

The Unintended Effects of Penal Reform: African American Presence, Incarceration, and the Abolition of Discretionary Parole in the United States

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Abstract

The authors use a pooled-time series design to examine the interplay between state incarceration rates, determinate sentencing, and the size of the African American population between 1978 and 2004. Consistent with prior research, findings show that larger Black populations are associated with higher incarceration rates but that this association has weakened over time. Results also indicate that determinate sentencing is associated with lower imprisonment rates. The interaction between a higher proportion of African American residents *and* determinate sentencing, however, is associated with *higher* incarceration rates, suggesting that in states with greater minority presence the abolition of discretionary parole amplifies the impact of punitive responses linked to racial threat. It is argued that this unintended effect reflects the fact that formal constraints on release decision making reduce the ability of justice systems to administer greater punishments to specific subpopulations.

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The stability in incarceration rates once observed in the United States disappeared in the last 30 years giving rise to a new era marked by higher-than-ever imprisonment levels. Research has documented a number of social forces associated with this punitive turn, including shifts in drug markets, changes in population characteristics, and the rise of conservative ideologies (Greenberg & West, 2001; Jacobs & Helms, 1996). Yet, these macro-level models have been reconfigured by an emerging body of literature that seeks to combine the assessment of the social covariates of imprisonment with a number of policy-based interventions (see, for example, Bushway & Piehl, 2007; Crow & Bales, 2006; Greenberg & West, 2001; Jacobs & Carmichael, 2001; Nicholson-Crotty, 2004; Smith, 2004). By “bringing the state back in” (Jacobs & Carmichael, 2001, p. 64), research has begun to reconsider the specific ways policies may exert an effect on incarceration rates independent of these more traditional covariates of imprisonment.

Despite the significance of these contributions, research remains fairly limited on the intersection between incarceration, social forces (e.g., minority presence, unemployment), and policies (e.g., sentencing guidelines, parole release, mandatory sentencing; Pfaff, 2008; for exceptions, see King, 2007; Wooldredge et al., 2005). When included in analyses, policies are often specified as statistical controls for other covariates or not explicitly included in measurement models. More importantly, studies have not systematically examined the moderating role of policies on the relationship between social forces and imprisonment. Substantively, policies may not only have direct, independent impacts on penal practices (e.g., requiring longer imposed sentences, reducing the availability of parole) but also amplify or mitigate broader socioeconomic pressures on the use of imprisonment (e.g., changing public and political expectations for more punitive outcomes; Garland, 2001; Jacobson, 2005; Vaughn, 1993).

This article addresses this gap in the literature by exploring whether the impact of racial dynamics on punishment is moderated by state policies. Specifically, we use state-level panel data for 1978-2004 to examine whether the relationship between the size of the African American population and state incarceration rates is conditioned by the enactment of determinate sentencing (i.e., the abolition of discretionary parole release). As such, this study integrates two long-standing approaches to the understanding of the determinants of punishment. On one hand, conflict theories argue that more punitive

forms of social control are triggered by the heightened sense of threat associated with relatively larger “dangerous” subpopulations (see, for example, Liska, 1992). Racial threat theorists further specify the nature of these processes by focusing primarily on the coercive responses triggered by larger groups of African Americans (Blalock, 1967; see also Alexander, 2010). On the other hand, a more narrow set of studies argues that sentencing and corrections policies have an effect on imprisonment levels independent of impacts by broader social forces (see, for example, Marvell & Moody, 1996; Nicholson-Crotty, 2004). Specifically, research has consistently shown that the implementation of determinate sentencing is associated with lower incarceration rates (e.g., Greenberg & West, 2001; Jacobs & Carmichael, 2001; Stemen & Rengifo, 2011). For some authors, this is due to the fact that by abolishing discretion at release through determinate sentencing, states can more effectively insulate release decisions from social forces that would otherwise influence parole practices (Jacobs & Carmichael, 2001; Stemen & Rengifo, 2011). This article seeks to refine this argument by exploring how the insulation effect of determinate sentencing may be more effective vis-à-vis some social forces and not others.

Theoretical Framework

Group threat, African American presence and imprisonment. A number of theoretical approaches have examined the mechanisms and contexts by which the use of incarceration is mobilized as a form of social control (Liska, 1992). Although functionalist perspectives largely conceptualize incarceration as a direct, consensual response to crime (Durkheim, 1893/1984), conflict and group-threat theories see imprisonment as a tool for the management of threatening subpopulations (Garland, 1990). Early contributors argued that incarceration is a reaction to “economic threat” posed by the poor who are seen as having an interest in redistributive violence and cannot be monitored through conventional, noncoercive mechanisms of social control (Chambliss & Seidman, 1982; Rusche & Kirchheimer, 1939).

