.00	.32
Boston	9	7	.64	.02
MA	2	83	13.83	.45
Philadelphia	10	11	1.00	.03
PA	5	23	3.83	.12
		city $\bar{X}$ = 1.87	city $\bar{X}$ =.06	
		state $\bar{X}$ = 7.76	state $\bar{X}$ =.25	

[a]Rankings based on proportion of total n of descriptors mentioned in offense provisions.

[b]Volume per offense = n of enactments divided by n of offense categories (11 for city; 6 for state).

[c]Annual volume per offense = volume divided by 31 years

initiatives and had granted a fair measure of local discretion.

As a further test of the linkage between scope and volume at the local level, we can look at the same comparisons for cities with the lowest scope in 1948: Philadelphia (ranked tenth) Boston (ninth), and Indianapolis and Newark (tied for eighth). Their volume rankings were similarly low. Their independent contribution to the total scope of offense definitions in 1948 was negligible. Further, they were also granted minimal local discretion through much of the period. These, then are cities in which the policy initiatives were, by and large, at the state level.

The pattern of the volume changes related in a general way to the pre-existing conditions. Contrary to our original hypothesis, locales that had a relatively broad scope in 1948 tended to update their codes more frequently.

B. State Legislative Attentiveness to Crime:
Comparison of Felony and Order Maintenance Offenses

For purposes of comparison we calculated the volume of activity standardized by the number of offense categories for the selected order maintenance offenses defined by cities and states and for three felony offenses (rape, robbery, and burglary). In Table 4.2 the comparative volume figures are presented. The data indicate that the state legislatures made far fewer changes in the felony provisions than in the order maintenance sections. The latter were changed on the average at an annual rate three times greater than that for the felony provisions. The difference in the average enactment rates for the two types of offenses suggests that the attentiveness was selective. While much concern has been expressed about the rise in violent and property crime, of which rape robbery, and burglary are major components, there is probably less discretion in what legislatures may do to redefine such offenses. Rape is perhaps a recent exception. At the very end of the period some major efforts were made in some of the nine states to rewrite the rape sections, removing some of the burdens on the victim and some of the perceived sexist assumptions regarding offender characteristics. Even with the calls for reform, stemming in large part from the feminist movement, the legislatures rarely changed the definitions of such offenses.

What the state legislatures did do, however, was change the order maintenance offenses and penalty provisions. While such attention would not address directly the problems of a sharply rising property and violent crime rate it would provide controls on some of the antecedents (availability of guns and drugs) over which legislatures had greater discretion to act. Also, certainly as a corollary to crime, disrespect for public

TABLE 4.2

VOLUME OF ENACTMENTS IN ORDER MAINTENANCE AND FELONY PROVISIONS FOR 31 YEARS, 1948 TO 1978

	VOLUME OF ENACTMENTS	VOLUME PER OFFENSE CATEGORY
Atlanta	59	5.36
GA (misdemeanor)	39	6.50
GA (felony)	9	3.00
Phoenix	16	1.45
AZ (misdemeanor)	34	5.67
AZ (felony)	10	3.33
Minneapolis	42	3.82
MN (misdemeanor)	43	7.17
MN (felony)	7	2.33
Houston	11	1.00
TX (misdemeanor)	25	4.17
TX (felony)	8	2.67
Oakland	15	1.36
CA (misdemeanor)	64	10.67
CA (felony)	14	4.67
San Jose	22	2.00
Indianapolis	8	.73
IN (misdemeanor)	48	8.00
IN (felony)	7	2.33
Newark	15	1.36
NJ (misdemeanor)	60	10.00
NJ (felony)	9	3.00
Boston	7	.64
MA (misdemeanor)	83	13.83
MA (felony)	7	2.33
Philadelphia	11	1.00
PA (misdemeanor)	23	3.83
PA (felony)	6	2.00

city $\tilde{X} = 1.87$
state misdemeanor $\bar{X} = 7.76$
state felony $\bar{X} = 2.85$

order, the civil disorders, and organized protests were often defined as crime problems. The order maintenance provisions could be called on to address the immediate problems of public safety if not the more serious crimes. It is perhaps significant that the law as a mechanism for social control is invoked in such issues, suggesting that other forms of regulation have failed to address issues involving the growing social complexity of the urban settings (Black, 1976).

C. State and Municipal Attentiveness: Trends Over Time

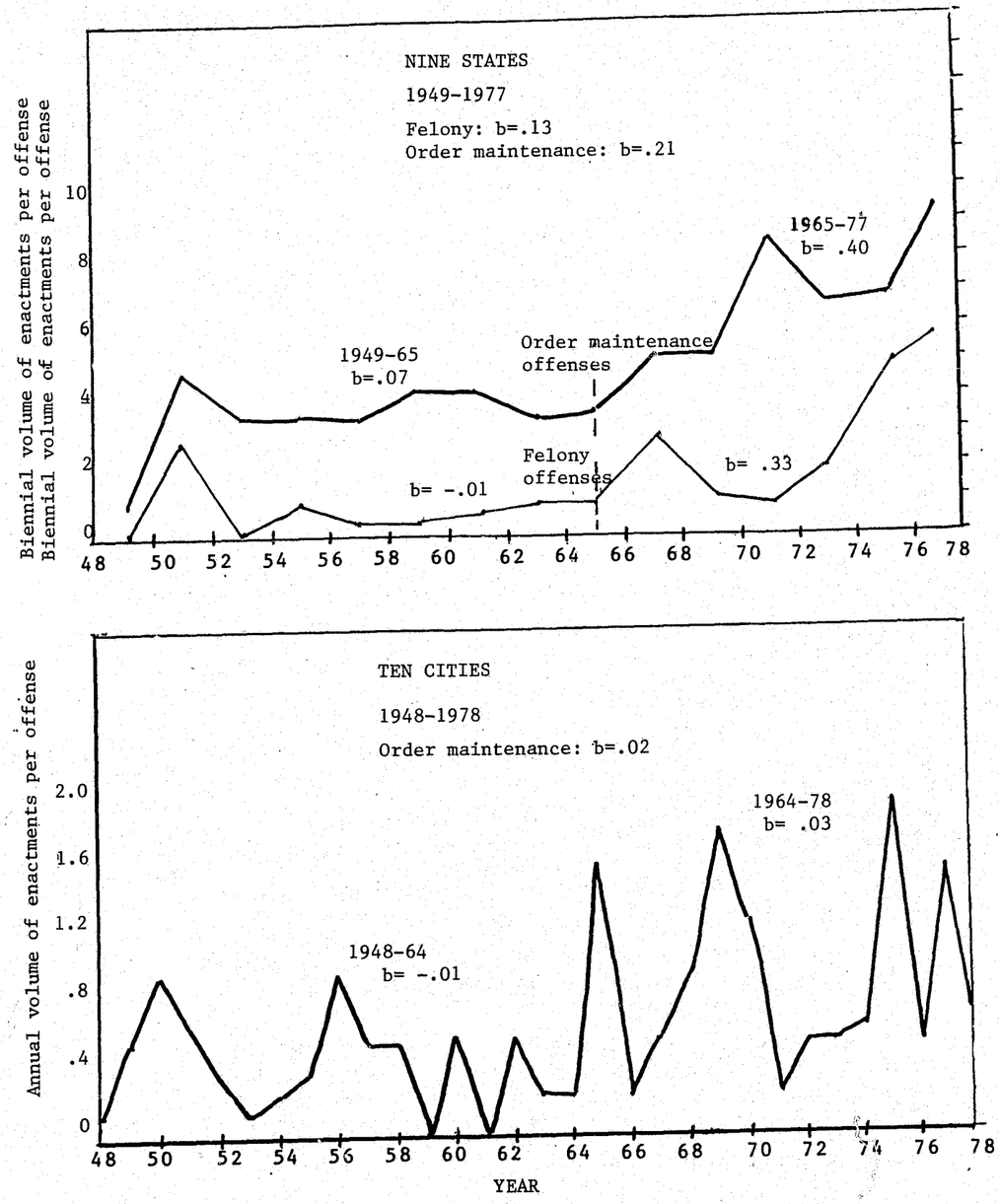
Figure 4.1 plots the enactment activity for the states and cities. The purpose is to see whether code reform was part of a regular review process or, alternatively, whether periods could be identified during which interest was particularly high. In order to make comparisons we have standardized the measures by the number of offense categories used in the study (11 for the city codes, six order maintenance, and three felony categories for the state codes). The state data were aggregated into biennial figures to remove peaks and valleys attributable to variants of the two-year legislative sessions.

Two sets of comparisons may be made. First, at the state level the comparative attentivenss to two types of crime issues, violent and property crime compared to order maintenance crimes. As we have already indicated, revisions in the felony provisions were made much more rarely than were revisions of the order maintenance sections. The space between the two lines on the figure makes that point in a graphic way, adding the time dimension. Comparing the movement of the two lines, we see considerable similarity in the trends: stable levels of attention until the 1967 session when legislatures began to pay relatively more attention to both kinds of offenses. However, the two lines diverge rather dramatically only to come together again in the latest session for which we collected data. Thus the 1967 session began a period of more or less sustained attention to the order maintenance provisions at the state level. The same session showed only a temporary rise in the rate of felony revisions with a more sustained attention coming only with the 1973 session. The increase in the number of revisions in both types of crime provisions in the mid 1970s is a function to some large degree of penal reform affecting the entire criminal code, a point discussed in more detail in Chapter VI.

The increase in legislative "productivity" coincides with federal court decisions challenging the vagueness of some order maintenance provisions in city and state codes. These dealt primarily with status offenses such as drug addiction and vagrancy. As a result, the study includes efforts to address those court-generated issues.

In addition the increases coincide with increases in

FIGURE 4.1
VOLUME OF ENACTMENTS PER OFFENSE FOR STATES AND CITIES[a]



[a]b=unstandardized regression coefficient

legislative productivity across a wide variety of issues. Gathering data on an annual basis on the number of enactments for the nine states proved extremely costly. Based on figures provided by others (Citizen's Conference On State Legislatures, 1971; Berk, et al., 1975) a secular trend exists in the increasing rate of enactments. Within that trend, in California from 1955 to 1971, revisions in the Penal Code rose from three percent to eight percent of all revisions (Berk, et al., 1975: 123). Such figures suggest that the state legislatures may have increased somewhat their attentiveness to crime issues relative to other public policy concerns.

A second set of comparisons consists of the relative attentivess of city and state legislatures. At the city level the volume of enactments showed quite different patterns from those at the state level. While the rate of change in the state codes increased rather substantially after 1965, at the city level no such trend emerges. The comparatively low level of municipal legislative attentiveness shows up in the range used on the vertical axis. While in the busiest biennium at the state level, on the average each state passed one change per offense, among the cities in the busiest year less than two of the ten took such action.

What is also notable is the variability from year to year in the city data. Since city councils meet frequently throughout the year, annual figures are appropriate. Nevertheless, for the cities, the coefficient of variability, a measure of the variations around the mean was .79. For the states, with a much higher volume, it was a much smoother .27 for order maintenance offenses but .78 for changes in the personal and property offenses. The difference in the annual (or biennial) fluctuations shows the rarity of the event at the local level. The effects of the deviant cases (Atlanta and Minneapolis) show up quite clearly. The regression coefficients which measure the direction or slope of the line show that there was little change in the rate of enactments after those swings are taken into account. Up until 1964 the underlying direction was downward (b = -.01) indicating, if anything, more concern in the early 1950s than in the early 1960s. After 1964, however, there was a very modest increase in the volume (b = .03). The trend for the entire period, 1948 to 1978, showed a slight increase in the annual volume (b = .02, F-ratio = 6.51; significant at .02 level). The increases attentiveness in the latter half of the period coincide with the pattern at the state level and with the social and political events of the period. Nevertheless, the instability of the pattern needs to be borne in mind.

D. Relationship Between Legislative Attentiveness and Crime as a Policy Issue.

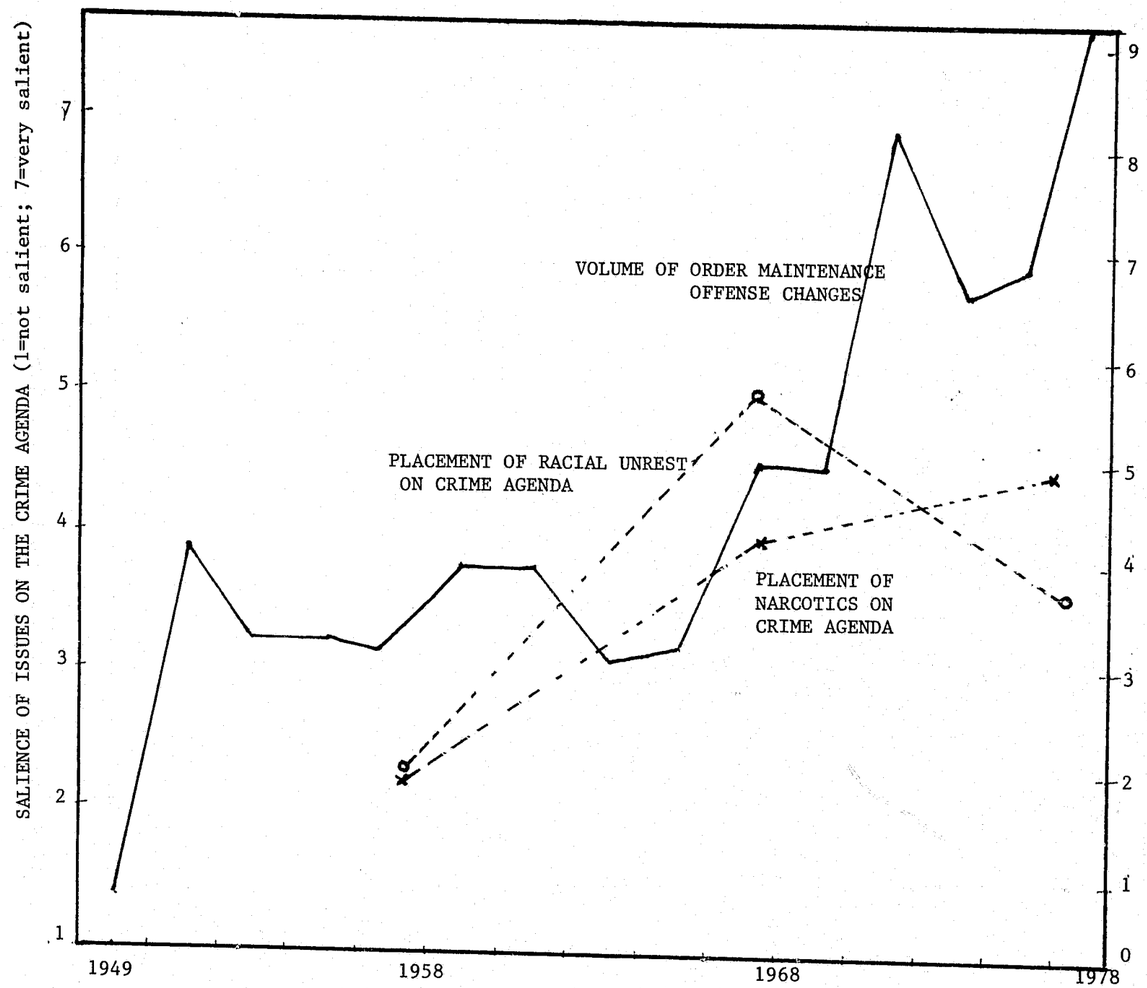
We have asserted at various points that the increased

legislative activity coincided with the rise of crime on the political agenda. At this point we present some evidence to support that assertion. In another part of the project a major effort was made to identify changes in the content of the polical agendas in each of the ten cities (Beecher and Lineberry, 1982). The data base draws on narrative histories written by the field directors of the project who were located in the ten cities, elite interviews which the field directors conducted with knowledgeables in their city during different mayoral administrations, and newspaper accounts of municipal electoral campaigns. The effort produced systematic, empirically derived measures of the changing level of attentiveness to crime relative to other policy issues as well as different components of crime. We found that crime, both as an election issue and as an issue confronting city administrations rose in importance during the period. Violent and property crime not surprisingly ranked high on the lists of crime problems. However, they were not the only aspects of crime facing city leaders. Relevant to the issue of order maintenance, narcotics as a crime problem rose in importance faster than virtually any other criminal justice issue. Civil disorders and minority problems peaked in the late 1960s as crime problems for city policy makers and then fell somewhat in significance by the mid 1970s.

For the purposes of this volume the placement of crime on the local political agenda is useful as an explanatory variable for legislative attentiveness to crime. Figures 4.2a and 4.2b show the correspondence. The volume of legislative enactments for order maintenance at the state level tracked quite closely the changing location of narcotics and racial unrest on the local crime agenda. There was a general upward trend in the volume of enactments. The placement on the agenda of racial unrest peaked in the middle period. The concerns were reflected in changes in disorderly conducted provisions in the middle and late 1960s. While the place of racial unrest decreased to some extent on the crime agenda in the last years, narcotics as a crime issue continued to rise. When the two issues are taken together, their rise makes a pattern similar to the one for legislative attentiveness. The volume of changes in felony provisions increased also but many of the enactments came in the last five years of the period, after violent crime had become a matter of political concern as well as after crime as a general issue had moved into a prominent position on the political agenda. Without making too big a point of the pattern, it is perhaps useful to note that the bulk of the changes in the three felony offense categories involved changes in the substantive provisions of rape laws and penalty revisions. These two issues are ones around which considerable interest group attention was targeted in the last years, unlike that for robbery or burglary. Such developments suggest that the legislative responsiveness is related to general demands in the external environment which are reflected in the content of the political agenda as well as the concerns

FIGURE 4.2a

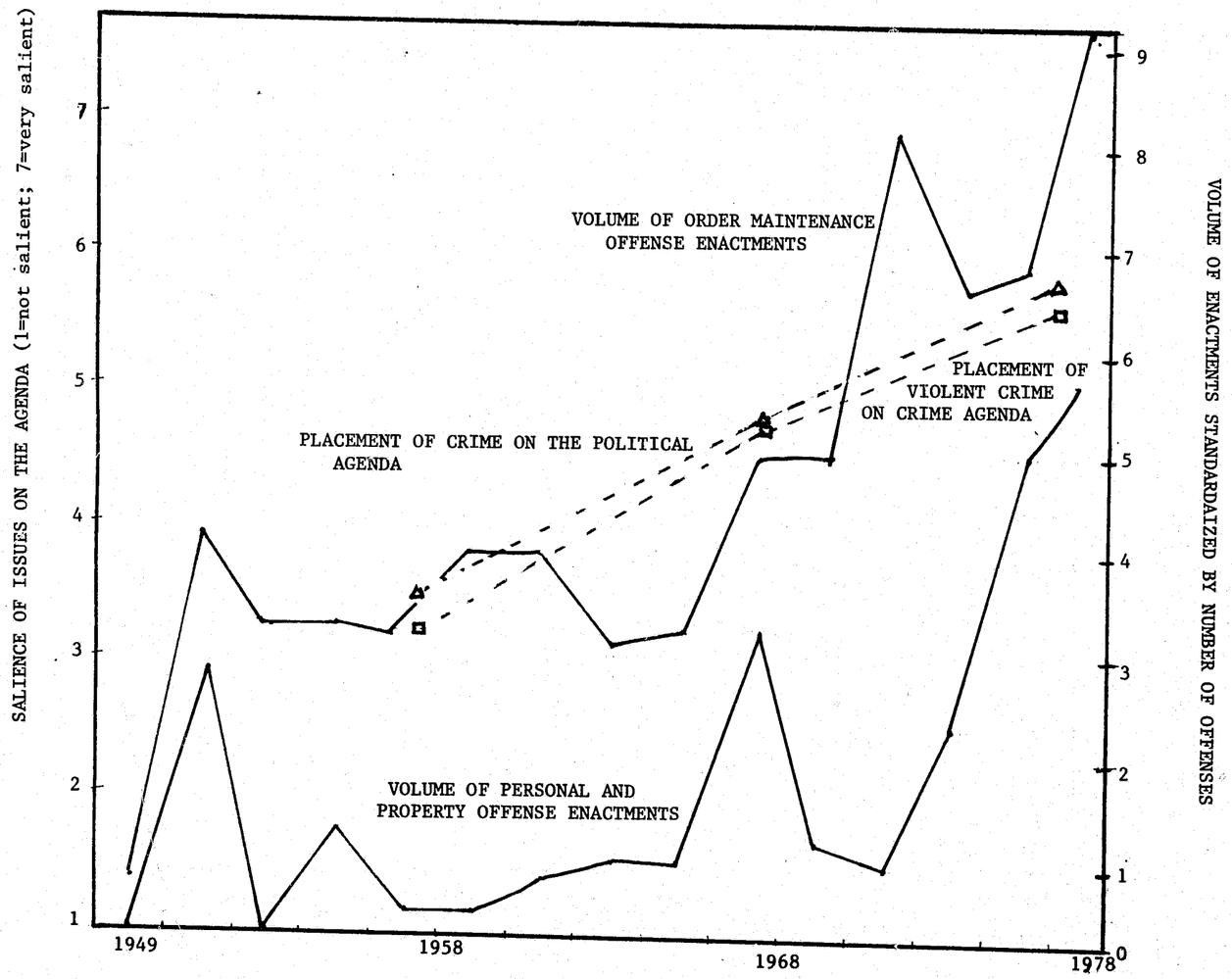
STATE LEGISLATIVE ATTENTIVENESS TO CRIME: VOLUME OF ORDER MAINTENANCE ENACTMENTS, 1948-1978 AND PLACEMENT OF SELECTED ISSUES ON CRIME AGENDA DURING THREE PERIODS.[a]

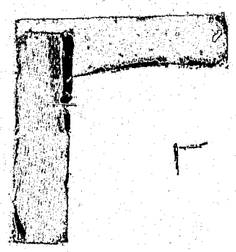


[a] Agenda data collected by Governmental Responses to Crime Project

FIGURE 4.2b

STATE LEGISLATIVE ATTENTIVENESS TO CRIME: VOLUME OF ORDER MAINTENANCE AND FELONY ENACTMENTS, 1948-1978 AND PLACEMENT OF CRIME ON THE POLITICAL AGENDA[a]





of groups appearing in the legislative arena itself. It is interesting to note the correspondence between agenda content at the local level and state legislative action. Issues of concern in the cities were quite clearly receiving some attention in the state legislatures. While it is beyond the scope of our inquiry it is interesting to note that the increasing attentiveness to crime issues in the state arena occurred shortly after the U. S. Supreme Court's Baker vs. Carr decision which required redistricting legislatures, often resulting in greater representation for cities. Four of the ten cities were state capitols and the fifth had the state capitol in its SMSA. Three of these five led the list in local attentiveness while the other two were at the bottom. Proximity to the state legislature does not, therefore, provide a compelling explanation of the volume of enactments at the local level.

