

Let's talk about INCARCERATION.

The relationship between politicization of crime and punishment
and public opinion.



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Abstract

Despite dramatic reductions in crime in recent years, the United States' prisons are overflowing with inmates. While the American public's appetite for harsh punishment has dropped considerably, policymakers have continued to pursue ultra-punitive policies on crime. These policies and the rhetoric supporting them have fueled today's exorbitant incarceration rate. Prior research has helped explore how the system got to this point, but falls short of explaining how this relationship exists today. This thesis addresses that gap by answering the following: what is the current relationship between rhetoric on crime and punishment and public opinion? And how is this relationship manifested in the way the public views politicians on their respective crime platforms? I argue that the relationship has changed so that offender rehabilitation is a more supported ideal than it has been in the past. To test this argument I collect original experimental data testing the effect of retributive and rehabilitative political rhetoric, as well as the impact of "soft on crime" accusations, on public opinion regarding incarceration and support for politicians. The study indicates that respondents' punitiveness is more affected by rehabilitative arguments than retributive arguments, and that the "soft on crime" label does not negatively influence impressions of that candidate. These findings suggest that past explanations of the relationship between the forces behind penal policies are outdated and are potentially constricting policymakers to their punitive trend.

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Preface

I believe everyone will have at least three experiences in their lifetime that will profoundly impact the way they view the world and their place within it. Why three? No reason. Let's not focus on the numbers—we will get to numerical reasoning in a few pages.

One of my “life-altering experiences” came after my sophomore year at the University of Michigan. That summer I was a criminal investigator for the Public Defender Service of the District of Columbia, working with two attorneys to prepare their felony cases for trial. From interviewing witnesses at Burger King until 2 o'clock in the morning to teetering on the legs of uncomfortable orange plastic chairs while visiting my clients in the D.C. jail, I began to understand the facets of our nation's incarceration system in a new way.

The more time I spent working within the criminal justice system, the more I realized it is not what it should be. I questioned the inequalities I witnessed first-hand and wondered what could be done to solve them. I became fascinated with the issue of incarceration. Since that summer I've worked to pursue this passion in my extra-curricular, interpersonal, and academic realms. There was no question my senior thesis would embody some aspect of this new interest, but it was unclear exactly *how*. Finally my advisor, Professor Ted Brader, and I developed a project to encompass what I consider the most intriguing aspects of this issue: public opinion, rhetoric, and incarceration policy. The thesis that follows is as much a product of that life-changing summer as it is of academic study.

Introduction

The United States boasts the highest rate of incarceration—or, number of citizens behind bars—among liberal democracies (Loury, 2008).¹ The Pew Center estimated in 2009 that one in every thirty-one American adults is in prison or on parole or probation. Roughly 2.2 million people were serving time in prison in 2007, a number that has increased steadily since the early 2000s (The Pew Center on the States, 2009).

Criminologist Michael Tonry asserts that a nation's incarceration rate is an indication of that society's punitiveness (Tonry, 2007). According to criminologists, increases in criminal activity explain at most 17% of the overall growth in our prison system between the 1970s and early 2000s. The rest is the result of the punitive turn in incarceration policymaking. In fact, 35% of the increase in incarceration rates is attributed to an increase in amount of time served due to a scaling back of parole efforts in combination with new mandatory sentencing. Forty-eight percent of this incarceration increase is due to the higher likelihood the individual would be incarcerated given the crime they committed (Raphael & Stoll, 2009). That is to say, crimes—especially those related to drugs—that would have historically received a lighter, parole-like sentence are now met with prison time.

¹ By definition, “incarceration” means confinement to a prison. Throughout this paper, any reference to the greater prison system is meant to encompass incarceration, parole, probation, and any other punishment measures.

Despite the fact that our nation's incarceration rate reflects policy punitiveness that is higher than ever, public opinion data indicate that *public* punitiveness is actually decreasing. Public punitiveness refers to a societal favoring of retributive measures over restorative or rehabilitative justice. Those who are retributive-focused tend to say prisons and harsh punishments reduce crime, the U.S. should send more people to prison for longer, and that rehabilitation does not work (Frost, 2006). To gain a more holistic view of punitive attitudes, consider Figure 1.1, a chart compiled from the General Social Survey over a period from 1972 to 2010 asking: "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?" We can see that fewer respondents answer "not harshly enough" after 1994, and the number has decreased steadily since. Moreover, the number of respondents indicating that the system is "too harsh" was at an all-time high in 2010, roughly 15%. Instead of focusing on what caused this change in punitiveness, this investigation will explore rhetoric and public opinion surrounding the United States' crime and punishment agenda throughout history, and what the current age of lower punitiveness means for public policy today.

When scholars make a connection between policy and public opinion, this linkage usually focuses on how politicians' perceptions of public opinion affect their policymaking decisions. "Within any public policy debate there is some question whether politicians lead or follow public opinion"—and the issue of incarceration is no exception (Ruddell, 2004: 17). Nobody doubts the influence of public opinion on policymaking, but understanding the development of this relationship stops short of explaining how the relationship functions in the current age. For example, if we believe penal policies became harsher because of politicians' responsiveness to public punitiveness we would expect to see penal policies become less harsh as

the public thirst for punitiveness wanes. However, while public demands for harshness have dropped off in recent years, public policies have not followed.

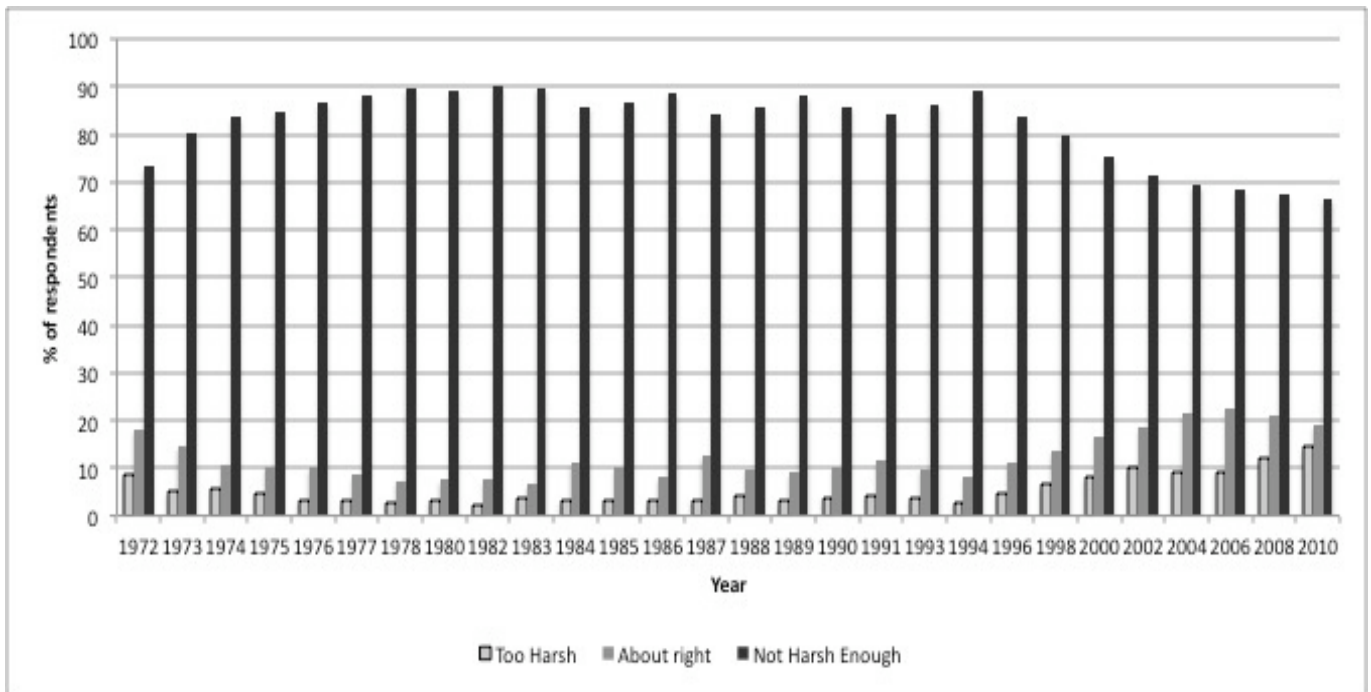


Figure 1.1. Levels of public punitiveness from 1972-2010: “In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?” Data from General Social Survey.

Public opinion of course is not the only factor that might influence policymakers’ decisions; politicians may also base their decisions on the social and economic facts underlying a problem. For example, if harsh incarceration policy was a response to high crime rates, we would expect policies to become more severe when the crime rate rises and less severe when it declines. Figure 1.2 illustrates trends in the violent crime rate over much of the past half century. Violent crimes increased fairly steadily for several decades, and this trend indeed seems to parallel the

punitive turn in American penal policies during this period. However, in the early to middle 1990s, violent crimes, as well as the overall crime rate, began to decline rather steadily. This corresponds fairly well to the shift in public opinion noted earlier, but again the punitiveness of American incarceration policies remains unchanged.

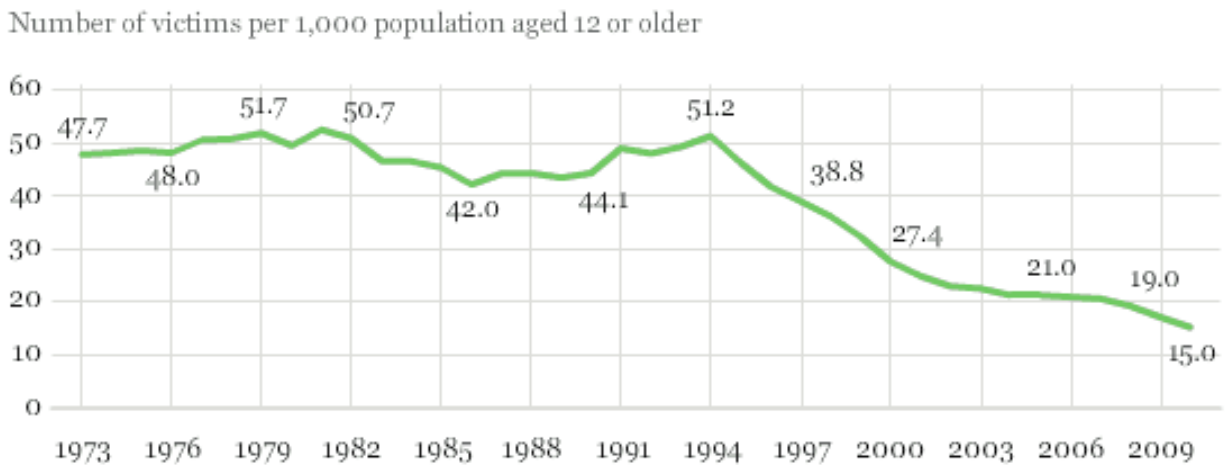


Figure 1.2. U.S. Violent Crime Rate, U.S. Justice Department Statistics, 1973-2010. Source: Gallup Poll. “Most Americans Believe Crime in U.S. Is Worsening.”

Considerable research focuses on why policy punitiveness increased, but not on why it has stayed the same. Moreover, traditional terms of “cause and effect” explored by political scientists and criminologists concentrate on explaining origins of punitiveness. This work is immensely helpful in paving the way for a further analysis, and leaves us with important questions to be answered. Given that the major schools of thought used to explain this phenomenon focus on a period in which crime, public punitiveness, and political agenda-setting on crime platforms were on the rise, there rests an unexplored issue: *in the current age where the crime rate, public punitiveness, and politicization of crime and penal strategy are low, what is the relationship between rhetoric on crime and punishment and public opinion?*

Furthermore, past research has left much uncovered regarding how the public's perception of the "toughness" of a politician on the crime issue influences how they view policies that politician proposes. Analysts and experts, from academia to political consulting, have said politicians must appear "tough on crime" to have successful political campaigns and careers (Beckett & Sasson, 2005; Caplow & Simon, 1999; Currie, 1998; Downes & Hansen, 2006; Newburn, 2007; Skolnick, 1996). Rampant use of this unsupported claim leads us to ask: *Does the label "soft on crime" mean political suicide? Is the public more skeptical of a politician's proposed policies if he/she has this label?* Policymakers have long thought the public wanted them to be harsh towards crime and those who commit crimes, but in a political climate where crime is not such a hot-button issue, where crime rates have dropped, and where the public is less harsh, is this still the case? To fully develop these issues, my experiment studies how candidates with rehabilitative-focused policies or retributive-focused policies influence respondents' levels of punitiveness.

In chapter one, I develop the relationship between public opinion and rhetoric surrounding crime and punishment through a historical discussion of policy. Within this chapter, I utilize past scholarship, rhetoric, and legislation to examine trends in American penal policy over the past century. Then, in chapter two I use prior research and theories to link public opinion and rhetoric to explain why these policy changes have occurred. Following this exposition, chapter three provides an explanation of the theory and hypotheses of the present study. Chapter four details the design of the study and chapter five presents the results. The thesis concludes in chapter six with a discussion of the implications of the study and its findings for the politics of American penal policy and opportunities for future research in this area.

<p style="text-align: center;">I --- The Penal Path</p>

What is crime and incarceration policy and how has it changed over time?

We expect to see policy changes in all facets of American society as leadership, attitudes, and—more simply—times change. But crime and punishment policy is one area that has experienced a dramatic transformation whose roots have not been adequately developed. In this section we will explore facets of the United States’ penal policies, illuminating the shifts in these policies over the twentieth and twenty-first centuries.

Society & Rehabilitation: what causes the crime problem and how to solve it

Penal policy is guided by what those making the policy and/or what society views as the causes of crime. From the early 1900s to the late 1960s and early 1970s, the United States used consistent punishment, independent of economic and social conditions. In other words, penal policy—from regulations to sentencing—did not experience dramatic change. Much of this stability stemmed from the belief at that time: society is responsible for crime and delinquency. Thus, treatment and rehabilitation were the main purposes of the prison system, a way for society to reform the ills it caused (Pratt, 2009; Ruddell, 2004). The Assistant Executive Director of New York City’s Welfare Council, Leonard W. Mayo, described this view in his 1939 work on the corrections system: “Crime is a legal term for a social problem. It is an individual’s expression of

the external and internal conflicts that beset him, a phenomenon that has its roots in the total environment and its reflection in individual and group conduct” (Mayo, 1939: 16). He went on to highlight the importance of “...the control and treatment of those... in conflict with the law and who need care and supervision for their rehabilitation and for the protection of society” (Mayo, 1939: 16). In his writing, Mayo showcased the dual responsibility the system held to care for the criminal and for society.

To be sure, some present-day criminologists question if a system focused on rehabilitation ever existed. Jerome Miller, who served as Massachusetts Commissioner of Youth Services in the late 1970s, is one of those skeptics, writing:

If budgets were any measure, rehabilitation was a straw man. There has never been a rehabilitative era in American corrections. Most correctional systems had few, if any trained psychiatrists, psychologists, or social workers. Virtually all correctional budgets went to staff that operated traditional prisons, jails and reform schools. (Miller, 1989)

However, there is no doubt the country’s *ideal* correctional system was rehabilitative, whether or not this goal came to fruition; the amount of propaganda surrounding the positive effects of rehabilitation is indisputable. One such advertisement run by the National Probation Association advocates for alternatives to prison sentences, especially for juvenile offenders. Emphasizing the potentials of probation instead of prison, the 1940 campaign exhibits an image of a smiling youth flying model airplanes in the park with his probation officer as the voiceover announcer says, “Johnny has found a new world and ambition... Intelligence and friendly guidance has accomplished what mere punishment could never do” (National Probation Association Public Service Announcement, 1940).

By the same token, the definition of “rehabilitation” as it exists today is different from what it was during Mayo’s time. While a large portion of this old idea rests in helping the offender reenter society through social programs, part of the origin of the “medical model” was

medical treatment. Electroshock therapy and cocktails of prescription drugs were used for “reducing violent tendencies” and calming social ills (Pratt, 2009: 34). However, though this way of using medicine is rebuked in the Western world today, the objective of the prison system was still to change the offender for the better during that time period. Lastly, a notable characteristic of this treatment-focused system was the determination of the length of imprisonment *after* treatment. In other words, prison operated like a hospital: people were discharged when the corrections staff felt they were “better” than when they came into the facility (Ruddell, 2004).

Another defining aspect of crime policy during this era, dubbed the “modern administrative state,” was that agency professionals, like psychiatrists and wardens, controlled corrections policy. Crime prevention, response, and punishment were parochialized at the local level, an issue individually tackled by cities and communities (Pratt, 2008). Such localization is not surprising; since the cause of crime was said to be rooted in the community, who better than the community to take care of it? This was the manner of thinking that pushed passage of the Boggs Act of 1951 (Gill, 2008; Parenti, 1999). Representative Hale Boggs (D-La.) pushed the belief that drug addiction was a contagious disease for which its victims should be quarantined for treatment, so Congress established mandatory minimum sentences for first-time drug offenders, even for simple possession. The Boggs Act, given its medical model roots, was not so much a step in criminalization as it was in seeking a public health measure against these offenses (Gill, 2008). In the pre-punitive era, rhetoric and prison policy pushed crime as a social woe and the idea that those who committed crimes could be reformed through treatment and rehabilitation.

The beginnings of a transformation

The 1960s began a galvanization of the responsibility of crime and punishment, much of

which occurred through the lens of drug crimes. This change occurred in two sectors: accountability for crime and punishment, more specifically the incarceration system, shifted from local to national hands, and the blame for crime problem became rooted in the individual himself or herself instead of society. Prior to the late 1960s, the overwhelming opinion of the root of criminal behavior was that it was society-driven instead of individual-driven. In a Gallup poll, respondents were asked “What do you, yourself, think is the cause of lack of respect for law and order and the increase of crime in the United States of America today?” In 1964, 41% cited poor parenting, a social cause, while only 18% cited the need for tougher law enforcement. By 1969 the Harris poll found that 64% of Americans believed “mollycoddling hardened criminals” to be a major cause of the increases in crime (Erskine 1, 1974). Somewhere between 1964 and 1969 something changed the public’s mind.

Senator Barry Goldwater’s campaign against Lyndon B. Johnson in 1964 is credited with bringing the crime issue to the national stage via an attack on social responsibility (Beckett, 1994; Beckett & Sasson, 2005; Caplow & Simon, 1999; Parenti, 1999; Pratt, 2009; Ruddell, 2004). Highlighting the issue of crime, Goldwater called for changes to be made in responsibility and therefore in punishment as well. In his anti-crime, pro-law and order campaign, Goldwater assailed the idea of social welfare and, more importantly, altered the sense of responsibility in American society. Emphasizing this connection, Goldwater exclaimed:

If it is entirely proper for the government to take away from some and give to others, then won’t some be led to believe that they can rightfully take from anyone who has more than they? No wonder law and order has broken down, mob violence has engulfed great American cities, and our wives feel unsafe in the streets. (Quoted in Beckett, 1997: 28)

The message Goldwater sent was clear: American society needed to rethink the way it handled crime and punishment. Though Lyndon B. Johnson defeated Goldwater, the impact of this shift was not lost.

In fact, the impact was all *but* lost. Once in office, Johnson kept the crime issue on the national forum as he tried his hand with crime policy. Notably, he established the Bureau of Narcotics and Dangerous Drugs, the first federal attempt to control drugs on a national scale. Additionally, he created the first concrete, multi-faceted legislation, the Omnibus Crime Control and Safe Streets Act of 1968, to create a national standard for the relationship between the police and the community (Omnibus Crime Control and Safe Streets Act, 1968; Parenti, 1999). The section of this legislation titled “Declarations and Purpose” provides context around how Congress envisioned the act:

To prevent crime and to insure the greater safety of the people, law enforcement efforts must be better coordinated, intensified, and made more effective at all levels of government. Congress finds further that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively. It is therefore the declared policy of the Congress to assist State and local governments in strengthening and improving law enforcement at every level by national assistance. (Omnibus Crime Control and Safe Streets Act, 1968)

Though crowning the local governments the main leaders of the crime and punishment effort, the act established the federal government’s role as head sponsor of the movement. Providing \$400 million of federal funds under the creation of the Law Enforcement Assistance Administration (LEAA), this act was the brainchild of Johnson’s National Crime Commission, which he assembled almost immediately after his election (Beckett & Sasson, 2005; Omnibus Crime Control and Safe Streets Act, 1968; Parenti, 1999).