Racial threat theorists follow a similar rationale, although their notion of conflict is framed in the context of racial inequality and the use of incarceration to control racial minority populations seen as threatening (Blalock, 1967; Blumer, 1958) in terms of fear of crime but also perceived cultural differences (Jackson, 1989; King & Wheelock, 2007; Liska, Lawrence, & Sanchirico, 1982). Racial threat theories have received considerable empirical support with regard to macro-level criminal justice outcomes. Growth in the percentage of the population that is non-White has been shown to lead to greater

spending on corrections (Jacobs & Helms, 1999), police strength, and the relative size of law enforcement agencies (Jackson, 1989; Liska, Lawrence, & Benson, 1981; Stults & Baumer, 2007), and higher incarceration rates (Carroll & Cornell, 1985; Greenberg & West, 2001; Marvell & Moody, 1996; Western, 2006). However, the specific mechanisms by which racial threat translates into more punitive outcomes remain relatively unexplored (Eitle, D'Alessio, & Stolzenberg, 2002). With few exceptions (King & Wheelock, 2007; Stults & Baumer, 2007), the operationalization of racial threat remains limited to a few variables and relatively static associations.

Social forces, policies, and incarceration. Consistent with prior literature (Greenberg & West, 2001; Jacobs & Carmichael, 2001), we conceptualize the social forces that configure the use of imprisonment as socioeconomic and political factors that shape the social organization of different constituencies (states, counties, etc.). As such, we treat these social forces as substantively distinct from government-centered processes (e.g., arrest/enforcement practices) and policies (e.g., sentencing guidelines, determinate sentencing). Nonetheless, these constructs are interrelated in different ways, as policies may be the expression of partisan politics, ideology, or socioeconomic changes (see, for example, Barker, 2009). In this article, we focus on the interplay between one social force—minority (African American) presence—which has played a significant role in the conceptualization of the use of incarceration, and one policy—determinate sentencing—which is illustrative of a broader set of reforms aimed at limiting discretion in the criminal justice system.

Research and theory have paid significant attention to the association between various social forces and incarceration. Conflict theories, for example, have highlighted a positive relationship between unemployment and incarceration rates (Cappell & Sykes, 1991; Greenberg, 1977; Jacobs & Carmichael, 2001). Authors have also shown that more conservative citizens and governments support more severe sanctions (Bowers & Waltman, 1993; Tyler & Boeckmann, 1997) and that conservatism is associated with higher imprisonment levels (Greenberg & West, 2001; Griset, 1999; Jacobs & Carmichael, 2001; Smith, 2004; Vaughn, 1993). Similarly, research has found a relationship between Republican strength and more punitive approaches to sentencing and corrections (Jacobs & Carmichael, 2001; Jacobs & Helms, 1999; Western, 2006). At the same time, however, other scholars argue that crime control policies are dominated by tough-on-crime discourses or broader concerns about the control of minority populations, thus decreasing the relevance of partisan politics (Alexander, 2010; Wacquant, 2005).

A growing body of literature has operationalized state sentencing policing as independent factors influencing imprisonment levels (see, for example, Carroll & Cornell, 1985; Marvell, 1995; Nicholson-Crotty, 2004). One policy-determinate sentencing-has received significant attention partially due to its diffusion across states over time, and its impact in the organization of state corrections systems (Greenberg & West, 2001; Jacobs & Carmichael, 2001, 2001; Marvell & Moody, 1996; Smith, 2004).

Through 1975, all 50 states had “indeterminate sentencing” systems. Under traditional indeterminate sentencing, parole boards maintain fairly broad authority to decide when to release individuals from prison through discretionary parole release (Bureau of Justice Assistance, 1996; Reitz & Reitz, 1993; Tonry, 1996). In contrast, “determinate sentencing” refers to a system *without* discretionary parole release as a mechanism for releasing offenders from prison (Bureau of Justice Assistance, 1996; Reitz & Reitz, 1993; Tonry, 1996). Determinate sentencing eliminates discretionary parole release, generally, by abolishing the parole board; without discretionary parole release, offenders are then *automatically* released from prison after serving the term imposed by the judge, less any reductions through sentence reduction credits (e.g., “good time”). As such, determinate sentencing is not about controlling sentencing decisions but is about controlling *release decisions* (see, e.g., Reitz & Reitz, 1993). Between 1975 and 2004, 19 states adopted determinate sentencing by abolishing discretionary parole release for most offenses (see appendix); many states that adopted determinate sentencing retained discretionary parole release for some very small subset of offenses (e.g., life with parole).