At the city level the general patterns are more difficult to identify since the volume of enactments fluctuated so greatly. Nevertheless, the slight upward drift in the latter period coincides with the upward movement of the order maintenance and crime issues on the political agenda. Beyond these general patterns of legislative productivity (that is, the volume of enactments) and the political agenda, the development of legislative attention is the product of the interplay of groups and events at the state and local level. When aggregated as we have done, the idiosyncratic experiences show some general correspondence. To see how the processes operate would require knowledge of these individual stories.

E. Relationship Between Legislative Attentiveness and Organizational Structure

The preceding discussion has described the trends over time in enactment volume and the placement of crime on the policy agenda. Common patterns of increasing attentiveness within the legislatures and the rising importance of crime as a political issue in urban America emerged. The legislative attentiveness thus appeared as a response to an issue in the political arena and, at least indirectly, to the changes in crime rates.

Another way of explaining the variations in attentiveness is to look at the organizational characteristics of the decision-making body. There is a considerable literature on two aspects for which we have data: the size of the organization and the representational base of the members. In one of the few comparative empirical studies of city councils Eulau and Prewitt (1973) found that council size (among the cities in California in their study membership ranged from five to nine members) differentiated decision-making styles. While they do not have policy content or activity data comparable to

ours they suggest that large council size "makes integration of the decisional structure all the more difficult." (Eulau and Prewitt, 1973: 187) In addition it produces shifts in voting patterns. Pursuing such a finding to the question of council outputs we hypothesized that the larger size and more fluid voting patterns might lead to greater accommodation to the preferences of individual members on at least non-critical issues.

We have three descriptive measures of the structural characteristics of the ten city councils in our study. They are: 1) the size of the council, 2) the representational base of membership, and 3) the power to act (i.e., the extent of home rule powers delegated to the cities). We include the issue of home rule as a measure of organizational structure since those formal rules govern the discretion available to local legislators to define local affairs. Since council structure in several of the cities changed on these measures during the period of the study we have looked at the characteristics for three periods, 1948 to 1962, 1963 to 1974, and 1975 to 1978, matching the periods used in the description of the political agenda. The following discussion is thus based on characteristics of 30 councils (10 city councils for 3 periods = 30). Table 4.3 summarizes the findings on the three measures. Regarding council size, we found that the largest councils (13 or more members) were somewhat more likely to enact order maintenance provisions than the smaller councils. The pattern is not as straightforward as one might like, however, since both the small and large councils were more active than the mean for the whole group. There is one outlier in the small councils: Oakland in the most recent period was much more attentive to order maintenance offenses than any of the other small councils. Among the large councils Philadelphia and Minneapolis in the early period were quite inactive. Reducing the effects of outliers by using median rather than mean volume per offense category scores produces a somewhat more straightforward pattern: the median for the smallest councils (less than 9 members) was .05 for the medium-sized, it was .02; and for the largest it was .14. Thus, the largest councils tended to enact more changes than the others.

Cities with home rule powers were more likely to enact than those without. That finding, which summarizes what was presented in descriptive fashion in Chapter 3, indicates that cities generally took advantage of the powers available to them and, further, that the changes in the rules governing city-state relations affected legislative behavior.

Finally, the representational basis of membership made relatively little difference in the legislative attentiveness to order maintenance offenses. The annual volume of enactments was virtually the same whether members were elected by wards or at-large. Municipal reform, as many government texts describe,

TABLE 4.3

RELATIONSHIP BETWEEN COUNCIL STRUCTURE AND RULES AND ENACTMENT VOLUME[a]

A. COUNCIL SIZE

SMALL (5 to 8 members) (n = 12)	MODERATE (9 to 12 members) (n = 8)	LARGE (13 to 29 members) (n = 10)
.08	.03	.15

B. REFORMISM

UNREFORMED (some ward-based representation) (n = 18)	REFORMED (no ward-based representation) (n = 12)
.09	.08

C. POWER TO ACT

STRONG HOME RULE (n = 21)	WEAK HOME RULE (n = 9)
.11	.03

[a] n=30. Each city was counted three times to cover the prevailing conditions in 1948-1962; 1962-1974; and 1975-1978. Where changes in structure occurred within those periods, the conditions governing the longest portion were used to summarize the period. Data collected by Governmental Responses to Crime Project.

dating back many decades has had as one of its cardinal tenets the advocacy of at-large elections in order to avoid the perceived dangers of cronyism, patronage bossism, and other such evils of big city politics. The argument was made that representatives elected by the entire city would be less susceptible to the more parochial or private interest of neighborhood or social group. Instead, at-large members would work for the broader "public" good (Banfield and Wilson, 1964: 876). In a study of the relationship between reformism and public policies, Lineberry and Fowler (1967: 715) conclude "By muting the demands of private-regarding groups, the electoral institutions of reformed governments make public policy less responsive to the demands arising out of social conflicts in the population."

If enacting revisions in the order maintenance provisions in the city code is seen as representing the public good, then with reform one would expect increased activity, holding other factors constant. Such a hypothesis is plausible assuming that the largely allocative policies of such enactments affect actions throughout the city. Prohibitions about public drunkenness or gambling apply to activities in all neighborhoods. Enactments, in the reform spirit, are thus statements about the policy preferences applied to the entire community.

If one takes a somewhat different view of the enactment process, a contrary hypothesis may be offered. If the enactments are the result of particularistic concerns of constituents rather than more universalistic issues of the city, then one would expect greater activity in councils which have more direct constituent contents, the ward-based system. The situation in Boston offered the basis for such a hypothesis. When asked about the Boston city council's lack of attention to code revisions even after significant changes in its home rule status in 1966, one member suggested that the size of the territorial base made a significant difference in the council activity (Interview, October 1980). The member pointed out that there were more state legislative districts in Boston than members of the council who in any event ran at-large. As a result he felt that many citizens have a closer tie with their state representative than anyone on the council and therefore take even local problems and requests for assistance to the state rather than city legislators.

Contained within this observation about state and local politics in Boston is the assumption that the volume of legislative enactments reflects organizational responsiveness to neighborhood or social group requests for amelioration of local conditions. When citizen contact with elected officials is minimal (as is arguably the case in at-large jurisdictions) the enactment volume can be expected to be comparatively low.

The evidence from our study gives no support to either

reformism hypothesis. The mean annual volume of enactments for cities with ward and at-large elections was virtually the same. As an example, while Boston in the 1970s with at-large elections did little, Atlanta when it had the same procedures was very active.

Comprehensive tests of the relationships between organizational structure, crime as an agenda issue, and legislative productivity are impossible without more complex models and reliable data. What we have are some suggestive patterns of common trends. We found that state and local legislatures became more active in revising order maintenance provisions as the issues of crime took on greater importance on the policy agenda of the cities. Based on that coincidence, legislative action appears to be at least in part a response to perceived problems. Without more complete arrest data (the best available measure of the problems of order maintenance), we are not able to trace responsiveness to the changing dimensions of crime itself. Nevertheless perceived problems are more proximate antecedents than the more objective measures. An important caveat at the state level was that the attention to order maintenance offenses was much greater than to property and violent offenses. As we have suggested, the availability of legislative solutions varies with the type of offense.

There appear to be a variety of organization structures that give some legislative bodies a greater capacity to respond than others to perceived threats to the public order. As a precondition cities needed the authority to act on local matters. That included the formal rules as well as the force of a political context that would encourage local initiatives. In addition the size of the council itself had some effect on its attentiveness to these issues.

F. Case Studies of Legislative Activity

The preceding discussion of legislative responsiveness to crime has shown that, by and large, states rather than cities have been the sites for the greatest activity. In the following sections we provide four vignettes which illustrate some of the general themes that have been proposed. Atlanta and Minneapolis are two deviant cases because of the disproportionately high level of activity at the city level. Newark and Boston are at the other extreme. Both were quite inactive while their state legislatures were addressing a wide variety of issues. Besides describing the activity at the two levels we have included as contextual information descriptions of the political attentiveness to crime and some of the organizational structure of the city councils. In each case there are what we might best describe as suggestive continuities between legislative action and these explanatory

variables.

1. Atlanta: The Case for City Regulation of Local Affairs. Since Georgia's code was relatively undifferentiated (that is, its scope was relatively narrow) at the beginning of the period, we expected it would probably become more heavily involved than most states in revising its provisions. In fact it ranked sixth out of the nine states in terms of the volume of enactments over the entire period. Thus it does not support the initial expectation that low differentiation would lead to higher volume in subsequent years. The state's attention was greatest in the last third of the period both for order maintenance and felony offenses. The increase at that time coincided with rising concern with crime issues in Atlanta. (We do not have state-level crime agenda data.) To summarize, Atlanta is located in a state that gave comparatively little attention to the content of its code at least until the most recent part of the period.

The organizational structure of the Atlanta city council changed several times during the period. Its representational base fluctuated between at-large and ward elections although the wards remained a persistent political reality throughout. The size of the council also changed but it remained one of the largest of the ten, ranging from 16 to 27 members at different times. Finally, Atlanta had a moderate degree of authority to define local offenses.

The Atlanta city council took full advantage of the power to legislate local affairs. It enacted more changes than any other city in the study, enacting 59 changes in the 11 order maintenance provisions. It had a higher enactment rate per offense category than some of the states in the study.

If Atlanta represents the most active city council of the ten in our study, then one of the first observations to be made is that changing the city code is a relatively rare occurrence. The 59 changes, averaged across eleven offenses that we coded in the city codes, equals 5.4 changes per offense, spread across 31 years. Changing the code is not an annual exercise like passing appropriations. The relative rarity of the event suggests that these enactments are episodic rather than incremental.

The timing of the changes points out the episodic nature of the code reform process in Atlanta. There were four years during which a large number of changes were made (1950, 1965, 1970, and 1975). However, between 1950 and 1965 there was a lull. Examining the entire set of changes leads us to suggest that there were two main periods of reform (i.e., 1948-1950 and 1965-1978). We infer from these trends that during those two periods community norms for behavior were in greater flux than in the quiescent periods. The more active periods of code reform may also be periods when maintaining public order in one

or another guise was a particularly troublesome policy problem. Based on the measures of the placement of crime on the political agenda in Atlanta available from another part of the project, the increasing volume of enactments, which occurred in both the city and state codes, occurred at the same time that political attention was focusing on crime-related issues. The Atlanta council, with a large number of members and a tradition of ward politics, is an example of the use of vigorous local attentiveness to definitions of offenses.

2. Minneapolis: Local Initiatives in a Pluralist Political Context. The Minnesota legislature fairly regularly made revisions in its order maintenance provisions. A peak came in 1963 when the state revised its entire code. The pattern is somewhat different from that in other states where we found a growing volume of activity in the latest period. While the line plotting the number of changes is not flat, neither does it have an easily identifiable long-term trend. In fact, the peak and surrounding "valleys" may tell us more about the process of rewriting codes (no changes were made in the sessions immediately before and after the 1963 code revision) than about the crime policy agenda. Minnesota's place (fifth) among the other states in the study in terms of legislative output provides little support for the notion that one of the driving forces behind the state's activity was the relatively narrow scope of the existing provisions.

The Minneapolis city council shared some basic structural characteristics with the Atlanta council. It was comparatively large, with 26 members until 1964 when it was reduced in size to 13. Throughout the period members ran in local districts. Unlike Atlanta, however, the Minneapolis council has been the center, both in practice as well as by charter, of political decision-making. One of the consistent themes of Minneapolis politics has been an aversion to structures or practices that would centralize authority or responsibility (McPherson, 1980a). In formal structure the city has a weak-mayor system which describes its practice as well. Parties appeared to play a relatively minor part in local politics. Interest groups and localized constituent pressures have been particularly successful in Minneapolis, according to McPherson. In concluding that formal fragmentation has resulted in an emphasis on consensus-building, she notes, "Given the decentralized authority of the formal decision-making structure, the importance of interest groups, and the tendency toward non-partisanship, it is understandable that politicians are motivated to avoid conflict whenever possible" (McPherson, 1980a: 35). Thus Minneapolis appears to be a place where the formal structures summarize quite well the political realities. With these characteristics in mind we would expect that local constituent requests for relief as well as the policy recommendations from local groups might be relatively easily incorporated in the code.

Minneapolis, whose code was comparatively extensive in 1948, ranked second only to Atlanta in terms of the number of changes that were made. The city council in Minneapolis made 42 changes in the offenses we examined. In fact, Atlanta and Minneapolis stand out as exceptions to the general rule that revising the city code was a relatively rare event.

The two peaks of activity came in 1969 and 1977. In those years the city increased the maximum penalty for most types of ordinance violations. Such acts affected all of the offenses so that they appear as major revisions in terms of the volume (as distinguished from the substance) of activity.

Moving to a more speculative level, the volume of legal changes in the city code suggests that council was in fact as well as in form an active political center. The comparative ease with which Minneapolis changed its code suggests that the lack of a strong mayor and the diffusion of power among various groups did not per se make reaching decisions especially difficult. We should note that pluralism does not necessarily mean paralysis nor does it mean that consensus was not possible. In fact the frequent success of those wishing to change the code suggests that consensus among various groups could be developed without too great political costs.

3. Newark: Effects of Structural Changes on Local Legislative Responses to Crime. We have considered the volume of enactments as a function of political context since enactment activity points to the priority placed on making statutory or ordinance changes. We have seen several patterns of activity.

In some locales little attention was paid at either the city or state level (Philadelphia and Houston). In others there was considerable attention to both city and state codes (Atlanta and Minneapolis). We have found places where the state was the dominant source of change (Massachusetts); some where the local jurisdiction gave some impetus (Philadelphia and Minneapolis). Newark and New Jersey fall into the middle categories of both volume and locus of attention. In comparison with other jurisdictions in our study, the political context of the city and state put a moderate priority to changing the meaning and penalties associated with various offenses.

The state legislature revised the code quite often: New Jersey ranked third among the nine states in our study. The bulk of the attention was concentrated in three periods -- in the early 1950s, the late 1960s, and the late 1970s. The first and last peaks coincide with revisions of the entire code in 1951 and 1978. The three periods of high activity also coincide with periods of concern for particular crime problems:

drugs in the early 1950s, riots and disorder in the 1960s, and alternatives to the rehabilitative, discretionary model of sentencing in the late 1970s. These concerns will be developed in more detail later but suggest the periodic nature of crime policy-making. The frequency with which the state code was revised is also interesting in light of the fact that the New Jersey code in 1948 was already highly specified.

Newark has been confronted by as many, if not more, of the social and economic problems of post World War II as any large, old American city. During the period crime rose precipitously on the political and election agenda. Further, the 1967 riots show up as a watershed and as an example of the complex problems of maintaining public order in an urban setting.

The structure of Newark's local government was reorganized substantially in 1954, moving from a commission to a mayor-council form of government. At that time it expanded the size of its council from five to nine members, adding four at-large positions. These changes in formal structure affected the ways in which policy decisions were processed, with the centralization of responsibility in the mayor's office.

Within this context of changes in the formal structure, the commission, and then the council, made relatively few modifications in the local definitions of offenses. In the 31 years the legislative body adopted 15 revisions in the 11 categories of order maintenance offenses. The peak occurred in 1956 when the city adopted a new penalty provision affecting all the offenses. The concentration of activity in the 1950s occurred shortly after the two structural changes in city government were in place which were designed to facilitate local policy initiatives. In 1950 the state had set in motion the option of local control and in 1954 Newark voters, angered by political corruption, finally supported reformers who had been fighting to end Commission rule. In the 1954 election Newark adopted a mayor-city council form of government and elected Leo Carlin, a leader in the reform movement to the post of mayor (Guyot,1980).

A more modest peak occurred in 1967, the year of the riots. Preceding the riots by some months, the changes dealt with problems of public order -- crowd control. They removed from the police some of the sweeping discretion they had had to regulate the conduct of various social groups by removing status definitions of disorderly conduct. While the changes that were enacted may have been made possible by its new home rule power, the experience in Newark also suggests that those new mechanisms did not permanently change the local priorities on the utility of changing offense meanings. Moreover, traumatic as the Newark riots were, they did not stimulate a substantial number of enactments. Thus, at most, the structural changes may have produced some short term effects.

4. Boston: Tradition is Stronger than Rules. The Boston city council, which was one of the largest at the beginning of the period with 22 members, was reorganized in 1952. The council was reduced in size to 9 members, all elected at-large rather than by wards, as had been the case previously. Later in the period the state's constitution was amended to provide more extensive power to the cities to regulate their own affairs. As was mentioned earlier, the at-large elections were a thorn in the side of local politicians who felt that the lack of a neighborhood or community base for representation limited legislative effectiveness. Whether it was the type of representational base or the size of the territorial unit that was at issue is less significant at this point than the perception that the formal rules were constraining policy initiatives. In any event, Boston passed few changes in its code. In 31 years, just seven changes were made in the order maintenance provisions included in the study. Thus the formal rules, whether home rule authority, council size, or representational base, appear to make relatively little difference to the legislative responses to crime at the local level. Four changes were made in the 1950s, two in 1969, and one in 1975. Making changes was an extremely rare event.

While Boston made few changes, Massachusetts, for a more limited number of offenses, made a great many, far more than any other state in our study. Aside from the sheer volume of activity at the state level, the trend over time in volume is also notable. Whereas for most of the other states in our study the attentiveness to offense definitions increased in the latter part of the period, Massachusetts' interest in revising its code was a more on-going activity. At the beginning of the period the scope of the state's coverage was moderately extensive -- it ranked second in scope in 1948. On the theory that the volume of changes would be inversely related to the scope in 1948, Massachusetts provides a significant counter example. Local officials explained their relations with the state by noting that they were, until very recently, reasonably satified with their ability to achieve what they wanted in the state legislature. In an important caveat for developing major shifts in policy directions, it was noted, however, that it was considerably easier to block legislation deemed undesirable than to pass proposals that Boston might prefer. (Interview with former corporation counsel, 1980). Nevertheless, there has been sufficient consensus in the state regarding criminal law legislation to pass a large number of changes if not major innovations. Political traditions of state dominance are persuasive factors in explaining the minimal attention paid to code revision at the city level. As one former corporation counsel described the situation in Boston, enacting ordinances was grandstanding. The solution to crime was in enforcement, not in the availability of laws (Interview, 1980).

C. Conclusions

The review of the volume of enactments showed some general comparability to the trends in the reported crime problems. Beyond that, the adoption process included local catalysts in the form of unique incidents which helped define the problem. Further, the process needed a source of ideas for directions for reform. At both the city and state level the volume of enactments appeared to have more to do with the values about the efficacy of law reform, and less to do with the substance of the code, its stage of development, or the directions of change.

Some jurisdictions, both at the city and state level, used law reform frequently and others resorted to it rarely. Such attentiveness coincided in large part with crime issues as political agenda items and with structural characteristics which facilitated that responsiveness. There was some general support for the proposition that the organizational structure was an important explanatory factor in explaining local legislative responses. Nevertheless, the critical role of that amorphous but apparently powerful concept of political context or tradition comes through quite clearly as a mechanism for structuring expectations about the appropriateness or utility of law reform. At the individual level we speak of a sense of efficacy about law. At the level of policy makers there may be a similar predisposition about the uses of law.

Chapter V

CHANGING CONTENT OF LAW: CRIMINALIZATION

A. Introduction

In the preceding chapter we discussed legislative attentiveness to order maintenance issues in terms of the frequency with which code provisions were changed. A second perspective on attentiveness focuses on the consequences of that attention: the changing content of the codes. In the discussion of the general patterns across the states and cities one of the most consistent findings is that both cities and states have expanded the definitions of criminal behavior in the post war period. We will show the policy development in the aggregate and then give some specific examples of how state and city codes changed, illustrating the general patterns. Within the general trends we will discuss the changing dimensions of criminalization in light of the changing demands for action. Thus, there is variation in the extent to which the states took the lead in addressing these issues, as has been discussed in the chapter on the power to legislate. There is also variation with respect to the types of offenses being addressed -- different problems appear to have been handled differently within the context of the overall criminalization. In this chapter we describe the changing content in terms of different types of policy which depend in part on the demands for action, and the political costs of taking action. While the presentation does not reach a systematic analysis of the policy process, identifying the changing policy types is helpful in examining the conditions under which the legislatures take action.

B. Analytical Procedures

Our measure of the scope of an offense described the range of acts for which a person is liable for prosecution. For the analysis of changes in definitions we used a measure of criminalization which looks at the magnitude of the changes in each descriptor that was affected by an enactment. For example, removing all social status definitions of disorderly conduct may change the content of only one or two descriptors but amount to a significant decriminalization. Alternatively, the adoption of the Uniform Controlled Substances Act may affect a whole variety of descriptors but result in a small net criminalization compared to the definitions in effect at the time of adoption. The net criminalization score for each enactment in a given year was added together to produce an annual net change score for each offense category and then

across all the offenses in the study. These annual scores were then accumulated over time. In order to allow comparisons across cities and states we standardized the scores by the number of offenses examined at the state (6) and city (11) level. The resulting cumulative net change score traces the incremental effects of each change on the existing status of the definition. The additive assumption that is built into the cumulative net change score, following the procedures adopted by Berk, et al. (1977) is appropriate since each enactment affected provisions in effect at the time of the change. An enactment affects a time-based condition: it changes the definitions as they existed at a particular time, not some ideal condition nor some prior condition.

