2016 Pilot Study Proposal: Perceptions of Mass Incarceration and Sentencing Reform

Key words: mass incarceration, mandatory minimum, racial disparity, prison, sentencing

In 1970, less than 200,000 Americans were in state and federal prisons. In 2013, the most recent date for which data are available, this number is more than 1.5 million. The scale of the incarceration system in the United Sates is unmatched by any other country in the contemporary world or historically. The consequences—which have fallen disproportionately on those living in poor black and Latino communities—have been devastating (Western 2006; Clear 2007). The most proximate reasons for this increase are surprisingly simple: new policies were created which had the effect of sending more people to prison for longer periods of time (Clear 2007). Mass incarceration, then, is a political creation. After Republicans won a framing battle over the causes of and proper solutions to crime, both parties participated in the creation of punitive policies in an effort to earn themselves politically valuable reputations as tough on crime (e.g. Beckett and Sasson 2004; Simon 2006). However, the political landscape appears to have recently shifted.

Criminal justice reform has not only emerged as a salient issue in the current and previous Congresses; it has also drawn together a "strange bedfellows" coalition of politicians, lobbyists, and scholars from both the left and the right (Johnson, 2015). A prime example is the recently-formed Coalition for Public Safety, whose mission is to "work to reform our criminal justice system to make it more just, more fair, and more effective."[1] The Coalition's partners include the ACLU, the NAACP, Americans for Tax Reform, and the Faith and Freedom Coalition – groups that rarely see eye-to-eye. Similarly, a number of high-profile sentencing reform bills have been introduced in Congress with bipartisan sponsorship, including the SAFE Justice Reinvestment Act (Reps. Sensenbrenner [R] & Scott [D]), the REDEEM Act (Sens. Paul [R] & Booker [D]), and the Smarter Sentencing Act (Sens. Lee [R] & Durbin [D]). In the electoral arena, presidential candidates Hillary

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[1] http://www.coalitionforpublicsafety.org/

Clinton and Rand Paul have both delivered major speeches and written op-eds about the need to reform the nation's criminal justice system (Bazelon, 2014; Schreckinger & Karni, 2015), and several other candidates have weighed in on the issue (Baker, 2015; Easley, 2015). Finally, the recent mass protests and civil unrest in Ferguson, Missouri and Baltimore, Maryland that revolved around issues of police brutality and disproportionate punishment of racial minorities by courts heightened the salience of the national discussion about flaws in the justice system to a fever pitch.

Pertinent, but slightly tangential, evidence suggests that people's opinions about mass incarceration and sentencing reform will significantly affect their political behavior and vote choice in the 2016 election. Several scholars find that negative contact with the justice system (such as being stopped by a police officer, arrested, or incarcerated), be it personal or vicarious through a family member, decreases people's propensity to vote and propensity to engage in various forms of political behavior. On the other hand, Rios (2011) finds that disadvantaged youth who experienced police harassment became more politically engaged in order to protest perceived injustice, and anecdotal evidence suggests that the death of Michael Brown prompted increased turnout for local elections in Ferguson, Missouri (Eligon, 2015). The relationship between justice system contact and political behavior is often mediated by reduced trust in the legitimacy of government, a perceptual factor that suggests a role for opinions about criminal justice in the motivation or suppression of political behavior (Burch, 2014; Lee, Porter, & Comfort, 2014; Muller & Schrage, 2014; Weaver & Lerman, 2010).

Direct, empirical tests of the relationship between opinions about crime and justice and voting behavior are much rarer, though some research suggests that during periods of heightened anxiety about crime, voters penalized Democratic candidates who voted against punitive justice policies (Canes-Wrone, Minozzi, & Reveley, 2011). On other hand, there is abundant anecdotal evidence that the negative effect of the "Willie Horton ad" on Michael Dukakis' presidential

campaign taught a generation of politicians to believe that voters would reject any candidate whom they perceived to be "soft on crime" (Schwartzapel & Keller, 2015). In the current, "smart on crime" climate, though, the logic appears to have flipped; for example, some pundits wonder if Joe Biden's "tough on crime" record might hurt him should he choose to run for president in 2016 (Fandos, 2015), and Hillary Clinton has vocally admitted that her husband's 1994 crime bill created many unintended consequences that must be remedied.