Much of the act focused on law enforcement rather than criminal justice and punishment,

but one key provision signaled the desire to convict more lawbreakers. Responding to the contested *Miranda v. Arizona* Supreme Court decision, this title gave judges the authority to interpret admissibility of a defendant's statement based on listed "circumstances," among which is the issuance of Miranda rights.² Under the Omnibus Act, a defendant's statement could still be considered admissible even if they were uninformed of their Miranda rights as long as a judge thought the statement was otherwise given under valid circumstances (Omnibus Crime Control and Safe Streets Act, 1968). Motivated by the hunger to see more convictions, this act was the first step in the direction to tighten law enforcement and crack down on crime ("The Supreme Court's Harmful Error", 1991). In a statement made during the act's signing ceremony, Johnson said he had "called upon [Congress] to strike a sure and swift blow against crime in America" (Johnson, 1968).³ The LEAA simultaneously created crime and punishment provisions and allowed Johnson to establish himself as a crime solver, as he indicated during its signing: "My overriding concern today, as it has been since the first day I became President, is for safe streets in America. [...] Crime will never yield to demagogic lament—only to action. With this measure, we are beginning to act" (Johnson, 1968).

When Richard Nixon became president in 1968 he took crime control to new heights, increasing spending in federal law enforcement, and publicly demanding "law and order" (Marion, 1994; Parenti, 1999). Following Goldwater's anti-welfare, pro-punishment lead and attacking

² In 1966, by way of a 5-4 decision, the Supreme Court ruled that inculpatory and exculpatory statements in police custody are admissible only if the defendant was informed of the right to consult an attorney and abstain from answering questions. Many saw this as a way to let criminals off the hook (*Miranda v. Arizona*, 1966; "The Supreme Court's Harmful Error," 1991).

³ Though Johnson upheld the Act, he did show his disappointment that some steps were not outlined as he had hoped, announcing that the "measure contains more good than bad and that [he] should sign it into law" (Johnson, 1968). Among other provisions with which he disagreed, Johnson asked, "What in the name of conscience will it take to pass a truly effective gun control law?" and said the legislation, on the issue of gun control, was "only a halfway step toward the protection of our families and homes" (Johnson, 1968).

Johnson's civil rights and social programs measures, Nixon argued the "solution to the crime problem is not the quadrupling of funds for any governmental war on poverty but more convictions" (Marion, 1994: 70). To solve this crime problem, Nixon argued, America must look to the deterrence method: lock someone up to provide an example of what happens when people do bad things. Being relaxed with criminals taught people that they, too, could commit crimes, an idea that lends itself to an unstoppable cycle of crime. According to the President, the crime issue was a matter of respect, a value that had deteriorated due to the spread of "corrosive doctrine" (Beckett & Sasson, 2005). This "corrosive doctrine," of course, was nothing short of the civil rights movement and the Beatniks and the protestors and the activists, all of whose methods were eroding law and order (Beckett & Sasson, 2005; Parenti, 1999). Something needed to be done.

At the start of his presidency Nixon requested an increase in LEAA funding for local law enforcement. In fact, Nixon authorized the LEAA eleven times more funding between 1969 and 1973 (statistics from the Congressional Budget Office 1978, as cited in Hynes, 2010). More noticeable, however, was Nixon's linkage between the drug problem and the crime problem. In a speech in 1971, Nixon asserted that drug addicts were responsible for over \$2 billion worth of property crimes every year. Interestingly, the FBI reported the total amount of property stolen in the U.S. that year was only \$1.3 billion (Baum, 1996). Such "tough-sounding rhetoric" became the foundation of Nixon's crime strategy, and "fighting drugs became a crucial weapon in the war on crime" (Beckett & Sasson, 2000: 56; Epstein, 1977, quoted in Beckett & Sasson, 2000: 56).

While Nixon's general crime rhetoric was indisputably harsh, his legislation revisited and revised the Boggs Act's mandatory sentencing for drug crimes. The Comprehensive Drug Abuse

Prevention and Control Act of 1970 removed the mandatory minimums for drug offenses except in a few select severe circumstances, mostly dealing with drug trafficking rather than drug use (Gill, 2008). Still, the Act by no means lessened criminalization of drug use. Rather, the act provided legal framework for the Drug Enforcement Agency (DEA) while classifying controlled substances by level of danger and potential for abuse and addiction (Drug Enforcement Administration). In continuation of his usual “tough” language, Nixon fortified the connection he forged between crime and drugs when he signed the act:

Those who have a drug habit find it necessary to steal, to commit crimes, in order to feed their habit. [...] ... I hope that at the time the Federal Government is moving, as we are moving very strongly in this field, that the whole Nation will join with us in a program to stop the rise in the use of drugs and thereby help to stop the rise in crime; and also save the lives of hundreds of thousands of our young people who otherwise would become hooked on drugs and be physically, mentally, and morally destroyed. (Nixon, 1970)

Through employing a rhetorically strong, yet factually weak connection between crime and drugs, Nixon used his “tough on drugs” approach to be “tough on crime.”

After the Watergate scandal and Nixon’s resignation, America was still focused on solving the crime problem.⁴ At the start of the 1970s, with higher-than-usual crime rates, society was skeptical of the long-used rehabilitative structure of the United States’ prison system (Ruddell, 2004). Sociologist Robert Martinson, who had studied U.S. prisons for years, pushed rehabilitation over the edge when he released a report in the journal *The Public Interest* in 1974 titled “What Works? —Questions and Answers about Prison Reform.” In this widely publicized report, Martinson relayed that, when it came to rehabilitating offenders, “nothing works”

⁴ Though corporate and white-collar crimes are out of the scope of this analysis, it is interesting to note that some criminologists (namely, Ruddell, 2004) have said the Watergate scandal encouraged political disaffection, to which the federal government responded by proving to the public they could do good things on the crime front.

(Martinson, 1974; Ruddell, 2004).⁵ Martinson appeared on talk shows and was cited by politicians who advocated for a removal of the rehabilitative goal from the incarceration system (Glazer, 1989). Martinson, politicians, and the public were convinced nothing could be done to change the path of criminals, and this simple phrase gave America proof that the rehabilitative ideal should be scratched. Despite the fact that Martinson retracted his statement five years later after further researching the topic, politicians continued to cite his original essay and employ rhetoric that, when it comes to criminals, “nothing works” (Downes & Hansen, 2006; Ruddell, 2004).

With the explosion of the Martinson report, the old debate about the culpable actor—the individual or society—flared. Now that the individual was responsible for his or her own actions, they needed to be punished. Summarizing the prevailing idea of the mid-late 1970s, Glenn Loury said, “felons are no longer persons to be supported, but risks to be dealt with” (Loury, 2008: 9).

Gerald Ford took his turn as the crime-stopping president in the immediate wake of the Martinson report. In the 1976 State of the Union address, Ford turned his focus to imprisonment as a response to crime:

To keep a convicted criminal from committing more crimes, we must put him in prison so he cannot harm more law-abiding citizens. To be effective, this punishment must be swift and it must be certain. Too often, criminals are not sent to prison after conviction but are allowed to return to the streets. (Ford, 1976)

With this strong “law and order” rhetoric, Ford reinforced that prison was the only place for a criminal. Like his predecessors, Ford was clear to distance the federal government from the effort, saying that states and local law enforcement agencies were “the frontline fighters in the

⁵ To back up this catchphrase, Martinson reports that, “... with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism” (Martinson, 1974: 25). Additionally, he says, “our present strategies ... cannot overcome, or even appreciably reduce, the powerful tendencies of offenders to continue in criminal behavior.” (Martinson, 1974: 49)

war against crime” (Ford, 1976). Nonetheless, Ford increased funding for the cause, initiated plans to build four new federal prisons, and urged Congress to impose federal mandatory sentences for gun crimes (Beckett & Sasson, 2005). While the latter never came to fruition during Ford’s presidency, it would a few short years later under the Reagan administration.

The next administration—the Carter Presidency—presents somewhat of a conundrum for current criminologists. In fact, nearly all who write on the topic of incarceration policy conveniently travel in time from Ford to Reagan, insisting that the nation’s leaders remained uncompromisingly obsessed with incarceration (Beckett & Sasson, 2005; Parenti, 1999; Pratt, 2009). President Jimmy Carter, however, did not fit this mold. Instead, Carter spoke out against injustices in the system and reverted back to the society-is-guilty belief. At a campaign speech in Detroit, Carter said, “Every time a person goes back to prison as a repeat offender, it is a sign that our prisons have failed. I believe we can reduce the percentage of failures and at the same time reduce the amount of crime. Presidential leadership can make a difference” (Carter, 1977: 220). However, Carter did nothing to offer a solution to the crime problem. During his time states began to issue mandatory minimums for drug offenses. For example, Michigan began 1978 with the colloquially named 650 Lifer Law, establishing mandatory life without parole for possession of 650 grams of cocaine or heroin, among other mandatory minimums. Such sentencing followed previous standards set by other states. In 1973, the state of New York signed the Rockefeller drug laws to institute mandatory 15-year to life sentences for certain drug crimes, creating a mandatory sentencing template for states to use in years to come (“History of Mandatory Sentences”, 2005; Katel, 2007; Weiman & Weiss, 2009).

At the end of the 1970s, the state of U.S. incarceration had experienced an extreme change from the pre-Goldwater era. Not only had the societal explanation of the root of the crime

problem changed in the public's mindset, but the way to *solve* the crime problem changed as well. Now that the individual was to blame, society was no longer responsible for making wrongs right. Hence, rehabilitation lost significance within corrections services as its allure was "eclipsed by deterrence and incapacitation" (Beckett & Sasson, 2005: 51). An identical Harris poll done over several years asked Americans: "What do you think should be the main emphasis in most prisons—punishing the individual convicted of a crime, trying to rehabilitate the individual so that he might become a productive citizen, or protecting society from future crimes he might commit?" (Applegate, Cullen, Fisher, 1997). In 1968, 73% of respondents answered that the main emphasis should be rehabilitation. In 1982, just fourteen years later, this number plummeted to 44%. While deterrence was not measured, the desire to protect society registers support for incapacitation. The percentage of respondents indicating "protect society" as the ideal main goal of prisons was 12% in 1968. By 1982 this percentage nearly tripled (Applegate, Cullen, Fisher, 1997). The 1970s marked a dramatic change in societal preference and expectation of punishment, casting away rehabilitation in favor of deterrence and incapacitation.

The early 1970s reflected an unprecedented growth in incarceration, explained mostly by an increase in criminality mirrored by economic and social conditions, according to today's criminologists. However, starting in the late 1970s, incarceration rates would soon become dependent not on crimes committed, but policies increasing criminalization and punishment (Flanagan & Longmire, 1996). Going into the Reagan administration, America was headed on the fast-track toward mass incarceration.

The War on Crime gains steam

"The loss of confidence in rehabilitation has contributed significantly to the growth in

prison populations” (Flanagan, 1996: 77). With national prison policies becoming increasingly punitive, more individuals were incarcerated than ever before in the country’s history. Coming out of the 1970s, the steadiest increase in incarceration rates began at the start of the new decade: between 1980 and 1984 the prison population increased by more than 50 inmates per 100,000 citizens without a change in the national crime rate (Ruddell, 2004). It is precisely this boom that led many criminologists to find consequence in harsher policies. One criminologist expressed this view in stating, “The growth in incarceration was driven principally by policy decisions made by society and much less by changes in criminal behavior” (Raphael & Stoll, 2009: 21). The present prison system, bursting at the seams with inmates, is a product of policy changes, especially those enacted in the 1980s (Raphael & Stoll, 2009; Ruddell, 2004).

Following Nixon’s War on Crime and War on Drugs, the link between drugs and crime only strengthened in the ‘80s. Congress passed the Comprehensive Crime Control Act and the Anti-Drug Abuse Act in 1984 and 1986, respectively (Beckett & Sasson, 2005). The Comprehensive Crime Control Act gave judges the authority to deny defendants bail, initiated the Sentencing Commission to issue sentencing guidelines, and established mandatory minimums on federal drug crimes and offenses committed with a gun (Comprehensive Crime Control Act, 1984).⁶ Politicians passed minimum sentence ranges for federal judges “in order to correct past patterns of ‘undue leniency’” (Katel, 2007: 302). Establishing the first round of mandatory sentences in 1986, Congress began to add the creation of mandatory minimums to their agenda nearly every election year (“Federal Mandatory Minimums by Number Passed per

⁶ Though conceptually in the same vein, sentencing guidelines and mandatory minimums are different. Mandatory minimums are written by Congress to be hard legislation and sentencing guidelines are advisory measures issued by the Sentencing Commission to serve as a benchmark for the federal expectation and standard of sentencing. For example, if a person is sentenced for a crime that does not have a mandatory minimum, the judge will consult—but not necessarily follow—the sentencing guidelines (“Federal Sentencing Guideline Amendments in a Nutshell,” 2010).

Year,” 2011).⁷ Table 2.1 illustrates the history of mandatory minimum sentences made by Congress. We can see that even in recent years the fever of such statutes has remained very much alive and nonpartisan. Mirroring this, as the federal government removed judges’ discretion, the prosecutor became an ever-powerful actor in law enforcement (Ruddell, 2004). His or her goal was to press charges and get convictions, and the judge merely issued the sentence.

Number of MMs Created	Congress	Years Congress in Session	Majority Party of House of Representatives	Majority Party of Senate	Party of President
26	100th	1987-1989	Democrat	Democrat	Republican (Reagan)
7	101st	1989-1991	Democrat	Democrat	Republican (Bush I)
1	102nd	1991-1993	Democrat	Democrat	Republican (Bush I)
26	103rd	1993-1995	Democrat	Democrat	Democrat (Clinton)
40	104th	1995-1997	Republican	Republican	Democrat (Clinton)
17	105th	1997-1999	Republican	Republican	Democrat (Clinton)
4	106th	1999-2001	Republican	Republican	Democrat (Clinton)
2	107th	2001-2003	Republican	Republican / Democrat	Republican (Bush II)
44	108th	2003-2005	Republican	Republican	Republican (Bush II)
24	109th	2005-2007	Republican	Republican	Republican (Bush II)
7	110th	2007-2009	Democrat	Democrat	Republican (Bush II)
1	111th	2009-2011	Democrat	Democrat	Democrat (Obama)

Table 2.1. Distribution of data based on political parties of Congress and President.
Source: “Federal Mandatory Minimums by Number Passed per Year” by Families Against Mandatory Minimums.

An additional measure enacted through the 1984 and 1986 legislations was the element of

⁷ This has held true; the year 2010 was the only election year in which Congress did not issue or revise any mandatory minimum sentences. With the political nature of penal policy decisions, it is easy to see where politics comes into play in America’s crime and punishment forum.

forfeiture laws whereby federal drug trials could be held in a state civil court (still maintaining their federal punishment). The incentive behind this provision was to catch as many offenders as possible, bring them to trial quickly and efficiently without wasting resources, and lock them away. To encourage states to follow suit, the legislation provided that the state police could keep any monetary assets obtained by the conviction. By 1990, 49 states had created their own forfeiture laws and were accumulating wealth from trials—not to mention an escalating number of convicted felons in their state prisons (Beckett & Sasson, 2005).

Perhaps most dramatic and instrumental in increasing the number of people behind bars, however, were the 1984 Act's elimination of federal parole and the 1986 abolishment of probation for many federal offenses. Now anyone convicted of a federal crime would receive a full sentence to be served inside prison walls, instead of spending part of their sentence in the community. Given that parole and probation boards had been heralded as the way to give offenders a smooth reentry into society, these provisions were the ultimate blows to rehabilitation (Beckett & Sasson, 2005; Pratt, 2009). During the Reagan years, there was no denying: imprisonment was in, rehabilitation was out.

One of Reagan's more notable stances was that which he took on the responsibility for crime. His conviction that crime was a matter of individual choice encouraged his removal of treatment from the federal allocation of funds toward punishment. The Reagan administration likened "street crime" with declining moral standards and defined the "drug problem" as a criminal issue, instead of a public health or social issue (Beckett, 1994). In the Reagan era, talk of the criminality of addiction seemed to be everywhere, and it hit a high point when Reagan paralleled drug use and social welfare programs. Of these programs, Reagan said, "government became a drug, providing temporary relief, but addiction as well" (cited in Beckett & Sasson,

2005: 52). The use of the word “drug” itself became a hot-button symbol for crime. Similarly, Reagan strove to shed the tradition of “coddling criminals,” stating, “Government’s function is to protect society from the criminal, not the other way around” (Reagan, 1984: 238). In order to shift this standard—a standard which had actually been largely absent for years, but one that still proved to have rhetorical power—Reagan advocated for the government to stop handing out assistance and start handing out sentences.

Anti-treatment measures driven by Reagan’s stance on origins of crime appear even more pronounced in a review of legislation and funding allocated to the drug issue. By 1985, 78% of funds put toward solving the drug problem went to law enforcement, and only 22% went to drug treatment and prevention (Beckett & Sasson, 2005, citing the 1990 Budget of the U.S.

Government from the Executive Office of the President). Drug abuse legislation focused on incarceration instead of treatment; a highlight of the 1988 Anti-Drug Abuse Act was the increase of funding to the Bureau of Prisons for new prison construction (Brown, 2004). Reagan showed his enthusiasm for incarceration over treatment when he signed the act, saying, “This bill helps us close rank on those who continue to provide drugs. Arrests, convictions, and prison sentences of sellers and abusers are rising to record levels” (“Remarks on Signing the Anti-Drug Abuse Act”, 1988).⁸ Congress and state legislatures walked the path paved by the federal government and slashed funds for drug and mental health treatment, opting for prison complexes instead (Beckett & Sasson, 2005).

The Anti-Drug Abuse Act also directly lengthened prison sentences for drug offenders. Taking existing mandatory minimums a step further by adding more sentencing statutes, the act

⁸ Ironically in the previous breath Reagan had said, “In every corner of our society, people are fighting the purveyors of this evil and are just saying no ... And the total number of [cocaine] users has leveled off” (“Remarks on Signing the Anti-Drug Abuse Act,” 1988). It is curious that even he would admit incarceration rates were rising though drug use was plateauing. Evidently he wanted credit for both contradictory aspects of crime and punishment.

included a minimum five-year sentence for first time offenders possessing 28 or more grams of crack cocaine. The same federal mandatory minimum was imposed for 500 grams of powder cocaine.⁹ Additionally, it introduced the option of the federal death penalty for participation in criminal enterprise or drug-related felony crime that kills another person, whether intentionally or not (Brown, 2004). Though the death penalty was not a mandatory sentence in this instance, the suggestion that this method of punishment be used sent a clear signal to the public that crime would not be tolerated. Critics of the act argue its mandatory minimum provisions were expansive and vague: 20 years for drug offenses, 10 years for endangerment during drug manufacturing, and life for three time drug offenders (Beckett & Sasson, 2005; “History of Mandatory Minimums,” 2005). Reagan’s “tough on crime” legislation and rhetoric leaves no question as to why scholars cast him as the leading role in punitive movement (Pratt, 2009). After the Willie Horton uproar cost Michael Dukakis the 1988 election, President George H.W. Bush continued Reagan’s punitive policies without notable changes in legislation or action on the crime and punishment front (Newburn, 2007).¹⁰

Following five years of behind-the-scenes national legislative work, the country’s largest crime bill—the Violent Crime Control and Law Enforcement Act of 1994—was the next major national-scale effort. With the peak in the national rate of violence in 1991 and 1992, legislators had no trouble gaining support for their act. This “bipartisan product of six years of hard work” established federal capital punishment for 16 crimes, most of which were drug crimes and violent crimes, bringing the total number of offenses for which the death penalty was permissible to about 60 offenses (“Violent Crime Control and Law Enforcement Act of 1994 Department of

⁹ This disparity will be addressed in the section to come as we unpack the impact of racism in policies fueling the U.S. incarceration system.

¹⁰ The nature of the Horton scandal will be explored in the subsequent chapter in a discussion on public opinion, rhetoric, and policy.

Justice Fact Sheet”). But perhaps the most significant mandatory minimum provision was the “three strikes” measure whereby a convicted felon was guaranteed “mandatory life imprisonment without possibility of parole for Federal offenders with three or more convictions for serious violent felonies or drug trafficking crimes” (“Violent Crime Control and Law Enforcement Act of 1994 Department of Justice Fact Sheet”). This idea—appropriately nicknamed “Three Strikes, You’re Out”—caught on fast: by 2000, 26 states had such legislation (Ruddell, 2004). Among other punishment-enhancing provisions, the bill also strengthened penalties for: “drive-by-shootings, use of semi-automatic weapons, sex offenses, crimes against the elderly, interstate firearms trafficking, firearms theft and smuggling, arson, hate crimes and interstate domestic violence” (“Violent Crime Control and Law Enforcement Act of 1994 Department of Justice Fact Sheet”). Additionally, the bill authorized adult prosecution of juveniles 13 and older charged with certain violent crimes, a measure representative of a movement to punish harshly.