C. Validity Check of Criminalization Measure

Before addressing the trends in the data it is useful to compare the results of our study of order maintenance offenses with the trends that Berk, et al. (1977), found in their study of changes in the entire penal code in California from 1955 to 1971. The comparison allows a test of the validity of our data base by drawing on an independent source which examines similar phenomena. We used somewhat different procedures developed to address the different research needs of our comparative study. Nevertheless, the trend lines reported in their study and what we found show remarkable similarity once one takes into account the particular type of criminal law policy our study was addressing. They reported a marked increase in criminalization particularly for property and what they termed crimes against the public interest (e.g., disorderly conduct and firearms). On the other hand, they found a small increase in crimes against the person and almost no increase in victimless offenses (drugs, prostitution, public drunkenness, and the like). They noted that the minimal increase in this last category was due in large part to the decriminalization of drug addiction in the 1960s (1975: 183). For most other criminal law issues the early to mid 1960s were years of increasing criminalization. By 1971, the end of their study, major increases were being made less frequently but the incremental effects of the high volume of legislative activity continued to register increases in criminalization. Thus they found that the shape of the upward-moving line changed in 1967 so that after that time the slope increased at a slower rate.

The findings in our study of order maintenance offenses show a similar pattern for that period but add a first chapter (1948-1955) and a last chapter (1971-1978). Figure 5.1 shows the cumulative net change in criminalization per offense in the six order maintenance offenses tracked in our study of state codes. The trend line starts at zero in 1948, following the procdure used by Berk, et al. (1977: 141). The base at which it started is arbitrary for our purposes since our focus at

this point is on the incremental effects of changes themselves, not on some ideal or norm-based definition. The slope of the line for the changes would be similar regardless of the starting point. Nevertheless, we do have available a base from which to start the trend line. We know from the preceding chapter that California gave moderately comprehensive coverage to its code provisions in 1948, ranking in the middle (fourth) of the nine states at that time. The scope rankings in 1948 and 1978 are useful benchmarks to suggest some of the overall effects of the enactments on the specificity of the code. California's revisions, which were second only to Massachusetts in volume, expanded the variety of acts considered offenses. However, the same trend was occurring in other states as well so that California's position in 1978 relative to the other states remained essentially the same.

The unstandardized betas may be compared across the different periods as a way of assessing the direction and magnitude of the changes in content. Since the same variables are being used in each time period the unstandardized betas are appropriate as expressions of the annual increase in criminalization for a given period. The betas are useful in comparing the changes in city and state codes because the cumulative change index has been calculated in the same way for both sets of data. We cannot make direct comparisons between the slopes of our data and those reported in Berk's study since their criminalization index was not standardized by the number of offense categories in the California code. While their approach has the appeal of maintaining somewhat easier interpretability to the raw numbers, it runs into problems when offenses are moved out of the penal code entirely, as happened to most of the drug provisions in the California code in 1965. We standardized the number of offense categories in our study in order to be able to make comparisons across jurisdictions.

While the differences in index construction make direct comparisons impossible, the relative magnitude of the betas within each study provide at least a heuristic device for making comparisons. The slopes in cumulative net change in criminalization across the entire penal Code in Berk's study (1977) showed steady increases over time.

While there were exceptions in the 1960s, the net effect of enactments involving order maintenance offenses in California tended to expand the definitions so that more behavior was defined as criminal in the later period than in the earlier one. For example, the relatively narrow firearms regulations were extended to cover sawed-off shotguns, licensing requirements were expanded, a person could not let someone in his or her car with a concealable firearm, and disorderly conduct no longer contained lists of socially undesirable persons, although it added those who obstructed traffic.

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In this catalog of changes in coverage is evidence of several trends in legislative attentiveness to crime which will developed more systematically later. Our purpose at the moment is to establish the external validity of the procedures used to collect and code our data. Similar to Berk's findings, the trend among order maintenance offenses was to expand steadily the definitions of offenses. The periods when the rate of increase slowed or, as in 1965, stopped, were due to two areas which ran counter to the general pattern of increasing criminalization. First was the decriminalization of drug addiction and second, the decriminalization of other social statuses which had been included in the disorderly conduct provisions. The period of social turmoil in the 1960s shows up as a modest contrast to the earlier and later periods. During the ascendancy of the liberal forces in the state legislature, described by Berk, et al.(1977), the tendency was to decriminalize the status offenses and nuisance provisions. Vagrancy was removed, disorderly conduct was reduced from a broad catchall to cover only more immediate and active threats to the public order, and drug addiction as a status was decriminalized. Penal provisions were replaced by civil commitment proceedings for addicts and public drunks. These policy developments are reflected in the criminalization trend line in our data as well as Berk's. What the trend in the California data does not support, however, is the proposition that Donald Black (1976) has offered, that law will increase during periods of increased social complexity or differentiation . What we found was a decrease in the amount or scope of the law at a time of considerable social turmoil compared to earlier, and later, periods. We will return to this theme later.

By extending the line to 1978 we can see that the reduced enthusiasm for hard-line law and order policies, as Berk described them, was short-lived in California. Starting in 1971 the criminalization line moved sharply upward again. The rate of increase returned to the same pace as the early 1950s and early 1960s. The additional time points available in our study suggest that in California the concern with order maintenance issues, among which were the highly volatile issues of maintaining political order, increased markedly in the last portion of the period. The increases in the 1970s occurred after many of the other social control aspects of drugs and vagrancy had been removed under constitutional challenges. What appears in the 1970s is the sense that legislatures continued their interest in the deterrent effects of law as an instrument of maintaining the political, if not the social, order.

The California state code changes illustrate how the data are organized for analysis and establish a means of evaluating their external validity.

D. General Trends in Criminalization in States and Cities

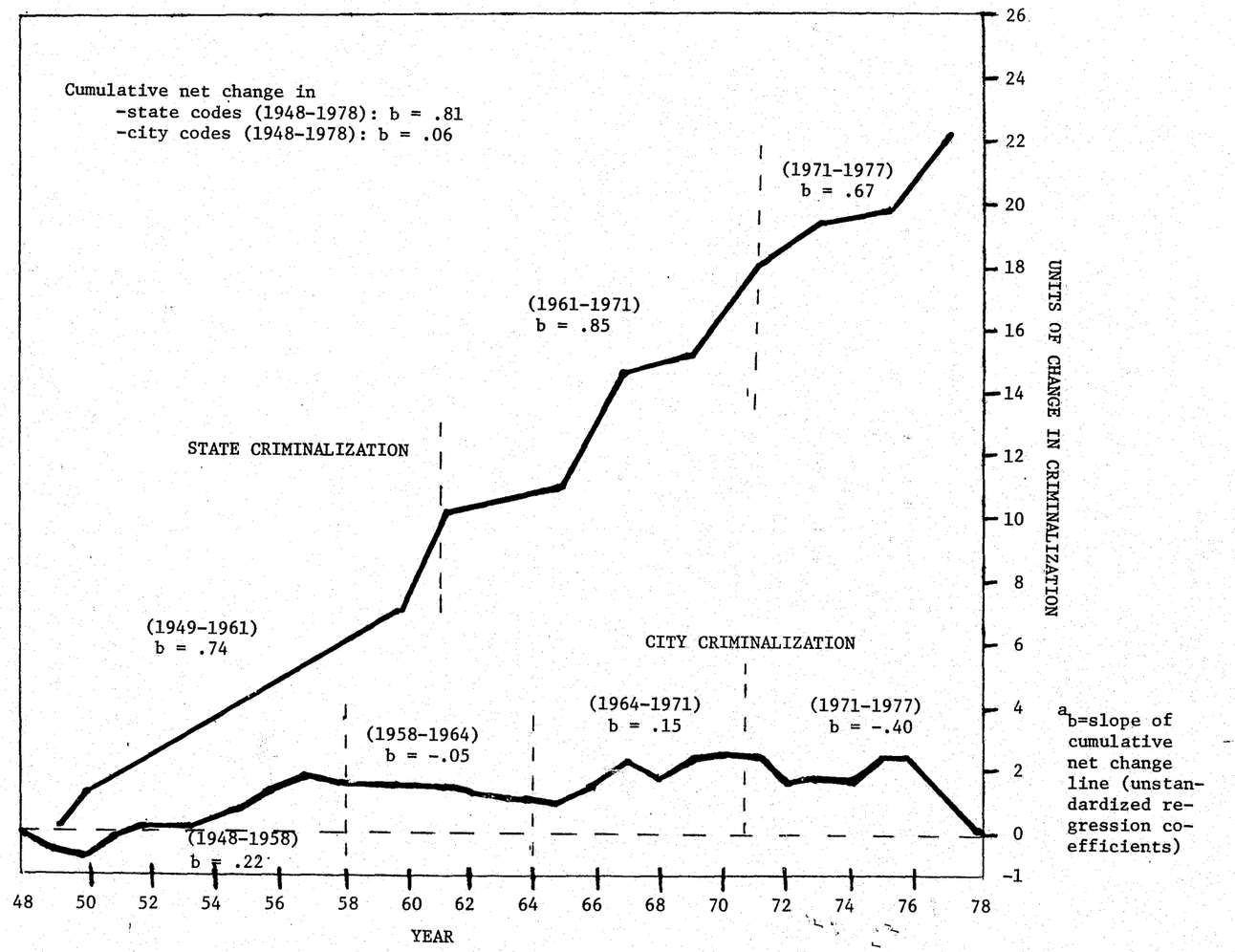
At the state level the overall trend of the changes was to criminalize. No state criminalized less in 1978 than it did in 1948. Given the concerns with mounting crime problems such a finding is not surprising. The pattern is presented in Figure 5.2. The steep slope of the lines points to the magnitude of the accumulated changes. Further, the line for criminalization was relatively smooth, showing a steady increase. The basic legislative response, according to our data, was to extend further and further the reach of the criminal sanctions. The trend line aggregated across the nine states in the current comparative study suggests that the legislative decisions at the state level most often consisted of adding new actions to the definitions of offenses. While constitutional challenges on vagueness grounds in several offenses were successful in removing some of the discretionary power of police, many legislatures enacted new provisions designed to salvage some control, particularly to meet challenges to the political order.

The criminalization line for the ten cities looks dramatically different from the line for the states. The line, instead of making a strong diagonal cut on the graph, shows a modest increase over time. Both the flatness and the year-to-year variation at the city level point to the importance of the content of formal rule constraints under which the cities operated. The widely different approaches to the issue of local control and the variation in the level of municipal effort tended to cancel each other out when aggregated.

The criminalization line for cities does not indicate in all cases inaction. Instead it points to the variation in local responses. The story of the changing content of order maintenance offenses is thus complicated by the variability in the relations between states and their cities. In order to give substance to the general patterns we will present some brief histories of trends in the content of city and state legislative policies. The selections illustrate several points that will be developed for further discussion. Pennsylvania and Indiana are good examples of the general trend to criminalize. The patterns in Texas and New Jersey, in contrast, show two different routes which resulted in minimal criminalization trends. Placed along side of the state descriptions are the changes at the city level. Included is an example of a city (Minneapolis) in which the city council took an active role in initiating changes in policy directions with the result that by 1978 the city code was one of the most comprehensive in the group. Philadelphia shows a different response pattern, largely explained by the state political context in which it operated. Houston and Phoenix show cities which made few policy initiatives. In the process of

FIGURE 5.2

CUMULATIVE NET CHANGE IN CRIMINALIZATION PER OFFENSE CATEGORY FOR CITY AND STATE CODES[a]



[a] b=slope of cumulative net change line (unstandardized regression coefficients)

describing the patterns in selected jurisdictions several issues about state and local legislative policy-making emerge.

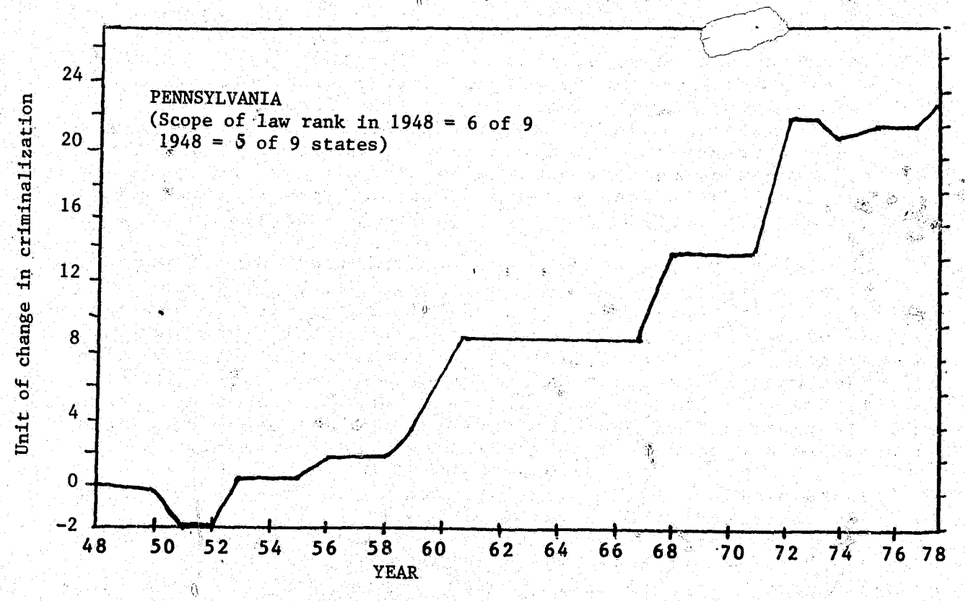
1. Pennsylvania: Criminalization as Legislative Policy. The cumulative effect of the state attention to legal changes in the public order offenses was consistently to criminalize behavior. Figure 5.3 shows few exceptions to the general direction of change.

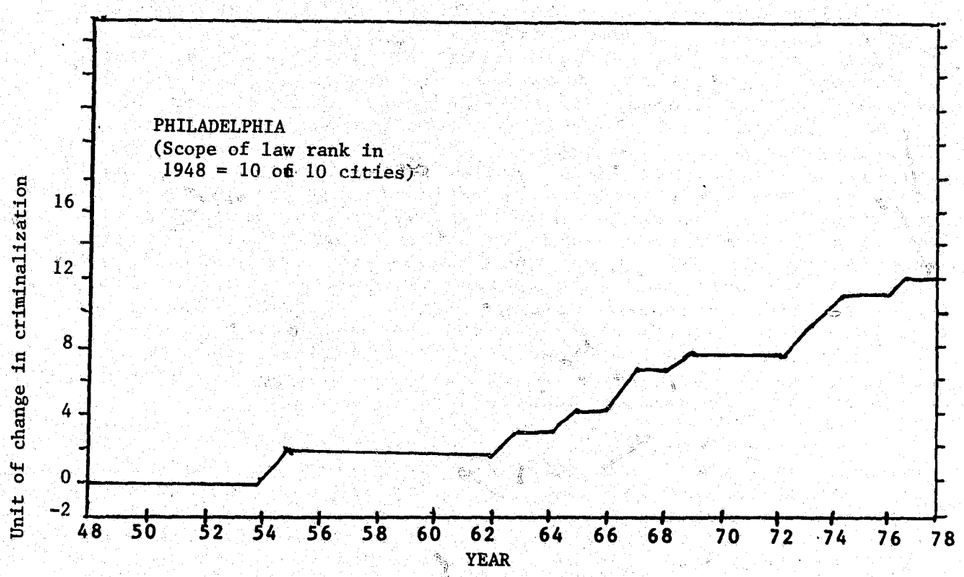
Consistent with the theme of the private ethic described by Baltzell (1979), in the early period in Pennsylvania, the combined state and local coverage of disorderly conduct was the least restrictive of any of our city/state combinations. However, the state coverage expanded considerably to include provisions for traffic control (1968) and dispersing disorderly groups (1972). The direction of the changes suggests that the state code's treatment of disorderly conduct changed to take into account the changing nature of the threats to the political order, such as demonstrations and marches. Associated with the turmoils of the late 1960s and early 1970s was thus an increased visibility in defining legitimate behavior. By 1978 the state's coverage of disorderly conduct was more extensive than any other state in the study. Further, of the three offense types (public order, morality, and public safety) the public order concerns were criminalized the most.

The story of code responses to morality offenses lies almost exclusively at the state level, although even there the issues did not generate much activity. The state had a quite comprehensive drug section of the criminal code at the beginning of the period. The only changes that were made had the effect of extending the coverage, although the state legislature was not particularly active during the period.

The efforts to control guns in Pennsylvania is in part a story of the politics of city-state relations. We have described in some detail in Chapter III the ways in which the formal powers of the city have been used to develop substantive policy choices. Pennsylvania's gun control provisions were generally modest throughout the period and the state eventually preempted efforts by Philadelphia to provide more stringent controls within the city. While the state made a variety of modest changes in its coverage during the period, the changes did not break significant new ground in gun control policy. Most of the provisions delegated to local authorities broad discretion by regulating the availability of guns through modest licensing procedures. In 1968 the state enacted some outright prohibitions, but, significantly, they were limited in their applicability to the largest city and to declarations of public emergencies. Those caveats are consistent with the earlier point about the priority that the state legislature put on addressing public order concerns. Nevertheless, making an allocative decision such as prohibiting carrying weapons even with those constraints marked something of a departure from

FIGURE 5.3
CUMULATIVE NET CHANGE IN CRIMINALIZATION IN ORDER MAINTENANCE OFFENSES IN PENNSYLVANIA AND PHILADELPHIA, 1948-1978





past delegations of discretion. The reference to urban emergency conditions in the enactment suggests that the consensus that existed in 1968 may have developed around the "crisis" conditions of those years. The temporary nature of that consensus was demonstrated by the subsequent adoption (1974) of a state preemption clause prohibiting more stringent local provisions. At the local level, the direction of changes in the Philadelphia code was consistent with that at the state level -- increasing criminalization. While the volume of changes was so low that to use the enactments as evidence of policy directions is presumptuous, those changes that were made when placed in a context suggest a set of priorities.

The city code included no definitions of disorderly conduct or vagrancy from 1948 to 1978. Only loitering was defined, first appearing in 1955 after the city gained some measure of home rule authority. The first version was minimal in scope. An interesting point about the Philadelphia ordinance was the explicit exemption of labor strikes in the definitions of loitering offenses. Unlike Phoenix, which explicitly proscribed such activity, Philadelphia protected labor-related demonstrations, picketing, and the like.

Subsequent revisions in 1963, 1973, and most importantly in 1974 expanded the coverage significantly. The 1974 revisions covered sit-ins and extended the prohibitions to private property, although labor activity was protected. The changes gave city officials broad authority to break up political demonstrations. The blockade of the Philadelphia Inquirer building by Mayor Rizzo's supporters in 1972 and the police arrests of Vietnam War protesters during a Nixon visit in October, 1972, are examples of the complex public order problems that were occurring in the city (Buffum and Sagi, 1980). Whether the loitering revision may be considered an effort by the Council to rein in what it viewed as Rizzo's political excesses or was a general statement of concern about the political disruptions of the period is beyond the scope of our inquiry. However, the revision, which was tantamount to a prohibition against certain forms of political protest, occurred at a time when such challenges were coming from a variety of sources. When faced with these disruptions, Philadelphia's response was to limit or narrow the methods available for protest. In contrast, when Boston was faced with such challenges in the late 1970s during the school desegregation controversies, it did not change its explicit protections of such demonstrations.

The picture that emerges in the analysis of the local and state attention to maintaining order is one of a consistent trend of criminalization. At the city level the attention distinguished between the economic and political threats. During the period, both city and state made explicit the importance of maintaining a stable political order. The efforts to regulate the availability of guns included at some

points concern with civil disorders, if not riots. Regulating guns was seen in part as a response to the problems of crowd control, rather than the rising crime rates.

2. Indiana: The Case for State Dominance. The changes in state law criminalized a wide variety of acts. Figure 5.4 shows the general trend. For example, in 1969 and particularly in 1973 the state added rather extensive licensing requirements to its firearms provision. Such additions are somewhat of a surprise in a rather conservative Republican state.

The description of disorderly conduct was changed several times to increase the coverage of obstructing traffic. In 1971 and 1976 the section was substantially rewritten to remove many of the more archaic forms and add some of the acts more directly applicable to problems of crowd control and outbreaks of violence.

The crime problem that received the most attention over the years among the offenses in our study was drugs. The legislature took various approaches to the issue including the prohibition of paraphernalia and a nuisance offense for covering apartment owners. In 1976 the state moved to decriminalize marijuana by providing for a conditional discharge of charges for a first time offender and by reducing possession of small amounts of the drug from a felony to a misdemeanor.