Despite the pervasive link between determinate sentencing and increased punitiveness linked to other policies such as mandatory minimums and habitual offender laws (Tonry, 2004), empirical research has routinely found that the enactment of determinate sentencing is associated with lower state incarceration rates (Greenberg & West, 2001; Jacobs & Carmichael, 2001; Smith, 2004; Stemen & Rengifo, 2011). Little attention, however, has been devoted to explaining how determinate sentencing promotes lower incarceration rates. Perhaps the most often-cited explanation for this pattern is that the adoption of determinate sentencing is often accompanied by a narrowing of statutory sentence ranges for offenses (Marvell & Moody, 1996). Jacobs & Carmichael (2001), in contrast, argue that determinate sentencing, by eliminating discretion in release decisions, insulates decision making from those social forces—for example, race, economics, political ideology—that would otherwise lead to higher incarceration rates. In the context of racial threat, however, it is unclear how the insulation of release decisions will

affect overall incarceration rates. If determinate sentencing results in release decisions that are uniform and consistent with those historically reserved for White defendants, then determinate sentencing may reduce incarceration rates; if determinate sentencing results in release decisions that are uniform and consistent with those historically reserved for non-White defendants, then determinate sentencing may increase incarceration rates.

Specifying the moderating role of determinate sentencing. Consistent with group and minority threat theories, we anticipate that states with larger African American populations should have higher incarceration rates (Hypothesis 1). We also hypothesize that the implementation of determinate sentencing is associated with lower incarceration rates (Hypothesis 2) because it insulates prison release decisions from social forces that may lead to higher incarceration rates in the absence of the policy (e.g., vulnerability of parole boards to political conservatism and tough-on-crime demands).

To provide a historical baseline for our analyses, we also explore whether the relationship between the size of the African American population and imprisonment is constant over time. Although studies have systematically highlighted how minority presence and racial threat are related to punitive outcomes (see, for example, Western, 2006), and some have suggested that this relationship became stronger in the late 1980s (Greenberg & West, 2001; Jacobs & Carmichael, 2001), this pattern has not been systematically explored by quantitative research, linked to broader substantive frameworks, or expanded to account for the more recent dynamics of mass imprisonment. There is some evidence that exposure to imprisonment has increasingly become an event experienced across many social groups (see, for example, Pattillo, Weinman, & Western, 2004). Justice statistics also point to a more rapid increase in recent incarceration patterns for nonminority populations (West, Sabol, & Greenman, 2010), although this is caused, at least in part, by lower base rates for nonminorities. We hypothesize that as state criminal justice systems react to more intense scrutiny to eliminate racial disparities, emerging definitions of “dangerous groups” have become less racialized and more highly dependent on new, more administratively defined actors such as conditional-release violators and sex offenders (Jacobson, 2005). We argue that this long-term shift in penal practices has been accentuated since the early 1990s by the more general emergence of “actuarial risk” as a guiding force for criminal justice decision making (Feeley & Simon, 1992). Drawing on these considerations, we argue that race remains a fundamental correlate of imprisonment—higher minority presence is associated with higher imprisonment rates—but that it becomes weaker during the study period due to the rise of these new categories of offenders and new frameworks to mobilize

penal interventions.¹ Thus, we suggest that *the positive association between the size of the African American population and imprisonment should weaken throughout the study period* (Hypothesis 3).

Finally, we hypothesize that *the size of the African American population matters more in a context of reduced release discretion* (Hypothesis 4) because the greater coercive reaction to racial threat affects the population at large.² Specifically, we argue that racial threat operates at a social level to set overall levels of punishment and at a justice system-level to ensure that punitive practices are mobilized largely against minority groups; moreover, as noted above, these overall levels of punitiveness are higher than in states not characterized by racial threat. By eliminating discretion in the context of racial threat, practices can no longer direct this higher level of punitiveness only at minorities; rather, it must be directed at all minority and nonminority defendants uniformly and consistently. In the end, the implementation of determinate sentencing in the context of racial threat may lead paradoxically to higher incarceration rates as all offenders are subjected to more severe punishments due to a greater number of minorities in the population.

