

Assessing the Dynamic Relationship between Punitive Crime Policy Attitudes over Time and Crime Policy Reform in the U.S. States

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Abstract: In the 2000s many U.S. state governments have quietly begun adopting criminal justice reforms. States have modified repressive anti-drug laws, adopted parole and probation reforms, and placed a renewed emphasis on criminal offenders' rehabilitation. How these policies came to be presents an intriguing political puzzle because for the past generation lawmakers have adopted increasingly punitive policies in order to be seen as "tough-on-crime." This research examines whether shifts in public opinion toward criminal punishment have provided a political window of opportunity for "softer" reform alternatives and the extent to which state context affects individuals' crime opinions over time. Results from a cross sectional time series analysis (1974-2006) shows a meaningful decline in support for more punishment. State contextual factors including the size of states' black criminal population, crime rates, and change in states' sentencing policies affect individual opinion over time, which as discussed, presents both challenges and opportunities for states' penal reform efforts.

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If in the 1970s state lawmakers set forth a series of policy goals for the U.S. criminal justice system that included building an unprecedented number of prisons and jails, placing a record number of people behind bars and adopting policies that disproportionately hurt racial and ethnic minorities, then criminal justice policy of the past generation would be viewed as an unqualified success. Of course few would have knowingly chosen the punishment system the U.S. has today. Presently U.S. federal and state prisons have a total of more than 2.3 million people behind bars, more so than other country in the world. One in one hundred Americans are now behind bars on any given day (Warren et al. 2008). African American males are about six to eight times more likely to be incarcerated than whites and states' ballooning law enforcement and corrections-related costs are placing a serious and persistent economic strain on state governments (Greenberg and West 2001).

As with determining any other mix of goods and services governments decide how much punishment they want. As has been well documented (Beckett 1997; Yates and Fording 2005; Garland 2001; Tonry 2004) the state that the contemporary U.S. penal system finds itself in is the result of a "tough-on crime" paradigm that by the late 1970s and early 1980s became the dominant framework for not only understanding the problem of crime but also the broad direction government should take to lessen its effects. At its center is a belief that there is little if any chance criminal offenders can be rehabilitated, criminals are morally reprehensible deserved of the strongest retributive policy response, and punishment and incapacitation serve as an effective deterrent to future criminal acts. Responding to growing public fear and anxiety about crime in the 1960s and 1970s lawmakers quickly began to see the clear electoral benefits of being tough on crime. With lawmakers and opinion leaders placing crime and drug use in increasingly moral and righteous terms and working to clearly demarcate criminals and drug

users from the rest law abiding society, crime has been one of the central wedge issues in American domestic politics over the past generation. With neither a Republican or Democratic politician wanting to be caught on the wrong side of this morally charged issue (Simon 2007), what ensued was a generation of laws that increased the authority to punish, tougher sentencing laws (including mandatory imprisonment) for a broader array of criminal offenses, mandatory minimum sentences and truth-in-sentencing laws, stricter probation and parole monitoring, and greater use of the death penalty (Tonry 2004).

While some tout these policies as a leading cause for the decline in crime rates (Barr 1992) a significant body of evidence suggests they have only reduced criminal activity at the margins (Western 2006). And thus with the rising social and economic costs of mass imprisonment becoming increasingly apparent, U.S. state lawmakers in the 2000s have somewhat quietly begun to rethink anti-crime policy approaches. The last decade has borne witness to the consideration and eventual adoption of a variety of corrections-based reform policies in the states. State governments including California, Kansas, Michigan, Ohio, have adopted alternative criminal sentencing provisions that divert many non-violent offenders from prison. New York, in the summer of 2009, rid themselves of the Rockefeller Drug laws adopted in the 1970s—some of the toughest in the nation (Peters 2009). Others have instituted parole and probation reforms, and placed a renewed emphasis on prisoner rehabilitation through the expansion of “prisoner reentry” services. The state of Texas, one of the toughest of the “tough on crime” states increased spending by \$240 million in 2007 for additional drug treatment capacity and adopted a variety of alternative sentencing statutes to divert non-violent offenders to community sanction programs rather than prison (Fabelo 2010). Collectively these policies are designed to 1) institute a greater degree of justice and fairness within the U.S. penal system

across categories of race, class, and types of criminal activity and 2) use evidence-based approaches that protect public safety, reduce economic costs, and emphasize *crime prevention* rather than mere punishment.

While certainly more than just symbolic these efforts cannot be framed as a complete repudiation of the three decades-long tough-on-crime paradigm. Even under the most opportunistic political conditions it would be difficult to turn back a generations worth of policy in a few short years. And as reform minded state lawmakers report for every reform-centered policy successfully introduced or adopted in recent years a lot of scarce legislative time is still spent preventing newly introduced legislation that would *increase* sentence length or classify a new category of crime as a felony from becoming law.¹ Yet a key puzzle and a principal motivating factor behind this research is this: if lawmakers for three decades have adopted increasingly punitive policies largely motivated by the electoral and expressive benefits lawmakers receive from being viewed as tough-on-crime, how is that many of these “softer” reforms have reached states governing agendas and managed to get successfully adopted?