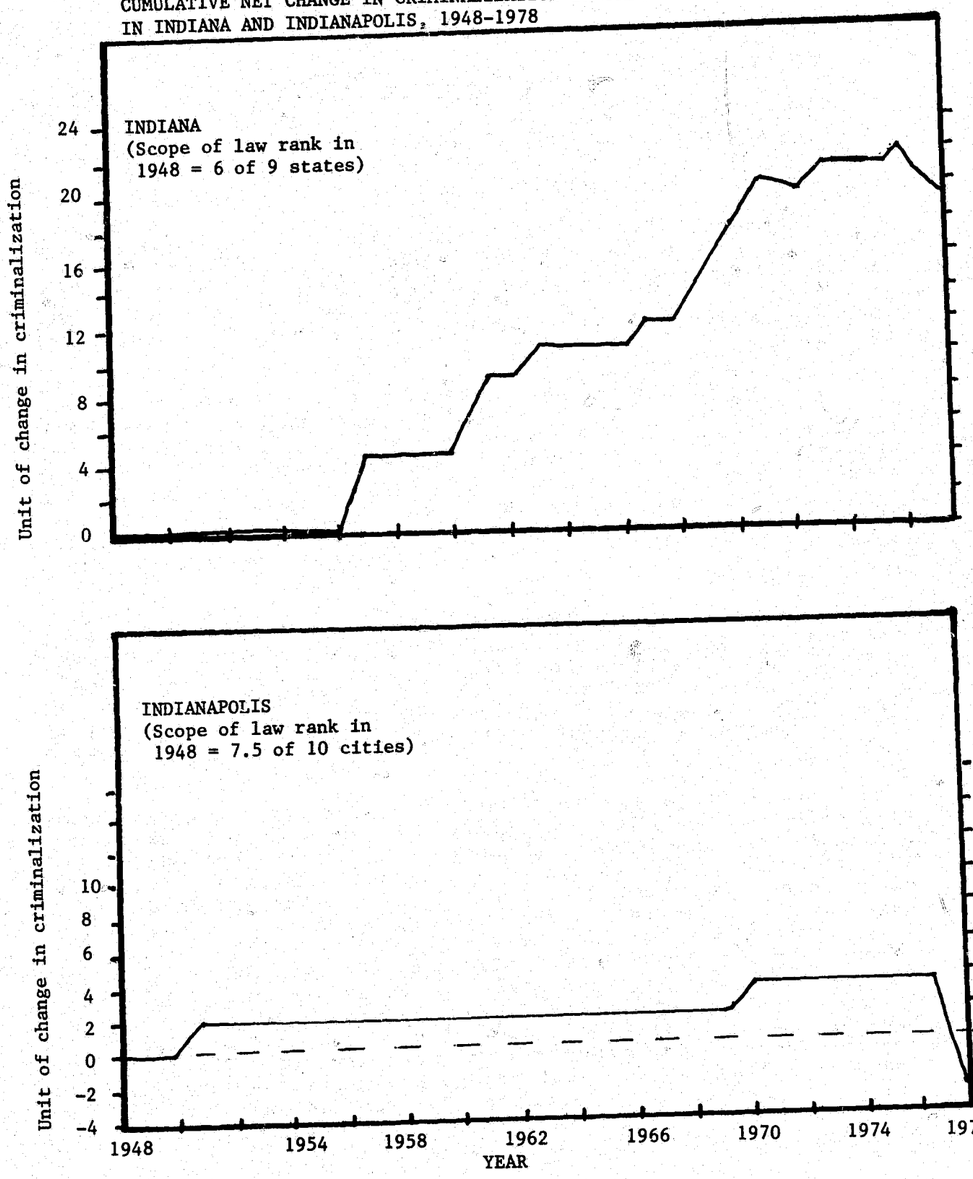
The state made its largest increases in criminalization during the middle period, from 1957 to 1969. After that time, although the frequency with which changes were made increased, the net change was more modest. The differentiation among offenses and, among different aspects of the offenses, account for the more modest net effects in definition in the most recent period.

The Indianapolis city council made few changes in its code from 1948 to 1978. The infrequency of the changes makes it difficult to argue that we are tapping the content of a major area of legislative concern. That is not to suggest that the city did not use its definitions of offenses to prosecute those engaged in offensive behavior. For example, the new police chief announced a "war on crime" early in 1948. Based on accounts of the period, crime at that time meant a) vice, particularly gambling, and nuisance behavior among juveniles and b) traffic violations (Pepinsky and Parnell, 1980). The Indianapolis police relied heavily on the city's disorderly conduct and gambling provisions to make arrests. The fact that the city council did not change the provision suggests that there were few benefits to be gained in Indianapolis at the time by making even a symbolic gesture which might reinforce the community norms already included.

Indianapolis was important to the study because of the

FIGURE 5.4

CUMULATIVE NET CHANGE IN CRIMINALIZATION IN ORDER MAINTENANCE OFFENSES IN INDIANA AND INDIANAPOLIS, 1948-1978



structural changes in the formal powers of the city that were introduced with Unigov and the revised home rule provisions. We had expected that the city might choose to move into the crime definition area in order to assert local preferences. As Figure 5.4 shows, such was not the case. By 1978 the city code was narrower in scope than it was in 1948. When the city adopted a new code in 1978, gun control and disorderly conduct had been largely eliminated as locally-defined offenses and loitering had been narrowed to some degree. Prostitution was expanded considerably in 1970 while a relatively extensive gambling section remained unchanged. The city's attention was thus directed more toward morality offenses than problems of public disorder or safety. The structural changes appear to have had little effect to date on the city's interest in making local initiatives. The state's own attention may have provided sufficient resources to make local attentiveness appear unnecessary. Further, the damper placed on the articulation of local preferences by the state court may well have had a chilling effect. In any event, the site of criminal law policy-making clearly remained at the state level, not at the city.

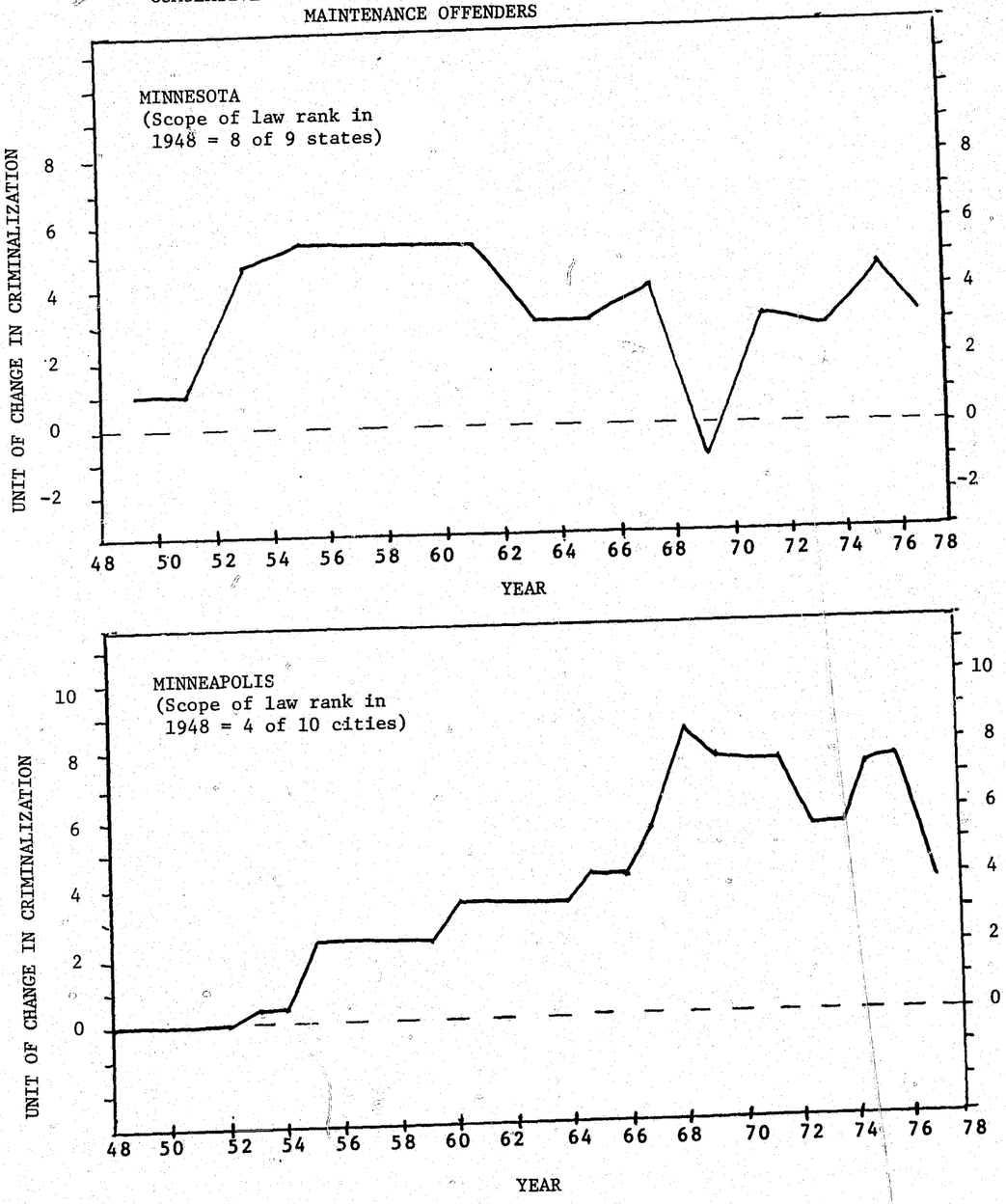
3. Minnesota: The Case for City Initiatives. While the coverage provided by the state code in 1948 was limited, the Minneapolis city code addressed a wide variety of issues in 1948. Of particular note was its attention to drugs. During the period of our study there were some discernible shifts in the direction of policy. As shown in Figure 5.5 from 1965 to 1968 there was a sharp increase in criminalization. Those increases may be explained by the introduction of various restraints on public disorder starting with the introduction of a loitering ordinance in 1965. Loitering and disorderly conduct were criminalized in 1967 and 1968. Prior to that the city addressed such problems of public disorder as crowd control in various sections covering disorderly conduct. According to the state legislative committee's report in 1963, which described the rationale and history of the state's revised code of 1963, the definition of disorderly conduct had, until that time, been largely a matter for local control (Advisory Committee Report, 1963).

The timing and direction of the changes in the public disorder offenses occurred at a time when such matters were of some local concern. Minneapolis' version of racial disorders occurred in 1966 and 1967. While not of the same magnitude as those in Detroit or Newark, the riots had visible effects, at least on the politics of the city (McPherson, 1980a). The mayor at the time took considerable flak because he was out of town when the riot began in 1966.

The second episode, in 1967, has further relevance for our study in that the precipitating event was a white tavern owner's killing a black patron with a handgun (McPherson, 1980a). According to reports at the time the owner had been in

FIGURE 5.5

CUMULATIVE NET CHANGE IN CRIMINALIZATION OF ORDER MAINTENANCE OFFENDERS



trouble before for using his gun without good reason. The following year the city council adopted a relatively stringent firearm registration ordinance. The city's action came seven years before the Minnesota legislature passed its own more lenient provision. It was the local unit which took the initiative in the matter. Again, in 1974 the city adopted provisions prohibiting the sale of "Saturday night specials" -- a year before the state acted. Finally, in 1976, the state ratified Minneapolis' right to take the initiative in developing a more stringent policy than was in effect for the state as a whole.

On one level the actions at the local and state levels amount to an ackowledgement of the different political realities (and crime problems) in the urban areas in a largely rural state. Further, they suggest that in Minnesota the meaning of local control of municipal affairs is rather more tolerant of local policy initiatives than, say, Pennsylvania or perhaps Massachusetts where local efforts, to the extent that they have been made, were rebuffed. The ability of the city to adopt policy changes which responded rather directly to local crime problems suggests, among other things, the salience of these issues on the political agenda. It seems not coincidental that a former police lieutenant, Charles Stenvig, was able to parlay the "law and order" issue into a mayoral victory in 1969.

The city was not always the initiator of changes. For example, the decriminalizations that show up in Figure 5.5 in 1972 and 1976 occurred when the city dropped its public drunkenness, vagrancy, and marijuana provisions entirely. The action on marijuana in particular is interesting as it expands our understanding of local-state relations. The action came the same year that the state enacted a preemption provision prohibiting local enactment or enforcement of more restrictive drug ordinances. At the same time the state decriminalized possession of small amounts of marijuana by making it a petty misdemeanor with a maximum penalty of a 100 dollar fine: less than Minneapolis' penalty structure for ordinance violations. In this situation, as contrasted to the gun control issue, the state took the initiative and ensured a state-wide policy.

The contrasting positions taken on different policy issues by the Minnesota legislature regarding the appropriateness of local options sheds some light on the complexities of intergovernmental relations. The issue of preemption appears as a matter that is policy-specific. Further, we can see in Minnesota that while the city may exist as merely "the creature of the state," the city may also serve as the source of policies that are subsequently adopted by the state.

Our discussion of the content of local policy has suggested that the city, like the state in general, took a relatively moderate approach in the regulation of public order.

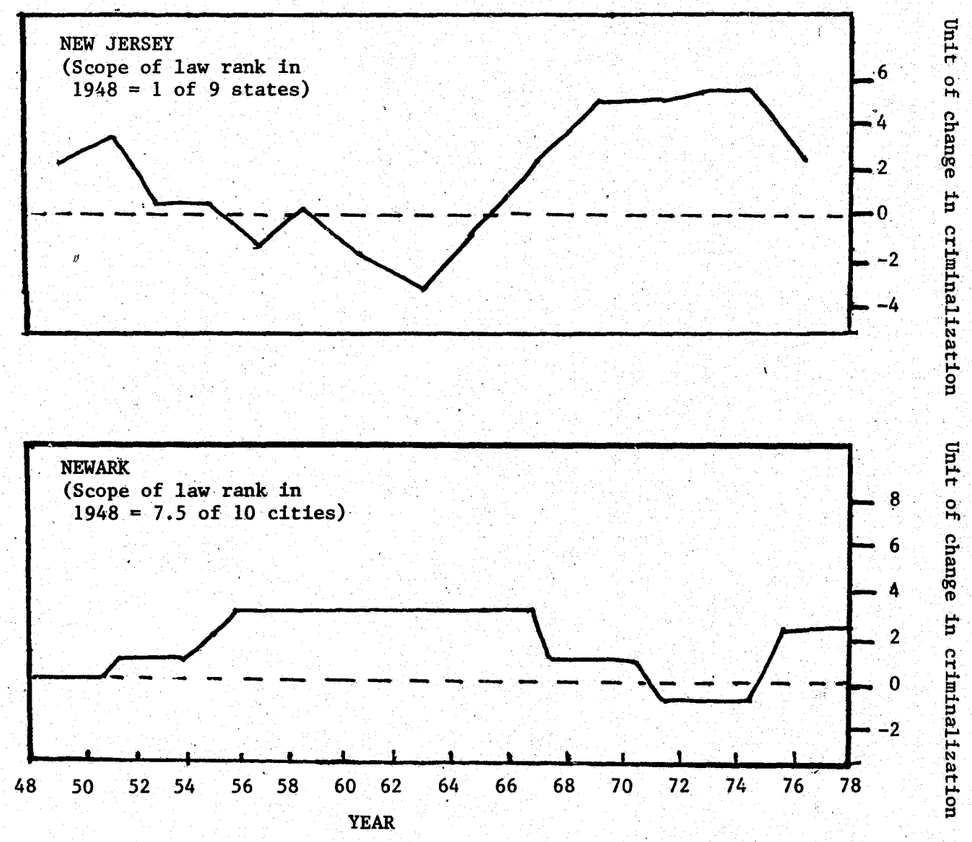
It is interesting, therefore, to look at one more area, that of private morality, specifically gambling, homosexuality, and prostitution, because these issues recently generated considerable local political controversy involving the city's zoning code (McPherson, 1980b). The mayor, the police department and the city council were all involved. The issue was raised in the context of ensuring the city's reputation as a "clean," "upright" city. While the matter was not resolved until 1979, after the study period, it is instructive regarding the complexities of local policy-making. Our study included tracking definitions of prostitution itself. We found that Minneapolis' code included a modest provision about prostitution which received scant attention during the period of our study. The definitions were revised twice in 1974 with only minimal effect, hardly evidence of a long-standing concern or of a plan for a major policy reorientation. Thus, these aspects of private morality did not receive much attention in the city code. The morality issues in 1979 may be an aberration in terms of the general policy direction but is consistent with our observation about the responsiveness of the local authorities to matters of current concern. To summarize, based on the large number of enactments that were adopted, it was relatively "easy" to make such changes. As our analysis of the local state relations has shown, the state has generally supported the city's right to take the initiatives. And the city has exercised that right. Further, the actions that have been taken have not been strictly minor "clean-up" operations. The leadership in gun control initiatives is particularly interesting in that context. Perhaps it is the social homogeneity and liberal traditions rather than the structural characteristics that explain the frequency and direction of Minneapolis concerns.

4. New Jersey: A Complex Set of Policy Priorities. At the state level the cumulative effect of the changes in substance and penalties resulted in an uneven line within which some developmental trends may be identified, as shown in Figure 5.6. Up to 1952, there was a modest trend toward criminalization and increased penalty severity. From 1953 to 1965, most of the changes decriminalized behavior. Then, from 1966 to 1970, the slope of the line changed, showing a criminalization trend. After 1970, the line leveled off until 1977 when the state again decriminalized some offenses in the process of a major code revision.

As an example of the changing policy initiatives, in 1948 the state added to the disorderly conduct provision those who were "common drug addicts"--those who "habitually use narcotic drugs" (Sect. 2: 202-3). In 1952 the state made another effort to control drug traffic with a provision requiring registration with the police of all those convicted of drug offenses Failure to do so was a violation of the disorderly

FIGURE 5.6

CUMULATIVE NET CHANGE IN CRIMINALIZATION IN ORDER MAINTENANCE OFFENSES IN NEW JERSEY AND NEWARK, 1948-1978



persons section. Making drug use an offense was part of a highly visible campaign to combat drug traffic in New Jersey (Guyot, 1980). The drug use and registration offenses were dropped twenty years later, in 1971. In 1970 the state moved to a partial decriminalization of drugs by providing for pretrial diversion for first offenders.

During the decriminalization period of the late 1950s and early 1960s, the state changed its modest gun control provisions to increase the number of people who were exempt from the licensing provisions for purchasing and carrying handguns. However, in 1966 (two years before the Federal Firearms Act) the firearms sections were overhauled. The changes made it somewhat more difficult to purchase and carry firearms. The changes expanded the licensing requirements to cover carrying, not just concealed weapons, but also those "in [a person's possession] or under his control in any public place or public area." (2A: 151-41). Further, rifles and shotguns were added to the carrying regulations which had previously referred only to handguns (pistols and revolvers). The effect was to make it more cumbersome to obtain the necessary permits, licenses and identifications to purchase or carry guns, although it did not address their availability.

The net effects the Newark's code revisions form a rough mirror image of the changes at the state level. While in the early period New Jersey tended to decriminalize, Newark added to its list of offenses (see Figure 5.6). The disorderly conduct provisions were expanded three times in the early period to cover various kinds of lewd behavior.

After the revisions in the mid 1950s, the city council next changed the code in February, 1967, five months before the Newark riots. While we had hypothesized an increased effort to control disorder with the criminalization of the various challenges to the government--failure to disperse, unruly crowds, and marches--the changes went in the opposite direction. The changes decriminalized some aspects of disorderly conduct, loitering, and public drunkenness. Prior to the 1967 change, for example, people could be arrested for an ordinance violation if, while in a group, they refused to move on in response to a police request to disperse. In 1967 the section was revised so that only the leader -- the person who "caused a crowd to collect" could be arrested and even then the crowd and its leaders were protected if the leaders were lawfully addressing the crowd (17:2-16 (b)). The enactments in February do not seem to have been the result of any immediate local disruptions preceding the July riots, although the issues surrounding charges of police brutality make a long and complex story covering much of the 1960s (Guyot, 1980). Certainly the changes had the effect of reducing police authority to break up gatherings with mass arrests. Since the state had removed much of its crowd control authority in 1951, by 1967 the effect was to reduce the authority of police to use arrests as a mechanism

for controlling crowds, as such. Police could still arrest for an ordinance violation anyone committing such overt acts as fighting, using loud or threatening language or behaving in a threatening or disorderly manner. However, using mass arrests to break up a demonstration would be difficult. Further, nothing was done in the city code to extend the rather limited firearms provision.

The decriminalization trend of the late 1960s continued with a significant decriminalization in the disorderly conduct provision in 1971. In 1970 and 1971 the state was revising its own section with a net decriminalization. While for the broad category of disorderly persons the city and state moved in the same direction, a comparison of the net effects of the changes for all offenses combined shows that from 1966 until 1970, the state was criminalizing, while the city was doing the opposite. From 1971 to 1978, the direction at the state level was volatile, while the city made a significant expansion in both loitering and public drunkenness, The policy content at the two levels followed different patterns in each period.

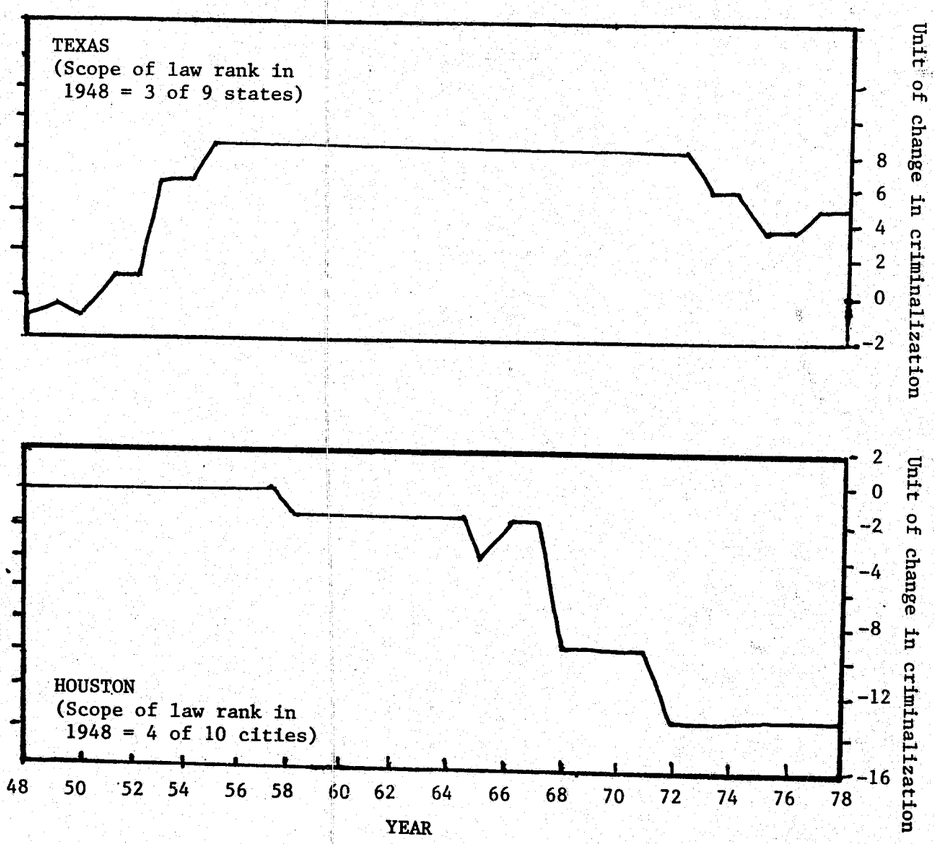
5. Texas: Bucking the Trend. The patterns of changing definitions in the state code look quite different from those in other states in our study. Figure 5.7, which traces the cumulative net change in criminalization, shows a moderate increase in the early to mid 1950s and then, after a 20-year pause, a modest decriminalization. The result, by 1978, was an overall increase in the two indices, although the magnitude was smaller than in many states. Also, Texas is unlike other jurisdictions in the shape of the lines. Elsewhere we have seen variants on a straight-line increase over time. Here we have what might be described as a table-top shape, showing decreases at the end of the period. In broad outline, then, Texas appears not to have moved in the same directions as other states in the nationalization of responses.