Data and Method

To test these arguments, we compiled state-level data for 1978–2004 on imprisonment rates, crime levels, and key socioeconomic and political variables. Our dependent variable—state incarceration rate—is based on figures by the Bureau of Justice Statistics on the total number of prisoners under state jurisdiction per 100,000 residents. Consistent with prior studies, our independent and control variables were lagged one year to allow for the time needed to process defendants in the criminal justice system (Greenberg & West, 2001; Marvell & Moody, 1996). We used annual data to take full advantage of within-decade variations in our predictors and increase the precision of our estimates via a lower ratio of variables to cases.

Our two independent variables are also derived from administrative sources. The percentage of the resident population that is Black was compiled using a state-level annual series produced by the census. Data on the implementation of determinate sentencing were collected via a systematic review of state criminal codes carried out as part of a broader project on sentencing policies (Stemen & Rengifo, 2006). Following prior research (e.g., Greenberg & West, 2001; Jacobs and Carmichael, 2001), we rely on a narrow definition of determinate sentencing (1 = *presence of determinate sentencing*, 0 = *otherwise*; see appendix). As shown by Stemen and Rengifo (2006), the

structure of sentencing systems—primarily, differences in statutory sentences and time served requirements prior to mandatory release—vary significantly across states. According to these authors, however, these differences have no impact on state incarceration rates. Moreover, operationalizing time served requirements proves quite difficult given differences across states in underlying statutory sentence lengths and sentences imposed; the ultimate impact of time served requirements may be more dependent on these factors than on the percentage of the sentence required to serve.

A number of variables reflecting sociodemographic, economic, and political characteristics of states were included as control variables. These include violent crime rates and property crime rates as reported in the Federal Bureau of Investigation's Uniform Crime Reports (UCR). UCR records are also used to calculate a drug arrest rate. We rely on census estimates to measure the percentage of the state population within the ages 18 through 24, the fraction of Hispanic residents, the real per capita income, and the state unemployment rate. Using data from the census on state expenditures and revenues, we created a ratio of revenues to spending reflecting the fiscal health of each jurisdiction (see Berry & Berry, 1990). We measure partisan politics via a dichotomous variable indicating whether the governor was Republican (Erickson, Wright, & McIver, 1993) and another variable indicating the percentage Republicans in the state Legislature as derived from the Book of the States. We also use a measure of the states' level of citizen liberalism based on the interest group ratings of members of Congress for each state and the election returns for congressional races (Berry, Rinquist, Fording, & Hanson, 1998). Consistent with prior studies, we use the natural log of the imprisonment rate and percentage of Blacks as this transformation decreased the influence of extreme observations generating more normal distributions (e.g., Jacobs & Carmichael, 2001).

Table 1 displays means and standard deviations for all variables included in our analyses. Variables such as fiscal health and percentage of people aged 18 to 25 years exhibit greater variation within states than across states. In contrast, variation in the proportion of African Americans is greater across states than over time. Determinate sentencing is evenly distributed across time and space with the number of states implementing the policy increasing from 4 to 17 between 1977 and 2004.

Model specification. To assess the influence of African American presence and determinate sentencing on state incarceration rates, we use a pooled-time series cross-sectional design combining data from all 50 states over 28 years from 1978 to 2004 ($N = 1,350$ state-year observations). This strategy permits the evaluation of separate changes in independent and dependent variables,

Table 1. Summary Statistics.

Variables	<i>n</i>	<i>M</i>	<i>SD</i> (overall)	<i>SD</i> (within state)
Dependent variable				
Incarceration rate (ln)	1,349	5.44	0.62	0.44
Explanatory variables				
Violent crime rate × 100	1,350	463.51	239.55	90.99
Property crime rate × 100	1,350	4,327.27	1,150.25	630.15
Unemployment rate	1,350	5.95	2.02	1.65
Income per capita	1,350	25744.67	4,780.01	3,123.58
Fiscal health	1,350	0.09	0.12	0.11
Percent ages 18-25	1,350	11.29	1.68	1.58
Percent Latino	1,350	5.67	7.76	1.83
Citizen ideology	1,350	47.14	15.27	6.94
Percent Republican Legislature	1,323	0.42	0.18	0.17
Republican Governor	1,350	0.45	0.49	0.45
Drug arrest rate	1,321	6.85	3.25	2.39
Percent Blacks (ln)	1,350	1.93	0.99	0.08
Determinate sentencing	1,350	0.23	0.42	0.24

Note. Explanatory variables are lagged 1 year.

reduces the threat of multicollinearity, and increases the precision of estimates.