Out of nearly four dozen elite interviews I conducted on the politics of penal reform in the U.S states between May 2009 and April 2010, in addition to referencing journalistic and other scholarly writings, the policy changes witnessed in recent years might be explained by three primary hypotheses. The first is tied to macroeconomics. State government’s suffering from declining tax collections from the post September 11 recession and to a greater degree the Great Recession and its progeny have caused state lawmakers to look for more efficient public safety alternatives after realizing they can no longer afford to incarcerate with impunity. The second is tied to declining crime rates over the past twenty years. Criminologists have documented crime rates in the U.S. peaked around 1990 and have declined in every state and

every major city over the past two decades (Tonry 2004). As a result the public's anxiety about crime, and with that, the crime issue's potency as a "wedge" issue has declined (or perhaps more accurately, been usurped by other fear-inducing issues like terrorism). And finally the third, which as will be shown here is not necessarily independent of the second, centers on changes in public opinion. Specifically the hypothesis is that the public in the 2000s has less of an appetite for monolithic crime policies based on criminal retribution and harsh criminal sentencing, which has provided an important political "window of opportunity" for reform-minded policy entrepreneurs to get their alternative policy solutions taken seriously (see Kingdon 1995).

This paper limits its investigation to the third hypothesis and the nexus between public opinion and crime policy reform in the U.S. States. We know from Kingdon's (1995) theory of policy change that a receptive political environment is a necessary but not sufficient condition for successful policy reform. Because public opinion serves as key ingredient in shaping the nature of political environments across time, a key part of the investigation must involve determining the extent to which attitudes toward crime and punishment have changed over time. Are citizens in the 2000s actually less inclined to support increasingly harsher punishments and if so to what degree?

Overall trends in public opinion have important implications for states' criminal justice policy making in general terms, but research has also documented that across the states citizens' ideological orientations and attitudes toward specific policies vary substantially and serve as important predictors of state policy outputs and outcomes (Berkman and Plutzer 2009; Brace et al. 2002; Erikson, Wright, and McIver 1993; Norrander 2001; Norrander and Wilcox 1999). Following this line of research we should expect that citizens in some states will hold opinions related to crime policy that are more conducive to reform than others. Given this however, there

has been little effort made to understand how state context affects individuals' crime policy preferences over time. If it can be shown that a state's context like its crime rate, policy environment, or criminal population characteristics affect opinions toward crime and punishment over time, we can begin to isolate the factors within states that affect citizens' propensity to support anti-crime policies that place emphasis on prevention/rehabilitation rather than retribution.

The remainder of this paper is divided into three primary sections. The first section presents a brief survey of public opinion research on matters of crime and punishment and also highlights some of the limitations of this research especially when attempting to examine changes in crime opinions over time. The following section examines opinion through the lens of state contextual factors and develops specific hypotheses about how state context might be expected to influence citizens' attitudes toward criminal punishment over time. The final section presents the results of the analysis and as well as a discussion of the implications of the findings for criminal justice reform efforts in the U.S. states.

The Nature of Public Attitudes toward Crime

A wide body of evidence shows important links between generalized and specific measures of public opinion and government policy. However the relationship between opinion and policy might be especially strong in the context of crime given the unique character of American federalism and the large number of officials—legislators, prosecutors, judges, governors—who are elected and charged with adopting and implementing criminal justice policy. If the public is anxious about rising crime, or if a particular case is especially heinous there is little to stop these actors from seeking personal benefit by posturing before public opinion (see Tonry 2009; pp 385). Theoretically at least a precipitous drop in support for status

quo crime policies may also invoke a policy reaction among policymakers. It is this close relationship between the people and institutions in the context of crime that heightens the expectation that changes in public opinion may be central to establishing windows opportunity for reform.

Although culpability for the contemporary state of U.S. penal policy may be easiest to pin on pusillanimous politicians trying to get reelected, it is also fair to say that in a representative democracy, punitive crime policies would not have been adopted and certainly would not have persisted over time if the public was not willing to go along (see Tonry 2004). Why is this important within the context of criminal justice reform? The answer is that it illustrates the important role public opinion has played in constraining what criminal justice reforms are politically possible. Proposals that seek to repeal or modify tough sentencing laws, add good time credits and early releases or promote access to education services—are all policies that can be easily portrayed in hyperbolic “hug a thug”/ “coddling criminals” terms. Political courage is required and for the most part lawmakers have been risk averse especially in an environment where the public has supported increasingly harsh penalties for criminal offenders.

Given the potency of the crime issue as a wedge issue in American politics it is not a surprise that scholars have spent considerable effort attempting to understand the nexus between public opinion and crime. In the traditional majoritarian model, public opinion is thought to influence government policies as lawmakers act in their role as delegates of the people to adopt policies reflecting public sentiments. Indeed lawmakers hoping to curry the public’s favor often note that their tough policies are merely a response to strong public demand for such policies and thus represents “democracy at work” (Beckett 1997; Cullen, Clark, and Wozniak 1985; Scheingold 1984). Under this scenario more punitive opinion serves as a precursor to more

punitive policy responses. But in an influential content analysis of the nexus between public opinion and drug policy in the 1970s and 1980s, Katherine Beckett (1997) shows that the media's focus on issues related to crime and drugs and lawmakers public speeches in reaction to those stories predated elevated public fear about crime or expressions of greater support for more punitive policy approaches. Placing emphasis on the states, Norrander (2000) finds the link between public opinion and capital punishment policies is multifaceted. Past opinion on capital punishment is found to indirectly affect states' current capital punishment policies through its influence on past policies. Moreover states past policies were found to affect the public's current attitudes toward capital punishment. This research suggests that public opinion does not drive crime policies in the way a pure democratic majoritarian model would predict. Opinion seems to react to past policy choices but in doing so shapes current (or future policy) policy by serving as a legitimizing and reinforcing mechanism to lawmakers seeking to adopt harsher penalties in order to appear tough on crime who turn to public opinion for legitimization of their actions.

