

James Eisenstein and Herbert Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little, Brown, 1977. 322 + xi pp. \$11.95 (cloth); \$5.95 (paper).

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This monograph reports what is clearly a remarkable piece of research. The authors used both quantitative and qualitative methods to compare the systems of criminal justice in Baltimore, Chicago, and Detroit, three of the six cities in which McIntyre and Lippman (1970) had earlier demonstrated differences in prosecutorial style, including the use of plea bargaining. Thus the reader of *Felony Justice* may reasonably expect to learn something about the conditions that contribute to high or low rates of conviction based on negotiated guilty pleas.

Whether the expectations of the reader are fulfilled depends on his affinity for small group research. For the core of the book is the following thesis: such traits as coherence, familiarity, stability, and homogeneity of values, that characterize the groups who gather daily in all courtrooms (including judges, lawyers, clerks, bailiffs, etc.), will determine the number of cases handled in informal (nonadversarial) ways. To look for a more general, macrostructural approach will lead to frustrations. The authors studied almost 1,500 cases in each city to identify the effects of organizational traits upon the disposition of cases. Having developed categories to describe courtroom groups and their environments, they observed each courtroom for a week. By introducing the variable of "identity of courtroom," the authors are able to improve predictions based on traditional independent variables such as strength of evidence and characteristics of the defendant or the offense charged, where the dependent variables are, for example, the number of days between arrest and disposition, the decision to plead, choice of trial type, or outcome. However, they studied the effect of these group characteristics in an unfortunate way. Because the variable "identity of courtroom" is operationalized in terms of the identity of the judge, the influence of courtroom group may be confounded with that of the particular judge. Nowhere in the book are such group traits as stability or cohesion used as independent variables from which to predict, for example, the proportion of cases disposed by plea bargaining. The only proof offered for this relationship is the conjunction between an overall rating ("Baltimore workgroups were much less stable than those in the other two cities", p. 247) with the

rate of bargained guilty pleas. My main critique, however, is that the study does not start with the importance of crime control as merely one among a variety of state functions; nor does it ask how variation in the political-economic substructure of the different research sites affects the way in which the police and the courts contribute to these state functions. Although there is some reference to the impact of public opinion about crime control upon prosecutorial policies, the authors generally pay more attention to relationships within the criminal justice system than to the totality of external structures.

Thus, even though the authors avoid taking sides in the debates over criminal justice and refrain from suggesting reforms, they implicitly seem to favor cooperative decisionmaking. In a way this is an inevitable consequence of assuming that decisions are group work-products. Yet this assumption, which appears to be simply the outgrowth of a value neutral theory, may have important ideological consequences because only such cooperation allows a steady flow of convictions, especially as the police increase their input of cases into the criminal justice system. This increase in the number of cases may reflect a mounting crime wave. But it may also be a statistical artifact of poor police work. In capitalist societies, where fear of crime remains one of the very few areas in which the illusion of a social consensus may be preserved, the police may have to produce increasing crime rates. And faced with this rising input the courts may have no choice but to resort to informal procedures more frequently. As such cooperation increases the system of penal justice may, in the long run, be transformed into a system for the administration of penalties.

All this is not to say that I reject the notion that court decisions can be analyzed as the work-product of groups rather than of individual judges (who exhibit particular personality traits or political affiliations). I am convinced that Eisenstein and Jacob have introduced a new and valid approach for predicting court outcomes, even though they are not able to produce any statistical evidence for their central hypothesis that the rate of guilty pleas is determined by characteristics of the courtroom workgroup.

The book may be summed up like this: a very readable account of impressive empirical research which introduces a promising approach to the study of court outcomes. If it leaves this reader asking what makes two cities have different rates of convictions (per police file) and use plea bargaining differ-

ently, the authors themselves conclude: "much remains to be learned" (p. 310).

REFERENCE

McINTYRE, Donald M. and David LIPPMAN (1970) "Prosecutors and Early Disposition of Felony Cases," 56 *American Bar Association Journal* 1154.

AUTHORS' REPLY

Professor Schumann's review of *Felony Justice* will convey to those who have not read the book two erroneous conclusions. First, our approach to understanding felony court dispositions is not as narrow as Professor Schumann implies. We clearly do not conclude that workgroup characteristics "determine" the number of nonadversarial dispositions. The statistical analysis of correlates with guilty plea dispositions reported in Table 9.2 (p. 238) suggests the original charge, defendant characteristics, and strength of evidence play an important part in shaping how cases are handled. More significantly, it simply is not true that we ignore a macrostructural approach. Chapter 3 presents a theoretical discussion of the "ecology" of courtroom workgroups, including analyses of sponsoring organizations and *their* environments, appellate courts, the media, and the political environment. The descriptions of the cities' disposition processes utilize these concepts, as do the substantive data analysis chapters and the concluding chapters. Second, our argument that decisions about how to dispose of cases result from interactions of work-groups is not an assumption, but is derived from our field research. In fact, this approach did not figure prominently in our conceptualization when we commenced our research in the field.

We will conclude our response with two additional brief comments. Our data do not support the reviewer's assertion that only work-group cooperation allows for a steady flow of convictions. Indeed, in Baltimore we found workgroup cooperation low, but convictions flowed nonetheless. For what it is worth, neither of us personally favors "cooperative decision-making" even though some readers might conclude that we do. In fact, the term itself is misleading, because it conceals the widely divergent patterns of interaction that fall into the category of "cooperative."

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