At the state level the legislature rarely sought to redefine offensive behavior from 1948 to 1978. In other states the trend, by and large, was to pass numerous laws designed to deter such behavior and to punish more severely or, at least, more certainly, those who had been convicted. Texas, however, tended not to use law reform.

Houston, made few changes in its city code from 1948 to 1978. The basic response by the city council was to decriminalize. The status of home rule in Houston was such that the city could have taken action in at least some of the areas we examined, if it had wished to do so. In 1968 when the city adopted a new code, three offenses were dropped entirely: vagrancy, firearms, and weapons. Much of the activity in Houston amounted to deleting archaic forms. In the process, the city did not substitute alternative, contemporary

FIGURE 5.7

CUMULATIVE NET CHANGE IN CRIMINALIZATION IN ORDER MAINTENANCE OFFENSES IN TEXAS AND HOUSTON, 1948-1978



formulations. notion of private, largely unregulated jurisdictions.

D. Directions of Change

Embedded in these general trends, we found considerable variation among the states in the magnitude of their concerns. Table 5.1 gives the net effect of the changes accumulated from 1948 to 1978 in the criminalization index for each set of state and city code changes. Georgia and Pennsylvania made the most significant increases in criminalization, while New Jersey and Minnesota made the smallest. In the city descriptions we identified many of the developments which are incorporated in the cumulative score. In some cases there was an almost linear increase in criminalization with few deviations. Massachusetts and Georgia are good examples of such consistent and steep increases. A further point to be made is the incremental nature of those changes. Thus the slope of the line moved upward at a steady pace with few step-level changes that might denote major policy shifts.

At the opposite end of the criminalization index was New Jersey. In the early period, as the state legislature tried to control drug traffic we found a net criminalization. After a lull in the late 1950s and early 1960s the trend was to criminalize behavior. However, in the mid 1970s we found revisions which decriminalized some drug provisions, partly mandated by court decisions. Some changes suggested shifts in legislative preferences. Although the net effect in New Jersey was a very small criminalization, the path by which that score was achieved was a circuitous one reflecting changing patterns of responses and changing perceptions of the nature of crime problems.

The patterns that we found in New Jersey are ones that we found in several of the states: criminalization in the early 1950s due to concerns about drugs and weapons; criminalization in the latter half of the 1960s, particularly of disorderly conduct and gun control; and a levelling off or variability in the 1970s. In the 1970s several states showed considerable variability in the direction of the substantive changes. In the more detailed descriptions we found that the variability was due to differentiation in the definitions of the dimensions of crime problems. Thus what appeared as minimal net changes were often due to different directions in the policy responses to various crime issues. At the local level the criminalization scores showed similarly varied results. Half of the cities had an absolute decrease in the criminalization score. They were the same cities that showed a net decrease in the scope of the offenses by the end of the period. City codes declined in scope due in some degree to changes in local

TABLE 5.1

CUMULATIVE NET CHANGE IN CRIMINALIZATION STANDARDIZED BY OFFENSE FOR ORDER MAINTENANCE OFFENSES IN STATE AND CITY CODES

JURISDICTION	CITY score(rank)	STATE score(rank)
Atlanta	-.59(9)	4.45(1)
Phoenix	-.21(6)	3.22(5)
Minneapolis	.35(4)	.55(8)
Houston	-1.24(10)	.82(7)
Oakland	.90(2)	2.80(6)
San Jose	-.57(8)	
Indianapolis	-.42(7)	3.23(4)
Newark	.21(5)	.18(9)
Boston	.75(3)	3.47(3)
Philadelphia	1.09(1)	3.85(2)
Jurisdictional mean	.04	2.51

authority to regulate. The concomitant decriminalization suggests that the city authorities took their own steps to narrow the issues of local concern.

1. Patterns of Criminalization. The preceding histories show some significant developments in legislative efforts to control the public order. The timing of the changes in policy directions was often a function of factors peculiar to individual jurisdictions. Nevertheless, the 1960s was a time of major increases in criminalization in many of the jurisdictions. The content of that criminalization took many forms. Often it was the result of a series of minor revisions which, when viewed cumulatively, added up to a rather clear cut set of allocative decisions. For example, at the same time that legislatures were removing archaic forms from disorderly conduct, loitering, and vagrancy sections to meet constitutional vagueness tests they were adding provisions that gave police the authority to meet challenges in the streets. Police discretion to remove social undesirables was reduced, but the legislatures were careful to maintain police authority to arrest those who obstructed traffic, prevented others from working, caused public disruptions, and the like. The content of the new provisions suggests that these were matters of continued concern to both state and local bodies.

The political challenges of the civil disorders of the 1960s and 1970s were often met with legislatively defined prohibitions against certain kinds of offensive behavior. Such a pattern is not surprising in a study which is looking at offenses for which there is a penal sanction. However, since other pertinent sections of the code maintained the power of the state to punish assault, arson, and the like, the legislative decision in many jurisdictions to reassert strong prohibitions against disorderly conduct and often, to extend its applicability to civil disorders, is noteworthy.

In contrast to the legislative eagerness at both the city and state level to prohibit public disruptions, the area of gun control has been treated more gently with primarily regulatory provisions. Many state legislatures restricted to a greater (although often to a lesser) degree, access to guns. The restrictions often amounted to a delegation of authority to municipal agencies to regulate gun availability through licensing and registration provisions. Less frequently the states imposed prohibitions. Two examples of such allocative policies, prohibitions against seller advertising and carrying Saturday night special handguns have been instituted in some states. However, most often such provisions have appeared at the municipal level. While the availability of guns is a regional or national issue, several initiatives have been made at the municipal level. These local efforts often occurred in the context of minimal state regulation. Sometimes the local effort was subsequently extended to the state level, as in Minnesota. In other places the local initiatives were turned

back by state legislatures or state courts. Massachusetts and New Jersey are counter examples. Both reversed a trend toward decriminalization of gun offenses with a series of criminalizations which were the product of a mix of regulatory and allocative policy decisions starting in the mid 1960s.

The gun control issue is one of the most controversial in the study. Surrounding it are probably more and better organized interest groups than any other in the study. The power of the National Rifle Association to prevent passage of restrictions on gun availability is legendary (Kates, 1979). As an indication of the difficulty the issue posed for state legislatures, the mean cumulative change in criminalization for public safety provisions per state was an increase in less than two units of criminalization. For public order and morality provisions the figures were almost three units of increase. Table 5.2 presents the cumulative net change in criminalization by offense category. While the raw numbers are not easily interpretable, the comparison among the issue areas suggests that legislatures found it much easier to add prohibitions in some areas than others. The greater controversy surrounding gun control policy make it less likely that state legislatures will make the politically more costly decision to allocate benefits (or sanctions) directly. Instead the decisions are more likely to seek accomodation with the different interests, often by delegating the decision to other agencies through regulatory provisions.

The decriminalization of possessing small amounts of marijuana involved changes in penalty provisions in large part and will be discussed in more detail in the next chapter. In the context of a discussion of the importance of the interest group representation in the legislature, it is interesting to note that the move to decriminalize drugs started in recent years with the removal of the status definitions of drug addiction, starting in the early 1960s. California's move to decriminalize began in 1961 (pressaging the US Supreme Court decision in Robinson v. California which was handed down in 1963). Subsequent changes served to differentiate various aspects of the availability of drugs. In many states the reduction or removal of criminal sanctions covering small amounts of marijuana occurred at the same time that more stringent controls were being enacted on other kinds of drugs and on the distribution of all drugs.

The move to decriminalize marijuana represented a significant change in drug policy and had its origins to some degree in the structure of the demands from politically active groups for action. The powerful federal drug agencies in the 1930s were able to institute extensive provisions with often harsh penalties. At that time groups representing the user community were non-existent. Howard Becker's (1962) study of marijuana legislation in the state and federal level shows that users were not represented in the legislative process at that

TABLE 5.2

CUMULATIVE NET CHANGE IN CRIMINALIZATION FOR THREE OFFENSE TYPES FROM 1948-1978 IN STATE CODES

	PUBLIC ORDER	MORALITY	PUBLIC SAFETY
GEORGIA	6.83	6.06	1.87
ARIZONA	2.00	6.22	-1.15
CALIFORNIA	1.03	1.02	5.01
INDIANA	2.28	5.03	1.40
MASSACHUSETTS	.80	4.10	3.88
MINNESOTA	2.50	.63	- .23
NEW JERSEY	5.7	-3.00	1.30
PENNSYLVANIA	6.3	2.93	3.45
TEXAS	-1.83	2.10	.65
STATE MEAN	2.84	2.79	1.80

Public order:
Disorderly Conduct

Morality:
Narcotics
Heroin
Marijuana

Public Safety:
Firearms
Weapons

time and the laws that were enacted provided no benefits (or protections) for them. By the mid-1970s the issue of drug use was viewed as a much more complex problem. The growing social acceptance of marijuana use and the formation of interest groups like the National Organization to Reform Marijuana Laws (NORML) to represent user views in the legislative process made it likely that policy benefits would be spread more widely. There were indeed gains for users in the adoption of various diversionary options. Those gains occurred at the same time that other prohibitive provisions were being enacted -- giving benefits to the groups representing law enforcement authorities.

At a more abstract level, another point to be made about the patterns of criminalization was the reliance, particularly from 1961 to 1971, on the power of enactments to deter. Many of the legislatures placed considerable store in the importance of redefining offenses as a mechanism for solving problems. Compared to making revisions in penalty scales for an entire penal code (a solution that will be discussed in the next chapter), legislative revisions in offense definitions is a more narrow or targeted approach. Thus, a particular provision for a particular offense must be identified, and alternative content provided. The legislative drafter must address the complexities of "the crime problem" with a response that is contained within the confines of a statutory provision.

Addressing the content of offense provisions suggest the adoption of an analytical model of decision-making style. That is, a problem is identified, a solution is tailored to fit that problem, and finally, an enactment is introduced. The exercise is the least costly when addressing a problem that can be rather narrowly defined. The more intransigent the problem, the more difficult both politically and technically to devise solutions. The reduced rate of criminalization legislation across all offenses in the 1970s suggests that the legislatures may have begun to rely somewhat less on such solutions in the latter years of the period.

An additional point to be considered is the importance placed on the power of an authoritative statement (i.e., a legislative enactment) to change citizen behavior. This reliance, or, perhaps, faith in the state's ability to control offensive conduct by such statements raises some difficult questions about the nature of the relationship between citizen and government. It assumes that the changes are publicized so that all members of the community may be informed about the rule change. One does not need to use a conspiracy theory of government to suggest that the authoritative statements are made public only in a very technical sense. Since most such rule changes are discussed in a cursory fashion if at all in the public press, the proposition that an enactment will modify citizen behavior requires considerably more specification. In a provocative essay about the development of case law in

England, McBarnett (1981) argues that the largely prosecutor-oriented decisions in English courts constitute a rule-making process that is in fact closed and secretive because there are few mechanisms for giving notice of the proceedings or the decisions themselves. An analysis of the legislative process in the United States could be used to make a similar point. The lack of visibility on all but the most controversial of bills has been described in some detail in studies of state legislatures (Heinz, et al., 1969; Steiner and Gove, 1960).

As a sidelight to this question of citizen notice, it is relevant to consider the press coverage of legislative crime policy. The Governmental Responses to Crime Project included an extensive study of newspaper attentiveness to crime (Swank, Jacob, and Moran, 1982). The number of crime-related articles on the front page and letters to the editor and editorial pages were counted and coded for a random sample of dates from 1948 to 1978 in nine of the ten cities in the study. The findings in that study were striking but predictable evidence that newspapers rarely wrote about legislative policy on crime. Berk, et al.(1977), found relatively little attention in the California press that would inform the public about the activities in the California legislature regarding changes in the law.

At the formal level, then, one function of the definitional changes is symbolic. The process of enacting a substantive provision constitutes an effort to validate the power of law to structure citizen behavior. Particularly those provisions which are in the form of prohibitions depend to some degree on that assumption. Of course, the second assumption involved in the prohibitions involves the more concrete power to punish. This power will be discussed in more detail in the next chapter but ultimately it underlies the symbolic function. The communication process by which the enactment becomes known includes the enforcement authority. Thus, the police who make arrests under the new provisions communicate what the applicable standards of conduct are.

Chapter VI

PENALTY SEVERITY: THE CHANGING LOCATION OF SENTENCING DISCRETION

A. Introduction

State legislatures frequently decided to define more acts as offenses especially during the 1960s. Many states addressed order maintenance problems by extending the purview of the criminal law. The preceding chapter addressed the changing dimensions of that policy. Depending on the nature of the issue and its visibility, legislatures showed a tendency to endorse more allocative policies, taking upon themselves the responsibility to define standards of conduct. For the issues that generated the most controversy (e.g., gun control), legislatures tended to delegate to other agencies the power to regulate conduct or else to extend more broadly the benefits and sanctions of the law. Most cities were as active as the powers delegated to them permitted in defining local offenses. In some jurisdictions the city took the initiative, enacting more stringent provisions than the state. This occurred most often in the politically sensitive area of gun control. Both cities and states sought to protect the public order by defining as offenses mass protests and other forms of disruptive conduct. The ability of legislatures to pass such restrictions points to the lack of organized opposition to such policies, a situation that varied considerably across different types of crime-related issues.

In the present chapter the attention turns from the definitions of offenses to their penalty provisions. Three issues surrounding the power to punish are of particular interest. The first is the direction of change: what patterns of penalty severity emerge? In studying state penal provisions one is examining decisions with potentially significant consequences for corrections policy in the treatment of offenders. Even order maintenance offenses, which are the focus of the study, included some significant penalties. Many states at one time or another provided for life imprisonment or upwards of thirty years for the more serious drug violations. At one level, the severity of the punishment specified in the code constitutes an authoritative statement about the seriousness of the offense. Thus it is a description of the behavior of law (Black, 1976). Changes in penalty severity may be interpreted as indications of changing levels of public concern with the offenses as community problems.

The second issue is the relationship between the power to

punish and the power to define offenses. We examine the trends in both to see if there are identifiable patterns in the choice of one or the other legislative response.

The third dimension of penalty policy to be considered is the locus of sentencing decision making. One of the major changes in criminal law policy has been the issue of who (or what agency of government) makes such decisions. While the trial court judge and jailer may determine the length of time an individual offender will serve, the degree of discretion available to each in making that decision constitutes an important issue in sentencing policy. The legislative role in that process, as will be discussed, shows some significant changes during the period of the study which have the potential for major impact on the sentencing process and responsibility for setting crime policy.

B. Procedures

There are a number of ways in which penalty provisions may be worded. The general form prescribes that, "upon conviction, a person may be punished by ...". and then states various options. They are usually in the form of ranges in the length of imprisonment and/or fines that may be imposed. Each component of an offense category may have its own penalty. As an example, drug sellers are usually liable for much more serious penalties than users. Also, the range within which the sentencer may select the particular sentence may be very great (zero to 40 years) or very narrow (five years, plus or minus two). Changes may affect only the lower or upper limit of one part of the penalty for one part of an offense or it may restructure the penalties for a broad category of offenses if not the entire penal code. Thus the permutations of penalty changes are almost as great as those for definitional changes although the issues involved (time to be served or money to be paid) may be more easily quantified. Until recently penalty changes have been offense-specific so that one could not study legislative sentencing policy without considering the offense to which it was applied. The datum that we were interested in for the study of penalty changes was whether the net changes in the enactment were intended increases or decreases in penalty severity.

The attention in this study is not on the implementation (e.g., the effect of the change on the average length of sentence) but the intended effect, relative to the existing provisions. Increases in either the length of the maximum or the minimum as specified in the code would be scored as increased severity. Decreasing judicial and administrative discretion by setting out the criteria for deviations from guidelines or by decreasing the range in provisions available were scored as increases in severity. Again, the focus was not

on the impact on sentencing practices but on the consequences intended in the legislative statement.

Penalty severity scores were treated in the same way as criminalization scores, described in the Technical Appendix of this volume. Annual scores were created by adding together all of the scores for a given year. The annual net severity scores were then divided by the number of offenses (six) in the study in order to standardize for comparative purposes. The standardized annual net changes were then added together to produce a cumulative net change score. As with the criminalization scores the additive assumption is made as an approximation of the revision process.

The presentation will start with a discussion of general patterns in penalty severity over time. Examples from the nine states will be used to show how the general patterns are constituted. The presentation focuses on changes in the state codes. In the city codes the range in penalty options is generally so limited by state provisions that the changes provided relatively little insight into the policy process. Atlanta was the only city of the ten which made a significant number of changes in the penalty provisions independent of changes in definition. Even there, the most severe sentence option was six months in jail. The major point of discretion for city councils is not the penalty policy but the power to define offenses. Thus the important issue at the city level is the threshold one of whether or not the city gives local definitions of offensive behavior. As a result, in this chapter the focus is on changes in the state codes.

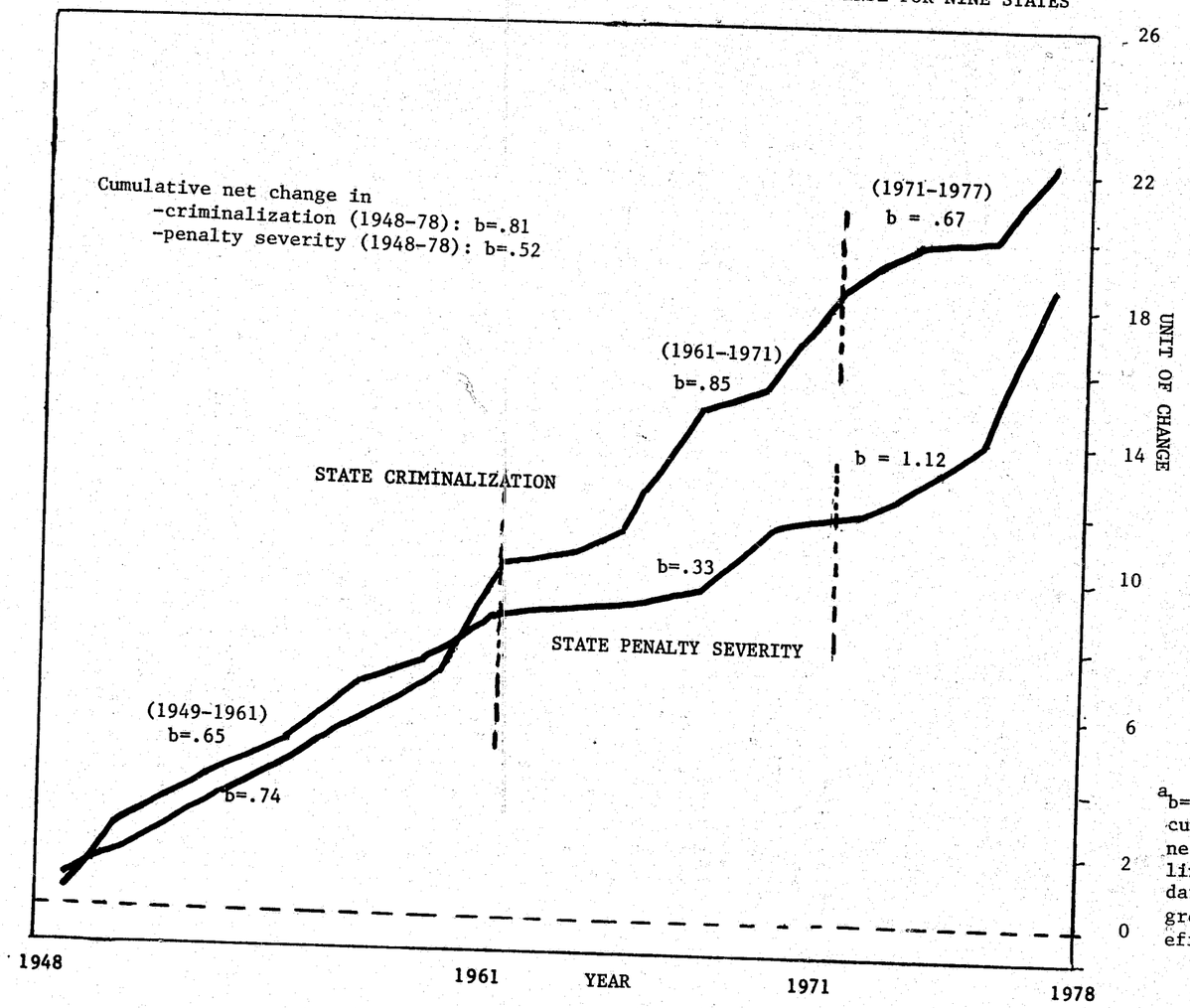
C. Trends Over Time: Decline of the Rehabilitative Model

Penalty severity is an abstraction, albeit one with some very concrete referents. A sentence is given for conviction of a particular offense. Nevertheless, the sum of the changes gives some estimate of the direction of penal policy as set by the legislature. Throughout this discussion the attention is on legislative policy, not on sentencing practices. The concern is not on implementation but on policy decision making.

All states in the study made changes which increased the severity of the penalty options. Not all changes increased the maximum penalties. However, most had the effect of increasing the length of time of incarceration that an offender might be held or the fines that might be imposed. Figure 6.1 traces the aggregated pattern over time. It shows an increase in the accumulated changes in severity over time. Compared to the criminalization trend, the penalty line showed a very similar pattern in the first third of the period as penalties were tied to particular offenses. Then in the 1960s the two lines diverged as criminalization increased but penalty severity

FIGURE 6.1

CUMULATIVE NET CHANGE IN CRIMINALIZATION AND PENALTY SEVERITY PER OFFENSE FOR NINE STATES[a]



[a] b=slope of cumulative net change line (unstandardized regression coefficients)

generally received less attention. However, in the 1970s, as indicated by the comparative size of the unstandardized regression figures, (b = .67 for criminalization but 1.12 for penalty severity), the rate of increase was much greater for the penalty than the substantive provisions particularly after 1973.