To show evidence consistent with the argument that changes in support for harsher punishment helps explain states' adoptions of reform alternatives by opening political windows of opportunity there needs to be some clear evidence that punitive attitudes have declined over time. This however naturally brings up a question about best way to measure crime-related opinion. As Cullen et al. (2000) point out national telephone surveys that include measures of opinion on crime and punishment typically ask only one or two generalized questions about capital punishment or criminal sentencing. Generalized questions on crime and punishment run the risk of measuring people's "top of the head considerations" (see Zaller and Feldman 1992) and may not accurately reflect what their informed opinion on the subject might be. As Roberts (1992) notes, given the public's lack of specific knowledge of the criminal justice system and

citizens informational sources on crime generalized questions on crime and punishment are likely to artificially inflate people's support for harsher penalties.

For example many people's perceptions about crime is influenced by what they see on television—a medium that focuses on the most heinous and glorified criminal acts giving the public a gross overestimate of rate in which violent crimes actually occur (Gilliam and Iyengar 2000; Roberts et al. 2002). Similar to many other areas of the political process (see Kinder 1998), research indicates that the public is misinformed about the criminal justice system and has little knowledge about the sentences judges actually impose on criminal offenders. The public tends to view bizarre sentences as the norm and underestimates the severity of sentences judges actually impose on criminal offenders (Roberts and Stalans 1997). Except for imprisonment the public appears to have little understanding of what specific alternative sanctions can be placed on criminal offenders, and if community sanctions alternatives are available such as probation or house arrest, there appears to be little knowledge about what community sanctions involve (Roberts and Stalans 1997; Hough and Roberts 1999).

From this body of research general questions support for tougher criminal penalties may in fact inflate the public's level of punitiveness and mask the public's "true" opinion on the topic. This does not suggest public punitiveness is merely a statistical artifact caused by question wording effects. The public supports tough retributive policies—especially for violent criminals (Roberts et al. 2002), but when given more information to inform their opinions (i.e. about the offender, nature of the crime etc.) attitudes become more complex and nuanced. Evidence shows that when people believe that criminogenic behavior can be partly explained by disadvantaged upbringings or substance abuse support for lengthy punishment declines (Cullen et al. 2000). When people see some alternative type of sanction as providing utility for offender, their

communities or victims they are also more likely to support alternative (less punitive) sanctions. Overall the empirical evidence paints a picture of a public with a prevalent punitive streak, but this is not monolithic; the public wants supports for rehabilitative approaches when certain conditions are met.

Unfortunately researchers interested in tracking complex and nuanced changes in public opinion about crime and punishment over time are generally left disappointed. Gallup and the National Elections Studies have asked questions about preferences toward harsher penalties versus more preventive rehabilitation services but have not fielded these consistently over time. Here I incorporate a general measure of opinion on criminal sentencing asked routinely over the past three decades in the General Social Survey—a measure criticized precisely because it risks masking more nuanced beliefs about crime and punishment. While I readily acknowledge its shortcomings and agree that it would be ideal to track the individuals' preferences toward more punishment versus rehabilitation over time, a priori there is no reason to expect that the question wording of a general crime question is processed by respondents in sufficiently different ways over time. Thus finding a downward trend in support for harsher punishment during the 2000s--albeit on an admittedly imperfect measure of opinion on crime and punishment—would be an important finding because it would signal a changing political environment and more political space or “cover” for politicians considering “softer” criminal justice alternatives.

Although I argue here that evidence of an overall decline in support for harsher penalties has important implications for reform, we also know citizens attitudes toward government and policy varies as a function of state context (Branton and Jones 2006; Hero and Tolbert 2004; Huckfeldt and Sprague 1996; Oliver and Mendelberg 2000; Sprague 1982). Thus examining only general trends in citizens' crime opinions runs the risk of overlooking important differences in

citizen attitudes toward the topic in different states. By also investigating the influence of state context on citizens attitudes and considering whether state characteristics cause citizens to hold more punitive attitudes we can obtain a better gauge about which states may be more or less receptive to reform. For this research I focus on three primary state contextual variables that theory suggests might affect individual opinion on crime: the racial characteristics of states' criminal population, change in states' criminal justice policy, and states' crime rates.

Testing the Effects of State Context on Crime Policy Opinion

Race and racial politics has long been linked to crime policy attitudes and policy decisions and thus stereotypes of blacks in the context of crime should be expected to impact citizens' attitudes toward punitive crime policies. Today the most relevant stereotype involves the perception of blacks as an aggressive and violent underclass (Edsall and Edsall 1992; Peffley and Hurwitz 2002). Gilliam and Iyengar (2000) find this stereotype is affected by media coverage of blacks who are frequently depicted in news broadcasts as physically threatening, abusers of drugs, and perpetrators of violent crimes. It may also be affected by reality that blacks are disproportionately connected to the criminal justice system: blacks comprise thirteen percent of the U.S. population but make-up nearly 50% of state prison population (Simon 2007).