This bill also called for state initiation of sex offender registries and truth-in-sentencing laws, whereby at least 85% of the sentence to which an individual was convicted would be served behind bars instead of on probation or parole (Dubin et al., 2002). In order to ensure states adopted such laws, the act authorized grants for programs and prison construction only for states that had these requirements. Unsurprisingly, this created the expected trend of states adopting the policies national legislators advocated (Flanagan, 1996). In fact, by 1998, 14 states had completely abolished their parole boards and 22 states did not allow violent offenders to be eligible for parole as part of their sentence (Dubin et al., 2002; Ruddell, 2004). Table 2.2 shows how the changes made in 28 states (and the District of Columbia) were largely ushered by this 1994 bill.

The bill was unique in that it provided \$9.7 billion in funding to build and operate more

prisons and \$6.1 billion in prevention programs (“Violent Crime Control and Law Enforcement Act of 1994 Department of Justice Fact Sheet”). Although the vast majority of the prevention programs involved law enforcement there were a few initiatives aimed at true community prevention, like the provision titled Crime Prevention Block Grants to establish boys and girls clubs, sports leagues and community-police partnerships. While the 1994 act paid a small amount of attention to thwarting the occurrence of criminal activity, it was undeniably provocative in terms of sentencing and punishment.

State	State TIS law enacted / implemented*	Parole restricted or abolished	Sentencing guidelines implemented	Three strikes laws
<i>Arizona</i>	1993 / 1994	1994	-	-
<i>California</i>	1994	1994	-	1994
<i>Connecticut</i>	1994 1995 / 1996 (85%)	1994 1996	-	1994
<i>Delaware</i>	1989/ 1990	1990	1987	-
<i>District of Columbia</i>	1997 / 2000	2000	2001	-
<i>Florida</i>	1995	1983 & 1995	1983	1995
<i>Georgia</i>	1994 / 1995	1995	-	1995
<i>Illinois</i>	1995	1978	-	-
<i>Iowa</i>	1996	1996	-	-
<i>Kansas</i>	1992 / 1993 (80%) 1995 (85%)	1993	1993	1994
<i>Louisiana</i>	1995 / 1997	-	1992	1994
<i>Maine</i>	1995	1976	-	-
<i>Michigan</i>	1994	1994	1981	-
<i>Minnesota</i>	1992/ 1993	1980	1980	-
<i>Mississippi</i>	1995	1995	-	-
<i>Missouri</i>	1994	1994	1997	-
<i>New Jersey</i>	1997	1997	-	1995
<i>New York</i>	1995 and 1998	1995 & 1998	-	-
<i>North Carolina</i>	1993 / 1994	1994	1994	1994
<i>North Dakota</i>	1995	1995	-	1995
<i>Ohio</i>	1995 / 1996	1996	1996	-
<i>Oklahoma</i>	1997 / 1998	1998	-	-
<i>Oregon</i>	1989 / 1990 (80%) 1994 / 1995 (100%)	1989	1989	-
<i>Pennsylvania</i>	1911	-	1982 & 1994	1995
<i>South Carolina</i>	1995 / 1996	1996	-	1995
<i>Tennessee</i>	1995	1995	1989	1995

<i>Utah</i>	1985	-	1985 & 1998	1995
<i>Virginia</i>	1994 / 1995	1995	1991	1994
<i>Washington</i>	1990	1984	1984	1993

* This year is only listed one time if the TIS law was enacted and implemented in the same year.

Table 2.2. The impact of the 1994 Violent Crime Control and Law Enforcement Act. Source: Adapted from Dubin et al., 2002. “The Influences of Truth-in-Sentencing Reforms on Changes in States’ Sentencing Practices and Prison Populations.”

Despite the presence of preventive programs in the Violent Crime Control and Law Enforcement Act, the act deeply wounded the rehabilitative ideal. One provision removed the availability of federal Pell grants for education in prison. In 1994, 27,200 state and federal prisoners were using Pell grants to obtain a college education while in prison. But some saw this as a waste of funding and an unfair commodity afforded to an undeserving population (Katel, 2007). Republican U.S. Senator from Texas, Kay Bailey Hutchison offered the view that this program embodied society’s undue and unjust burden of providing programs for prisons when she said, “The honest and hard-working are being elbowed out of the way by criminals. Prisons exist for the protection of society; not the comfort and convenience of criminals” (Katel, 2007: 296). The lack of support for prisoner education programs dramatically reduced the number of education opportunities available to inmates. In 1983, 41 states offered programs for inmates to receive a post-secondary education in which nearly 5% of the national prison population participated (Katel, 2007). After the VCCLEA passed and the funding for prisoner education programs plummeted, only 21 states offered programs and less than 2% of the prison population was enrolled by 1997. Some states, like Pennsylvania, abolished the possibility of taking college courses all together. Once hailed as one of the most successful rehabilitative measures, the opportunity to receive a college education behind bars largely disappeared (Katel, 2007).

Riding on the tails of the anti-coddling campaign, the newly Republican-controlled

House introduced HR 663 in 1995. The bill was titled the “No Frills Prison Act: To amend the Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious conditions in prisons.” Though the bill created state standards, it called on the Attorney General to establish federal prison standards on the same conditions. It summoned the return of striped uniforms as dress code, removal of weightlifting or work out equipment, and prohibition of in-cell televisions (Flanagan, 1996). In the words of the act, it “provides living conditions and opportunities to prisoners within its prisons that are not more luxurious than those conditions and opportunities the average prisoner would have experienced if such prisoner were not incarcerated” (No Frills Prison Act, 1995: 2). The goal, as predicted and evidenced by its title, was to ensure that prison was not someplace anyone would want to be.

Additionally, the prison legislation enforced differences in conditions for violent and nonviolent offenders. Imposing limitations on the amount of personal property allowed, engagement in sports or exercise (no more than one hour a day), and television viewing (none allowed), the bill took extreme measures to remove any trappings of a normal life. Most notably, the act had a powerful implication for rehabilitation of violent offenders:

In the case of a prisoner who is serving a sentence for a crime of violence which resulted in serious bodily injury to another [there should be] housing other than in separate cell blocks intended for violent prisoners and designed to emphasis [sic] punishment rather than rehabilitation. (No Frills Prison Act, 1995: 4)

The bill equated rehabilitation with comfortable, relaxed, luxurious living conditions—conditions unfit for a truly harsh prison experience these violent criminals deserved. As one commentator observed, this legislation was ushered forth by “terminology like ‘country club prisons’ and ‘coddling criminals’” (Flanagan, 1996: 91). Furthermore, the legislation’s rhetoric juxtaposed its listed restrictions with “at public expense,” asserting that the public receives more punishment than the “coddled” criminal (No Frills Prison Act, 1995: 2). Such exaggeration was

characteristic of anti-amenity campaigns: if prisons are so lavish, people will want to commit crimes to be inside! Conversely, the prisons, with small cells and rules and restrictions were hardly a country club (Adams, Flanagan & Marquant, 1996; Flanagan, 1996; Wright, 1999).

Around the same time of this legislation, equipped with new federal grants for prison construction, states saw the rise of the supermax prison—a facility with the aim of holding as many prisoners as possible. Characterized by their uniform look, supermaxes were usually constructed in rural communities under the guise of creating jobs for residents (Katel, 2007). In fact, the public was largely enthusiastic about building prisons in their areas as politicians and the media marketed them as supports for the local economy.¹¹ These prisons, it seemed, answered both the need for economic assistance to communities and the need for more space to house lawbreakers (Hunter & Wagner, 2007). The rise of the supermax alerted the public to the benefits of the prison system (Hunter & Wagner, 2007; Katel, 2007). If they were not punitive-minded already, a new prison in their community told individuals incarceration was the answer.

Shortly after the No Frills Prison Act, Congress enacted the Prison Litigation Reform Act of 1995 (passed in 1996) to continue the anti-mollycoddling spree (Katel, 2007). Answering a rise in litigation streaming in from prisons, the PLRA sought to decrease the amount of cases brought to civil and federal courts on behalf of prisoners.¹² Its provisions called for limitations on bringing a claim forward, requiring pre-trial documentation such as proof of physical injury prior to filing a civil action suit against a correctional facility or its staff. It also set up regulations like denying the right to bring an action until the prisoner has exhausted all remedies available in the

¹¹ Representatives stepped over one another to ensure the state's prison would be built in their county to benefit their constituents. However, new prisons did not do much for the local economy beyond providing a few hundred, low-wage jobs. They did not bring money into the community because, contrary to naïve popular belief, people in prison did not spend money in the community, nor were there the imagined tourist-like prison visits where family and friends of the incarcerated pumped their money out for local gain (Hunter & Wagner, 2007).

¹² The prison overcrowding increased violence and claims skyrocketed as inmates and their lawyers questioned the constitutionality of living conditions and prisoner treatment.

institution through or toward which they are filing the suit (e.g. filing claims with the warden) and allowed the court to dismiss any suit before putting it on the docket. In all, the legislation prevented prisoners from exercising and protecting their rights and was one more way in which legislators attempted to make prison life less “comfortable” (Katel, 2007).

By the end of the twentieth century, the nation’s crime and punishment policies were harsher and more regulated than ever before. In a thirty-year period, crime had become a huge focus of national, state, and local agendas. Federal spending toward state and local corrections had soared, increasing by 1101% (controlled for inflation) from 1977 to 2001 (Ruddell, 2004). Prisons had succumbed to the anti-amenity movement, and rehabilitation was nearly removed from the national objective of punishment. Lastly, the surge of mandatory sentencing and truth-in-sentencing legislation found in nearly every state ensured the next decade would be marked by a continued climb in the nation’s incarceration rate (Ruddell, 2004). At this point, the likelihood of being sent to prison—versus entering some form of community correction—and the average time served in prison both increased. The United States, as some criminologists said was becoming “addicted to incarceration” (Pratt, 2009).

The current state of incarceration

Entering into the new millennium, the prison system was feeling the effects of the policymaking of the ‘80s and ‘90s. The incarceration rate was at an all-time high, and the number of people incarcerated had quadrupled from the mid-1970s to the year 2000 (Ruddell, 2004). The boom in the prison population focused prison resources on housing, food and security measures, leaving little room in the budget for prison programs (Katel, 2007). Moreover, given the huge increase in the prison population, some states had no choice but to revisit the way they

were incarcerating their citizens; with more people coming into the system than going out, they had nowhere to put the new inmates. As a result, state legislators were forced to look at other options beyond imprisonment to save themselves from overcrowding and exorbitant debt. For example, six states enacted provisions to allow drug prisoners to qualify for early release or other measures to forgo sentencing for minor drug offenses in lieu of treatment programs. In fact, drug incarceration fell slightly from its peak in the 1980s and '90s because of measures to decrease time behind bars for nonviolent drug offenders (Katel, 2007).

California was one state where swift changes were necessary to maintain the prison system. With one of the oldest three strikes laws and some of the toughest mandatory minimums for drug offenses, the Golden State had the highest incarceration rate in the country and the system was quickly overflowing with inmates (Katel, 2007). In an effort to provide alternatives to incarceration, the state passed the Substance Abuse and Crime Prevention Act—also known as Proposition 36—by a 61% popular vote (“California Proposition 36”). The Act offered five years of funding for drug treatment programs aimed at first- and second-time offenders (“California Proposition 36”; Katel, 2007).¹³ When the program experienced high dropout rates Governor Schwarzenegger added a provision that a judge could order jail time for individuals who failed to complete the program (Garvey & Leonard, 2009). In 2009, he reduced substance abuse treatment funding by \$18 million, cutting the program from the 2010-2011 state budget entirely (“California Proposition 36”; “Governor’s Budget 2010-11”). California’s trial with drug abuse programs for offenders was short, as incarceration ultimately prevailed over rehabilitation.

Today, California is still considered one of the most punitive states; its three strikes legislation, enacted by popular vote in 1994 following the Crime Control and Law Enforcement

¹³ Though the immediate costs of the program were high, according to researchers at the UCLA Center for Advancing Longitudinal Drug Abuse Research, the program saved the state \$2.50 for every \$1 invested (Longshore et. al, 2006).

Act, still reigns (Katel, 2007). According to a study by the Presley Center for Crime and Justice at UC Riverside, the “controversial and costly three strikes law has done nothing to deter crime despite expanding the state’s prison population” (Megerian, 2012). Yet it remains the focal point of the state’s prison system, a symbol of the faith placed in incarceration.

In recent years, the U.S. criminal justice system has turned to sentencing guidelines, like three strikes legislation, to shape sentences. Much of this rests in the necessity for states to show compliance with the national standard, as some states rely on adherence to this standard to strengthen their applications for federal funding. Regardless of the cause for employing such guidelines, these sentencing standards have led to a higher prevalence use of incarceration today than was the case before the 1994 Violent Crime Control and Law Enforcement Act increased incentives to follow the recommendations (Ruddell, 2004). Consider Tables 2.3 and 2.4. Both show the distribution of sentences for which the courts used the sentencing guidelines. One can see the use of sentencing guidelines has more than doubled; though crime in 2010 was lower than in 1994 and 1995, sentencing guidelines were used twice as much. The contrast between the “prison only” and “probation only” columns is stark. Instead of seeking out alternatives to incarceration, the overwhelming trend has been an increased use of imprisonment.¹⁴

¹⁴ The sentencing reform component of the 1984 Comprehensive Crime Control Act says federal sentencing guidelines should “reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense...” (“Duties of the Commission”). The act also listed probation as an option for sentencing. It is clear that, though these intentions are named, they are not often executed.

Sentencing Zone	Total	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		#	%	#	%	#	%	#	%
Total	32,756	24,480	74.7	1,524	4.7	2,591	7.9	4,161	12.7
Zone A (min 0 mo.)	4,193	906	21.6	44	1.0	329	7.8	2,914	69.5
Zone B (min 1-6 mo.)	3,342	1,194	35.7	276	8.3	1,503	45.0	369	11.0
Zone C (min 8-10 mo.)	2,256	1,070	47.4	728	32.3	231	10.2	227	10.1
Zone D (min 12+ mo.)	22,965	21,310	92.8	476	2.1	528	2.3	651	2.8

Table 2.3. Type of sentences imposed immediately after signing the 1994 Act (October 1, 1994 through September 30, 1995). Source: United States Sentencing Commission.

Sentencing Zone	Total	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		#	%	#	%	#	%	#	%
Total	72,790	64,249	88.3	1,938	2.7	2,175	3.0	4,428	6.1
Zone A (min 0 mo.)	6,290	3,924	62.4	25	0.4	137	2.2	2,204	35.0
Zone B (min 1-6 mo.)	6,229	4,647	74.6	182	2.9	786	12.6	614	9.9
Zone C (min 8-10 mo.)	5,863	4,505	76.8	565	9.6	342	5.8	451	7.7
Zone D (min 12+ mo.)	54,408	51,173	94.1	1,166	2.1	910	1.7	1,159	2.1

Table 2.4.¹⁵ Type of sentences imposed in FY 2010. Source: United States Sentencing Commission.

Other notable legislation highlighted recidivism as a major problem for the high population of incarcerated individuals. Citing the fact that over two-thirds of state offenders

¹⁵ The Sentencing Zones used in Figure 2.4 are identical to those found in Figure 2.3.

would be rearrested for a serious misdemeanor or felony within three years of their release, the Second Chance Act declared its primary goals: “to break the cycle of criminal recidivism, increase public safety, and help States, local units of government, and Indian Tribes, better address the growing population of criminal offenders who return to their communities and commit new crimes” (Second Chance Act of 2007). Signed by President George W. Bush in 2008, the act added programs targeting reentry to national legislation. Ten million dollars worth of funding was allocated to states for programs like case management before release, and reentry programs for employment and family reunification (“Second Chance Act Resources”).

The initiative almost ended in 2011 when the U.S. Senate appropriated zero funds to the Act, but the final Congressional budget allocated \$63 million. By comparison, however, the budget included \$470 million for Justice Assistance Grants, or appropriations to various entities of law enforcement by the Department of Justice, \$35 million for drug courts, and \$10 million for residential substance abuse treatment programs (“Second Chance Act Resources”). It is clear that, when it comes to incarceration, the main priority is still incapacitation and deterrence. Even a measure like reducing recidivism is framed through the lens of public safety, justified by “assist[ing] offenders reentering the community from incarceration to establish a self-sustaining and law abiding life” (Second Chance Act of 2007). The solution to the crime problem continues to focus on the front-end—law enforcement—and the back-end—reentry—instead of incarceration itself.

One exception, however, to this pattern of maintaining the status quo of incarceration policy is the Fair Sentencing Act of 2010. This act, signed into law by President Barack Obama, amended previous legislation that stipulated different levels of punishment for crack and powder cocaine (Fair Sentencing Act of 2010; Tonry, 2011). Under prior mandatory sentencing from the

1980s, in order to receive the same punishment as one gram of crack an individual would need to possess 100 grams of powder. The 2010 Act lowered the ratio to 1:18. The mandatory minimums are still in place, but at a new standard: 28 grams of crack would yield a five-year sentence, whereas 280 grams or more would garner ten years behind bars (Fair Sentencing Act of 2010). Republican Congressman Lamar Smith of Texas spoke against the bill, proving the “get tough” movement was still alive in some. Days before Obama signed the bill into law Smith spoke out against sentence reform:

Why we are coddling some of the most dangerous drug traffickers in America? [...] We should not ignore the severity of crack addiction or ignore the differences between crack and powder cocaine trafficking. We should worry more about the victims than about the criminals. [...] This bill sends the wrong message to drug dealers and those who traffic in destroying Americans’ lives. It sends the message that Congress takes drug crimes less seriously than they did. The bill before us threatens to return America to the days when crack cocaine corroded the minds and bodies of our children, decimated a generation, and destroyed communities. (“Floor Statement of Rep. Lamar Smith (R-Tex.) on the Fair Sentencing Act of 2010, July 28, 2010.”: 108-109)

According to this view, penalties must be harsh in order to deter crime. Taking this strongly punitive opinion, Congressman Smith represents a “tough on crime” attitude that is still prevalent among policymakers today.

While the majority of the public supported the act, some were disappointed it was not retroactive nor completely eliminated the disparity, and some said its effects were weakened by the decision not to record representatives’ votes. By sidestepping individual accountability, they argued, the representatives missed an opportunity to take a public stand on the effort to decrease incarceration (Tonry, 2011). Still, looking more closely, the public paid attention to the cocaine provisions, but the other, more punitive measures slipped by relatively unnoticed. These additional, uncovered provisions, however, indicate much about the state of incarceration today. While it did eliminate the mandatory minimum sentence for simple possession of cocaine, the

Act increased the monetary penalties for “manufacture, distribution, dispensation, or possession with intent to manufacture, distribute, or dispense” for major drug trafficking (Fair Sentencing Act of 2010). It also increased the amount of time an offender would serve for the use of violence during a drug trafficking offense. Although punishment may have become more fair, incarceration is very much still the name of the game.

At the end of 2002, violent crime rates had reached the lowest point since the pre-imprisonment boom, reflecting the levels of the 1950s (Raphael & Stoll, 2009). Despite this decrease, our penal system still relies on harsh punishments originally aimed at and created for slashing high crime rates. Though there have been moves to decrease harsh sentencing, these can largely be attributed to the necessity of reducing crowding and debt (Beckett & Sasson, 2005; Katel, 2007). Furthermore, we have yet to see a dramatic change in incarceration policy or a sincere break from the traditionally punitive policies. When states do enact measures to curb the incarceration rate—for whatever reason—they are doing so covertly; as one criminologist comments, “some state governments are quietly attempting to undo some of the more draconian and extreme aspects of the get-tough approach to crime and drugs” (Beckett & Sasson, 2005: 59).

As we will see in the discussion to follow, today’s harsh policies fail to reflect a new, less punitive public’s approach to crime and punishment, but rather hold onto a fifty-year tradition of punitive policy making. The relationship between rhetoric, policymakers, and public opinion, then, seems to have been relatively parallel until recent years. How did we get to the point where crime policy and public opinion are not congruent? We will explore this issue in the next chapter.

II --- Review of Theories and Research

What was the catalyst for historical changes in crime policy?