The increases in penalty severity in the 1950s were quite different in kind from those that were made in the 1970s. In the early period most states used variants of indeterminate sentencing. That is, the statutory provisions included very wide ranges. The sentencing judge would identify a wide range (for example, up to 20 years for selling marijuana). The exact time to be spent in prison was determined by corrections officials during Parole Board reviews of individual offenders depending on the speed with which the offender indicated evidence of having been rehabilitated.

Under these statutory provisions the connection between legislative statements about sentencing practices and the time served was quite tenuous. Sentencing policy was delegated in large part by state legislatures to other agencies. The changes that were made in the 1950s had the intent, by and large, of increasing the severity of the penalties that might be imposed. The changes were to a large extent symbolic rather than concrete in that they made relatively little difference in the sentencing options available. Within the rehabilitative model, however, the direction of change was one of increasing penalty severity. The legislative sentencing policy, as distinguished from the practices in the courts and corrections agencies, was to provide increasingly severe sanctions as a means of deterring crime. It was somewhat at variance with the rehabilitative goals of indeterminate sentencing. The legislative decision to change the law, unless it is an idle exercise, assumes, among other things, that the authoritative statement (the law) of what acts may be punished will serve to deter. The law, therefore, is presumed to have the power to control the behavior of those within its jurisdiction. This would hold true whether there was a direct allocation of sanctioning rules or a more indirect structural approach with the delegation of responsibility to various administrative agencies.

The decreasing rate of increase in the 1960s occurred at a time when the rate of criminalization was going through its sharpest increase. In the preceding decade the definitions and penalties extended the reach of criminal sanctions at a similar rate. In the face of mounting concerns about various dimensions of the problems of crime in the 1960s, the relatively greater attention to definitional changes suggests that the first line of attack was to use the symbolic power of law to deter by adding to the list of prohibitions.

Then, as the intractability of problems with public order

became more visible, the desire to exercise the power of the state to punish came to center stage. By the mid 1970s the policy took another dramatic turn. As is illustrated in two of the examples which follow, the penal policies adopted in the last part of the period tended to have strong similarities across jurisdictions. The common theme that results in the steep increase is the shift away from indeterminate sentencing toward various forms of determinate or fixed sentences. While several variants were enacted there was convergence around the idea that penal policy needed to provide certainty of punishment. Instead of providing wide latitude in sentencing options the legislatures specified more narrow ranges or required fixed sentences, giving judges rather than corrections officials the power to set the length of time to be served. While the extremely long maxima may have been removed from the statutes, the intentions of the change were to increase the time served and to increase the number of people who would serve time rather than be granted probation.

Presaging the overhaul of penal policy were provisions of mandatory minimum prison terms for certain offenses. Introduced with increasing frequency in the 1960s, the specification of mandatory incarceration demonstrated the legislative willingness to set penal policy, something that had been largely delegated in the past to courts and departments of corrections. The consensus emerged in the face of patent failures of many other solutions, both within the legislative purview and outside, to make significant inroads in the crime rate. The consensus contained an important shift in legislative policy since the proposals increasingly moved sentencing discretion out of the hands of courts and corrections officials and into the legislative arena.

Our attention in this section is on the timing of the penal policy developments. It is curious that at the time of growing complexity in the crime problems that the legislatures should adopt such sweeping allocative policy. Further, the new approach decreased the amount of regulation by removing the rules and procedures for parole review. It thus runs counter to the general proposition that Black (1976) offers, that the growing complexity in the society, or, in terms closer to the legislative process, complexity in the patterns of demands for legislative action, will lead to more law, not less. Tracing the comparative developments in criminalization and penalty severity suggests a possible explanation for such a policy shift. In the preceding chapter the suggestion was made that criminalization was a solution most often used when the problem for which a solution was sought was rather narrowly defined. Thus, the definitional change required the identification of a particular section and provision in the code and the development of alternative wording specific to the offense. Of necessity the changes had to be tailored to fit a narrow set of elements in the "crime problem." Penal reform trailed by some years the use of criminalization as the dominant theme of

legislative policy. One of the characteristics of recent penal reforms was the adoption of penalty schedules that provided a limited set of sentence options to be applied to a broad category of offenses sharing a similar level of seriousness. The divorce of penalty and offense definitions helped remove some of the more obvious disparities in sentencing policy which had developed with the piecemeal approach to setting penalties. The separation also suggests that penal policy permitted a more global legislative response. Changing the outer limits of a few subsections could change the penalty structure for whole classes of offenses. While it is to some extent an oversimplification, the legislators could move relatively easily from the identification of the problem (too much crime) to the development of a policy preference (assertion of the power to punish) and the specification of a solution (increase the severity of the criminal sanctions). Whether legislators included in the information-gathering process the likely effects on prison populations, is a separate issue.

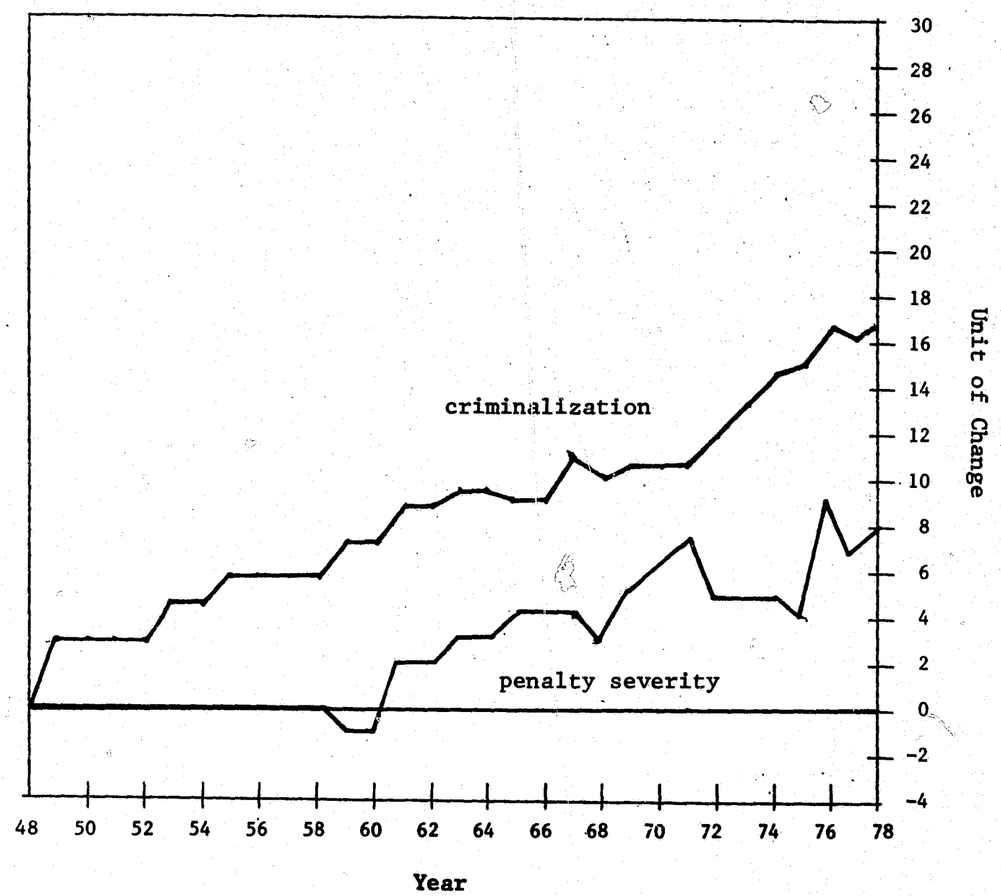
Another element in the adoption of variants on determinant sentencing model is the support from groups with widely differing philosophies to the idea that certainty rather than severity of punishment may be a stronger deterrent to crime. Under the same rubric were those who supported a more punitive approach as well as those who argued that what was needed was a set of well-established limits in order to reduce the demoralizing effects of sentencing disparity.

The following four descriptions of changes in state penal policy provide substance to the general pattern already outlined. Each state has its own permutations and the timing of innovations may vary. While each description contains exceptions to the generalizations, the theme of the assertion of the legitimacy of the state to punish and the changing locus of sentencing discretion come through quite clearly.

1. California. The divergence in the lines tracing net changes in the penalty and substance of offenses presents strong evidence of the multiple approaches that have been tried in California. While the laws were removing the broad scope of the nuisance and status offenses in the 1960s other changes were instituting harsh new penalty provisions. For example, for selling narcotics the penalty was increased from 5 years minimum to 10 year minimum in 1961, with the option of large fines on top of the incarceration, and with some limited use of mandatory minimums for repeat offenders. In 1965 the ceiling for some firearms convictions increased from ten years to 15. According to Figure 6.2, in the 1970s the trend was to increase the severity of the penalties. The general trend needs elaboration on two points. First, in the mid 1970s the penalty changes showed marked variation across offenses. For example, while the penalties for minor weapons violations were being reduced, significant mandatory minimum penalties for serious drug offenses were enacted (1975). The following year, the

FIGURE 6.2

CUMULATIVE NET CHANGE IN CRIMINALIZATION AND PENALTY SEVERITY FOR ORDER MAINTENANCE OFFENSES: CALIFORNIA



state adopted a determinate sentencing provision. The result was to decrease the maxima from life sentences to seven years for the most serious of the order maintenance offenses. We scored the change as an increase in severity because of the reduced discretion to grant minimal sentences. More to the point is that the change represents a major shift in the locus of sentencing policy. The legislature took a much more active role in the allocation of sentencing decisions, removing much of the discretion that had been delegated to courts and corrections. When viewed as a reduction in judicial and corrections' discretion, there were some antecedents to the 1976 determinate sentencing provision. The state had made earlier moves to reduce judges' and corrections officials' decision making authority with the the provision for mandatory minima. Among our nine states, Indiana (1977), Arizona (1978), and New Jersey (1978) also had adopted determinate sentencing by 1978. Minnesota followed in 1979. The rapidity with which similar policy innovations were adopted across these states suggests a diffusion process of some significant dimensions.

2. Arizona. The line tracing penalty severity shows a varied pattern. During the 1960s the state made modest reductions in the severity of the penalty provisions. This occurred at a time of increasing criminalization. Clearly the greatest attention was being given to substantive changes in individual offenses rather than the more global approach of wholescale penalty reform.

Arizona changed its penalty provisions for drugs several times. Two changes deserve special attention. In 1961 the legislature substantially increased the penalty severity for all three drug types. For the most serious parts of the offense, the range for the prison term was increased from zero to 25 years to ten to life. For the more minor aspects, the penalty was also increased: maximum fines went from 1000 to 50,000 dollars and prison terms range from zero to one year to two to ten. In addition, the provision provided a mandatory minimum prison sentence for first offenders for many aspects of the drug offenses. Thus, the discretion was reduced while the severity increased. At the end of the period the discretion in sentencing drug offenders was further reduced with the adoption of determinate sentencing.

In the late 1970s the criminalization and penalty severity scores increased dramatically when the state overhauled its criminal code. The sharp increase in penalty severity that appears at the end of the period indicates the state's adoption of determinate sentencing. While the maximum sentences allowed showed a marked decrease, the procedural changes amounted to an increase in severity. Arizona's penalty section, modeled after California's, which had been adopted two years earlier, severely restricted the availability of alternatives to incarceration. It required the use of fixed sentences selected from within a narrow range set by the legislature. It made

numerous record keeping requirements for judges who imposed other than the legislatively mandated sentence. The result of the sentencing policy change was to take the discretion for sentencing out of the hands of judges, prosecutors, and correction officials and place it with the state legislature.

3. Massachusetts. Through much of the period, Massachusetts has paid somewhat less attention to the penalties for drug violations than the substance. A third of the changes included revisions in the penalty structure. At the beginning of the period the penalty for most serious aspects of drug offenses was a maximum of ten years in prison. No fines were specified for these most serious cases - only prison. The same penalty provisions applied, regardless of the type of drug involved. In 1951 the maximum doubled, to 20 years. In 1957, in a major revision, the maximum was raised again, to 25 years and a mandatory minimum sentence for violations of certain provisions was included for the first time. Three years later it was removed.

In 1971, with the adoption of the Controlled Substances Act, the penalty structure was altered significantly. For the first time fines were an option for the more serious elements. A separate and less severe schedule was adopted for marijuana offenses. While Massachusetts did not go as far as some other states, it enacted a limited decriminalization of marijuana possession starting in 1971. Using a penalty revision as a mechanism for redirecting policy priorities, the state specified probation for first offenders and expungement of records upon successful completion. This approach amounts to a modified decriminalization since it reduces significantly the seriousness of the violation but maintains the criminal sanctions.

The resulting expansion in sentencing discretion was in keeping with the multiple dimensions involved in drug enforcement, as seen in the greater attention to distribution and sources (i.e., doctors and pharmacists). While the discretion increased, the maximum penalty was reduced from 25 years to ten for heroin and the more serious narcotics and from 2five to five years for marijuana. The 1971 revision, as it refined and systematized existing regulations, also expanded the sentencing options to address a more complex definition of the problem.

Massachusetts changed its firearms and weapons statutes more often than any other state in our study. The firearms sections were modified 21 times and the weapons sections, eight. The changing nature of the concern is illustrated in a comparison of the timing of changes for the two offenses. Six of the eight weapons changes were made before 1960. Only four of the 21 firearms changes were made during that early period; ten of the 21 occurred in the 1970s alone. Thus, the attention to the use of deadly force has narrowed over time to focus on

firearms. When the enactments for the two offenses are combined, the volume remains at about the same high level over time. This point is significant in light of the attention that has been given to one of those changes: the provision, in 1974, of a mandatory minimum one-year prison sentence for carrying a firearm, rifle, or shotgun without a license. The inclusion of a mandatory minimum was intended to remove from the courts and prosecutor considerable discretion in the processing of gun cases and is significant as an exercise in legislative adjudication in contrast to their more familiar role as law makers. One conclusion to be drawn from our analysis of changes in the Massachusetts gun statutes is that the introduction of a mandatory minimum sentence stands alongside a long-standing effort by the state legislature to limit and regulate the possession of weapons. The state concentrated on licensing and retributive sentences to regulate availability.

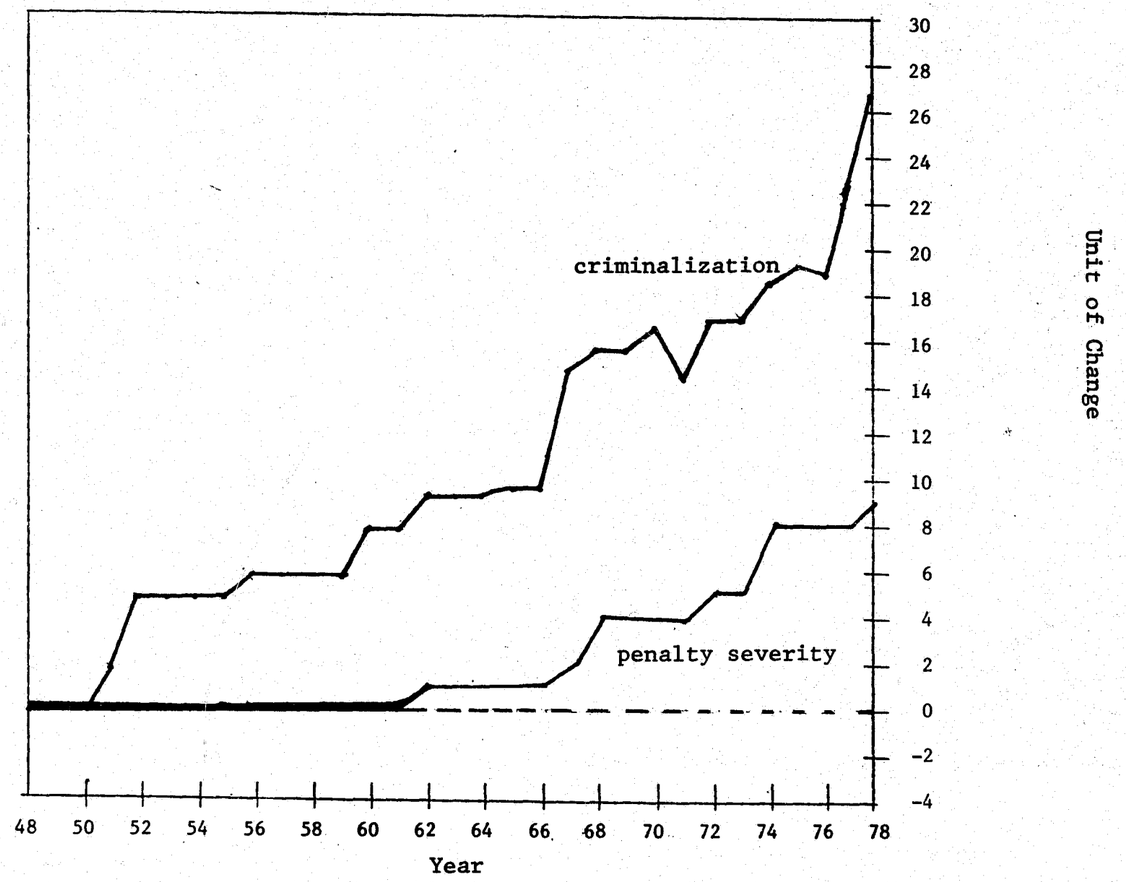
During the early period the emphasis was on weapons, particularly in the prohibition and enumeration of weapons. An important difference in the approach that the state code adopted toward weapons and firearms is that for weapons the attention was on the outright prohibition of sales, while for firearms the focus was on regulation through various licensing requirements in conjunction with stiff criminal penalties. Regulation rather than prohibition is perhaps a less severe approach since it does not attempt to dry up outright access to firearms. The mandatory minimum penalty is probably the closest the legislature came recently to an allocative decision. In that example the legislature took upon itself a greater portion of the sentencing function by reducing significantly the discretion available to criminal justice agencies in prosecution, disposition and sentencing.

4. Georgia. The scope of Georgia's offenses was modest in 1948. Further, compared to other states, Georgia made relatively few changes. We then looked closely at the content of the changes to identify the policy directions that were taken. The plot of the Georgia changes in the two indices is presented in Figure 6.3. The trend moved very steadily upward indicating a consistent policy of criminalization and, to a lesser degree, increasing penalty severity. The effect of the increased volume from 1967 to 1978 on the trends is quite visible. The rather steep increase in criminalization in 1967 was the result of an accumulation of changes covering riots, the availability of weapons, and drugs. In two years, 1971 and 1976, there were absolute decreases in criminalization, due primarily to minor modifications in the drug offenses.

The state spent less time revising its penalty provisions than it did the definitional sections. Unlike several other states in the study, Georgia did not substantially revise its policy in sentencing during the latter period. It maintained

FIGURE 6.3

CUMULATIVE NET CHANGE IN CRIMINALIZATION AND PENALTY SEVERITY FOR ORDER MAINTENANCE OFFENSES: GEORGIA



the use of indeterminate sentencing for these offenses during the entire period. The changes that were made tended to increase the discretion of judicial and administrative agencies by expanding the range between minimum and maximum incarceration time. For example, in 1968 the range for the disorderly conduct convictions increased from up to one year in jail to one to five years. In 1974 the maximum narcotics and heroin penalties were increased from two to five years to five to thirty years. Marijuana, which had had the same penalty structure, was differentiated at that time: the ceiling was raised to only 20 years instead of the 30 year maximum for the other drugs.

The policy in Georgia throughout the period was consistently to criminalize and increase penalty severity. The trend became more pronounced in the latter half of the period as crime problems were becoming more visible. Talarico and Myer (1981), in a study of Georgia legislative politics of sentencing, have interpreted similar findings as evidence of a long-standing cultural tradition of punitive policies. Georgia did not adopt innovations such as determinate sentencing, decriminalization of marijuana, or significant gun control provisions that we found in several other jurisdictions. Instead Georgia pursued a course of relatively undifferentiated criminalization.

D. Conclusions: The Innovation Process

The adoption of new sentencing provisions in the later 1970s points to another issue in law reform: the diffusion of reform proposals. Between 1976 and 1979, five of the nine states adopted major sentencing reform; all five used the same general framework. As another example, the decriminalization of marijuana likewise was adopted by five states during the mid 1970s. Table 6.1 indicates the diffusion process. One of the interesting issues is the speed with which an innovation, once it is adopted in one state, becomes law in other states as well. Walker (1969) proposes what amounts to a lateral transfer process. Legislators are more likely to adopt an innovation if it has been accepted elsewhere, particularly in states that are perceived by their legislators to share common (often regional) problems (Walker, 1969). He found that for a wide variety of innovations across a wide spectrum of policy areas, states varied in the speed with which they adopted new programs or ideas. He reports innovation scores for each state covering adoptions from the late 19th century to the mid 20th century. The rankings that he developed correspond to some considerable degree to the states that figured prominently in the adoption of criminal law innovations in our study. Of the five states that had adopted determinate sentencing by 1979, three ranked in the top quarter of Walker's list. For decriminalization of marijuana, four of the five were in the

Table 6.1 Diffusion of Criminal Law Innovations

Determinate Sentencing		Decriminalization of Marijuana[a]	
California (3)[b]	1976	Massachusetts (2)	1970-71
Indiana (18)	1977	California (3)	1975
New Jersey (4)	1978	Indiana (18)	1976
Arizona (36)	1978	New Jersey (4)	1971-72
Minnesota (12)	1979	Minnesota (12)	1973-75

a. Includes removal of significant criminal penalties for first offenders such as pretrial intervention programs.

b Rankings on Walker's composite innovation score. From Jack L. Walker (1969) "The Diffusions of Innovations Among the American States," American Political Science Review 63: 880-899.

top quarter. One absence from the list is interesting. Pennsylvania, which ranked seventh on Walker's scale did not adopt any of the innovations that figured in the offenses in our study. Another anomoly is the presence of Arizona on our list. It ranked 36th on Walker's list. However, as an example of the dissemination process the 1978 Arizona code revision explicitly cited the earlier California adoption as a major source for Arizona's code. Thus, while historically Arizona may have been relatively slow to adopt new policies, in the subject areas in our study it appears to have followed quickly in the footsteps of its neighbor. It appears, therefore, that several of the states in our study have had a history of adopting innovations in a whole variety of fields -- they quickly pick up on the reforms that are being proposed.