Importantly, the tendency of whites to associate blacks with criminal activity has been shown to structure their attitudes toward more punitive crime policies. Survey-based experiments on "symbolic racism" find that whites who perceive blacks as violent have an elevated level of support for capital punishment and long prison sentences (Kinder and Mendelberg 1995; Kinder and Sanders 1996). Additionally, Peffley and Hurwitz (2002) find whites with more negative views of black prisoners have a greater chance of supporting punitive crime policies than those with negative views of white prisoners. From this evidence they

contend that when many whites think about punitive crime policies as crime control mechanism crime they are in fact thinking about black criminal offenders.

While there is a tendency to link race with criminal activity we know comparatively little about how individuals' associations between race, crime, and policy preferences are influenced by their actual contextual environment. Blacks are often perceived as being more prone to drug use and violence, but these stereotypes might vary across individuals as a function of their contextual environment. As respondents reason about the punishment of criminals, this is likely cue thoughts of criminal populations—or the target of crime and punishment policies. Stereotypes connecting blacks to crime should be expected to be cued and strengthened among whites who reside in states with a larger black criminal population. And because those who hold these stereotypes tend to hold more punitive crime policy preferences I predict that individuals across time will be more likely to express greater support for punitive sentencing policies as the criminal black population in their state increases.

Public opinion research has also shown that the public's policy preferences are influenced by changes in the policy environment over time (Bowler, Nicholson, and Segura 2006; Johnson, Brace, and Arceneaux 2005). Wlezien (1995) notes that in a democratic society in order for accountability to take hold the public has to be reasonably knowledgeable about what public officials do and then adjust its preferences for “more” or “less” policy in response to what policy makers produce. (pp. 981). In areas like defense and social policy spending, Wlezien (1995) finds that over time the public acts like a “thermostat” adjusting its preferences for more spending downward when public spending increases and vice versa. In essence he finds evidence of policy feedback loop as the public responds to changes in policy outputs and the policy informational environment.

While this research is not intended to build a formal test of a thermostatic model of public opinion, it might be expected that citizens' preferences for increasingly punitive policies may be partly influenced by policy changes within their state over time. Given what we know about citizens' specific knowledge of criminal justice system it would be too much to expect that citizens have an ideal level of criminal punishment in mind; however, following the arguments of Wlezien (1995), we should expect citizens to have a general sense of whether they want "more" or "less" of something and that these preferences should be responsive to a state's policy making environment.

Over the time period studied here, the early to mid 1990s represent years that are some of the most punitive in terms of policy adopted. This marked a period when truth-in-sentencing laws quickly diffused across the states (in part spurred on by the 1994 crime bill that enticed states with prison construction dollars to adopt tougher sentencing policies) forcing violent and non-violent offenders alike to serve a greater proportion of their maximum sentence by eliminating, or severely curtailing, the ability of prisoners to earn early release. "Three strikes and you're out" laws perhaps best exemplify the punitive nature of truth-in-sentencing laws. First adopted by the state of Washington in 1993 and over the next two years by 23 other states, these laws require courts to issue mandatory and increasingly lengthy prison sentences to people convicted of a serious felony criminal offense on three or more occasions.²

Collectively these laws represent some of the most repressive sentencing policies of the tough on crime era. Although undoubtedly popular at the time in the states that adopted them, it can be predicted that in the years after their adoption, citizens in those states will be less likely to support even more punishment as these "hyper-punitive" sentencing laws have the effect of matching their preferred level of punishment, or in many cases, run afoul of citizens changing

sensibilities about how much punishment is fair and appropriate. Thus it is hypothesized that citizens living in states that adopted punitive truth in sentencing laws as measured by their adoption of three strikes policies will express less support for increasingly punitive crime policies in the years following the adoption of those policies.

It may also be the case that citizens' attitudes toward punishment are influenced by the actual crime environment. A review of the literature shows that there is little consensus on the correlation between crime rates and public attitudes toward crime policy. Some find the public is not very good at determining actual trends in crime (Roberts 1992), while other research suggests the public is quite sophisticated and public reflections of actual attributes of crime—that is the relative frequency of different types of crime—are more informed and accurate than one might presume (Graber 1980; Warr 1980, 1995). Higher crime rates are often surmised to breed public fear of crime; however, Warr's (1995) analysis of the association between crime and public fear using data from the General Social Survey shows the two are largely independent of one another. Their ostensible independence may be a result of relying on national crime rate measure rather than more context-specific measures. In this research I examine the extent to which violent crime rates within each state affect citizens' attitudes toward more punitive policies over time. The expectation is that states with higher crime rates will signal evidence of a policy problem needing to be addressed, generate heightened fear of crime, and greater support for more punishment.