There are several forces at work in the relationship between public opinion and rhetoric on crime and punishment. Some existing research focuses on causality, seeking to explain the root of opinions regarding crime and punishment. Other research branches off the causality path to examine how politicians interact with public opinion. With these associated veins as a backdrop, we will discuss how rhetoric on crime and punishment encompasses other trends like racism in crime and punishment rhetoric and the “victims’ movement.” Finally, we utilize the case of Michael Dukakis’s “soft on crime” curse in the presidential campaign of 1988 to characterize the tenderness of the relationship under investigation.

Does the politician represent the views of the public, or vice versa?

Reflecting on penal policy, politicians, and public opinion, one criminologist pointedly quipped: “Which came first: the public’s expressed desire or the words of politicians?” (Gaubatz, 1995: 4). To date, scholars offer many answers. Some political scientists consider the relationship between the public and policymakers and speculate that public opinion—or, in the case of politicians, the desire to be seen favorably by constituents—drives public policy and shapes political rhetoric. Others believe politicians are responsible for shaping public opinion,

monopolizing on fear in order to push their own agendas. Still, some step away from the chicken-or-egg debate and speculate that both forces are acting together and are catalysts for each other, positing a cyclical relationship (Frost, 2006).

The democracy at work theory, also called democracy in action, asserts that punishment has become more severe because that is what the public wants (Beckett, 1997; Frost, 2006). There are two commonly referenced models in this theory that provide a lens through which to examine this relationship more closely: the objectivist model and the constructionist model (Beckett, 1994). The former reasons that the concern about crime is fueled by increased incidence of drug use and street crime. The harsh approach taken by politicians and leaders, then, is a response to public concern born from knowledge and experience with an increased crime rate. Criminologist and political scientist, James Q. Wilson agreed, arguing, “public opinion was well ahead of political opinion in calling attention to the rising problem of crime” (Wilson, 1975: xvi).

Conversely, the constructionist model holds that attention, rhetoric, and action *surrounding* crime drive public concern. The two factions of constructionist theory argue over whether the degree of action by the state or action by criminals influences public opinion. Cultural constructionists focus on representations of crime as predatory and imminent, leading the public to gravitate towards punitive solutions. Elite constructionists take this a step further, saying state and political initiatives to combat this hyper-represented crime trigger public concern through a so-called “moral panic” (Beckett, 1994; term credited to Stanley Cohen in *Folk Devils and Moral Panic*).

Scholars prefer constructionism over objectivism regardless of the constructionist splinter group—cultural or elite—one upholds (Beckett, 1994). Katharine Beckett, an expert on public

opinion and the history of incarceration policy, upholds the general constructionist view, saying, “it is definitional activities of the state and the media, rather than the reported incidence of crime or drug use and abuse, that has shaped public concern regarding those issues” (Beckett, 1994: 426). In her study she finds that public concern is not highly correlated with incidence of crime or decisions made regarding crime. Instead, trends in public concern follow media and state action surrounding the crime issue.

Based on her analysis of public opinion polls throughout the last few decades, Beckett does not identify a strong link between the public’s identification of crime and drugs as the nation’s most important problem and actual prevalence of crime and drugs. Rather, the importance the public sees in the issue is determined by the degree to which state actors and the media focus on crime and drugs (Beckett, 1994). Supporting her theory, polling done before and after the 1993 crime bill proposal, which ultimately became the Violent Crime Control and Law Enforcement Act of 1994, shows a change in what the public viewed as “the nation’s most important problem” based on coverage of national action on crime. Before the crime bill proposal went public, 7% of Americans said crime was the most important problem, but, six months later, after concentrated publicity, this figure increased to 30%. Seven months after Clinton’s State of the Union address, this percentage was up to 51% (Pratt, 2009).¹⁶ Drops in the level of state initiatives, Beckett reasons, are followed by declines in public concern, instead of the other way around (Beckett, 1994).

Critics of the democracy at work theory say it is an overly simplistic analysis of a complex issue, asking ‘but *why* does the public want punishment?’ (Frost, 2006). Other

¹⁶ Clinton’s anti-crime rhetoric was at an all-time high during this address as he urged for public support on the upcoming crime bill. He employed phrases like “my fellow Americans, the problem of violence is an American problem” and, “violent crime and the fear it provokes are crippling our society, limiting personal freedom and fraying the ties that bind us” (Clinton, 1994).

important theories do not seek to rebuke the objectivist or constructionist arguments, but rather use them as a platform for other theories. For example, another idea, called misinformed democracy, focuses less on where the public gets information to form its view of crime and punishment, and more on how this view is formed (Frost, 2006). This theory postulates that public perception of crime diverges from the actuality of crime. “As the public becomes increasingly fearful, it becomes increasingly punitive,” but fear is not necessarily based on reality (Frost, 2006: 39). In fact, fear is a response either to an increase in crime or the sensation that crime is increasing. Since the early 1970s, Americans’ perception of crime has registered steadily above the actual national crime rate, as illustrated by Figure 3.1. This fear of crime is extreme; compared to other, more likely experiences, the Bureau of Justice Statistics in 1985 noted there were more citizens preoccupied with the possibility of violent victimization than were fearful of cancer death, injury from fire, and heart disease combined (Flanagan & Longmire, 1996). But crime itself does not fuel the fear of crime; something else triggers this reaction (Pratt, 2009). To understand this, we return to the objectivist and constructionist views.

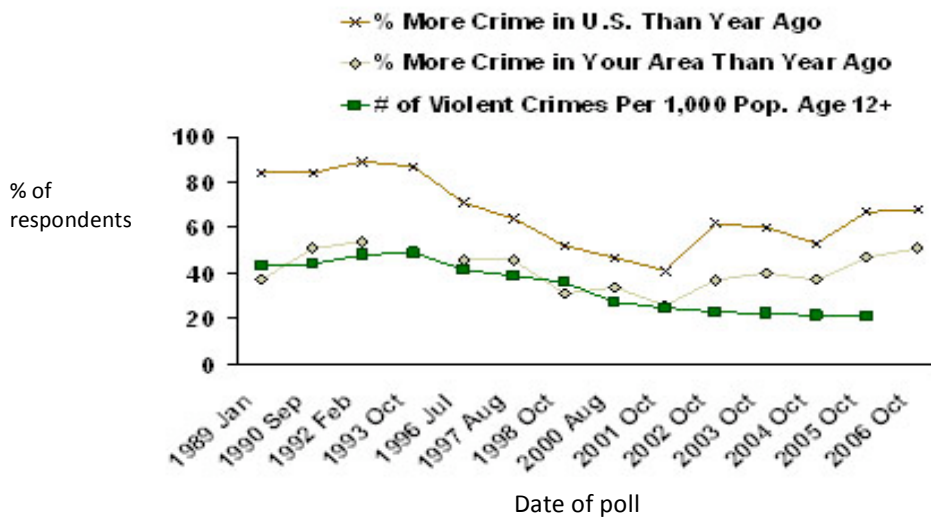


Figure 3.1. Crime perceptions versus the violent crime trend. Source: Saad, Lydia. "Worry About Crime Remains at Last Year's Elevated Levels." Gallup News Service, 2006.

In the objectivist view, the fear of crime position is dangerous. The public's perception of crime is hyperbolized, as indicated by Figure 3.1, and, if we follow the objectivist view, this will lead to exaggerated policy decisions to "answer" the public's inflated concern. Furthermore, the theory of misinformed democracy posits that politicians are even more removed from that incorrect public perception (Frost, 2006). Policymakers, in fact, overestimate public support for punitiveness, causing them to hitch a ride on the "punitive bandwagon" until it is too late to get off (Cullen, Clark & Wozniak, 1985: 23). Investigation shows politicians exaggerate public opinion polls that indicate the public's desire to see tough policies, ultimately enacting policies that are actually *more* punitive than the public wants (Cullen, Clark & Wozniak, 1985; Frost, 2006). Whether they cause these attitudes, or are solely reacting to them, politicians rely on public opinion to shape public policy.

Along a more constructionist line of thought, some note the importance of the media in portraying crime as a top issue. Studies show the majority of Americans use what they hear and read in the media in forming their thoughts about crime and criminal justice (Beckett, 1994; Yousman, 2009). When crime was declining in the '90s, one opinion poll said America was battling extreme levels of violent crime. Scholars credit this hyperbolic distortion to media coverage of crime: since 1993, crime has been the single most reported issue on network nightly news (Yousman, 2009). In fact, a 1997 study by the Center for Media and Public Affairs exposed:

Since 1993 crime has been the most heavily covered topic on the network evening news with 7448 stories, or 1 out of every 7 stories on all topics. [...] News about murders rose even more sharply. During 1990-92 murder coverage averaged 99 stories per year. Since 1993 the coverage increased to 714 stories per year, a jump of 721% at a time when the real world homicide rate was dropping. (Center for Media and Public Affairs, 1997)

Though some criminologists disagree about the media's role in bringing about these changes, it is at least a gauge of the views and issues the public holds to be important: it would not be on the

nightly news if it did not “sell” (Yousman, 2009).

Stepping away from the objectivist/constructionist debate, other criminologists raise issue with fear of crime leading to punitive attitudes. Sociologist Arthur Stinchcombe and his associates say the fact that women, a demographic less victimized by violent crime, are more fearful but less punitive than their male counterparts, discredits this claim (Stinchcombe, 1980). Perhaps, they argue, fear of crime needs to be more specified: either increased fear of personally being victimized or the heightened belief that other people are being victimized increases punitiveness. Arguments such as Stinchcombe’s led some criminologists to shift away from saying “fear of crime” to “fear of victimization.” The disparity between the two, however, remains muddled in most literature. One study by Richard McCorkle (1993) separated these types of fears and found weak correlations to punitiveness with both. Thus, he argued that the fear of victimization and the perception of, or fear of, crime are not indicators of punitiveness.

Crime as the MVP in the political game: playing on public opinion

Regardless of where the public gets the idea to demand harsh policies, many criminologists suggest politicians and the policies they enact exploit public opinion. Essentially, whether politicians shape public opinion or base their policies off of public opinion, the two factors—politicians and public opinion—are in constant interaction. One need not solidly grasp the degree of that interaction (i.e., which factor influences which *more?*) to know that it ultimately influences policy. Figure 3.2 offers a visual explanation of this theory of penal populism (Beckett, 1997; Frost, 2004; Pratt, 2009; Scheingold, 1984; Skogan, 1995).

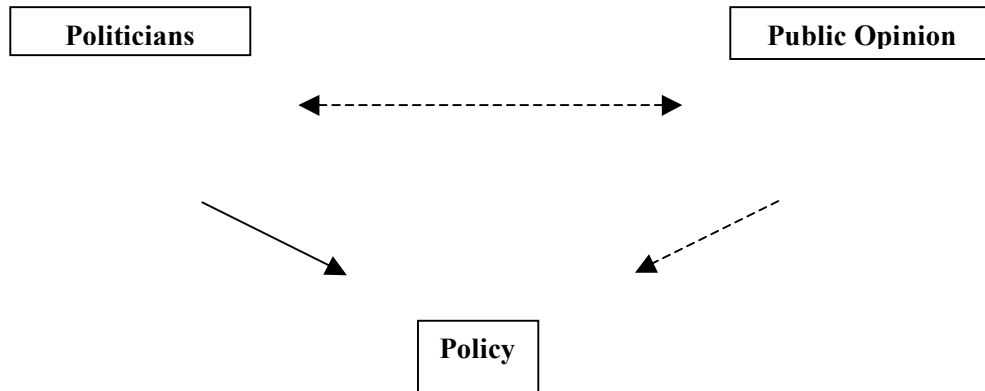


Figure 3.2. A visual representation of political usage of public opinion.

The theory of penal populism argues punitive policies are the result of “politicians tapping into, and using for their own purposes, what they believe to be the public’s generally punitive stance” (Beckett, 1997: 40). Some declare that the nation’s leaders are “obsessed with reaping the most political advantage from popular concerns about crime,” saying politicians use the crime issue primarily for political gain (Skogan, 1995: 9). Some even go so far as to say that the entire issue of crime and punishment was *constructed for* political gain. A scholar of criminology and public opinion, Kenneth Adams, likens the crime and punishment forum to economics: “consumer demand driven by sophisticated marketing strategies and key market makers are trying to outdo each other vying for the public’s admiration” (Adams, 1996: 314).

So where did this so-called manipulation of public punitiveness begin? Research suggests the crime issue has strong ties to the reconfiguration of political parties in the 1960s (Beckett & Sasson, 2005; Ruddell, 2004; Tonry, 2011). According to scholars, the Southern Strategy, a tactic to bring white voters to the Republican Party, discretely appealed to whites’ racial angst under the veil of crime and lawlessness (Beckett & Sasson, 2000; Beckett & Sasson, 2005; Ruddell, 2004). Beckett & Sasson explain that “new sets of Republican constituencies were thus

courted through the use of racially charged ‘code words’—phrases and symbols that ‘refer directly to racial themes but do not directly challenge popular democratic or egalitarian ideals’” (Beckett & Sasson, 2000: 58). Echoing this view, Kinder and Sanders (1996) purport that conservatives began using euphemistic language on “racial code” issues like crime in the early 1960s. This passively-loaded language still exists, as “racial codewords make appeals to prejudice electorally profitable even when, as in contemporary American society, prejudice is officially off limits” (Kinder & Sanders, 1996: 223).

A pragmatic example of this idea is found in a review of Nixon’s agenda at the height of the Southern Strategy movement. When Nixon linked drugs to crime he did so while appealing to racial anxieties—and he allegedly knew it. As H.R. Haldeman, Nixon’s Chief of Staff, said, “[President Nixon] emphasized that you have to face the fact that the whole [crime] problem is really the blacks. The key is to devise a system that recognizes this while not appearing to” (Quoted in Shah, 2005: 43).

But as much as some scholars would like to believe otherwise (e.g., Beckett & Sasson, 2005; Caplow & Simon, 1999), the entire problem of mass incarceration cannot be put on Republicans’ shoulders.¹⁷ In fact, the realignment of political parties was felt on the left as well: “The increased importance of these swing voters, along with Republican and Democratic reluctance to target and mobilize alienated (and disproportionately young, poor and nonwhite) nonvoters and the winner-take-all electoral college system, encourage candidates from both parties to avoid taking anything that may be perceived as a controversial stand” (Beckett & Sasson, 2005: 50). In order to woo swing voters to the Democratic Party, liberals joined the

¹⁷ Scholars are usually quick to blame conservatives, saying “conservative politicians have worked for decades to alter popular perceptions of crime, delinquency, addiction and poverty, and to promote policies that involve ‘getting tough’ and ‘cracking down’” (Beckett & Sasson, 2005: 32). While it is true that a significant amount of attention was paid to crime and punishment during Republican administrations, it is also true that Democrats have done their fair share of rallying the crime and punishment brigade.

game and played the crime card, too.

After the political shift in the late 1960s and early 1970s, the role of public opinion polls and paid political consultants took hold (Dyer, 2000). Politicians began to use public opinion polls to target voters in the 1980s and 1990s more than ever before. Prior to this era of mass polling, politicians relied on slow and less reliable indicators of public opinion, but in this new age they could respond quickly to public opinion and watch how their actions affected it. With the influence of political consultants as, politicians were increasingly sensitive to public concern and public criticism (Dyer, 2000).

Perhaps the reason criminal justice policy is so inextricably linked to politics, regardless of the cause and effect theories one believes, is that a harsh policy agenda can hardly be falsified; the answer is always ‘maybe we’re not being harsh *enough*’ (Pratt, 2009). When crime rates increased between the 1960s and 1980s, politicians thought the answer was harsher punishment. When crime rates diminished in the 1990s, it gave politicians a lot of ammunition to say they had done right by their constituents and that they had pioneered a solid crime policy (Currie, 1998). But as subsequent developments have shown, politicians and the policies they create are not necessarily responsive to crime. Instead, such policies only seem to go in one direction—harsher. And there always seems to be plenty of research to echo this need for harsher punishments. Take the Martinson “nothing works” phenomenon, “a catchphrase that haunts correctional policy more than 20 years later.” When Martinson published a counter-report five years later it went relatively unnoticed: it was inconvenient to use this new research that challenged the punitive turn when Martinson’s old research fit so nicely with the trend. In a striking metaphor, one criminologist says, “politicians use public opinion surveys in the manner that a drunk uses a lamppost—for support rather than illumination” (Adams, Flanagan & Marquant, 2006: 153).

In what ways have politicians used the crime issue? The answer lies in rhetoric. In general, “the experience of punishment bonds members of a society... in condemnation of deviance” (Ruddell, 2004: 35). One of the most powerful examples in crime and punishment of rhetoric forging such a bond is the use of war terminology (Dyer, 2000; Ruddell, 2004). “Our ‘wars’ on crime and drugs have contributed to cynicism about criminal justice,” and have created a sense of competition: it’s “us” versus “them” (Ruddell, 2004: 4). Evidence of the power of “war” rhetoric is found in public opinion surrounding the drug problem. When Reagan began his War on Drugs in 1982, less than 2% of Americans named the drug problem as the country’s most significant issue. In 1988, just six years later that number had increased by more than 3,000%, as 64% of Americans named drugs the nation’s most important problem (Pratt, 2009). What better than a war to bring a society together against the enemy and to fight for a common cause?

Rhetoric and race

As indicated at various points in this discussion, race was—and still is—an important part of crime and punishment in America. Of this relationship, scholar Glenn Loury commented:

The punitive turn in the nation’s social policy—intimately connected with public rhetoric about responsibility, dependency, social hygiene, and the reclamation of public order—can be fully grasped only when viewed against the backdrop of... racial history. (Loury, 2008: 10)

While characteristics of individuals who commit crimes are the same regardless of race, the incarceration system is disproportionately African American. In 1989, for the first time in history, the majority of the population entering state prisons was black—a statistic that has not changed since (Ruddell, 2004). Black men are five to seven times more likely than white men to be incarcerated at some point in their lifetimes. Among other factors (e.g., discriminatory sentencing by judges on the basis of race) the disproportionate incarceration rate of minorities is

largely a result of policies, like crack cocaine legislation, that targeted African Americans more than their white counterparts (Loury, 2008).

Through the passage of this type of legislation, policymakers continued the link forged by President Nixon. Blaming the increase in the national crime rate on the “corrosive doctrine” of the civil rights movement, Nixon played on latent racism to make his point all across the country (Beckett & Sasson, 2000; Beckett & Sasson, 2005; Parenti, 2008). Though he would not have publicly admitted it, behind closed doors, Nixon linked public opinion on crime and race and his crime policy in a letter to former President Eisenhower: “I have found great audience response to this [law and order] theme in all parts of the country, including areas like New Hampshire where there is virtually no race problem and relatively little crime” (Pratt, 2009: 25). As crime became a national issue, Nixon relished the ability use racial cues to push law and order rhetoric even in areas without crime.

One of the most notable appeals to latent racist attitudes in America was the case of an advertisement run by supporters of George H.W. Bush (see Figures 3.3 and 3.4) attacking Governor Dukakis’s crime policies. Though Bush and his aides would spend a few months defending the ad against claims of racial motivations, one of his political operatives later explained that the Horton incident and the way the supporters’ ad monopolized on it was “a wonderful mix of liberalism and a big black rapist” (Karst, 1993: 73). Reiterating the ad’s latent racism, Tali Mendelberg argued the advertisement had more of a significant role in priming racial cues than it did in triggering worries about crime (Mendelberg, 1997). This and other issues with the Willie Horton phenomenon will be discussed at length later in this section.



**Figures 3.3 and 3.4: Images from the Willie Horton advertisement.
Source: “YouTube—Dukakis Attack Ad 1988.”**

Rhetoric and the victim

The 1970s and ‘80s saw extreme use of victims and their supporters as a key audience in the War on Crime legislation. To be easy on criminals was to be merciless to these victims—a notion nearly pegged as a crime itself (Armstrong & McAra, 2006). Politicians like Gerald Ford polarized the issue and started the victims’ rights movement—you were either for the victim or for the criminal—with statements like, “for far too long, the law has centered its attention more on the rights of the criminal than on the victim of the crime. It is high time we reversed this trend” (Katel, 2007: 297). Criminologists Sarah Armstrong and Lesley McAra deemed this a “trend towards greater marketization in punishment with the victim as the core consumer in the penal process” (Armstrong & McAra, 2006: 9).

If there were any doubts about the role of rhetoric focusing on victims, one need not look further than the wave of legislation-naming in the 1990s to see the effects. Crime and punishment legislation, usually pushed by parents of young victims, creates inherent emotional ties to the legislation, almost ensuring its passage. From Megan’s Law—named for the New Jersey girl raped by a released sex offender—to Laci and Connor’s Law—responding to the murders of Laci Peterson and her unborn son—the victim-naming legislative trend keeps

memories of tragedies close to home and their resultant policies more difficult to reject. In other words, rhetoric involving victims increases support for tough laws (Armstrong & McAra, 2006).