While the dissemination process is an important explanatory model, the local political context needs to be built into our understanding. Triggering events such as political demonstrations or electoral changes, are often salient as they are interpreted by state and local political processes (Hagan, 1980; Galliher, 1980). The presence of a dramatic event or the interplay of local groups may mobilize support for legislative action but does not eliminate other explanations (Berk, et al., 1977).

The diffusion of innovations among the state legislatures is also evidence of another trend that we have noted in our data: the nationalization of responses. We have reported in other chapters the nationalization of crime. Here we find that trend lines for criminalization and severity look similar across many of our states. Further, the content of some of the reform proposals responses is similar. Federal court action, adoptions in other jurisdictions whose situation is perceived to be similar, and the presence of national interest groups who may lobby in many state legislatures are the sources of innovation (Walker, 1969).

An additional point about the developing sentencing reforms deals with the location of sentencing discretion. With few exceptions during the greater portion of the period the jurisdictions in our study gave the power to sentence to judges, prosecutors, and corrections through indeterminate sentencing provisions and wide ranges in statutory penalty provisions. Legislatures thus delegated that power to others. In recent years that relationship has changed. With provisions for mandatory minimum prison sentences, reduced ranges for sentences written into the law, the specification in the law of aggravating and mitigating circumstances, the requirement that court records include the reasons for deviations from the legislatively-prescribed time, and the reduced role of parole boards to alter sentences have all served to reduce judicial and administrative discretion in sentencing. In their places

the legislature has assumed, to a greater or lesser degree, the power to set sentences. The legislatures, instead of making structural decisions which delegated sentencing power to other bodies, specified the sanctions themselves.

Chapter VII

LEGISLATIVE RESPONSES TO CRIME

A. Summary of Trends in State and City Legislative Responses

In the introductory chapter some general themes were laid out regarding different kinds of policy, and the political structural, organizational, and agenda characteristics that might be associated with legislative decisions. The histories of the ten cities and the states in which they are located show the development of the policy content as a building process. There are several issues about that historical development that deserve highlighting at this point. To summarize the findings:

1. There was an expansion in the scope of law during the period.

2. When not constrained by state preemption of the power to regulate local affairs, most cities made efforts to define local conditions.

3. The volume of legislative enactments was greater for order maintenance offenses than for personal or property felonies.

4. The volume of enactments at the state level coincided with the placement of crime on the local political agenda and the greater urban representation in state legislatures following reapportionment.

5. State attentiveness increased starting in the mid 1960s.

6. At the city level, two of the ten cities paid considerable attention to the content of the local code, particularly in the latter periods. The remaining cities made few changes.

7. Local attentiveness coincided with some structural characteristics of the legislative bodies: there was greater activity in cities with greater authority to act, when states took minimal action, and arguably, when the number of legislators was quite large. The representational base of the council appeared to make no difference in the volume of activity.

8. While states were more active than cities, on the issues around which legislative decision costs were greatest, cities sometimes took the lead.

9. The general trend in order maintenance policy was to criminalize: by extending the reach of the law. This trend was particularly strong in the latter half of the 1960s and included efforts at both city and state level to protect the political order even while removing, often after court challenges, the broad reach of police discretion to regulate social behavior in the form of status offenses.

10. Legislatures increasingly adopted allocative policy not only in enacting prohibitions but also in setting criminal sanctions. One of the most important changes involved the issue of the locus of discretion in criminal law policy. Increasingly the legislatures took that responsibility for themselves.

11. Major penal reform tended to follow in time more narrow, offense-specific changes.

12. In some areas of the law the trend was toward decriminalization in the increased differentiation in the targets of law. This was true for some drug offenses and status offenses. The pattern occurred in response to court challenges, the expanding variety of interests that were articulated in the legislative arena, and changing law enforcement priorities.

13. The adoption process of policy innovations across states and the reduced variation among states in the scope of law suggested some national trends in legislative responses to crime.

B. Expanding the Scope of Law

One of the questions that the preceding discussion about the growing differentiation of the law raises is whether the trends were due to the relative degree of differentiation in a code at the beginning. If there was a underlying trend in that direction we would expect that the jurisdiction with the least specified provisions in 1948 would lead the list in terms of the number of changes and the net effects of those changes. They would be catching up, so to speak. Conversely the jurisdictions that were more differentiated would be less active: they had already adopted the policy. One way to examine the question is to consider the rank order of the jurisdictions at the end points and note the size of their net changes. Table 7.1 presents the comparisons.

At the state level the pattern is quite persuasive. The

TABLE 7.1

NET CHANGE IN SCOPE, 1948-78

	SCOPE IN 1948		SCOPE IN 1978		CHANGE IN SCOPE PROPORTION 1948-1978
	%	rank	%	rank	
Atlanta	58	1	38	4	- 20
GA	56	7	85	1.5	29
Phoenix	55	2	45	3	- 10
AZ	65	9	81	6.5	16
Minneapolis	39	4	50	1.5	11
MN	68	8	76	8	8
Houston	39	4	25	6	- 14
TX	77	3	73	9	- 4
Oakland	39	4	50	1.5	11
CA	76	4	84	3.5	8
San Jose	30	6	21	8	- 9
Indianapolis	25	7.5	22	7	- 3
IN	72	6	84	3.5	12
Newark	25	7.5	25	5	0
NJ	85	1	85	1.5	0
Boston	16	9	17	9.5	1
MA	80	2	81	6.5	1
Philadelphia	3	10	17	9.5	14
PA	75	5	82	5	7
	city $\bar{X}$ = 33		city $\bar{X}$ = 31		
	state $\bar{X}$ = 73		state $\bar{X}$ = 81		

[a]Rankings based on proportion of total n of descriptors mentioned in ordinance or statutory language for 11 offenses for the cities; 6 offenses for the states.

mean scope for the nine states increased by eight percent. Within that general increase the states with the higher scope values in 1948 showed the least net change. Those with the lowest, had the greatest net change. As we might expect with those findings, the range of scope values across the states decreased slightly from 1948 to 1978. Although Minnesota's change was somewhat less than we might have expected the general pattern is quite consistent.

At the city level the pattern is less clear. The mean scope at the local level decreased slightly during the period. The cities with both the highest and lowest scores in 1948 led the list in terms of the magnitude of the net change: Atlanta, with the broadest scope to start, became more narrow in its attention, while Philadelphia, with virtually no coverage in 1948, added several new offenses after gaining a measure of home rule authority. The cities ranking seven through nine in 1948 registered the least change. Thus the summary findings at the local level suggest a much more complex pattern than that at the state level.

Although as a general rule the scope of the local codes became more narrow, four of the ten expanded their coverage. We have already discussed at some length the part that the home rule powers has played in the authority of cities to enact ordinances governing the maintenance of public order. Certainly the reduced scope of the local codes is due in part to the effects of state court rulings on state preemption: Philadelphia's and Phoenix's gun registration and Atlanta's loitering and prostitution provisions are cases in point.

Perhaps the most compelling example of the need for additional explanations beyond the formal structures of intergovernmental relations lies in the comparison of Oakland and San Jose. Each was governed by the same state statutory and case law provisions and each had a moderately broad scope in 1948. By 1978 Oakland was tied with Minneapolis for the broadest scope, while San Jose had dropped to eighth out of the 10 cities. Quite clearly local preferences played a significant part in determining the direction of change.

C. Legislative Responses to Different Dimensions of Crime

As cities removed antiquated provisions from their codes they had two choices: remove the issue entirely or rewrite the section to fit contemporary requirements. We found that some offenses were removed (as was done with vagrancy and many of the drug provisions) while others survived but often in more narrowly drawn language (disorderly conduct and loitering). The result is that city code definitions are alive and well in the ten cities although in somewhat "reduced circumstances." The changes demonstrate some of the themes we have been

developing: the trend toward greater differentiation, the removal of the broader status offenses, and the use of more carefully targeted definitions.

We have noted the general patterns of change, but such aggregation needs to be supplemented by an analysis of offense-specific trends. Comparing the total scope scores in 1948 and 1978 for each of the six offenses that we traced for both the city and state, we found that the firearms regulations had expanded the most in scope during the period. Marijuana was second. The others all expanded, but much more modestly. The substantive areas that received the most attention in firearms control were various forms of gun registration and licensing. In addition there was some concern with prohibiting firearms altogether to certain categories of people (convicted felons, drunks, and, in earlier years, aliens). Nevertheless, the bulk of the increase was directed at such structural policies as record-keeping: identification of weapons and/or owners. The controversy, if not complexity, of the gun control issue showed in the great variety of legislative responses that were made. As evidence, the scope of the firearms coverage expanded more than any other at the state level, although the net criminalization, which measured developments in existing provisions as well, showed only a modest increase. The difference in the two measures points to the difficulties the policy issue presents. New procedures were adopted which expanded the number of acts that were defined as criminal, but the coverage of some of the existing provisions was often reduced if not removed. Thus, licensing might be added, expanding the scope, but various groups (such as security guards, those going to work, or government officials) might subsequently be exempted, counting as a decriminalization.

The trend in regulating dangerous weapons was toward greater differentiation of response. We tracked both firearms and weapons because of the overlapping concerns. Since we were interested in the broader issue of public safety we wanted to be sure to identify the multiple areas of concern. We found that weapons offenses were changed most often during the 1950s when new types of instruments, particularly switchblades, were added to the list of weapons. Gun control became the dominant focus of concern starting in the mid 1960s. The greater concern recently with the more narrow issue of the availability of guns, is seen in the greater expansion in the definitions of firearms offenses than weapons. The attention has been less on the enumeration of all the latest technological developments in weapons and more with the identification and tracking of the more deadly weapons, particularly handguns.

Counter to the general statements about the direction of gun control legislation, two states which had minimal coverage in 1948 made no substantial change or had decreased their coverage by 1978: Texas and Arizona.

We can summarize the net effect on drug offenses in two ways. First, as we have noted, there was an increased differentiation in drug regulation during the period. The adoption of Uniform Narcotic and Dangerous Drug Codes has produced more similarity in the definition of drug offenses across the states than in some of the other offenses that we have examined. Second, we found that the cities in our study were not usually involved in the regulation of most drug offenses. Nevertheless, we found some exceptions. Atlanta adopted a marijuana possession ordinance with a fine-only penalty and Houston and Minneapolis became involved in glue-sniffing regulation. Minneapolis also addressed the issue of various pills. In general, however, the drug problems have not been ones for which the cities set their own policy. The lack of attention at the city level is certainly understandable in terms of the lack of local resources, both for investigating and penalizing.

While there was a lack of local regulation of drugs, there was often vigorous if often abortive local efforts to regulate the availability of guns. Speculatively, we may surmise that there was more local satisfaction with the content of state drug policies than with state gun control policies, leading cities to seek their own policy for guns and to accept the state drug offenses. Alternately the organized opposition to gun control may be more effective at the state level than at the city level. Thus, local initiatives become feasible when state action is doubtful. Finally, differences in the investigative needs of the two types of offenses surely structure to some extent the different responses to the issues of guns and drugs at the local level. Local initiatives are not inconceivable, as the glue sniffing and fine-only approach to marijuana suggest. Nevertheless, the basic policy initiatives have been at the state level.

Regarding the net effect on disorderly conduct provisions we found a very mixed picture. Both cities and states were active in revising their sections. As expected, in 1948 the sections had provided a pot pourri of definitions that encompassed a wide variety of acts. In subsequent years the old status-type definitions were replaced by provisions that were more specifically drawn. The new forms addressed acts that might lead to or include some form of confrontation or violence. They consisted of obstructing traffic, refusing to leave, or similar activities affecting several forms of political protest used in the late 1960s. The two directions of change in the definition of the offense tended to reduce police discretion in enforcement by reducing the number of vague status categories. Such a trend, both in city and state provisions, is consistent with the developing case law (Gregory v. City of Chicago, 1968) and (Robinson v. California, 1963). The legislative response, generally, was to rewrite the provisions to allow continued patrol discretion in situations that were viewed as potentially violent or at least threatening

to the public political order. Put broadly the trend was away from the social class control and toward maintaining the political order. The changes over time, therefore, produced a generally broader scope to the criminal law; that is, an increase in the number of different acts for which one could be prosecuted.

Changing the law is one of the most direct ways legislative bodies respond to crime. By making decisions which define criminal behavior and assess punishments, state legislatures and city councils make a variety of instrumental as well as symbolic responses. Policy options which would maximize deterrence, rehabilitation, or retribution may be implemented by changing the law. A careful examination of the content of such legislative policy statements describes changing policies and priorities. Different types of policies may change as attentiveness to crime increases.

State and local legislative bodies do not operate in vacuums. The selection of particular policy options may be driven by national developmental patterns in the criminal law toward greater specification and differentiation. Also, court decisions may structure the policies adopted by the legislative bodies. While the rest of the project focused on the city as the unit of analysis, the study of changes in the law must examine both state and local law and politics because city police enforce state law and city ordinances.

Generally, states have the primary responsibility for defining crimes and setting penalties. Cities, though, may act on their own to specify or supplement state authority in particular areas. Cities varied markedly in the scope of behaviors which were defined as criminal. There was also considerable variation in the amount of authority vested in cities to act, and their exercise of that authority. Even when cities were inclined to exercise authority, they were often constrained by legal or customary restrictions on their power by the state.

D. Law as a Mechanism of Social Control

At the state level there was more law at the end of the period than at the beginning. That is, on the average more acts were defined as illegal in 1978 than in 1948. In all but one state (Texas) the scope of law became more pervasive. In addition, as was described in the preceding chapter, the penal sanctions became more severe. These trends occurred at a time when the cultural diversity in each jurisdiction was growing. To the extent that cities in the United States experienced increased social and economic dislocations, the increased amount of law is consistent with the propositions developed in Donald Black's work, The Behavior of Law (1976). From his

perspective, the increase in the scope of law occurs at a time when other mechanisms of social control (such as family groups, religious or ethical ties, educational values, or a conventional culture) decrease in their ability to regulate public behavior. As a result, law increases in scope. In a broad sense our data support such a formulation. The increasing complexity of the political agenda in the latter periods (Beecher and Lineberry, 1982) provides a policy-oriented operationalization of Black's ideas of increasing social disorganization articulated in the political arena. Associated with that growing complexity was an increase in law.

The study of the changing content of order maintenance offenses also contained a counter example. The adoption of determinate sentencing includes the dismantling of some extensive administrative regulation by reducing or removing the discretion of parole boards, department of corrections, and judges. Reducing discretion in these situations, reduced the quantity of law by reducing the rules set out to determine parole eligibility, prison release, and the administrative determination of sentence length. The relationship between social and organizational complexity may have been useful in explaining the growth of law, but it does not help explain the reduction in the amount of law. The relatively greater cultural diversity across an entire state as compared to a large central city would lead one, following Black's propositions, to predict more law at the state level than the local level. While that is certainly the case when one looks at the entire code, it is interesting that some of the strongest initiatives on the gun control issue have come from the smaller, relatively less socially-diverse political units, the cities.

To the extent that changes in the definitions of public disorder offenses granted to the police considerable discretionary authority the decisions, it might be argued, were more structural than allocative. However, often under pressure from the courts, the legislative decisions stated more precisely than had been the case before, the rules that would govern police interventions. As a result, the new sections gave to the police and those groups urging crackdowns on dissenters considerable support. To the extent that the laws removed the criminal sanction from various categories of social and economic undesirables, the legislative decision also benefited potential offenders. However, since removing such broad categories from lists of offenders was updating codes to reflect court decisions, the legislatures should perhaps take relatively little credit. On the other hand, the constitutionally vague provisions could have been replaced by ones which were more narrowly drawn. In the areas of public demonstrations and drug-related behavior, the legislatures took up the challenge, but for morality and social offender categories the legislatures generally did not, with the

possible exception of prostitution. The rewritten provisions decriminalized behavior by removing from public control some groups of offenders while at the same time criminalizing, at least with emphasis if not new categories, the challenges to the political order.

The allocative nature of the legislative decisions regarding morality and public order reflects, within the legislative body, some high degree of consensus regarding appropriate solutions and a willingness to define community standards. Another legislative decision, the adoption of determinate sentencing, in five of the states, represents a fairly clear shift from structural to allocative policy. For example, prior to the new codes, which followed California's lead, most of the states adopting the reform had given the basic responsibility of setting sentencing policy to administrative agencies. The legislatively-set penalties gave such broad ranges in criminal sanctions that it in effect delegated the responsibility for determing the sentencing policy to parole boards and courts. With the new determinate sentencing provisions, the legislature took for itself that rule-making power.

Determinate sentencing and mandatory minima provisions, which reduced the discretion in the hands of the judges and corrections officials, were designed as a means of producing certainty of punishment.

Such a significant change occurred when crime was of rising concern on the political agenda at least in central cities that were the focus of the study. The greater attentiveness would likely produce a wide variety of proposals from the various interest groups concerned. The policy shift involved in the adoption of determinate sentencing suggests that the groups speaking out were in less disagreement than might have been expected during a period of growing public concern.

Such enactments mark a move away from the rehabilitative model of sentencing toward a more retributive approach. Further, it marks a trend away from the reliance on the symbolic power of law to deter and toward the more concrete control of sanctions. The emergence of a strong legislative presence in the adoption of such a policy also points to the decline in the power of the experts to define solutions in the face of the growing demand for action. While it oversimplifies the situation, it is perhaps significant that restructuring the state's sentencing policy is a global response affecting a whole range of crime problems, whereas definitional changes address particular aspects of crime. The adoption late in the period of such global responses suggests that the problems of crime have been viewed as "the crime problem" rather than in more precise terms with more narrow solutions.

Thus, while increased complexity and differentiation may lead to an expansion of law the trend toward legislative dominance in criminal law policy can be best explained in the more concrete terms. Attention needs to be given to the political process of agenda building and issue articulation in the legislative arena itself.

TECHNICAL APPENDIX

This appendix describes in more detail the procedures used to measure changes in the meaning of offenses. Here we describe the development of the data base and the construction of the indices.

A. Identifying an Offense

A longitudinal and cross-city comparison raised problems of defining the units of analysis. The vagaries of codification styles, changes in the state laws governing local options, and, we suspect, the interest in responding to specific events, led to aggregating and disaggregating different acts within an "offense." A municipal code may deal with public drunkenness, vagrancy, and loitering in one section of the code or separately. Where two or more of our offenses were incorporated in a single section, we coded the same section twice, once for each offense. Another problem is that sometimes a subclassification will specify a different penalty from the general section. We used those penalties governing the specific offense in our study.

These examples illustrate some of the dilemmas associated with determining the unit. Ideally a section of the code would correspond to an identifiable behavior. Further, all regulation and/or prohibitions of that behavior would be incorporated in one section. Thus, all regulations dealing with firearms and only firearm regulations would be in one section. Since that situation does not actually occur, we needed to use something other than section of a code as the operational unit. We developed a list of 11 generic categories of behavior which correspond roughly to legally identifiable sets. This list incorporates historical common law categories:

1. disorderly conduct
2. public drunkenness
3. vagrancy
4. loitering
5. narcotics
6. heroin
7. marijuana
8. prostitution
9. gambling
10. firearms
11. weapons

These 11 offenses are all associated with problems of maintaining public order. As such, they are particularly sensitive to decision-makers' perceptions and values about what constitutes threatening behavior. Some involve questions of personal morality such as prostitution, gambling, drugs, and public drunkenness, while others affect the stability of the established political and economic order (disorderly conduct, vagrancy, and loitering), and public safety (firearms and weapons). We can combine offense categories to see whether more attention was given to different elements in the public order (e.g., safety as opposed to morality).

We examined developments in these 11 offenses in each of the ten cities in our study. For each of the states in which the cities are located we traced the development of six of the 11 offenses (disorderly conduct, narcotics, heroin, marijuana, firearms, and weapons). (State codes being far more complex we focused our attention to a more limited number of offenses.) Finally, we traced the number of changes in the major crime categories: rape, robbery, and burglary.

B. Counting the Number of Enactments

Changes in the definitions of offenses occur when the city council or state legislature enacts a bill revising the existing code. A change is not precisely synonymous with an enactment. A single enactment which changed the definition and the penalty for a single offense would include both definition and penalty revisions. If a new penalty structure affecting all 11 offenses were enacted, we recorded 11 changes. Thus a single enactment which rewrites the entire municipal code is weighted more heavily than a single enactment which makes a minor penalty change in a single offense. We used the number of enactments, or volume, as the output of the legislative process.

C. Measuring the Content of Offenses

To trace the development within a variety of offenses that have been defined differently across jurisdiction and time we have developed an empirically-derived description of the content of each offense. Each offense, such as licensing firearms and control of disorderly groups, raised unique law enforcement issues. No ideal definitions exist against which we might compare contemporary formulations. Since we were addressing reponses to crime rather than the effects of the law on different groups, such as defendants, victims, corrections officials, or prosecutors, we needed to identify the unique descriptions of each offense. We then categorized those descriptors in ways that would allow comparative analysis of the changing scope, criminalization, and penalty severity of

the law.

While a particular descriptor may be unique to an offense, it may be combined with others to describe the behavior, its context, and the resources that may be needed which define an act as an offense. Table 1 shows, for each offense, the unique set of descriptors which we have used to describe the content of offenses.

Changes in the content of the descriptors of an offense affect the reach of the law. Thus, expanding or contracting the resources needed to commit an offense affects the ease with which a law may be violated. More people are brought within the scope of the gambling offense when a new device is added to the list of prohibited machines. An enactment which adds pinball machines to the list of prohibited games is thus coded as an addition, or criminalization. We consider such a change a criminalization because the changes add to the ways in which gambling is defined as a crime. The location of the behavior may also be specified. A change in the prostitution provision from one which specifies "in public" to "on public streets or parks" would be a decriminalization because the reach of the descriptor of the location of the offense has been narrowed.

Changes in the definition of the behavior (who does what) are distinguishable from the resource and context of the act. The behavior dimension traces the definition in the code of the targets of the law. The definition may identify particular social or legal groups e.g., youthful drug users, owners of houses of prostitution, aliens, or those with criminal records. It may specify instead those who should be exempted (e.g., pharmacists as distinguished from drug dealers or union picketers as distinguished from political marchers).