Data and Methods

Data for the analysis is drawn from pooling twenty three General Social Surveys, a nationwide random-digit dial telephone survey conducted by the National Opinion Research Center at the University of Chicago over the period of 1974-2006 (Davis, Smith, and Marsden 2006). Not unlike other studies that have tracked partisanship or opinion change at the individual level, I acknowledge the limitations of using a repeated cross-sectional design rather than panel data (Green, Palmquist, and Schickler 2002). In the first part of the analysis I examine overall trends in support for more punitive policies and compare the percentage of respondents in the GSS who reported support for harsher punishments in the 2000s relative to earlier periods. Trends in support for harsher punishments are also juxtaposed with changes in the overall crime rate in the U.S. over time as a rough measure of whether any changes in support track with changes in crime rates. In the second part of the analysis I test the degree to which individual level opinion over time is shaped by state context. To do this state geo-codes were obtained from NORC allowing me to trace each of the survey respondents to a particular state.

The dependent variable is constructed from the COURTS variable in the General Social Survey which was asked in every survey year between 1974 and 2006 and serves as a measure of opinions on criminal sentencing. Specifically the question asks, “In general do you think the courts in this area deal too harshly or not harshly enough with criminals?” Response categories included (3) “not harsh enough”, (2) “about right” and (1) “too harsh”. I am most interested in changes in the trend over time of those who report that the courts are “not harsh enough” which should serve as a rough proxy for individuals support over time for increasingly punitive crime

policies more generally. For the regression models presented below this variable is recoded into a dichotomous variable where 1=not harsh enough, 0=other.³

The state contextual variables are of most interest to the analysis and I include measures of the size of each states' criminal black population, whether states' adopted a three strikes law, and states' violent crime rates. To measure the state criminal population that is black I include a measure of the percentage of black prisoners in each state over time. Unfortunately prisoner demographic data in each of the 50 states for each year under study are not readily available so to construct this measure I rely on data from the U.S. Census of State and Federal Correctional Facilities conducted every five years beginning in 1974. Each Census supplies data on prisoner characteristics (race, age, gender etc.) in every prison facility in each state. This was used to determine the number black prisoners in each state's (state-run) prison facilities. Once determined the number of black prisoners in each state's facilities were summed to generate a total number of black prisoners in the each state as of December 31 of the Census year. This total was then divided by a state's total number of prisoners which was then used to generate a measure of the percentage black prison population in each state. These steps were repeated for every Census covering the period 1974-2006.⁴

To measure change in public opinion as a result states' decisions to adopt or not adopt three strikes laws, a variable labeled *three strikes* is included. This takes the value of 0 in those states that failed to adopt a three strikes law over the period of the analysis. For those states that did adopt a three strikes law the variable takes the value of 0 in the years prior to the adoption of the law and the value of 1 in the year of adoption and thereafter. In order to take into account any effects that state crime rates have on individual attitudes, a *violent crime* rate variable, measuring a state's violent crime rate (this measure consists of murder, rape, burglary, and

aggravated assault) in each year is included. Data were collected from the FBI's Uniform Crime Report.

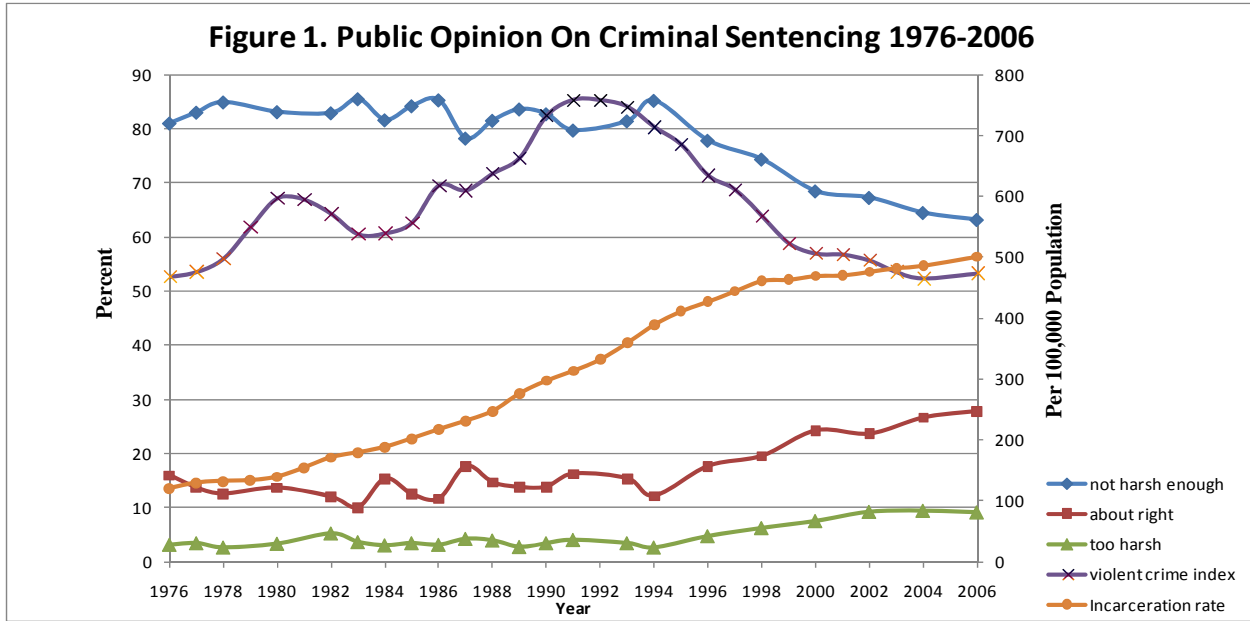
In addition to the state contextual characteristics, a set of individual level variables are included in the analysis. Republican Party identification and ideological conservatism are often linked with more punitive crime policy attitudes (Smith 2004; Yates and Fording 2005). To account for the influence of these factors, an *ideology* (where liberals are coded -100, moderates 0, and conservatives 100) and *partisan identification* (Democrats are coded -100, Independent 0, and Republicans 100) variables are also included.⁵ Scholars have also found significant generational differences on a number of political and policy attitudes (Miller and Shanks 1996). Punitive crime policy attitudes might be a product of the time individuals come into adulthood and become more civically active. Those born in the post Second World War "rights" era when the federal courts expanded the procedural protections of criminal offenders might be expected to hold less punitive attitudes on crime and punishment than those born prior to The War. Moreover, those born in 1975 or after—the so-called generation X cohort—tend to hold more tolerant attitudes toward race, gay marriage, and other social issues, and may also be more tolerant of criminal offenders than those born before them (Pew Research Center 2003). To account for age cohort effects two dummy variables are created. The first, labeled *post war* includes those individuals born over the period of 1945-1974 and is coded 1 if a respondent was born between 1945 and 1974, and 0 otherwise. A second labeled *generation X* includes those born from 1975 and thereafter (coded 1 if born in 1975 or after, 0 otherwise).⁶ Those born before 1945 serve as the reference category.