Despite the bipartisan support for reform, important points of disagreement linger, and theory tells us that some of the arguments being used to advocate for reform may polarize the electorate. There appears to be a generational divide within the Republican Caucus; while many younger Republicans, like Rand Paul, are pushing for sentencing reform, several older Members, most notably Senate Judiciary Chairman Chuck Grassley, are resisting proposals to repeal mandatory minimum sentencing laws under the belief that they are necessary tools to prosecute dangerous criminals ("The Roadblock to Sentencing Reform," 2015). Even more broadly, race is (unsurprisingly) emerging as a divisive issue in conversations about reform. It is common for activists and politicians to employ several different arguments when advocating for the need to reform sentencing laws and reduce the size of our nation's prison population. The major arguments are: 1) the U.S. should not have the largest prison population in the world, 2) mass incarceration is extremely expensive but not cost-efficient, 3) the system is unjust because racial minorities are arrested, prosecuted, and incarcerated at far higher rates than whites (see Gottschalk, 2015). Racial priming theory suggests that this last argument about racial disparities may create a "backlash" effect among voters. Several scholars find that racialized language and imagery in the media and public discourse activate whites' stereotypes that blacks are prone to crime, which causes them to express stronger opposition to social policies designed to help the poor, as well as stronger support for punitive punishment for criminals (Gilliam & Iyengar, 2000; Gilens, 1999; Huber & Lapinski, 2006;

Hurwitz & Peffley, 2005; Mendelberg, 2001; Peffley & Hurwitz, 2010; White, 2007). Politicians who focus on the "racial justice" frame in the pursuit of reform may polarize and alienate the portion of the white electorate that harbors racist sentiments.

Based on this, we propose three overlapping sets of questions to be included in the 2016 American National Election Studies (ANES) Pilot Survey. These questions should be of substantial interest to other researchers and are likely to be related to other questions generally asked in ANES surveys, including measures of racial attitudes. The first two sets of questions each propose an experiment to explore the nature of support for incarceration reform. The first of these uses as a treatment four different elaborated reasons why people support prison reform. The second replicates an experiment by Hetey and Eberhardt (2014), presenting manipulated numbers on the racial composition of the prison system. The third is a general set of question about views on mass incarceration, organized into four distinct types of framing tasks.

Prison Reform Framing Experiment

We propose that the ANES include a framing experiment in which participants are randomly-assigned to receive one of four different arguments that are presently being used by advocates and politicians to push for sentencing reform. Furthermore, the questions will measure respondents' opinions about several issues that remain divisive in the current debate, such as the distribution of discretionary power to judges versus prosecutors built into mandatory minimum laws and the question of whether or not we should release people convicted of violent crimes.

The U.S.A. currently locks up over 2 million people – 500% more people than we incarcerated forty years ago. Some policymakers argue that we need to reduce the number of people locked up in our nation's prisons and jails [INSERT TREATMENT CONDITION]

T1: because it is wrong for the U.S. to incarcerate more people than any other country in the world.

T2: because it costs taxpayers about $80 billion dollars each year to incarcerate this many people, and criminal justice costs reduce the amount of money that states can spend on other public services or schools.

T3: because blacks and Hispanics are much more likely to be imprisoned than whites, and about 60% of prisoners are racial and ethnic minorities even though blacks and Hispanics are only about 30% of the U.S population.

T4: because several states have already shown that it is possible to release offenders from prison and still see the overall crime rate go down.

Please tell us how strongly you support or oppose the following proposals to try and reduce the number of people in prison. (Response Scale: strongly support, support, neither support nor oppose, oppose, strongly oppose).

A1. Allow judges to choose punishments other than a prison sentence for convicts if the convict is determined to be at a low risk of committing new crimes.

A2. Make it illegal for prosecutors to threaten arrestees with longer prison sentences in order to coerce them into providing information to convict other people.

A3. Release prisoners early when a parole board judges them to be at a low risk of committing new crimes.

A4. Release prisoners early when they complete education programs or vocational training.

A5. Reduce or eliminate prison sentences for non-violent drug offenders.

A6. Reduce or eliminate prison sentences for offenders convicted of a violent offense other than murder.

A7. Legalize the sale and personal consumption of marijuana.

Race and Mass Incarceration

The second experiment is similar to the first, but uses the racial composition of the prison system as the experimental factor. The experiment is adapted from Hetey and Eberhardt (2014), who find that exposing people to manipulated representations of the racial composition of the prison system influenced support for criminal justice reform. In particular, when the incarcerated population was represented as more black, subjects (by design exclusively white) were less likely to sign petitions reforming three-strikes laws and "stop and frisk" practices. As Hetey and Eberhardt (2014) note, "exposing people to a world with extreme racial stratification increases their support for the policies that help to maintain that stratification" (p. 1950).

Several politicians have recently proposed reforms to reduce the number of people in prison. According to the most recent counts, about 2.2 million prisoners are locked up in state and federal prisons and jails. Across the US,

(36.1/56.1) percent of this prisoner population is black while (37.8/17.8) percent is white.[2] Please tell us how strongly you support or oppose the following proposals to address mass incarceration (strongly support, support, neither support nor oppose, oppose, strongly oppose).

B1. Eliminate "mandatory minimums" so that judges can choose not to sentence someone to prison in cases where they believe it is not necessary.