Rhetoric and the creation of an expectation

One of the most potent examples of incarceration rhetoric is the labeling of politicians as either “tough on crime” or “soft on crime.” The proclivity toward “getting tough” on crime has been consistent throughout the imprisonment boom. In fact, many scholars view being seen as “tough on crime” as not just politically expedient, but as a requirement to win political office because of electoral pressures (Beckett, 1994; Beckett & Sasson, 2005; Caplow & Simon, 1999; Downes & Hansen, 2006; Newburn, 2007). Data tells us this is not a wild conclusion: in a 1974 poll, four out of five voters said they would be more inclined to vote for a candidate who advocated tougher sentencing policies (Hindelang, 1975). Thus, the power of the “get tough” fad is unsurprising. The movement’s rhetoric is cited for the increase in punitive legislation: “three words—‘soft on crime’—have become the crowing curse of political discourse. And sharply rising incapacitation measures have been its consequence” (Skolnick, 1996: 307).

The “tough on crime” rhetoric transcended partisan lines as “politicians of both parties tripped over each other in the effort to be the most aggressive in ‘fighting crime’” (Frampton, Haney-López & Simon, 2008: 7). This largely stems from the failed Dukakis election when George H.W. Bush famously assailed his opponent, Massachusetts Governor, Michael Dukakis, for being “soft on crime.” A widely publicized advertising campaign (see Figures 3.5, 3.6 and 3.7) by Bush supporters reminded voters of Dukakis’s “soft” crime platform evidenced by the case of Willie Horton, a felon who raped, stabbed, and killed a white couple while on furlough. Television anchor Robert MacNeil captured the public attitude toward Dukakis when he reported

the overwhelming voter response as: “I’m going to vote for George Bush because I can’t vote for a man who lets murderers out of jail” (cited in Mendleberg, 1997: 23).



Figures 3.5, 3.6, and 3.7. Stills of the advertisement against Michael Dukakis. Source: “YouTube—Dukakis Attack Ad 1988.”

According to Professor of Criminology Tim Newburn, the Democratic Party learned quickly from the Dukakis disaster. He says Democrats saw three key messages in that election: 1) crime could be a huge “wedge issue” for candidates, 2) candidates should not “get caught being ‘soft on crime,’” and 3) irrespective of any policies they might actually endorse, the candidates must appear ‘tough on crime’ (Newburn, 2007: 437). In efforts to avoid another failed campaign, the Democrats were in a hurry to “de-Dukakisize” for the next opportunity (Bertram et al., 1996; Newburn, 2007).

The Democratic Party had its chance to show how far it had come in the presidential race of 1992. Clinton “was determined not to suffer [Dukakis’s] fate” (Beckett & Sasson, 2005: 56). He publicly expressed support for more law enforcement and police efforts and harsher penalties for drug crimes. He even flew to Arkansas to oversee an execution while on the campaign trail. Once in office, he called for more congressional action, like the federal adoption of three strikes legislation (Beckett & Sasson, 2005).

Though some Democratic voters expressed disdain for Clinton’s apparently conservative-leaning stance on crime, he and his administration felt they had no other choice. When asked to

explain why the President did not offer any alternatives to the conservatives' harsh crime legislation, one of his aides tellingly disclosed: "You can't appear soft on crime when crime hysteria is sweeping the country. Maybe the national temper will change, and maybe, if it does, we'll do it right later" (Kramer, 1994: 29). A few years later, a similar question was raised about Congress's decision to, post-Enron, increase the corporate fraud penalty from 5 to 25 years. When asked why the Senate voted for a bill that many had questioned, one senator said, "Nobody wants to get out ahead of that get-tough train" (Quoted in Beckett & Sasson, 2005: 58). The threat of appearing "soft on crime" scared some politicians enough to support initiatives they would have otherwise opposed and enact legislation in which they did not fully believe.

Concluding notes: the role of public opinion in forming (or responding to) incarceration policy

Analysts argue public opinion on crime and punishment is different than other "position issues" because crime and punishment strikes an emotional chord that other issues do not: "Public opinion on crime and punishment is a complex mix of perceptions, reason, emotion and social ideas of justice" (Warr, 1995: 302). In this discussion on the catalysts of historical change in penal policy we have explored the factors that contribute to the complex relationship between public opinion and rhetoric surrounding crime and punishment. In an exposition of the larger interaction between rhetoric and public opinion we explored theories of causality and the general affects of public opinion and political rhetoric on each other. We gathered through this section that "the politicization of crime is an interactive process combining elements of responsiveness with elements of manipulation" (Scheingold, 1984).

The distinct sections in this chapter have explored how the relationship between public opinion and rhetoric interacted with penal policymaking to propel us to the current age where

public inclination for punitiveness is low and reliance on incarceration is high. What does this mean? Are Americans ready for prison reform or are we still stuck in the web of our “tough on crime” past? Armed with an understanding of crime and punishment agenda-setting we now turn to the present study to fill in the gaps for how this sensitive relationship functions in the current age.

III --- Theory

Prior research has shed considerable light on the evolution of U.S. penal policy over the last several decades. Scholars contend that the increasingly punitive turn in policy was driven not only by genuine public concerns about crime rates, but also by strong “get tough” political rhetoric even in the face of dramatically falling levels of crime. For their part, so the argument goes, politicians maintain this historically established rhetorical drumbeat for harsh punishment out of their own fears—rational or irrational—that opponents will tar them with the “soft on crime” label and thereby banish them to join Michael Dukakis in the political afterlife. Thus, our two questions of focus are: *Q1: What is the relationship between rhetoric on crime and punishment and public opinion?* And *Q2: Does the label “soft on crime” mean political suicide? Is the public more skeptical of a politician’s proposed policies if he/she this label?*

These questions, though linked, are distinct and, therefore, elicit different hypotheses. The purpose of this chapter is to present a few of the main hypotheses in the present study and illuminate the grounds on which those hypotheses are formed.

Question one is best investigated through an analysis of the effects of rehabilitative and retributive arguments on individuals’ policy preferences. I expect exposure to rehabilitative and rhetorical arguments will affect peoples’ policy preferences toward preferring punitive or rehabilitative goals, respectively. However, I expect this effect will be to a different degree for the two arguments. Those exposed to the retributive argument will be more punitive than those

who read the rehabilitative argument, but that the change will not be as pronounced as those exposed to the rehabilitative argument. In other words, the rehabilitative argument will move respondents' attitudes more than the retributive argument. Therefore,

H2: (a) Exposure to the rehabilitative argument produces views more supportive of rehabilitation than exposure to the retributive argument. Exposure to the retributive argument produces views more supportive of retribution than exposure to the rehabilitative argument.

H2: (b) Exposure to the rehabilitative argument affects punitiveness in policy preferences to a more pronounced degree than the retributive or control argument.

The reasoning of the first part of this hypothesis is grounded in our understanding of the relationship between rhetoric and public opinion on this issue. Stepping back from the cause-and-effect speculation that has challenged political science for years, we know rhetoric matters. In other words, regardless of which *causes* which, we have seen rhetoric and public opinion feed off each other. Recall, for example, Katherine Beckett's study of public opinion surveys from 1964 to 1992 in which she found fluctuations in the public's concern about the crime issue were dependent on "political initiative,"—rhetoric and action around the crime issue—not the crime rate (1997). We do not need to know if politicians originally responded to or created public concern in setting their crime agenda to understand public opinion is vulnerable to rhetoric on the crime issue. Thus, I expect that the present study will follow this relationship.

Turning to the second element in this hypothesis, I expect that the aforementioned effect will be more dramatic for those exposed to the rehabilitative argument than the retributive argument. As revealed in the introduction, General Social Survey data reported roughly 15% of respondents in 2010 thought courts were too harsh—the peak of a climbing trend starting in 1996. So, given that public punitiveness is low and crime rates are low, I expect modern society

to welcome a rehabilitative argument. A retributive argument will move some individuals in a punitive direction, because of the effect of rhetoric on public opinion but it will not move people as far as the rehabilitative argument. Why? The decline of public punitiveness, I believe, represents that voters are not as drawn to punitiveness as they once were, so I expect individuals to be less sensitive to a retributive argument as compared to a rehabilitative argument. The lower-than-usual punitiveness found in polls reflects that society realizes our punitive approach is not working fiscally, nor do they see such harshness as necessary in the current state of low crime rates. This idea will be explored in more detail later.

The second question draws the relationship between rhetoric and public opinion to the political realm. In terms of likelihood of voting, I believe more people would vote for a candidate who pushes a rehabilitative platform than one who advocates for harsh, retributive policies.

H3: (a) Individuals will have a higher impression of a candidate if the candidate is rehabilitative-focused than if the candidate is retributive-focused.

H3: (b) Individuals are more inclined to vote for a candidate who supports rehabilitation than one who supports retribution.

I speculate respondents exposed to a candidate advocating retributive measures will reject the retributive arguments as too extreme for the same reasons I posit respondents become more rehabilitative-focused to a greater degree than those who become more retributive-focused after exposure to rehabilitative and retributive arguments, respectively. I believe respondents' overall impression of a candidate will be higher if that candidate advocates for rehabilitation. I expect respondents' likelihood of voting for the candidate to follow suit.

Another hypothesis addresses how the label of “soft on crime” affects respondents’ views on punishment. I hypothesize that exposure to this label will not affect the likelihood of voting for a candidate. Therefore,

H4: The label “soft on crime” will produce no effect on candidate assessments.

Regardless of the candidate to whom this label is applied—a rehabilitative-focused candidate or a retributive-focused candidate—I expect the label is not as potent as politicians think. In other words, I believe current politicians remain needlessly fearful of the “soft on crime” label, stuck in the rut of the past because of cases like the failed Michael Dukakis presidential campaign. Both of the hypotheses related to politicians reflect a speculation that in the current political environment, a candidate does not need to be “tough on crime” to gain support.

I posit these four hypotheses because of the current political climate: the crime rate is low and economic troubles are high. We know from previous discussions that the crime rate itself does not render a more or less punitive nation. Instead, factors like perception or fear of crime driven by accessibility of the issue are at play. As we have witnessed a drop in the crime rate, the crime issue has decreased in importance for citizens and politicians. In recent years, the percentage of Americans citing “crime” as the most important issue facing our country has hovered between zero and 1%. Thus, it is not surprising we do not hear politicians touting the crime issue (Pratt, 2009). I argue the country is less punitive, and therefore more open to rehabilitative policies, in part because the country is no longer focused on “get tough” crime-fighting agendas that were once so popular.

Another facet of this theory is based in economics. The country’s economic woes seem to have eclipsed the crime issue as the nation’s most important problem. The percent of respondents

highlighting the economy as the most important issue remains high. Since 2009, the number of Americans citing economic issues as “the most important problem facing the country today” has teetered around 75% (Gallup, 2012). It is apparent that Americans are sensitive to economic woes and therefore would likely be more open to re-evaluating the current corrections system. Even if individuals do not know how much money is spent on incarceration specifically, the current state of the economy encourages a revisiting of costly issues. Past research supports the idea that rehabilitation can be driven by economic reasoning: scholars have found individuals are more receptive of less punitive policies if they are informed of the cost, or if they are told they will need to pay more taxes to maintain punitive policies (Doble, 1987; Flanagan, 1996).

The low crime rate—and subsequent decrease political attention given to the crime issue—combined with perceptions of the country’s economic woes has created the atmosphere for societal support for rehabilitation. I think Americans are more open to options for addressing crime and punishment given the conditions discussed, so their views are more pliable to a politician’s argument than in other eras. Because of the factors discussed, Americans are more willing to adopt a strategy that diverges from the “tough on crime” path. At a time when the crime issue has been replaced by the economic issue, Americans’ views are more open to change, and, I hypothesize, more open to rehabilitation.

IV

Experimental Design

At the heart of my investigation is an experiment that measures the effects of political arguments on attitudes towards crime and punishment. The experiment consists of a pre-test survey, a randomly assigned treatment article, and a post-test survey. The experiment measures the effect of the retributive and rehabilitative treatments on the respondents' opinions of the candidate, preferences for specific penal policies, and general feelings about crime and punishment.

The pre-test survey asks respondents about their experiences with crime, opinions about federal spending, financial concerns, knowledge and perceptions about trends in crime, and items to assess their values and predispositions such as crime rate, authoritarianism and humanitarianism. These pre-test questions serve the dual purpose of distracting respondents from true focus of the experiment and measuring potential moderators and predictors of attitudes about crime and prisons.

After answering these pre-treatment questions, respondents are shown one of three news stories portraying a candidate "running for political office in another state." The treatment articles depict a candidate, John Dellsworth, running for a Senate seat and attribute to him different crime and punishment platforms depending on the article. One article, the retributive treatment, paints Dellsworth as an advocate of tough prison policies while the other, the

rehabilitative treatment, presents Dellsworth's crime and punishment platform as rehabilitation-focused. A third article, the control article, presents Dellsworth without mention of crime and punishment politics.

For all three articles, the respondent is told the candidate highlighted in the article is running in the political party with which the respondent identifies. For example, those who indicate that they are Republican are told the candidate is a Republican. Those who answer "don't know" or "independent" to the party identification question are told the candidate is an independent. This set-up is designed deliberately to minimize the impact of political party bias in shaping (and overwhelming) responses; it encourages respondents to focus on the article's arguments instead of reacting to party labels or inferring based on party stereotypes.

Having been presented with the candidate's political party information, respondents read one of three randomly assigned articles: control, rehabilitative treatment and retributive treatment. The baseline for all three articles introduces the candidate, John Dellsworth, without mention of any platform related to crime and punishment. Dellsworth is portrayed as a family man and a business entrepreneur who "has emphasized a need for greater energy independence...[,] more creative solutions to improving our schools and stimulating the sluggish economy." The platforms introduced in the baseline are not related to crime, but instead are politically neutral and rhetorically vague. The entirety of the control article is this unbiased baseline. The rehabilitative and retributive elements of the treatment articles are enveloped by the two baseline paragraphs.

Aside from the identical baseline information, the rehabilitative and retributive articles are parallel but quite distinct. Both say the current prison system is "not working," and offer ideas on how to fix it by addressing prison sentences, family visits, and access to resources, but

with opposite solutions to reflect their respective approaches.¹⁸ To balance the tone of the article, each one notes recent efforts to push “three strikes” laws in the opposite stance of the article (e.g., expansion of such laws in the rehabilitative article) and then gives a quote from the candidate on why he disagrees with the stated “three strikes” position.

Following the treatment, respondents are asked how likely they would be to vote for the candidate, if he were running in their state, and to evaluate him in terms of several character traits (moral, compassionate, strong leader, competent). Respondents then answer a large number of questions about their support for various penal policies and their views on the purpose of prisons (primarily using Likert scale “agree or disagree” statements). At the end of the study, respondents are asked a series of questions assessing levels of political knowledge, attendance at religious services, and other demographics questions. Respondents are debriefed about the purpose of the experiment and invited to submit comments or questions in a comment box. The entire experiment can be completed in less than fifteen minutes.

A second experimental manipulation examines the impact of “soft on crime” accusations. This treatment is realized through a question that mentions criticism of the candidate’s policies and then asks respondents whether they agree with this particular accusation. The exact wording is as follows:

“Thinking back to the article you read, some opponents have criticized Dellsworth’s policies. How ‘soft on crime’ do you think the candidate is?” [Indicated on a five-point scale from “not at all soft on crime” to “extremely soft on crime”]

The manipulation consists of placement of when this question is asked. For half of the respondents, regardless of which treatment article they read, this question appears almost immediately after reading the article, before evaluating the candidate or providing any policy

¹⁸ For example, the retributive article says we should allow fewer family visits while the rehabilitative article says we should allow more. All points addressed follow this format.

preferences. For the other half of respondents, the question appeared after answering all questions relating to crime and punishment, just before the end of the survey. This will enable me to see if being presented with the “soft on crime” label influences the candidate’s likeability.

The questionnaire design builds on prior research; some questions mirror those found in other surveys or experiments and some elements are inspired by holes, criticisms, and concerns in past studies. Namely, the experiment addresses the problems with criminological research Cullen and Moon detail in their work “Reaffirming Rehabilitation” (1999). Cullen and Moon explore three major issues with this type of research after analyzing public opinion surveys. First, most surveys do not glean the full effect of public punitiveness, only asking a few questions about hot-button punitive policies instead of getting a holistic view. This experiment addresses that concern by employing a multitude of questions regarding policies that range from highly retributive to highly rehabilitative in nature. Second, Cullen and Moon take issue with the use of simple two-point “agree or disagree” questions common in public opinion polling and surveys regarding incarceration. This is not a proper measure of punitiveness, they argue, because the respondent’s choices are limited. This study uses five- and seven-point scales to capture more subtle variation in respondents’ views. Third, Cullen and Moon say people are usually less punitive when presented with a variety of choices. For this reason, the post-test questions ask about multiple facets of rehabilitative-focused and retributive-focused incarceration policies. Furthermore, the treatment articles present the “three strikes” concept in the opposite tone and stance of the piece. This provides a slightly more balanced manner than would an exclusively rehabilitative or retributive article, giving respondents more variety in viewpoints on this issue.

The study was pre-tested on a small sample of eight undergraduates at the University of Michigan to ensure all questions were well explained and that randomization, skip patterns, and

timing procedures were working properly. The Appendix contains both the pre-test and post-test questionnaires and the treatment articles.

Data Collection

The experiment was conducted online using Amazon’s Mechanical Turk (MTurk) over a period of ten days. MTurk is a platform through which individuals—called Workers—from around the world can complete Human Intelligence Tasks (HITs) set up by Requesters for a monetary reward. Workers view which HITs are available to them and select the assignments they wish to complete. This study was advertised as a “roughly 15 minute survey about current political issues” for which Workers would collect fifty-five cents (a fairly typical amount for MTurk). For this study, controls were set to ensure respondents were from the United States and that they had an approval rating of 95% or greater (based on their successful completion of previous HITs).

Given the platform and nature of the survey administration, there is a risk that some respondents would not read their assigned article and therefore would not receive the treatment, as well as the possibility that some respondents would speed through the survey without giving genuine responses. This study took a number of steps to assess compliance in order to address such concerns. The survey posed a compliance question that all respondents must answer after the article to assess whether respondents read the treatment article.¹⁹ Respondents who did not answer this question correctly are not included in the results. Respondents were also eliminated from the analysis on the basis of time spent going through the materials and failure to answer a sufficient number of questions.

¹⁹ “According to the article you just read, what was the career of the candidate before he ran for office?” The candidate’s career as a business entrepreneur is heavily referred to at the top of all three versions of the article.

The results of the experiment are based on 739 complete responses filled over ten days. These 739 responses pass the validity test: they read their respective article in the amount of time necessary to be affected by the treatment (10 seconds or more for the rehabilitative and retributive articles, 5 seconds or more for the control article) and answered the compliance question correctly or answered “don’t know.” 911 respondents initiated the assignment and began the survey.²⁰

While it is reasonable to wonder about the validity of surveys using MTurk given the nature of the platform and those who select into the pool of Workers, recent studies show samples from MTurk are “at least as representative, if not more so, than the convenience samples typically used in political science experiments” (Berinsky, Huber & Lenz, 2010). Some have concerns about the sincerity and quality of responses from online studies since the researcher is unable to monitor compliance in person. This is addressed in the present study both through the compliance measures detailed above, as well as by respondents’ incentive to participate fully in order to receive payment. Like an in-person survey, subjects do not receive compensation until completion, and the researcher choose not to pay individuals who do not meet the demands of the survey. Though this monetary incentive is mostly beneficial, MTurk respondents may also be subject to experimental demand characteristics, behaving according to what they perceive as the researcher’s intent. Those who have investigated MTurk note that experimental demand characteristics can be present in all experiments. In all, MTurk has proven to be a reliable data collection tool for political scientists and psychologists to date (Berinsky, Huber & Lenz, 2010; Buhrmester, Kwang & Gosling, 2011).

²⁰ The MTurk HIT requested 800 Workers. Though 911 individuals started the survey using the link provided in the MTurk HIT, 90 did not complete the experiment. The additional 21 are likely respondents who did not enter their survey code in MTurk. In this instance, the respondent would not be registered as having taken the survey and therefore would not be counted in the 800 person quota.