I also include a standard set of demographic variables including a measure of *education* (coded 0=less than high school, 1=high school diploma, 2=some college, 3=college graduate,

4=graduate degree), gender (1=male, 0=female) and *income* (a trichotomized yearly income measure where 1=\$0-\$9,999, 2=10,000-19,999, 3=over \$20,000). A *race* variable coded 1=black 0=other is also added. Finally a *time* count covariate (coded 1-32 where a value of one is used in the first year of analysis and thirty two in the final year) is included to account for the effects of time on opinion change.

Results

The first set of analyses focuses on overall trends in support for harsher punishment of criminals over an even thirty year period using survey responses to the “Courts” variable from the General Social Survey. In addition to tracking the “not harsh enough” responses, for illustrative purposes Figure 1 also tracks the trend in responses of those who report the treatment of criminals as “about right” and “too harsh” over time. Similar to Warr’s (1995) research using this same data series, the results that track on the left hand side axis show consistently high support (ranging from 80% to 85% of respondents) for the opinion that criminal sentencing was “not harsh enough” through the 1980s and early 1990s. The last data point in Warr’s (1995) analysis was 1994. But interestingly, the results here show that over the next fourteen years there appears to be a meaningful decline in the percentage of respondents expressing support for harsher punishment. According to the data in Figure 1, 85% of the public supported harsher punishment in 1994 but declined through the latter half of the 1990s so that by 2006 the percentage had dropped 22 percentage points.



What might account for this general decline? For illustrative purposes Figure 1 also tracks the nation's (not state) violent crime rate per 100,000 population (on the right hand side vertical axis) over the same period. In the 1970s and 1980s fluctuations in the nation's crime rate appears to have no real effect on crime opinion. As national crime rates increased in the 1970s and again in the latter half of the 1980s, the percentage of respondents supporting more punishment remained high and relatively stable. However the overall decline in the percentage of public supportive of harsher crime rates between 1994 and 2006 appears to closely track with the long but steady decline in violent crime over this same period. Crime rates peaked in 1990-1991 and have continued to decline through the 2000s.

Briefly, another hypothesis might be that with the passage of time the public's support for harsher punishment declines as a negative reaction to increasingly punitive criminal justice policies more generally. As a rough proxy for the overall punitiveness of criminal justice policy over the period of study the "circled" trend line shows changes in the U.S. imprisonment rate between 1976 and 2006. The data indicates that U.S. imprisonment rates increased every year

during this period, reaching a peak in 2006. If it was the case that a decline in public support for harsher penalties was due to a negative reaction to rising incarceration rates, we might expect to see opinion change in the late 1980s when imprisonment rates increased at their steepest rate. As shown, this was not the case. Support remained high for punitive policies throughout the 1980s even as imprisonment rates climbed unabatedly.

Taken as whole the results show that the public's support for increasingly harsher penalties began its decline in the mid to late 1990s and this trend continued well into the 2000s. One must guard against a tendency to overinflate the importance of the downward trend and what it might mean for political prospects of reform policy alternatives. Even keeping in mind the shortcomings of the data noted above, the results indicate the public still maintains a considerable level of support for punitive policies. Importantly however, the public's appetite for harsher punishment has been on the wane since the mid 1990s and with these changes in the crime policy political landscape there should be less constraint on what policy choices lawmakers view as politically tenable. In short the changing nature of public opinion on punishment has served as an important backdrop to the significant number of reforms adopted in the U.S. states over the 2000s.