B2. Release prisoners early when they are judged to be a low risk to commit new crimes.

B3. Release prisoners early when they complete education programs or vocational training.

B4. Reduce or eliminate prison sentences for non-violent drug offenders.

B5. Approximately what percent of the US prison population is black? (answer between 0 and 100)[3]

The framing of mass incarceration:

A collective action framing perspective is useful for understanding how individuals understand social problems like mass incarceration. Actors will seek to "frame" social problems like mass incarceration in ways that support the kinds of solutions they favor (Goffman 1974; Nelson, Oxley, and Clawson, 1997; Benford and Snow 2000; Ching and Druckman 2007). Framing efforts will succeed when they align their frames with those of individuals (Snow et al. 1986). Thus, political and media actors will seek to influence public understandings of issues, but will also adapt frames to extant values and beliefs.

Specifically, people may hold sets of interrelated frames that are consistent with opposition to or support for mass incarceration reform. Even among those who support reform there may be distinct frames: for instance those that align more with libertarian versus liberal perspectives. These distinctions may be meaningful in terms of the potential for a coalition. Sets of frames generally include four kinds of framing tasks: identifying a particular issue as problematic (a *problem identification*

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[2] In each case the first number is based on actual counts from 2013. The second number adds 20 points to the black count and subtracts 20 points from the white count. Respondents will be randomly assigned to see one or the other sets of numbers.

[3] This question serves as the manipulation check.

frame), identifying the cause of the problem (an *attributional frame*), motivating action by highlighting unjust or harmful consequences (a *motivational frame*), and specifying solutions (*prognostic frames*).

Related recent work, employing ANES data, identified a unified set of framing tasks for understandings of crime and justice more broadly, as well as a set of frames for racial economic inequalities (Drakulich 2015a, b). We propose the inclusion of a similar set of questions to identify frames of mass incarceration as an issue. To our knowledge, this has not yet been done. Our expectation is that knowledge of a full set of framing tasks will be substantially more predictive of voting behavior than simplistic questions measuring basic opposition or support for reform. For instance, those who feel more strongly in the motivational frames—those who are particularly upset by the cost or racial disproportionality of our prison system, for instance—may be more likely to vote and more likely to vote for specific candidates on the basis of this issue in particular. Alternatively, those who hold attributional frames specifying the root of the prison boom in individual criminal choices rather than policy changes may be particularly likely to oppose candidates who explicitly support reform.

The questions proposed below reflect these four frames.[4] Question C1 captures a *problem identification frames*: the perceived scope of the problem. Questions C2 through C4 get at *attributional frames*, specifically contrasting two causes for the increase in incarceration: an increase in criminal behavior versus a change in criminal justice policy. Questions C5 though C9 get at *motivational frames*: the reasons why someone might be motivated to support or oppose specific reforms. Two reasons for opposition to reform—safety concerns and retribution—are captured in C5 and C6. C7 through C9 capture three distinct reasons to support reform: cost, efficacy, and racial disproportionality.

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[4] The questions will be explored for dimensionality and discriminant validity through exploratory and confirmatory factor analyses before being entered into structural equation models predicting political behavior (similar to Matsueda et al. 2012).

Finally, question C10 through C14 reflect *prognostic frames*: what kinds of potential solutions individuals support or oppose.

Please read the following statements about incarceration in the United States and tell us how strongly you agree or disagree with them (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree).

C1. There are too many people in prison in the United States.

C2. More people are in prison these days because more people are committing crimes.

C3. More people are going to prison than they used to for the same crimes.

C4. People these days are being sent to prison for longer sentences for the same crimes.

C5. The more people we let out of prison, the less safe we are from crime.

C6. In general, people in prison deserve to be there.

Please read the following list of reasons that some people give for thinking that there are too many people in prison in the US. Please tell us how strongly you agree or disagree with them (strongly agree, agree, neither agree nor disagree, disagree, strongly disagree).

C7. The biggest problem with the number of people in prison is the cost to keep them there.

C8. The biggest problem with the number of people in prison is that it isn't effective in making us safer from crime.

C9. The biggest problem with the number of people in prison is that we lock up too many racial and ethnic minorities.

Please read the following proposals to try and reduce the number of people in prison. Please tell us how strongly you support or oppose these proposals (strongly support, support, neither support nor oppose, oppose, strongly oppose).

C10. Eliminate "mandatory minimums" so that judges can choose not to sentence someone to prison in cases where they believe it is not necessary.

C11. Release prisoners early when they are judged to be a low risk to commit new crimes.

C12. Release prisoners early when they complete education programs or vocational training.

C13. Reduce or eliminate prison sentences for non-violent drug offenders.

C14. Legalize the sale and personal consumption of marijuana.

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