The Sample

The respondents in the study represent a variety of backgrounds, consistent with the research on MTurk's validity cited above. The majority of respondents is between 18 and 44 and has completed their bachelor's degree or some college. The number of respondents with full-time employment status is approximately 30%, about 15% are current students and about 15% are unemployed and looking for work. Roughly 75% of respondents do not have any children and about half of respondents never attend religious services. Approximately 75% live in a city or suburb, while the rest indicate residence in a small town or rural area. About 45% of respondents identify as male, while 55% identify as female. In terms of race and ethnicity, roughly 82% identify as white, 6% as black or African American, 6% as Asian and 5% as ethnically Hispanic. Respondents hail from 48 states and the District of Columbia.²¹

In terms of politics, the study's respondents are more interested in politics and more left-leaning than the average American. About 80% of respondents indicate they are extremely, very, or moderately interested in government and politics. The political ideology of this study's respondents is more liberal than the representative population. Half of respondents identifies as extremely liberal, liberal, or slightly liberal. Similar, yet distinct, frequencies indicate roughly 40% of respondents think of themselves as Democrats, 18% as Republican, and 33% as Independent. Of the Independents, 20% lean closer to the Republican Party, 47% lean closer to the Democratic Party, and 33% classify themselves as true Independents. Respondents in this study are on the whole more educated, less religious, and more liberal than a representative sample of Americans. For a side-by-side comparison of the attributes of the sample relative to the U.S. population, please refer to the Appendix.

²¹ The only states not represented are North and South Dakota.

V

Results

The hypotheses developed in the theory chapter are correct for the most part. Respondents who read the rehabilitative article express stronger preference for rehabilitative policies, but not necessarily weaker preference for retributive policies. The study also shows that the rehabilitative treatment affects respondents' attitudes in a more profound way than the retributive or control treatments. In other words, the rehabilitative treatment produces a stronger effect than the other two treatments. Respondents also are more inclined to vote for the candidate and have a better impression of him if exposed to the article in which he is portrayed as an advocate of rehabilitation. Finally, contrary to past expectations in scholarship and politics, the label "soft on crime" does not have negative implications in this study, but rather has some positive effects.

The Relationship

I break down the primary discussion of the relationship between public opinion and rhetoric surrounding crime and punishment in two ways. First, two multi-item scales established *a priori* from survey questions measure respondents' support for retributive or rehabilitative

goals and policies.²² The second method is an examination of the relationship under the lens of four nuanced scales. These scales provide a sharper focus of general support for rehabilitation or retribution by separately measuring harshness, support for specific rehabilitative programs, punitiveness, and lenience toward the incarcerated.²³ A factor analysis of these same questions yields the four distinct scales, so we know the questions that make up each scale are specific to one scale. I analyze the nuanced scales alongside the two general scales in order to provide a comprehensive analysis of respondents' attitudes and preferences toward crime and punishment. Besides using these scales to develop a better understanding of the general relationship between rhetoric and crime and punishment, I will also apply them to a discussion of moderating factors at play in the relationship: values, resentment, gender, and race. A discussion of other interesting side-variables measured by the present study will conclude the section of this chapter.

A t-test analysis of the basic relationship between the articles and support for rehabilitation and retribution yields information about changes in attitude and the types of arguments most strongly responsible for these changes. Consider Figure 5.1 for a visual representation of the means of the two scales measuring general attitudes—support for rehabilitation and support for retribution. The first thing we notice about the figure is that respondents' support for retribution does not change based on the article they read. Rather, we see that support for retributive goals shows little variance in the mean, maintaining a fairly consistent level across all three articles. This tells us that respondents' retributive views are likely to be consistent regardless of what new information they have or to what types of

²² In reality the two larger scales generate a similar factor pattern, so the two separate scales are related. For example, the same question that measures low support for rehabilitation could measure high support for retribution if reversed. However, these questions are grouped into either the rehabilitation support scale or the retribution support scale in order to create a distinction between these two concepts.

²³ Please refer to the Appendix for a factor analyses that confirm the cohesiveness of the nuanced variables. Unlike the general "support for rehabilitation" and "support for retribution" scales, the nuanced scales are composed of distinct variables. In other words, no variable could be in more than one nuanced scale.

arguments they are exposed. The mean for support for rehabilitation, however, varies across the treatment articles. Respondents' support for rehabilitative goals moves after reading the rehabilitative article more than reading the retributive or control treatments, whose difference in means is not statistically significant. We learn two things from this. First, exposure to the rehabilitative article affects respondents' attitudes more than the retributive or control articles. Second, since support for rehabilitation is the only dependent variable that varied by treatment, I conclude that support for rehabilitative goals is more malleable than support for retributive goals.

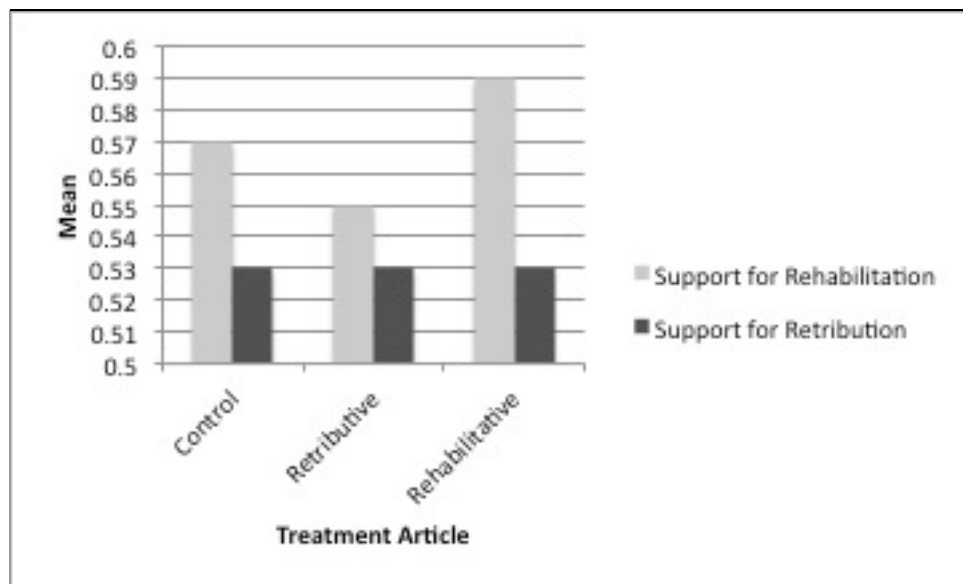


Figure 5.1. Bar graph of support for retribution and rehabilitation by article.²⁴

A comparison of the scales measuring lenience toward the incarcerated and support for specific rehabilitative policies helps us better understand the function of the retributive argument. The analysis indicates that lenience is higher after exposure to the rehabilitative argument and

²⁴ The means of the scales “support for rehabilitation” and “support for retribution,” which have different numerical ranges (scores), are re-coded to be on a scale from 0-1 in order to better compare the two. This is the case for all graphs of these two scales throughout this analysis.

lower after the retributive argument ($t = -2.50, p = .013$). Support for specific rehabilitative policies, however, is relatively unaffected by retributive arguments. The fact that leniency can be swayed by retributive rhetoric, but support for rehabilitative programs—a measure similarly “not punitive” in nature—is not affected implies a difference between the two that is brought out by the retributive argument. It appears that the public is more committed to supporting rehabilitative initiatives (e.g., work programs) than measures that make prison life more “normal” (e.g., access to resources); in the face of retributive rhetoric, respondents will uphold the former, but dismiss the latter.

Moderating Factors: Values and Resentments

Using our understanding of the general effect of the treatment articles on support for rehabilitative and retributive policies, we shift gears to consider how other factors affect respondents’ policy preferences and whether those factors moderate the impact of rhetoric. The variables under examination now are scale combinations of different questions with similar content to measure predispositions. Though I test over fifteen different independent variables to investigate correlations and relationships to our dependent variables, we will explore the factors that return interesting and distinct results. The variables compiled from the pre-treatment questions I analyze in this section are: individualism, racial resentment, revenge orientation, and attitudes about government spending. For the purposes of this analysis, respondents are “high” in a specific variable if they score more than the next whole number higher than the median of that particular factor, and “low” if they are less than or equal to the median.²⁵

²⁵ For example, if the humanitarian scale median is 7.51, high in humanitarianism is greater than 8, and low is less than or equal to 8.

As defined in this analysis, individualism taps adherence to the value of individual autonomy and getting ahead through one's own hard work. Table 5.1 shows the means for those high and low in individualism for all three articles. We can see that those high in individualism are more likely than their counterparts to be less supportive of rehabilitation regardless of the article they read. It is plausible the belief of "pulling yourself up by your bootstraps" has implications for the desire to see programs assist someone in self-betterment. Those high in individualism react more strongly to the treatment articles than those low in individualism; there is a p-value of .071 ($t = -1.81$) for the difference in means of support for rehabilitation between the retributive and rehabilitative treatments for those high in individualism, while those low in individualism do not have statistically significant differences in means by article. Individualistic respondents who read the retributive article are less supportive of rehabilitation and those who read the rehabilitative article are more supportive of rehabilitation. Given that individualistic respondents seem to be more affected by the arguments than those low in individualism, I posit there could be a correlation between punitiveness and individualism. However, further testing is needed to verify that a correlation can be drawn.

Article	Level of Individualism	
	Low	High
Control	21.92*	19.73
Retributive	21.82	18.03
Rehabilitative	22.86	20.28

Table 5.1: Mean of support for rehabilitation by level of individualism.
***Means are on a scale where the lowest point value is 0 and the highest is 37.**

A variable that proves to be highly statistically significant is racial resentment, or a mix of racial animosity toward African Americans and individualistic conservative values. In general, those high in racial resentment are remarkably more punitive regardless of which article they read. If respondents high in racial resentment read the retributive article they will be roughly six points (on a 0-37 scale) less supportive of rehabilitation than those who read the rehabilitative article ($t = -2.70, p = .0075$). Further, respondents high in racial resentment who read the retributive argument are two and a half points less supportive of rehabilitation than those who read the control article. Figures 5.2 and 5.3 show that the means for those high in racial resentment are swayed by the retributive argument more than the control or rehabilitative arguments. It seems high racial resentment reacts to retributive rhetoric, which in turn correlates with lower support for rehabilitative efforts and higher support for retributive efforts. The rehabilitative rhetoric, on the other hand, produces an effect similar to the control article, showing that racial resentment affects how respondents respond to retributive, but not rehabilitative, rhetoric.

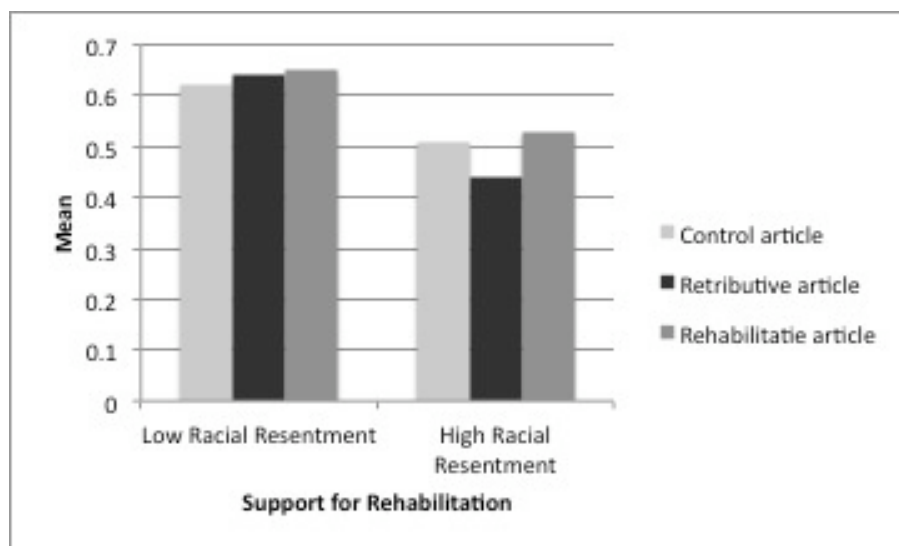


Figure 5.2: Support for rehabilitation with racial resentment, by article.

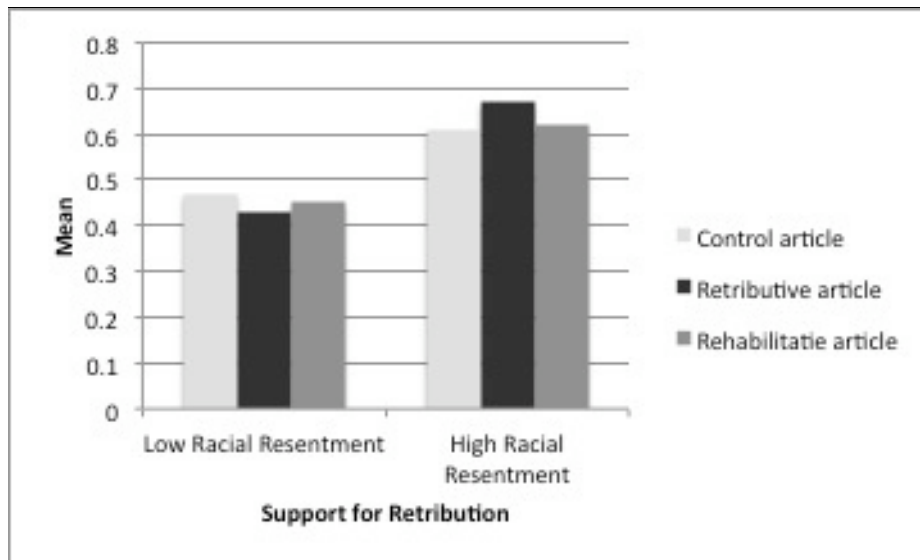


Figure 5.3: Support for retribution with racial resentment, by article.

An analysis using the four nuanced scales especially illuminates the effect of racial resentment on responsiveness to the treatment articles. Consider the tables below, which show each of these four variables by racial resentment values and treatment article. It is clear those high in racial resentment—regardless of the treatment—score lower on the rehabilitative policies scale and leniency scale, and higher on the punitive and harsh scales than respondents low in racial resentment. This suggests those high in racial resentment are more punitive than those low in racial resentment. Furthermore, those high in racial resentment are more sensitive to the retributive treatment. That is to say, respondents high in racial resentment score higher in the two retributive-focused scales and lower in the two rehabilitative-focused scales after exposure to the retributive treatment than the rehabilitative treatment. We see this relationship is especially significant in the harsh, rehabilitative, and leniency scales when we look at the difference in

means for those high in racial resentment between the retributive and rehabilitative treatments ($t = 1.94, p = .054, t = -2.02, p = .045, t = 2.58, p = .011$, respectively).

Article	Level of racial resentment	
	Low	High
Control	11.5*	9.7
Retributive	11.8	8.9
Rehabilitative	11.9	9.0

Table 5.2. Mean of support for specific rehabilitation policies by level of racial resentment.
*Means are on a scale where the lowest point value is 0 and the highest is 16.

Article	Level of racial resentment	
	Low	High
Control	9.0*	7.4
Retributive	9.4	6.0
Rehabilitative	9.5	7.8

Table 5.3. Mean of lenience toward the incarcerated by level of racial resentment.
*Means are on a scale where the lowest point value is 0 and the highest is 16.

Article	Level of racial resentment	
	Low	High
Control	3.8*	5.3
Retributive	3.5	5.6
Rehabilitative	3.4	5.2

Table 5.4. Mean of support for punitive initiatives by level of racial resentment.
*Means are on a scale where the lowest point value is 0 and the highest is 9.

Article	Level of racial resentment	
	Low*	High
Control	8.7	10.9
Retributive	8.0	11.7
Rehabilitative	8.7	10.8

Table 5.5. Mean of harshness toward the incarcerated by level of racial resentment.
***Means are on a scale where the lowest point value is 0 and the highest is 16.**

Another pre-test independent variable I investigate is revenge orientation, a scale that encompasses notions of forgiveness, mercy, and “just deserts” to measure a respondent’s initial proclivity, or predisposition, toward seeking retributive punishment. Testing shows that those with high revenge orientation have roughly six points higher means in support for retributive and roughly six points lower in rehabilitative goals than do their less revenge-oriented counterparts. Figures 5.4 and 5.5 illustrate this.

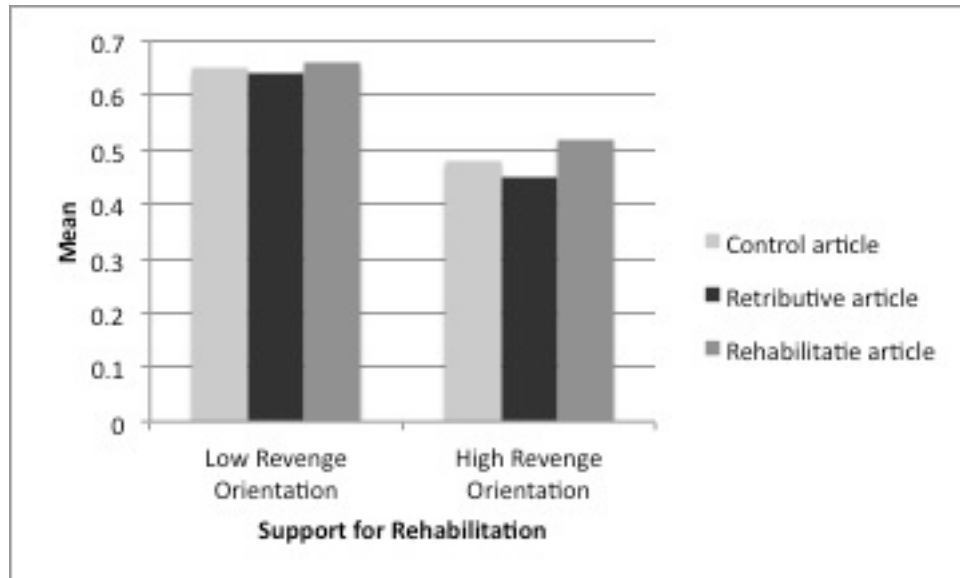


Figure 5.4. Support for rehabilitation with revenge orientation, by article.

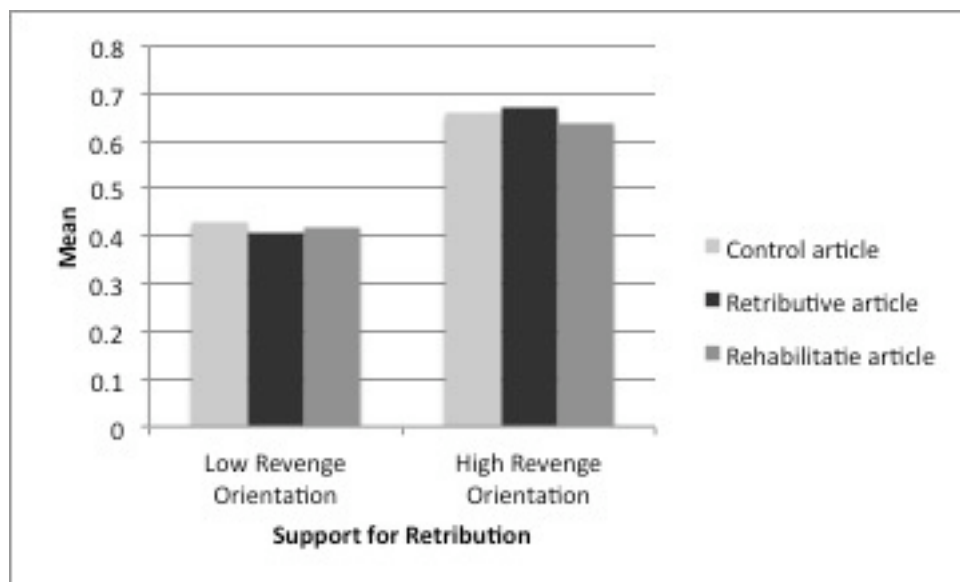


Figure 5.5. Support for retribution with revenge orientation, by article.

For those high in revenge orientation, we see a very strong difference in means of support for rehabilitation after exposure to retributive arguments. Support for rehabilitation is roughly two and a half points lower after reading the retributive article than the rehabilitative article ($p =$

.02). However, regardless of level of revenge orientation, support for retribution does not change based on the article. So, revenge orientation polarizes respondents exposed to retributive and rehabilitative arguments on their support for rehabilitation, but support for retribution is not triggered or enhanced by an article. Instead, high revenge orientation is related to higher support for retribution regardless of treatment. It is also correlated with lower support for rehabilitation, but especially when exposed to retributive arguments.