1. Scope. The next step is to describe how these sets of descriptors have been used to measure the changing scope and criminalization of offenses. We have used the descriptors to measure, first, the scope of each offense at the beginning and end of the period. The scope is indicated by the sum of the number of descriptors that are mentioned in the description of an offense. The scores on the scope measure may range from zero, if no descriptors are mentioned, to a maximum of ten to 14, depending on the total number of descriptors for an offense. As one example, we have included the Minneapolis provisions for firearms as they existed in 1948 as an example of an actual code (see Table 2). We have then listed all the firearms descriptors and how we coded the scope of Minneapolis provisions. Some of the coding is rather straightforward. We made one decision rule about coding that has significant impact on the meaning of scope. Following the work of Berk, et al. (1977), we coded the words in the ordinance and not to attempt to address what was included by implication or interpretation by law enforcement officials, the media, citizens, etc. Thus, the scope measures whether a particular descriptor was

mentioned in the law and not whether, by its silence, the law included what was not mentioned. A good example is the Minneapolis breach of the peace section.

> No person, in any public or private place, shall engage in, or prepare, attempt, offer or threaten to engage in, or assist or conspire with another to engage in, congregate because of, any riot, fight, brawl, tumultous conduct, act of violence, or any other conduct which disturbs the peace and quiet of another save for participating in a recognized athletic contest. (Code, 870.060)

Three descriptors for disorderly conduct are applicable: a) is the conduct prohibited in public? b) is the conduct prohibited in private places? and c) are locations specified? We coded the first two descriptors, yes , and the last , 'no', because the ordinance did not indicate any parts of public or private locations that were to be included. If the offense had omitted the phrase "in any public or private place" we would have coded all the location descriptors as 'no' because in the words of the law there was no provision about where the offense might take place. Such a decision was essential in order to develop reliable codes, although the scope of the offense might provide maximum enforcement discretion. If one wanted to investigate the scope of the enforcement possibilities as distinguished from the scope of the laws' language, one could do so by looking at the content of individual descriptors. In the Minneapolis disorderly conduct example, the ordinance did indeed give wide discretion to the police to arrest people anywhere within the city, even in citizens' own homes. We could identify that issue by noting that the public and private elements were included but no specification was provided which might limit that relatively vague phrase about the place.

The scope score at the end points measures the number of descriptors that the language of a provision in an ordinance or statute addresses. In the measure of scope we used a simple presence (1) or absence (0) score to indicate whether the law included information about a particular descriptor. It is not a measure of the enforcement scope, but rather a measure of the number of issues surrounding recent developments in the law that a provision includes. A higher score indicates a greater range of acts that are regulated.

2. Criminalization. We also used the descriptors as the basis for measuring the direction and magnitude of the changes in coverage. Taking the same descriptor list, we identified each change in language and coded whether the new version amounted to a large (2) or small (1), addition to (+) or subtraction from (-), the existing coverage. As a continuation of our examples, the firearms provisions in Minneapolis were changed in 1957 with the addition of the following provision: Table 3 sets out the language in the code and then shows the

coding decisions leading to the calculation of the criminalization score.

In this example the various changes, when considered together, resulted in making it somewhat more difficult for the seller to conduct business without violating the law. We balanced the increased ease of reporting with the significant restraint on doing business. To represent that change, we developed a mean criminalization score for each change in offense definition. A positive value indicates that the change expanded the definition, making more people potentially offenders. By making it more difficult (i.e., cumbersome or expensive) to run one's business, the legislature increases the number of people who may be unable or unwilling to comply and therefore who may violate the law. The criminalization score consists of the mean magnitude of all the changes in discriptors of an offense. In the preceding Minneapolis firearms enactment, which was shown in Table 3 the score was +.67. The maximum value for an enactment would be a $\pm$2.0. The larger scores indicate more significant changes. Mean scores are useful as measures of central tendency but it should be remembered that they will underrepresent the significance of those changes which incorporate opposite tendencies. Thus, a modest score may be the result of a minor change in a single descriptor or a balancing of changes which move in opposite directions. In drug offenses, for example, making possession with intent to sell a major offense, but at the same time decriminalizing possession of small amounts of marijuana, might result in a modest magnitude score but amount to a major revision in drug policy. The net effect is just that: balancing the multiple directions of the policy initiatives.

The mean criminalization score serves as the base upon which we have built the analysis of the direction and magnitude of changes in the law. To create an annual net change score we added together all the mean criminalization scores for a given year. If two offenses changed in a given year, the annual net change would be the sum of the two mean criminalization scores; if none changed, the net change would be zero. We then used the accumulation of changes in existence at the time of each enactment as the base onto which each annual change was added. The accumulated score measures, at any point, the cumulative net criminalization.

Thus, if in 1968, Philadelphia, for example, had changed its disorderly conduct provision to prohibit protest marches in public parks (mean criminalization = +1.5) and required a permit to purchase a handgun (mean criminalization = +2), the annual net change in Philadelphia in 1968 would equal +3.5. The cumulative net change would be incremented by 3.5 units of change in 1968. An algebraic representation of the calculation of the cumulative net change score is provided in Table 4.

These annual adjustments, when plotted over time, show how

crime policy develops. It is a summary of the policy content and is not offense-specific. Where significant changes in the treatment of particular offenses have taken place, we point out the details; otherwise we discuss the broader policy trends.

3. Penalty Severity. Regarding penalty changes we identified two dimensions, severity and discretion, which we will use to describe penalty changes. For penalty severity, we indicated whether the net effect of a penalty change was to increase or decrease the potential severity of a sentence. For example, increasing the maximum from 90 days to 180 days was scored as an increase in severity; a decrease in the severity of the minimum from five years to two, was counted as a decrease in severity, even though the maximum remained the same. The measure makes no attempt at an ordinal, let alone an interval, scale since the ranges across city codes are minimal and ceilings are sometimes placed on the ranges that could be used (e.g., California allowed nothing greater than 500 dollars fine and/or six months in jail for ordinance violations).

For some of the penalty changes, however, the interesting issue was not only the direction of the change in severity but the changes in the discretion delegated to the adjudication process (judges and corrections). One of the trends recently in penal reform has been to attempt to provide certainty of punishment by narrowing the ranges of alternatives available to sentencers. Thus, as we shall see, in Arizona the criminal code changed the penalty maximums from, e.g., five years to two but made it mandatory to provide that sentence (with a percentage increase or decrease in most cases for aggravating or mitigating circumstances).

While not new, the momentum to set penalties legislatively with presumptive or determinate sentencing or mandatory minima has only recently appeared with any frequency. For simplicity in the presentation of findings we have, therefore, elected to discuss penalty discretion in qualitative descriptions rather than as a separate dimension of policy content. Decreases in judicial discretion were incorporated in the severity score in two ways. Variants of determinate sentencing appear as net increases in severity. Although the new maximum penalties are much lower (e.g., two years to life maximum will be replaced with a seven-year maximum with a plus two years depending on aggravating or mitigating circumstances), the sentencing procedures are more restrictive to increase the time served. The second way in which a change in sentencing discretion will be incorporated in the severity score is in mandatory minimum provisions. These we have coded as increases in severity because they are intended as increases in the minimum penalty that may be imposed; hence, an increase in the severity of the penalty. These two types of changes in sentencing policy are significant and have been identified in the descriptions of penalty discretion. We accumulated the penalty severity score in the same manner as the criminalization score. We developed

an annual net change in penalty severity which we then accumulated over time to watch the developing trends in penalty policy.

TABLE 1

OFFENSE DESCRIPTORS: DEFINITIONAL ELEMENTS USED TO MEASURE SCOPE AND CRIMINALIZATION OF OFFENSES

PUBLIC ORDER OFFENSES	DESCRIPTORS		
	WHO	WHAT	UNDER WHAT CIRCUMSTANCES
DISORDERLY CONDUCT	- Classes of people - Collateral persons - Crowds - Strikes	- Definitions - Duty imposed to prevent proscribed behavior - Individual behaviors listed - Failure to leave - Language/fighting words - Obstructing traffic	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - Time specified in prohibition
VAGRANCY	- Classes of people - Collateral persons	- Definitions - Duty imposed to prevent proscribed behavior - Individual behaviors listed - Failure to leave	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - Time specified in prohibition
LOITERING	- Classes of people - Collateral persons - Exemptions	- Definitions - Duty imposed to prevent proscribed behavior - Individual behaviors listed - Failure to leave - Obstructing public passage	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - Time specified in prohibition - Possession of harmful objects

TABLE 1 (continued)

MORALITY OFFENSES	DESCRIPTORS		
	WHO	WHAT	UNDER WHAT CIRCUMSTANCES
NARCOTICS, HEROIN, MARIJUANA	- Classes of people - Owners, doctors, pharmacists are liable - doctors and pharmacists are exempted - possession is exempted	- Definitions - Duty imposed to prevent proscribed behavior - Possession proscribed - Selling proscribed - Use proscribed - Giving away proscribed - Narcotics enumerated	- Prohibited in public places - Prohibited in private places - Paraphernalia regulated
PROSTITUTION	- Classes of people - Collateral persons - Clients proscribed	- Definitions - Individual behaviors listed - Duty imposed to prevent proscribed behavior	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - Time specified in prohibition
GAMBLING	- Classes of people - Collateral persons	- Definitions - Duty imposed to prevent proscribed behavior	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - Gambling premises regulated - Games enumerated - Paraphernalia regulated - Lotteries - Slot machines - Pinball machines

TABLE 1 (continued)

PUBLIC SAFETY OFFENSES	DESCRIPTORS		
	WHO	WHAT	UNDER WHAT CIRCUMSTANCES
FIREARMS	- Classes of people (for license requirements)	- Enumeration of firearms - Duty imposed to prevent proscribed behavior - Confiscation permitted - use or possession exemptions - regulation of sales - prohibition of buying, using, or possessing	- Prohibited in public places - Prohibited in private places - Location of prohibition specified - License requirements - License fee requirements - Reasons for license revocation
WEAPONS	- Classes of people (for license requirements)	- Enumeration of weapons - Duty imposed to prevent proscribed behavior - Confiscation permitted - Concealment prohibited - Prohibit use or possession - Sale regulated - Sale prohibited - Use or possession exemptions	- Prohibited in public places - Prohibited in private places - Location of prohibition specified

TABLE 2

EXAMPLE OF CODING DECISIONS AND CALCULATION OF SCOPE INDEX: MINNEAPOLIS FIREARMS PROVISIONS IN 1948[a]

DESCRIPTORS FOR DEFINITIONS OF FIREARMS OFFENSE	REFERENCE IN ORDINANCE ON WHICH CODING DECISION WAS BASED	SCOPE SCORE[b]
a. Classes affected	Youth and those under the influence of alcohol and drugs	1
b. Possession prohibited in public	No prohibition about possession	0
c. Possession prohibited in private	No prohibition about possession	0
d. Location specified	Only reference is to sales in the city	0
e. Duty imposed	Duty on seller to report to police; police keep records on file	1
f. License requirements	None - only report by seller	0
g. Licence fee required	None	0
h. Criteria for license revocation	None	0
i. Firearms enumerated	Mentions pistol, revolver, derringer, bosie-knife	1
j. Firearms prohibited (sale, use or possession)	Firearms may not be sold to youth, etc.	1
k. Confiscation permitted	Not mentioned	0
l. Use/and/or possession exemptions	No provision for use or possession	0
m. Sale regulated	Sellers must report to police	1
n. Sale prohibited	Selling to minors, those under the influence is prohibited	1

[a] Text of provisions follows — Scope total = 6[c]

[b] 0 = no reference in ordinance to this descriptor
1 = there is a reference to this descriptor in the ordinance

[c] Total = sum of scope scores

37:45 SALE OF FIREARMS

An ordinance relating to and regulating the sale of firearms and other dangerous weapons in the City of Minneapolis.

Section 1. Every person, firm and corporation who sells or gives to any person in the City of Minneapolis any pistol, revolver, derringer, bowie-knife or dirk or any firearm or weapon of like character which can be concealed on the person except to regular dealers in such articles, shall, within twenty-four hours after making any such sale or gift, make and file with the Mayor or Superintendent of Police of the City of Minneapolis a correct and legible written report, stating in such report the date of such sale or gift, the true name, age, and place of residence, height, weight, complexion, color of hair and eyes and nationality of such purchaser or donee, and the number, kind and description and price of the weapon sold or given to such purchaser or donee, and the reason given by the purchaser or donee for puchasing or accepting such weapon. A record of all such reports shall be kept in the office of the Mayor or Superintendent of Police.

Section 2. Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof before the Municipal Court of the City of Minneapolis, be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding ninety days.

Section 3. This ordinance shall take effect and be in force from and after its publication.
(Passed 1-14-16, Approved 1-19-16, Published 1-20-16, 42 C.P.35.)

37:47 SALE OF FIREARMS TO MINORS

An ordinance relating to and prohibiting the sale, gift or delivery to certain persons of firearms, guns, pistols, cartridges, percussion caps, powder or other explosives in the City of Minneapolis.

Section 1. No person shall hereafter, within the City of Minneapolis, sell, give or deliver to any person under the age of eighteen years, or to any intoxicated person, or to any person under the influence of intoxicating liquors of any kind, or to any person under the influence of opium, cocaine, or chloral hydrate, or any of their compounds or derivatives, or to any person under the influence of any narcotic or drug whatever, any firearms, gun, pistol, cartridge, percussion cap, powder or any other exploseve whatever.

Section 2. Any person who shall violate any provision of the ordinance shall, upon conviction thereof, be punished by a fine not exceeding on hundred dollars, or by imprisonment until such fine is paid not exceeding ninety days.

Section 3. This ordinance shall take effect and be in force from and after its publication.
(Passed 4-28-16, Approved 5-4-16, Published 5-9-16, 42 C.P.399.)

TABLE 3

EXAMPLE OF CODING DECISIONS FOR CALCULATION OF CRIMINALIZATION INDEX: 1957 ADDITION TO MINNEAPOLIS FIREARMS PROVISIONS[a]

DESCRIPTORS OF DEFINITIONS OF FIREARMS OFFENSE	REFERENCE IN ORDINANCE ON WHICH CODING DECISION WAS BASED	CRIMINALIZATION SCORE[b]
a. Classes affected	Sale regulations still apply to "every person, firm or corporation..."	0
b. Enumeration of firearms	This scoring is somewhat difficult since it requires balancing the deletion of the reference to "derringers, bowie-knife or dirk...which can be concealed on the person..." with the addition of the definition of any "firearm with a barrel less than 12 inches in length." We scored this as a minor addition because it gives more precision to the definition of firearm and would include any firearm fitting the length criterion whether it could be concealed or not.	+1
c. Duty imposed	Balanced against a longer time (10-day instead of 24-hour time period) within which to make the report of a sale, the seller now must provide more information about the weapon that would make it easier to trace the sources of firearms. On the other hand, the statements must no longer be "true" or "correct," and the reasons for needing a firearm are no longer needed. As a result of balancing the different changes we scored this as a modest reduction in the duties imposed on the seller.	-1
d. Confiscation permitted	No reference	0
e. Use or possession exemptions	No reference	0
f. Regulation of sales	We scored this a major revision since sect. 3 precludes the seller from using important means of conducting business: advertising by displaying merchandise in store windows.	+2

TABLE 3 (continued)

g. Prohibition of purchasing use, or possession	No reference	0
h. Prohibition in public places	No reference	0
i. Prohibition in private places	No reference	0
j. Loction of prohibition specified	No reference	0
k. License requirements	No reference	0
l. License fee required	No reference	0
m. Criteria for license revocation	No reference	0

Criminalization index:[c] +2

Number of descriptors that were changed: 3

Mean criminalization index: (2 ÷ 3) .67

[a]Text of new provisions follows.

[b]Scoring of criminalization:
+2: major addition to existing coverage
+1: minor addition to existing coverage
0: no change
-1: minor subtraction from existing coverage
-2: major subtraction from existing coverage

[c]Criminalization index: sum of criminalization scores for all descriptors

TABLE 3 (con't)

37:48 REPORTS OF FIREARM SALES

An ordinance relating to and requiring a report of the sale or gift of revolvers, pistols and other like firearms.

Section 1. The words "pistol" or "revolver" as used in this ordinance shall be construed as meaning any firearm with a barrel less than 12 inches in length.

Section 2. Every person, firm or corporation who sells, delivers or gives to any person in the City of Minneapolis any revolver, pistol or like firearm shall within 10 days make and file with the Superintendent of Police of the City a legible written report stating there-in the date of such sale or gift, the name and place of residence of the person purchasing or receiving the revolver or pistol, and the caliber, make, model, manufacturer's number, or other mark of identification on such revolver, pistol, or like firearm.

Section 3. It shall be unlawful for any person, firm or corporation to display or exhibit for sale in any show windows abutting upon a public street or sidewalk or a public entryway which can be seen from the public street any revolver, pistol, or like firearm.

Section 4. Any person, firm or corporation violating the provisions of this ordinance shall, upon convicition thereof, be punished by a fine not to exceed $100.00, or imprisonment not to exceed 90 days.
(Passed 4-12-57, Approved 4-12-57, Published 4-12-57, 82 C.P.877.)

TABLE 4
CALCULATION OF CUMULATIVE NET CHANGE IN CRIMINALIZATION

$$C_t = \sum A_{t_{1...n}}$$

where $A = \sum O_{f_{1...n}}$

where $O_f = \frac{\sum d}{n}$

C = Cumulative Net Change in Criminalization

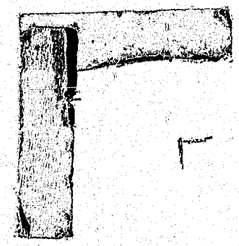
A = Annual net change

O_f = Mean criminalization score for a change in the definition of an offense for all changes in a year

d = change score for each offense descriptors (range = $\pm$ 2)

n = number of descriptors which were changed

t = year in which change occurred



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APPENDIX

PROJECT PAPERS AND PUBLICATIONS

Project Papers

1. THE EFFECTS OF THE POLICE ON CRIME: A SECOND LOOK (revised edition)

   Herbert Jacob and Michael J. Rich

   Revised version of a paper presented at the 1980 Annual Meetings of the Law and Society Association, June 6-8, Madison, Wisconsin.

2. MAYORAL TRANSITIONS AND CRIME RATES: A STUDY OF TEN AMERICAN CITIES

   Stephen C. Brooks and Robert L. Lineberry

   Paper prepared for the 1980 Annual Meetings of the Law and Society Association, June 6-8, Madison, Wisconsin.

3. CRIME CONTROL DECISIONS AT THE LOCAL LEVEL: MUNICIPAL CODE REFORMS IN TEN CITIES, 1948-1978

   Anne M. Heinz

   Paper prepared for delivery at the meetings of the Association for Criminal Justice Research -- Harvard Law School Conference on Sentencing Reform and Crime Control, October 7, 1980, Cambridge, Massachusetts.

4. POLICE AND NEWSPAPER PRESENTATIONS OF CRIME: AN EXAMINATION OF NINE CITIES, 1948-1978

   Herbert Jacob with the assistance of Jack Moran Duane H. Swank

   Paper prepared for delivery at the 1980 Annual Meetings of the American Society of Criminology, November 6, San Francisco, California.

5. CITIES AND CRIME

   Herbert Jacob and Robert L. Lineberry

   Paper prepared for the 1980 Annual Meetings of

the Social Science History Association, November 9, Rochester, New York.

6. CRIME, POLITICS, AND THE POLICY AGENDA: AMERICAN CITIES, 1948-1978.

Robert L. Lineberry and Herbert Jacob with the assisitance of Sarah-Kathryn McDonald

Paper prepared for delivery at the 1980 Annual Meetings of the Association for Public Policy and Management, October 23-25, Boston, Massachusetts.

7. POLITICAL RESPONSES TO URBAN CRIME

Janice A. Beecher, Robert L. Lineberry, and Michael J. Rich

Paper prepared for delivery at the 1980 Annual Meetings of the Midwest Political Science Association, April 16-18, Cincinati, Ohio.

8. DOES CRIME REALLY PAY?: THE STATE, SOCIAL DISORDER, AND THE EXPANSION OF SOCIAL WELFARE IN THE POST WORLD WAR II UNITED STATES

Duane H. Swank

Paper prepared for delivery at the 1981 Annual Meetings of the American Political Science Association, September 3-6, New York, New York.

9. COURT RESOURCES AND CRIME IN NINE U. S. CITIES 1948-1978

Herbert Jacob

Paper prepared for delivery at the 1981 Annual Meetings of the American Political Science Association, September 3-6, New York, New York.

10. CRIME, PUBLIC POLICY, AND PUBLIC EXPENDITURES

Herbert Jacob, Duane H. Swank and Robert L. Lineberry

Paper prepared for delivery at the 1982 Annual Meetings of the Southwestern Social Science Association, April, Tucson, Arizona.

CONTINUED

2 OF 3

Project Publications

1. THE EFFECTS OF THE POLICE ON CRIME: A SECOND LOOK

   Herbert Jacob and Michael J. Rich

   Law and Society Review (Spring, 1981): 109-122.

2. POLITICIANS AND URBAN POLICY CHANGE: THE CASE OF CRIME AND CITY POLITICS

   Stephen C. Brooks and Robert L. Lineberry

   In Terry N. Clark (ed.), Urban Policy Analysis Beverley Hills: Sage Publications forthcoming.

3. COMMUNITY POWER, THE URBAN AGENDA, AND CRIME POLICY

   Janice A. Beecher, Robert L. Lineberry, and Michael J. Rich

   In Social Science Quarterly (forthcoming, December 1981).

4. THE POLITICS OF POLICE RESPONSES TO URBAN CRIME

   Janice A. Beecher, Robert L. Lineberry, and Michael J. Rich

   In Dan Lewis (ed.), Reactions to Crime Beverley Hills: Sage Publications, 1981.

5. CRIME IN CITY POLITICS

   Anne M. Heinz, Herbert Jacob, and Robert L. Lineberry

   New York, New York: Longman, forthcoming.

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