Next I turn attention to the effects state contextual factors have on individuals' support for harsher punishments over time. Table 1 presents the results of random effects logit estimations with the variables describe.⁷ The columns in the table display results for all respondents and then for two separate subsamples, non-Hispanic whites and non-whites (including blacks, Hispanics, and Asians). Whites' crime opinions are expected to be uniquely shaped by changes in a state's black criminal population given it is whites who disproportionately conflate crime and race and thus dividing the respondents into racial

subsamples presents a clearer indication of whether respondents of different races are affected by state context.

Examining first the effects of the individual level factors, the results in column one indicate that more conservative ideological orientations, self-identified Republicans, males, and respondents with higher reported income levels were more likely to express support for more punishment across the period of study. Conversely those with higher levels of education expressed less support for harsher penalties as were both age cohorts born after the 1945. Not surprisingly, African Americans, the group which has suffered the harshest treatment under the tough on crime regime were less likely to support harsher punishment. Interestingly, the results in columns two and three show that the individual level predictors of opinion do not operate identically between the racial subgroups. Among whites, party identification, ideological orientations, education, income, gender, and age cohort were all significant predictors of white attitudes over time. However opinions among non-whites were independent of party identification, ideology, and age cohort; only gender, income, and education had significant associations with opinion.

To get a better sense of the substantive effects of these predictors and how they compare with state contextual effects examined below, I calculate changes in probabilities that a respondent expresses support for harsher criminal sentences for a given change in a single predictor variable while holding all other variables in the model at their median (for categorical variables), means (for interval level variables), or modal (for dichotomous variables) values (King, Tomz, and Wittenberg 2001, Tomz, Wittenberg, and King 2003). Shifting the time variable from its minimum to maximum values indicates that among all respondents through the 32 year time period examined here, there was a 22% percent decrease in the probability of

expressing support for harsher punishment. For white respondents there was an estimated 17% decrease in probability while among non-whites there was a slightly smaller decrease of 15%. Among the individual level predictors educational attainment has the largest substantive impact on opinion, decreasing the probability of supporting harsher punishment by 42% when shifting from the lowest to highest levels of education. This is followed by ideology (with conservatives estimated to have a 20% greater probability of supporting more punishment than liberals), party identification (Republicans have 12% greater likelihood of supporting more punishment), income (those in the highest income bracket are 12% more likely to support punitive policies), and gender (where men are estimated to support harsher punishment by 8%).

Now turning to the state contextual variables, the results provide a look into whether state contextual factors affect opinion over time. As hypothesized individuals support for more punishment is influenced by state context although the substantive impact appears to be relatively small when compared to some of the individual level attributes. Of the three state context variables considered the size of the black criminal population in the state has the largest substantive effects—but as predicted the racial characteristics of a state's criminal population appears to only impact white respondents. Whites living in states with a larger black criminal population are more likely to support harsher penalties which runs counter to the overall trend among whites over the period. In terms of substantive effects shifting from the minimum to maximum value on the percentage black prisoner population variable increases the probability of white support for harsher punishment for criminals by 6%.

In addition, crime opinion is influenced by changes in the state criminal justice policy environment. Among all respondents, individuals living in states that adopted three strikes laws in the early to mid 1990s expressed attitudes toward punishment that moved in a *less* punitive

direction relative to opinions before the adoption of three strikes or those living in states that never adopted such laws. The results in columns two and three suggest that states' decisions to adopt three strikes laws affected whites' opinions but not the opinions of non-whites. However even among whites the substantive effects associated with three strikes laws are rather small decreasing the probability of white support for punitive policy responses by 4.3%. Nonetheless this provides evidence of a policy feedback process and that crime opinion was responsive to the hyper-punitive policy making environment within many states in the mid 1990s and thereafter. These findings cannot be necessarily interpreted as individuals in these states rejecting three strikes policies but rather may reflect the reality that after the adoption of three strikes, punishment either reached (or exceeded) some general level that individuals in these states deemed appropriate and did not want policy to go in a further punitive direction.

Finally among all respondents higher crime rates contributed to greater support for punitive sanctions although examining the results of the subgroups this finding is largely driven by changes in non-whites' opinions. Among all respondents moving from low to high crime contexts increases the likelihood of expressing support for more punishment increases by 4%. However when considering opinions among non-whites the likelihood increases by 10.3%--a shift that runs counter to the trend of declining support for punitive policies among non-whites more generally over the period of study.

Discussion

John Kingdon's (1995) influential theory of agenda setting and policy change shows that in order to get policy issues on the governing agenda and successfully adopted there needs to be 1) evidence a problem, 2) viable solutions to those problems, and 3) a receptive political environment. These three "streams" converge at particular points in time and provide windows

of opportunity for policy change. As described in the opening paragraphs the state of the U.S. penal system is such that it has little problem meeting Kingdon's first criteria as evidence has piled up over the past two decades showing how the U.S. correctional system wastes both lives and money. As for the second, policy entrepreneurs for years have been pushing softer crime prevention policy alternatives but have had little to show for their efforts. In the 2000s evidence that states have begun to remake key parts of their criminal justice system suggests a convergence with Kingdon's third component-- a change in the political environment that brings with it a less tolerance for more and more punishment. As shown here these changes may be explained by the changing nature of public opinion on matters of crime and punishment during late 1990s and 2000s.

