

“We Wish to Instill Fear”: Mandatory Sentencing, Gun Control and the Bartley-Fox Law

Crime control is a fundamental policy issue at all levels of government, but political science does not always treat it as such. The extraordinary rise in state supervision of criminal offenders, often referred to as the development of the “carceral state,” is arguably the greatest change in how Americans interact with their government over the past forty years. Political scientists have begun to unpack the carceral state, but important gaps still exist in our understanding. My project addresses one of these gaps: the development of sentencing policy in the United States as it transitioned from an “expert” problem decided by judges to a public policy problem decided by elected officials. I focus on Massachusetts’ Bartley-Fox law, a 1974 bill that imposed a mandatory sentence of a year in prison for carrying an unlicensed gun. Bartley-Fox was the brainchild of two policymakers with two different solutions to the problem of violent crime: David Bartley’s solution was gun control, and John Fox’s solution was deterrence through harsh punishment. These two interpretations of the policy competed to define the legacy of this important state law. In the end, Bartley-Fox came to be seen as a successful example of mandatory sentencing, and an important harbinger of the “policy torrent” of mandatory sentencing that soon followed.

Bartley-Fox was conceived as an eleventh hour compromise to pass a law addressing the highly salient problem of violent crime that would withstand the opposition of Massachusetts’ powerful gun lobby. Two gun control bills, one banning handguns and another banning the cheap handguns known as “Saturday Night Specials,” had been defeated. However, the gun lobby declined to fight Bartley-Fox. The law was studied intensely by policymakers, academics, and the media as a test case for mandatory sentencing. These experts and commentators, however, disagreed not only about whether the purpose of Bartley-Fox was gun control or mandatory sentencing, but also about whether the law was effective or not. However, the N.R.A. was able to successfully portray Bartley-Fox as ineffective gun control in Congress at the same time that “tough on crime” conservatives successfully portrayed the law as effective mandatory sentencing.

However ambiguous they might have been, the lessons from Bartley-Fox were quickly removed from the very specific context in which the law was passed and were applied to a variety of crime “problems.” This contributed to a “policy torrent” dynamic, in which multiple mandatory sentencing laws passed year after year, instead of the more familiar punctuated equilibrium or classic policy diffusion models. These mandatory sentencing laws were not tailored to specific crime problems but were offered as a solution to a vague “crime problem.” The laws stayed on the books even after the salience of the “crime problem” waned and have thereby contributed to the buildup of prison populations. One potential solution would be to include sunset provisions in sentencing laws so that the passions stirred during crime waves have fewer long-run unintended consequences.