The last analysis I will illuminate is how a respondent's attitude toward government spending affects their proclivity towards specific rehabilitative or retributive measures. This attitude is measured by the variable "pro-government spending," a scale of combined support for government spending on education, welfare, healthcare, urban development programs, and environmental programs. Those high on the pro-government spending scale are more likely to support specific rehabilitation programs and be more lenient toward the incarcerated compared with respondents low on this scale. Those high on the pro-government spending scale are also less likely to exhibit a harsh attitude toward the incarcerated and support punitive policies compared with respondents low on this scale.

The most significant difference in the effect of attitudes on government spending is in sensitivity to the treatments. Those against government spending are significantly less lenient and less supportive of rehabilitative initiatives if exposed to the retributive argument than if exposed to the rehabilitative argument ($t = -2.60$ with a p-value of 0.010 and $t = -2.25$ with a p-value of 0.026, respectively). Conversely, those high in support for government spending are not only higher on the leniency and support for rehabilitative programs scale than their anti-government spending counterparts, they do not exhibit a significant difference in leniency and support for rehabilitative programs by article. In other words, those high in support for

government spending are not as sensitive to the retributive treatment—or any, for that matter—as those against government spending. It is possible that ideology or partisanship drives these attitudes, but more on that later.

Moderating Factors: Gender and Race

We know from our previously developed analyses that exposure to the rehabilitative argument increased respondents' support for rehabilitative measures and that support for retribution is not as pliable. In an examination of gender and race we see the complexity of this relationship come to life.

Difference of means tests indicate gender does moderate the impact of retributive and rehabilitative arguments on policy preferences. As we observe in Table 5.6, men become more supportive of retributive goals and less supportive of rehabilitative goals when exposed to either crime and punishment article compared to the control, which has no mention of crime. Women, on the other hand, are much more sensitive to the rehabilitative treatment; support for rehabilitation is highest and support for retribution is lowest after reading the rehabilitative article. Whereas men's support for retribution increases relative to the control regardless of the treatment article, women's support for rehabilitation increases regardless of the article. Thus, it seems *any* reference to crime and punishment elicits a distinctly punitive attitude in men, whereas the same reference elicits a distinctly rehabilitative-focused attitude in women.

	Support for Retribution	
Article	Men	Women
Control	11.1	14.2
Retributive	12.1	13.4

Rehabilitative	12.6	12.5
	Support for Rehabilitation	
Article	Men	Women
Control	23.3	19.3
Retributive	21.2	19.9
Rehabilitative	22.2	22.0

Table 5.6. Support for retributive goals and support for rehabilitative goals by gender. Means are 24 and 37 for retributive and rehabilitative scale, respectively.

Existing research has found women to be less punitive than men (namely Stinchcombe et al, 1980). Though women in the present study are initially more punitive than their male counterparts, they are more receptive to rehabilitative arguments. This provides a deeper understanding than simple conjectures of previous studies that indicate women are by nature less punitive than men because we understand that women’s punitiveness is more adaptable than men’s. Furthermore, in an examination of Figures 5.6 and 5.7 (visuals of the data represented in Table 5.6) we see a wide gender gap in support for retributive and rehabilitative goals without exposure to treatment. Upon exposure to either of the two treatment articles, however, this gender gap closes. This consolidation of the gender gap further supports the argument that men and women react to any form of crime and punishment rhetoric in different ways.

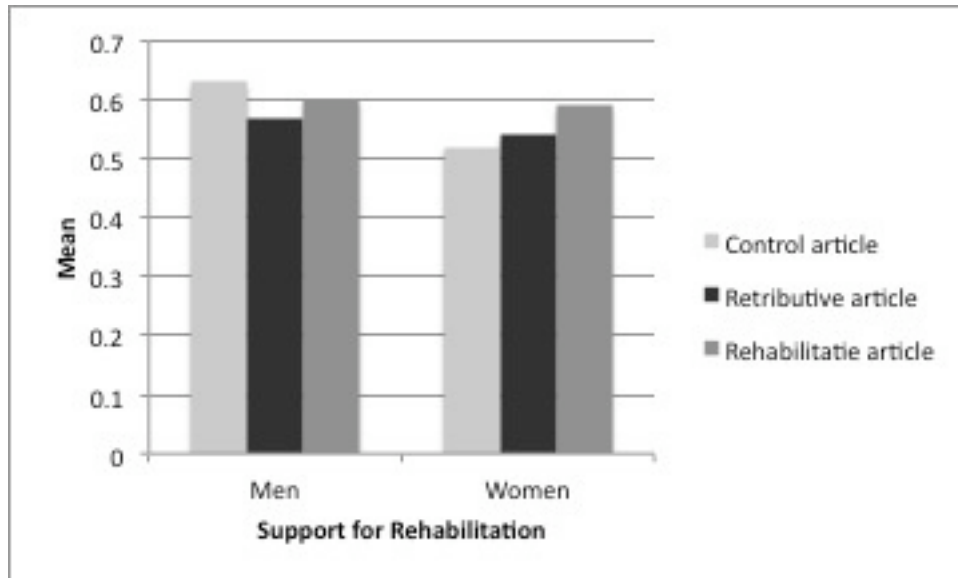


Figure 5.6. Bar graph showing support for rehabilitation by gender.

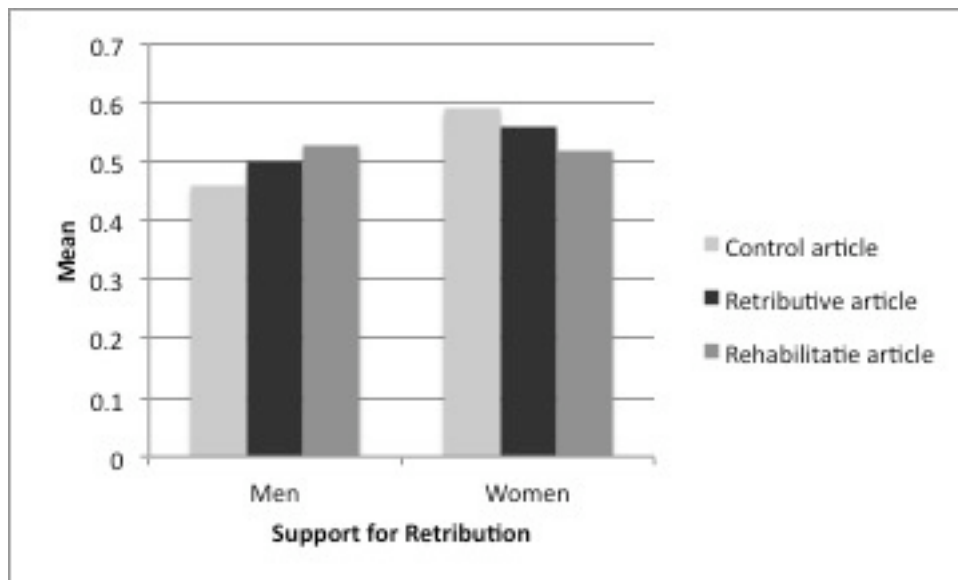


Figure 5.7. Bar graph showing support for retribution by gender.

We better understand the relationship between gender, the treatments, and policy preferences in an examination of the detailed scales. In all four nuanced scales, the means for women vary by article with statistical significance, but the means for men only show statistical

significance in the measure of specific support for rehabilitative policies. This helps solidify the argument that women are more sensitive to rhetorical arguments than men. Women who read the rehabilitative article score higher on the leniency scale than those who read the control and retributive articles. The difference in means between the control and rehabilitative articles, and the retributive and rehabilitative articles is statistically significant ($t = -2.79$, $p = .006$ and $t = -2.63$, $p = .009$, respectively). The pattern of significant difference in means between the control and rehabilitative articles continues for the other three scales: women are less harsh, less punitive, and more supportive of rehabilitative programs after reading the rehabilitative article.²⁶ In all, these four scales support the notion that women are less punitive after exposure to the rehabilitative argument than to the control or retributive arguments.

While I find that gender moderates punitiveness, race does not. In fact, there is no difference in response to the treatment articles by race. Previous studies assert that those who are more likely to find themselves in jail—more specifically, African Americans and Hispanics—are less punitive (McCorkle, 1993; Stinchcombe et. al, 1980). T-tests in the present study indicate there is no statistically significant difference in policy preferences between minorities and Caucasians in any of the treatments. Instead, we observe nearly equal support for rehabilitation and retribution between minorities and Caucasians, and that there is no difference in treatment effects between the two groups.

Moderating Factors: Party Identification

Finally, I conclude this section with an analysis of the role of political party identification. Much prior research tells us Democrats tend to be less punitive than Republicans

²⁶ The difference in means tests between rehabilitative and control arguments show statistical significance. Harshness ($t = 2.00$, $p = .046$), punitiveness ($t = 2.90$, $p = .004$), and support for specific rehabilitative programs ($t = -2.55$, $p = .011$) are all statistically significant for women.

(Erskine, 1975a; Shaw et. al, 1998; Stinchcombe et. al, 1980, to name a few). The present study allows us to dive into this link to discover how partisanship affects support for retribution or rehabilitation and more specifically how partisanship moderates perceptions of arguments for either type of punishment goal.

To begin, the present study supports the conjecture that Democrats are significantly less punitive than Republicans. Referring to the control rows in Table 5.7, we see that even without any exposure to crime and punishment rhetoric, Republicans are nearly five points higher in support for retribution and nearly four points lower in support for rehabilitation than Democrats.

My research shows that those who self-identify as Democrat respond more to the rehabilitative treatment and those who self-identify as Republican respond more to the punitive treatment. The difference in means in support for rehabilitation between Democrats exposed to the control and Democrats exposed to the rehabilitative treatment is very statistically significant ($t = -2.34$, $p = 0.020$), while the difference in means between the control and retributive treatment is not. This tells us Democrats' support for rehabilitation is more sensitive to rehabilitative arguments than retributive arguments.

While Democrats' support for rehabilitation is affected most strongly by exposure to retributive arguments, Republicans' support for rehabilitation is affected most strongly by retributive arguments. Though t-tests do not return statistically significant results (likely due to a small sample size of Republicans), we can see from Table 5.7 that the mean of support for rehabilitation is roughly two points lower if exposed to the retributive article. The rehabilitative argument elicits a mean nearly identical to the control article.

	Support for Retribution		
Article	Democrats	Republicans	Independents
Control	11.5	16.4	12.6
Retributive	10.8	16.7	12.8
Rehabilitative	10.5	16.0	13.6
	Support for Rehabilitation		
Article	Democrats	Republicans	Independents
Control	22.0	18.1	21.5
Retributive	22.6	15.9	20.8
Rehabilitative	24.2	18.0	21.3

Table 5.7. Support for retribution and rehabilitation by party identification.

The detailed scale measuring lenience toward the incarcerated helps clarify the previous analysis. As with the analysis on the support for rehabilitation above, we see Republicans are less lenient than Democrats. We also see that, in terms of leniency, Democrats are more sensitive to the rehabilitative argument, while Republicans are more sensitive to the retributive argument. The difference in means in leniency between the control and rehabilitative treatment exposure for Democrats is extremely statistically significant ($t = -2.77$, $p = .006$) whereas the same comparison is not significant for Republicans. Furthermore, Democrats exposed to the control and retributive arguments have very similar means on the leniency scale; only when exposed to the rehabilitative article will the mean shift to a higher value with statistical significance. For Republicans, I find most statistical significance in a difference of means test between the control and retributive arguments, verifying the conclusion that Republicans are more sensitive to the retributive argument than any other argument and more sensitive to this argument than their Democratic counterparts ($t = 2.08$, $p = .040$). Table 5.8 provides more illumination of this trend.

	Leniency toward the incarcerated		
Article	Democrats	Republicans	Independents
Control	8.5	7.4	8.6
Retributive	8.7	5.7	8.2
Rehabilitative	9.9	6.9	8.4

Table 5.8. Leniency toward the incarcerated by party identification and by article.

To further support the claim that response to certain treatments has strong partisan ties we turn to those who self-identify as Independents. Independents are relatively unaffected by the treatments, as no difference in means test yielded significant results. Still we can see the means for support for retribution are highest for the rehabilitative article, and the means for support for rehabilitation are lowest for the retributive article. There is no clear indication why, and the differences are not significant, but this could provide grounds for future investigations.

Other analyses: the death penalty, harshness of courts, and the purpose of prisons

Though the scales measuring support for rehabilitative/retributive encompass several variables, it is useful to uncover a few other variables in a deeper analysis. One such variable is support for the death penalty. The vast amount of research dedicated to this topic is outside the scope of the investigation and, thus, is not discussed here. However, the issue of the death penalty is important because it is an inflexible concept; the preference for or against the death penalty does not change based on the article. In fact, the means of support for the death penalty on a four point scale are coincidentally identical at 2.19 for all three articles. Respondents'

attitudes toward the death penalty represent policies that are so ingrained or controversial that they cannot be swayed by rhetorical treatment.

Another question to examine has been asked on the General Social Survey for years, and is reviewed in previous chapters: “Do you think the courts today deal too harshly or not harshly enough with criminals?” Interestingly, 27.6% of respondents indicate “too harshly,” while 35.9% and 36.5% say “just right” and “not harsh enough,” respectively. Remember that the 2010 General Social Survey found 14.4% believed courts were too harsh, 19.0% believed courts were “just right”, and 66.6% believed courts were not harsh enough. Looking at those exposed to the control article, we glean that our sample is less inherently punitive than the general public. Regardless, we do see a possible correlation between the articles and a respondent’s opinions of the courts’ treatment of criminals. In Table 5.9 we see the same trend in opinions independent of article assignments. However, one can note the slight difference in percentages between those answering too harshly (slightly more answering this had read the rehabilitative treatment) and not harshly enough (slightly more answering this had read the retributive treatment). This shows that, though the tests of significance are not strong, there could be a correlation between the articles and how harsh a respondent views the courts to be. Perhaps the statistical significance would be stronger if the sample were more varied on inherent punitiveness, since we know high revenge orientation does affect how individuals respond to rehabilitative arguments.

“Do you think the courts today deal too harshly or not harshly enough with criminals?”	Control Article	Retributive Article	Rehabilitative Article
Too harshly	26.7%	26.6%	29.6%
Just right	36.4%	34.4%	36.8%
Not harshly enough	36.8%	38.9%	33.6%

Table 5.9. “Do you think courts today deal too harshly or not harshly enough with criminals?”

Finally, though we observe how retributive and rehabilitative support is affected by the articles, when we ask what the main purpose of prisons should be, roughly 41% answer “rehabilitation.” This number does not change significantly from article to article. So, when we ask the question explicitly, people say they favor rehabilitative goals, but this is not what we see when we ask people about their support for specific rehabilitative policies and priorities. Whereas previous literature asserts people are more likely to reject rehabilitative measures if they are labeled as “rehabilitation” (Flanagan, 1996b; Moon & Cullen, 1999.), the present study shows at least some people are actually drawn to such a label. Not only that, the draw appears to be superficial (i.e., largely in name only), a false indicator of their true support for such policies. Perhaps this occurrence can be attributed toward people seeking a change from the current system, and seeing “rehabilitation” as that avenue for change, without truly understanding what it means. Though we find people to be on the less punitive side, we still observe that they say they favor rehabilitation more than they do when the policies are decomposed.

The Politician

Armed with a better understanding of the relationship between rhetoric and policy, we shift gears to the second question on how rhetoric affects evaluations of politicians. This section is comprised of four parts: the impression of the candidate (who is the purported source of the rhetoric and positions), inclination to vote for the candidate, inferences about the candidate’s party affiliation, and the effect of the “soft on crime” label.

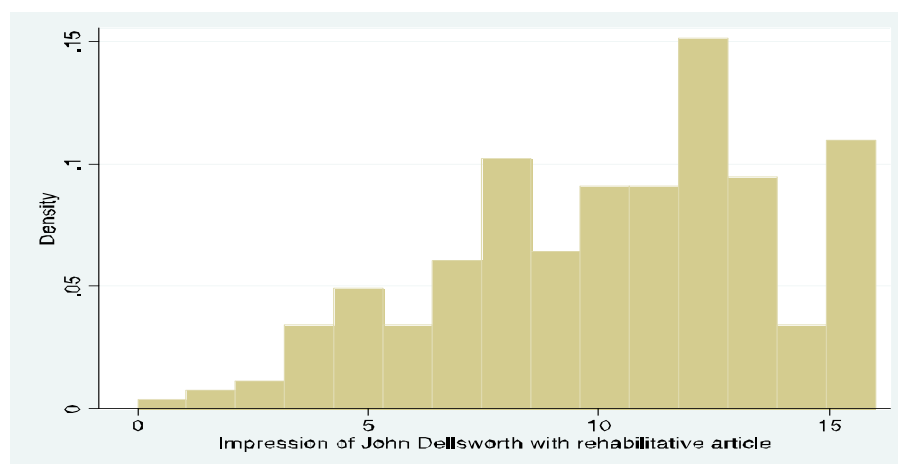
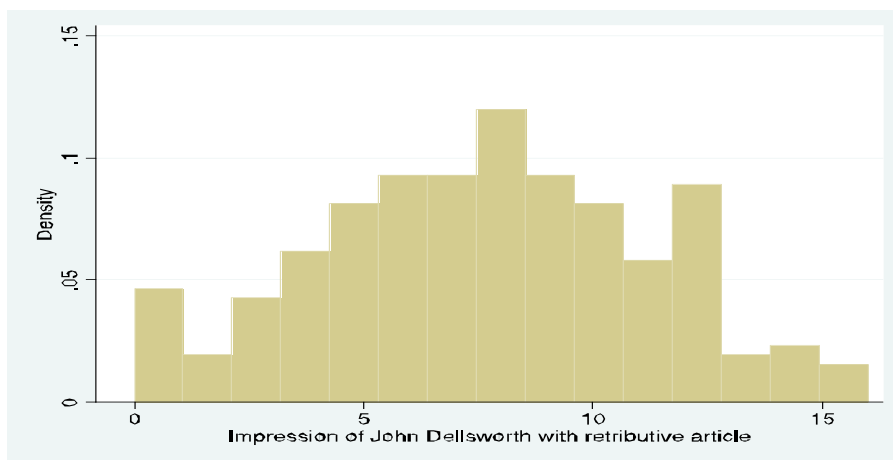
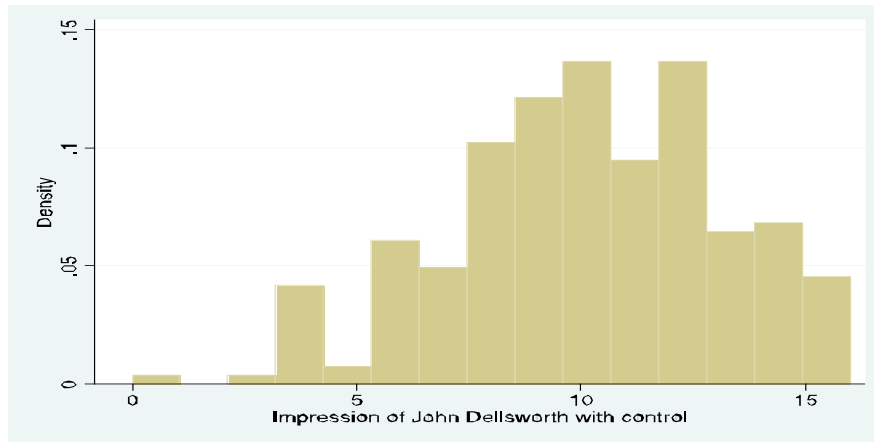
Impressions of Candidate Character

Respondents' impressions of the candidate vary notably with article exposure and respondent party affiliation. The scale measuring candidate impression is a combination of four trait evaluations: compassion, morality, strong leadership, and competence. When we review how the article affects the impression of the candidate, we see a large, statistically significant difference ($t = -8.27$, $p = 0.000$) in means between the retributive and rehabilitative articles (see Table 5.10).

Article	Candidate Impression
Control	10.0
Retributive	7.7
Rehabilitative	10.2

Table 5.10. Mean comparison of respondents' impression of candidate character by article. Scale is from 0 to 16.

The difference is even more apparent upon consultation of histograms showing the distribution of responses. Examining the histograms displayed below in Figures 5.6, 5.7, and 5.8, it is evident respondents' impressions are more normally distributed about the mean when the candidate advocates retributive measures. This histogram illustrates that respondents are critical of a retributive candidate, a point most strongly made in comparison of histograms of the control and rehabilitative articles. Very few respondents are in the bottom portions of the scale for the control and rehabilitative arguments, showing people tend to view these candidates fairly favorably. For the retributive argument, however, respondents are much more ambivalent about the candidate.