The findings presented here show that support for increasingly punitive criminal justice policies is on the decline in the U.S and has been since 1994. On one level this presents a small bit of irony because that year marks a period when crime control policies were at their most punitive. What are the implications of opinion change for prospects for criminal justice reform? In brief, the answer is that the public's declining support for retribution and "just-deserts" model of punishment should have the effect of creating a political environmental where different voices on matters related to crime and punishment can be heard. Heretofore state lawmakers consistently adopted laws that increased sentence length or made another criminal offense qualify as a felony not because they could show they reduced crime (because they couldn't), but because they provided important expressive benefits that for decades public opinion appeared to support. Under this changing political landscape, calmer more reasoned voices are more likely to heard and groups armed with evidence-based policy solutions that promote public safety but in

manner that is more cost-efficient and wastes far fewer lives are being incorporated into state legislation and bureaucratic culture.

Although the changing nature of crime opinion may be encouraging for those intent on reform the results showing individuals' attitudes are at least in part shaped by the racial characteristics of a state's criminal population, crime rates, and crime policy environment presents a complex if not conflicting political reality. These opinions, when aggregated should provide both opportunities and barriers to future reforms efforts. Greater opportunities are likely to be found in those states with lower crime rates, a smaller sized black criminal population, and perhaps ironically, in those states that have been historically toughest on crime. The substantial reforms adopted in Texas in recent years are a testament to this last point.

Table 1. Random Effects Logit Estimates of Opinion that Criminal Sentencing is “not harsh enough” 1974-2006			
	All Respondents	White Respondents	Non-white Respondents
State Contextual Characteristics			
% Black Prisoners	.212*** (.063)	.232*** (.069)	-.048 (.161)
Three Strikes	-.051** .030	-.059** (.033)	-.008 (.067)
Violent Crime Rate	.000** (.000)	.000 (.000)	.002*** (.000)
Individual-Level Characteristics			
Party Identification	.033*** (.005)	.037*** (.006)	-.002 (.015)
Ideology	.081*** .007	.095*** (.008)	.019 (.016)
Education	-.123*** (.008)	-.133*** (.009)	-.073*** (.020)
Income	.162*** (.013)	.160*** (.015)	.158*** (.032)
Race	-.233*** (.030)	--	--
Post-war (1945-1974)	.083*** (.023)	-.084*** (.025)	-.050 (.058)
Generation X (post 1975)	-.307*** .117	-.337*** (.135)	-.178 (.239)
Gender (male dummy)	.238*** (.021)	.246*** (.023)	.202*** (.048)
Time	-.020*** (.001)	-.019 (.001)	-.018*** (.004)
Constant	.305*** .063	.257*** .069	.346*** (.161)
	Log likelihood=-10407.0 Chi-square=873.26 p<.000 N=22,245	Log likelihood=-8410.1 Chi-square=873.26 p<.000 N=18,660	Log likelihood=-1978.9 Chi-square=72.51 p<.000 N=3,585

Note: one-tailed significance***p<.01, **p<.05, *p<.10. Standard errors are shown in the parentheses.

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Endnotes

¹ Personal interviews with California State Senator Mark Leno, Chairman of the California Senate Corrections Committee (November 7th, 2009) and Texas State Senator John Whitmire, Chairman of Senate Corrections Committee (March 21, 2010).

² California has one of the toughest three strikes laws and is the state in the union that has unquestionably applied it most brutally. Under the California law, a criminal offender convicted of a felony, but who also has two prior convictions for "serious or violent felonies," is sentenced to three times the normal presumptive term (to be served consecutively), or twenty-five years to life, whichever is longer.

³ In separate analysis not shown here I ran ordered logit regressions that included all three response categories. The substantive results did not differ significantly from the results presented here.

⁴ Computations from the 1974 Census are entered into the regression model for years 1974-1978, the 1979 Census figures are entered for years 1979-1983, 1984 Census figures for years 1984-1989, 1990 Census figures for years 1990-1994, 1995 Census figures for years 1995-1999, the 2000 Census for years 2000-2004, and the finally the 2005 Census for years 2005-2006.

⁵ The party identification variable was created from the following GSS item (PARTYID) asking, "General speaking do you consider a Republican, Democrat, Independent or what?" Responses including Strong Democrat, Not strong Democrat, Independent, and Near Democrat were coded -100, Independent 0, and Independent near Republican, Not strong Republican, and Strong Republican 100. Ideology is measured using the POLVIEWS variable in the GSS which asks respondents to place themselves on a 7 point ideology scale. Extremely liberal, liberal, and slightly liberal were coded -100, Moderate 0, and Slightly Conservative, and Extremely Conservative 100.

⁶ There is not universal agreement in the literature regarding the time boundaries of age cohorts. These are approximations using. Importantly, the results do not substantively change if I alter the low and high end boundaries of each cohort by several years.

⁷ A Hausman test was conducted to test between fixed and random effects in Stata. The chi-square test statistic equaled 7.55, $p < .81$ suggesting a random effects model is most appropriate to control for omitted variable bias. However as a robustness check of the findings fixed effects, random effects, and panel corrected standard errors (using the robust command in Stata) models were all run. The results in each model showed only slight variation in the coefficient estimates with no substantive differences between the models. Substantive results are presented with robust standard errors as Clarify for Stata cannot compute estimated probabilities using the xtlogit command.