Figures 5.6, 5.7, 5.8. Histograms of impression of candidate character by control, retributive, and rehabilitative articles, respectively.

Respondents' impressions of the candidate not only differ by article, but by their party identification as well. Remember that the experiment informs respondents that the candidate is a member of the political party with which they indicate they identify. For example, Democrats are told they are going to read an article "about a Democratic candidate who is running for political office in another state," and so forth. This is done to reduce the often overwhelming effects of partisanship that can make other relationships hard to observe.

In Table 5.11, the difference in mean candidate impression between Democrats who read the rehabilitative and retributive articles is nearly 4.5 points ($t = -9.56$, $p = 0.000$). Though not as strong, the difference in means between Democrats on the rehabilitative and control articles is about one point, but with a p-value of 0.052 ($t = -1.95$). Democrats, then, are sensitive to the candidate's argument either way. Independents behave similarly, with the strongest difference in means as between the retributive and rehabilitative treatments ($t = -3.03$, $p = 0.028$).

Republicans, on the other hand, do not differ substantially between articles. Therefore, we conclude that Democrats' and Independents' impression of the candidate is more shaped by crime and punishment rhetoric than that of Republicans.

	Candidate Impression		
Article	Democrats	Republicans	Independents
Control	10.4	10.1	9.6
Retributive	6.8	9.3	7.6
Rehabilitative	11.3	9.7	9.3

Table 5.11: Mean impression of candidate character by article and political party.

Candidate Support

An analysis of respondents' likelihood of voting for the candidate further clarifies the role of partisanship in response to crime and punishment rhetoric. In Figure 5.9 we observe that Democrats are more likely to vote for the candidate if his platform is rehabilitative. In Figure 5.10 we observe that Republicans are more likely to vote for a candidate if his platform is punitive, but that they are not entirely opposed to rehabilitation. On the contrary, the bimodal distribution of Republicans' likelihood of voting for a rehabilitation advocate tells us that Republicans are somewhat polarized on voting for the candidate. Additionally, the uniform distribution of the control article tells us Republicans react relatively differently to the control article candidate; for Republicans there is no "majority" feeling about the baseline candidate. This indicates that perhaps Republicans are more inherently skeptical about the candidate, compared to Democrats and Independents. Independents (Figure 5.11) behave like Democrats if they are judging the candidate in the control or retributive articles, but are unevenly distributed around the mean for the rehabilitative article. Independents, like Republicans, could go either way on the crime platform in terms of voting for a candidate.

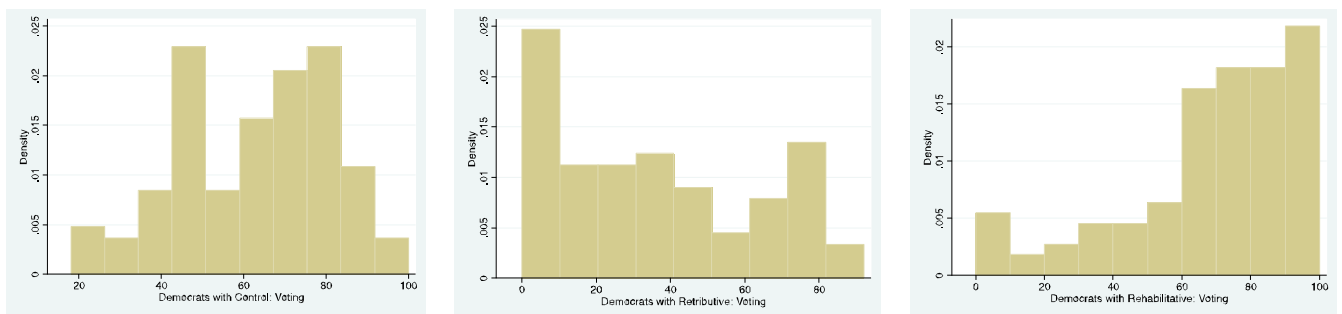


Figure 5.9. Histograms on Democrats' likelihood of voting for the candidate by control, retributive, and rehabilitative articles, respectively. The scale is 0-100, with zero on the left.

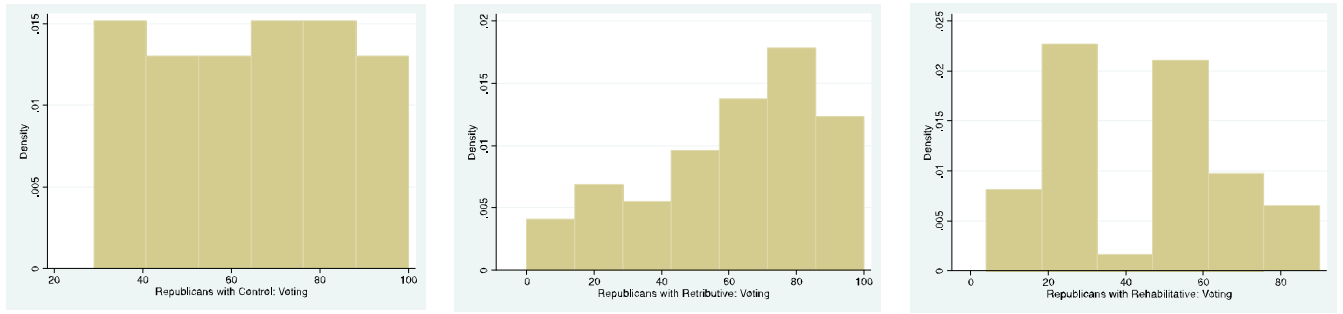


Figure 5.10. Histograms on Republicans’ likelihood of voting for the candidate by control, retributive, and rehabilitative articles, respectively. The scale is 0-100, with zero on the left.

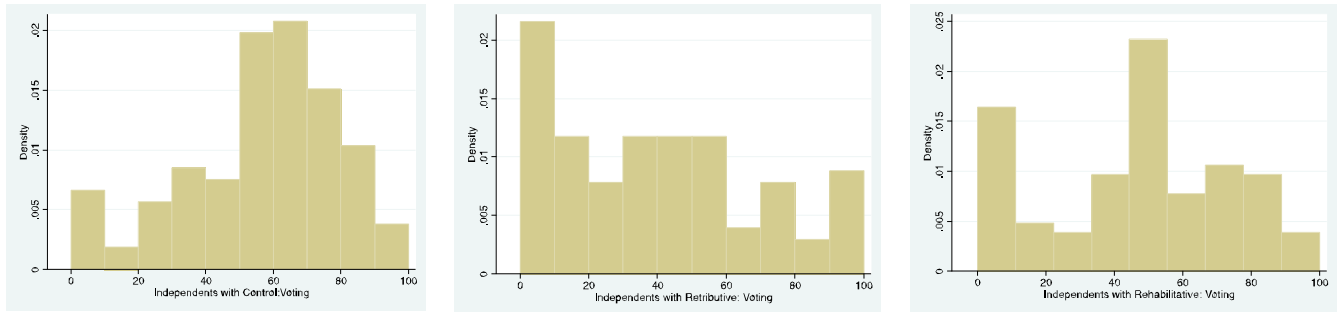


Figure 5.11. Histograms on Independents’ likelihood of voting for the candidate by control, retributive, and rehabilitative articles, respectively. The scale is 0-100, with zero on the left.

The “Soft on Crime” Label

As discussed in previous chapters, many scholars identify “soft on crime” as a label to be avoided, describing it as political suicide. However, the present study finds that “soft on crime” is not a negative label, at least among some parts of the contemporary American electorate. In fact, it only produced an effect in some situations, and in some situations the effect is positive—

respondents favoring the candidate more after exposure to the “soft on crime” accusation.²⁷ But this, like the other variables we have reviewed, is strongly tied to party affiliation.

Democrats who read the control article tend to favor the candidate more after being presented with the “soft on crime” label. I observe a difference in responses in the control article for Democrats who rated the candidate as very or extremely “soft on crime.” Compared with those not exposed to the “soft on crime” label, they rated him about 1.3 points higher in the control ($t = -2.40$, $p = 0.018$). We cannot explain this occurrence with certainty, but perhaps these respondents saw “soft on crime” as an attack on a candidate they liked. This “partisan pushback” is one theory, but the low p-value warrants further review. For Democrats, the difference in means between the two treatments for those exposed to the label is not statistically significant. Democrats exposed to the “soft on crime” label after reading the retributive article seem to reject the label as plausible, given the harshness of the argument, and the mean for those who read the rehabilitative article is slightly higher than for those not exposed.²⁸ Thus, the “soft on crime” label does not affect a respondent’s opinion of the candidate, and possibly elicits a stronger liking for the candidate in an effort to defend them against the label.

Though the tests of statistical significance on the effects of the label are not as strong for Republicans as for their Democratic counterparts, the pattern is interesting to note.²⁹ It appears that the label does not affect Republicans’ impressions of the candidate, except for possibly when he espouses a retributive platform. The mean of candidate impressions for Republicans

²⁷ Recall from the experimental design chapter that the following question serves as exposure to the “soft on crime” label: “Thinking back to the article you read, some opponents have criticized John Dellsworth’s policies. How “soft on crime” do you think the candidate is?” Half of respondents receive this question before answering any questions on likelihood of voting for or impression of Dellsworth. Therefore, while all respondents are “exposed” to the label, this label could actually impact responses from only half of respondents. We refer to this half as having exposure to the label and the other half, our control, as not having exposure to the label.

²⁸ This question can also be viewed as a manipulation check of sorts. The mere difference in means shows respondents did detect a difference between the “soft on crime” label and the candidate.

²⁹ The recruitment yielded a smaller number of Republicans, which makes it harder to form confident judgments about whether differences are statistically significant.

who read the retributive article and are exposed to the label is 1.6 points lower than for those who read the same article and are not exposed. Since the label does not make sense when applied to the retributive article, I am unsure why it would negatively affect the retributive candidate more than the rehabilitative candidate. Perhaps those exposed to the “soft on crime” label and the retributive argument knew it did not apply to such a harsh candidate and, sensing invalidity of the label, rejected the candidate all together. More tests, with a larger Republican sample size, are needed to further clarify this relationship.

Party Stereotypes and Voter Inferences

Before closing this section on the politician, a final exploration further illuminates the role of partisanship and party stereotypes in American crime and punishment policy. As explained in the experimental design chapter, respondents are asked near the end of the questionnaire if they remember the candidate’s party affiliation from the article. The majority of those who indicate they remember are correct in their identification, with no significant relationship between their own party affiliation and getting this question correct. The more interesting detail comes into play for those who did not remember the candidate’s party affiliation. More Independents are unsure of the candidate’s political party (84% of Independents), whereas Democrats and Republicans are roughly half and half on remembering or forgetting. I gather that those less wedded to their party are less likely to remember—or even register initially—that the candidate is of similar partisanship. Those who indicate they are unsure of the candidate’s political party are asked what they would guess the candidate’s party to be. Democrats and Republicans tend to say the control article depicts a candidate from their own political party, and Democrats, Republicans, and Independents alike say the candidate in the

retributive article is a Republican and that the rehabilitative article is a Democrat. Table 5.12 collapses all partisans together to show the precise percentages of the responses by article.

Party attributed to candidate	Control Article	Retributive Article	Rehabilitative Article
Democratic Party	37.3%	11.1%	51.6%
Republican Party	29.7%	57.4%	12.8%
Independent	33.9%	32.3%	33.9%

Table 5.12: “If you had to guess, what political party do you think Dellsworth is affiliated with?” by article

Perhaps it is unsurprising that the retributive and rehabilitative arguments are so categorically defined by party. Still, this observation that partisanship pervades crime and punishment policy provides context around the importance of certain policies to voters. Or, maybe the perceived partisan identity of the candidate is stronger than the actual policies he advocates in determining candidate likeability.

In sum, we have observed that candidates pushing a more rehabilitative platform tend to be better liked. We also see that a respondent’s political party is correlated with their impression and likelihood of voting for the candidate. Political party identification also surfaces in a discussion of the “soft on crime” label. For Republican respondents, the label is neutral (except for the noted reaction to the retributive candidate), and, for some Democrats, the label even triggers positive support. Regardless of partisan alliances, the “soft on crime” label does not affect impressions of the candidate advocating rehabilitative measures in our study. This suggests that respondents from both parties—regardless of their punitiveness—will look beyond the label and, in some cases, even rise to defend their candidate against it. It is clear through the analysis of both questions that partisanship correlates with how individuals respond to crime and punishment rhetoric.

VI

Conclusion

In this thesis we have explored the relationship between rhetoric and public opinion regarding crime and punishment. Even if there was once a strong link between policy and public opinion paving the way for present penal policies, these paths have since diverged. While the current system of incarceration is more punitive than it was thirty years ago, today's public is *less* punitive. The exposition of the country's penal history illustrated how the relationship functioned leading up to this disconnect, inviting closer scrutiny of the present-day relationship.

This study seeks to better understand the relationship between incarceration rhetoric and public opinion, shedding light on the willingness of Americans to support various types of penal policies. Through the study we see that rehabilitative rhetoric has the power to move people's opinions of crime and punishment toward support for rehabilitation. We also note politicians pursuing a rehabilitative platform are more liked than politicians advocating retribution, at least among Democrats, the main party identity in the sample. Finally, the present study shows the once-feared "soft on crime" label does not tarnish a politician's reputation to the extent many scholars and politicians have long believed. Instead of advocating for and supporting those who advocate "tough on crime" policies, it seems many Americans are more open to pursuing rehabilitative programs and policies. But what does this mean? To conclude this investigation we review the relevance of the present study in the current political sphere.

In the 2012 Republican presidential primaries, a campaign ad by Mitt Romney supporters told Americans his opponent, Rick Santorum, was soft on criminals (Hunt & Beaumont, 2012). In the advertisement, a concerned voice says, “Rick Santorum even let convicted felons vote,” displaying a picture of a faceless person in an orange jumpsuit (“‘Facts’ – Restore our Future, 2012). Santorum fought back during a candidate debate days later, calling on Romney to admit that the “facts” in the video blurred the truth. The ad falsely leads one to the conclusion that he supports letting those in prison vote, Santorum said (Hunt & Beaumont, 2012). One need not look further to know Rick Santorum is scared of being labeled “soft on crime.”



Figure 5.1: “Facts” campaign ad against Santorum. Source: “‘Facts’ – Restore Our Future.” <http://www.youtube.com/watch?v=oi6JL8JILKM>.

It is clear that candidates perceive that their handling of the incarceration issue matters to voters. More specifically, politicians have proven they want to be seen as “tough on crime.” But we know that crime and punishment is not the issue it once was. For example, while we see evidence that crime rhetoric is still important to politicians, the crime issue is visibly off many agendas. Instead, the focus of elections has become terrorism, war, immigration, and the economy. Why has the crime issue fallen off the ballot? Though fully answering this question is beyond the scope of the present study, we can use what we do know about the relationship between the factors at play in the shaping of penal policy to theorize. The crime rate of the 2000s

was lower than the pre-incarceration binge rates. Though Gallup polls show individuals still have inflated views of the crime rate, the fact that crime is low lessens the opportunity to build political agendas on lowering the crime rate (Saad, 2010). Public perception of the crime rate is important, but it can only go so far. Simply put, there are bigger national issues than the issue of crime.

If the prevalence (and relevance) of being “tough on crime” is waning, does this present an opportunity to bring about rehabilitative reform? Our results indicate that many individuals are supportive of rehabilitation, and that they will not cast a candidate away who advocates “soft” policies. The study suggests the current climate offers a ripe opportunity for advocates of such reform. Accompanied by the fact that crime is not a hot-button issue relative to other national issues, like the economy, perhaps Americans are more accepting of what came to be regarded for several decades as controversial ideas like rehabilitation.

Taking this a step further, there is evidence that the enormity of the issue of the economy has been a catalyst for encouraging alternative ways to deal with crime and criminals in lieu of more cost-effective alternatives. With combined federal, state, and local expenditures towards prison costs beyond \$69 billion a year, voters have reason to view the crime issue in a new light (Mears, 2010; Megerian, 2012).³⁰ Such was the case in California, the state with the most exorbitant prison costs in the nation. In 2011, Judge Paul Zellerbach, lampooned as “Judge Marshmallow” for his “soft on crime” policies, succeeded hardliner and “get tough” man, Rod Pachecho, as District Attorney (Minsker, 2011). This is example is just one of three cases in that election cycle representing a turn from traditional “tough on crime” policies and rhetoric.

Commentators cited economic troubles as the catalyst for this change: “This time around, a hard-

³⁰ The \$69 billion figure only reflects investment in corrections (e.g., running a prison facility). Once we factor in judiciary and law enforcement costs, this number becomes \$215 billion, a 500% increase from 1982 after accounting for inflation (Mears, 2010).

line stance alone without a plan for effective and budget-conscious enforcement is the new electoral kiss of death” (Minsker, 2011). Recent electoral wins such as those in California signal a possible end to the “tough on crime” movement in favor of a “smart on crime” movement. In categorizing this new approach, scholars say the crux of “smart on crime” is an effective reduction of the high cost of the current incarceration policy (Frampton, Haney-López & Simon, 2008). Opportunity for future research emerges on this point; though we can speculate the public is willing to revisit our crime and punishment policies under the umbrella of economic gain, a scholarly study directly exploring this facet of the relationship would be helpful.

While a discussion of economics may allow policy changes, other factors that arose in our investigation may inhibit this possibility. As we witnessed in the study, racial resentment plays a role in how respondents view rhetoric on crime and punishment. Not only does high racial resentment signify high punitiveness in general, it also affects the way individuals perceive rehabilitative and retributive arguments. Punitiveness tied to race is understood when we look at the composition of our nation’s prisons. The rate of incarceration of African Americans and Latinos is disproportionately higher than Caucasians; those who are a minority outside of prison walls are the majority inside. Do minorities *commit* more crimes than Caucasians? It is impossible to tell how many crimes are committed in a given time period and by whom, but history tells us a difference in criminality between races is not the whole story. Instead, we have seen policies like legislation that issues disproportionate punishment for crack versus powder cocaine, a relationship whose main distinction is not related to addictiveness but the skin color of those who use the drugs. Therefore, criminality and policies driven by racial resentment or bias contribute to the unequal incarceration rate.

Given that punitiveness and racial bias are connected both in historical legislation and in the present study, this leaves interesting implications for future research. Many scholars in criminology and political science have weighed in on race and crime and punishment, and the present study suggests the link should be explored further. If the same study was executed with the condition that primed some respondents by race implicitly and some explicitly, how would that change the effect of the treatment articles? Would there be a difference in how those low in racial resentment are affected by the priming? Such questions have yet to be explored.

Finally, we have discussed the difference in the way Democrats, Republicans, and Independents react to the rehabilitative and retributive arguments. The fact that there is a difference along party lines implies that Democratic candidates would have an easier time advocating for traditionally “soft” rehabilitative policies than Republican candidates. However, Republicans are *not* entirely against rehabilitation. Rather, our study shows they, too, see value in rehabilitation, it is merely through a more skeptical lens. Going back to the aforementioned idea of letting calls for prison reform ride on the coattails of economic issues, this could be the answer to getting Republicans on board with rehabilitation. A limitation of the present study was the representativeness of the sample relative to the American adult population, especially with regard to the sample size of Republicans, so an avenue for future research is in exploring how affiliates of this political party specifically understand rehabilitation. What does it take to get a Republican to support rehabilitative measures? How does this compare to their Democratic counterparts?

This investigation tells us that a candidate today need not strive to be “tough on crime” as has been believed by and expected of politicians in the past. Looking at the Dukakis failure and the rampant agenda setting of the ‘80s and ‘90s especially, there remains perhaps good reason to

believe that “soft on crime” was once political suicide. One limitation of this investigation is the inability to revisit the 1980s and 1990s to replicate the study to mark the difference in the way rhetoric and public opinion interact between then and now. We can, however, gather from our understanding of the political trail leading up to the current state of crime and punishment policy that the relationship *is* different today than it was twenty to thirty years ago. Therefore, we should not be shocked that being seen as harsh on criminals is not as politically necessary as it once was.

The study leaves hope for future prison reforms along the lines of rehabilitation, and sheds light on the possibilities of a publicly supported shift in the purpose of crime and punishment in America. In order to enact this change we must monopolize on the state of lower punitiveness. “We now have a window of opportunity, as the public’s receptivity to change combines with the availability of the resources to make change realistic. If we fail to make those preventive investments before we are struck by the next surge of violent crime, that window might close” (Currie, 1997:192).

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