We implement a fixed-effects model, including a dummy for each state that reduces the threat of omitted variable bias because it controls for unobserved state attributes correlated with the explanatory variables. Period fixed effects were measured via a linear trend variable capturing unmeasured effects that influenced all states. We also fit a quadratic time-trend variable to account for a general decrease in the rate of growth of prison populations. A series of tests indicated the need to further adjust our estimation routine. The modified Wald test for groupwise heteroskedasticity in the residuals (Greene, 2003) suggested that it was present in the data. First-order serial autocorrelation was detected via a Wooldridge test (Wooldridge, 2002). Furthermore, the Breusch–Pagan Lagrange multiplier (LM) test showed cross-sectional correlation (Greene, 2003). Following Beck and Katz (1995), we implement ordinary least squares (OLS) estimators derived from a Prais–Winsten correction for serial autocorrelation while adjusting standard errors for cross-sectional correlation. Compared with similar model specifications (e.g., Park’s Feasible Generalized Least Squares [FGLS] estimator), the

Table 2. The Association Between Social Forces and State-Level Incarceration Rates.

Variables	Model 1		Model 2		Model 3	
	Coefficients	SE	Coefficients	SE	Coefficients	SE
Violent crime rate × 100	.016*	.006	.015*	.006	.016*	.006
Property crime rate × 100	-.001	.001	-.001	.001	-.001	.001
Unemployment rate	-.001	.003	-.002	.003	-.002	.004
Income per capita × 1,000	-.006	.004	.007 [#]	.004	-.007 [#]	.004
Fiscal health	-.014	.019	-.013	.019	-.013	.020
Percent ages 18-25	.005	.008	.006	.008	.007	.008
Percent Latino	-.009*	.004	-.008 [#]	.004	-.007	.004
Citizen ideology × 100	-.043	.044	-.047	.043	-.050	.044
Percent Republican Legislature	.006	.009	.006	.009	.007	.008
Republican Governor	.011 [#]	.006	.010 [#]	.006	.010	.006
Drug arrest rate	.623***	.202	.618**	.200	.644***	.201
% Black (Ln)			.231**	.084	.238**	.082
determinate sentencing					-.075***	.017
Year (linear)	.084***	.006	.082***	.006	.084***	.005
Year (squared)	-.001***	.000	-.001***	.000	-.001***	.000
Constant	4.653***	.169	4.531***	.166	4.500***	.165
Adjusted R ²	.984		.984		.984	

Note. The dependent variable is the natural log of state incarceration rates with fixed and period effects. Models correct for first-order serial autocorrelation and heteroskedasticity.

[#] $p < .10$. * $p < .05$. ** $p < .01$. *** $p < .001$ (two-tailed).

Panel-Corrected Standard Error (PCSE) approach has been shown to produce more accurate standard errors without a significant loss of efficiency (Beck & Katz, 1995). Bivariate correlations showed no pattern of excessive redundancy in our predictors ($r < .50$). Estimation was carried out in Stata v. 10 using the XTPCSE command.

Results

Table 2 displays our baseline multivariate models. All predictors are time-varying covariates. Model 1 includes control variables for crime rates and socioeconomic and political characteristics of states. Our two main independent variables—determinate sentencing and percentage of Blacks—are

added to the estimation in Models 2 and 3. The high goodness of fit of these models is influenced by the specification of fixed effects and period effects.

Table 2 shows that the larger the proportion of African Americans the higher the states' incarceration rates. The estimated elasticity of incarceration rates with respect to percentage of Blacks is .45 (Model 2) suggesting that a 10% rise in the relative number of African Americans is associated with a 4.5% increase in imprisonment levels for the general population. We argue that punitive responses are linked to the specific presence of African Americans rather than to more general groupings of "minorities" (Greenberg & West, 2001; Wacquant, 2005). Unlike other studies (e.g., Keen & Jacobs, 2009), we did not find evidence of a significant quadratic relationship between percentage of Blacks and imprisonment rates suggesting that punitive responses are not sensitive to particularly low/high levels of minority presence.

Estimates presented in Table 2 also support our second hypothesis: States that abolished discretionary release exhibit lower incarceration rates. Holding all other predictors at their means, we estimate that the implementation of determinate sentencing is associated with a reduction in imprisonment rates of approximately 17 prisoners per 100,000 residents (Model 3). Findings also lend support to the functionalist perspective on punishment indicating that jurisdictions with higher levels of violent crime and a higher ratio of drug arrests have higher incarceration rates. Some of the political covariates of imprisonment are also supported in our models, as states with Republican governors have marginally higher incarceration rates. Contrary to a number of conflict-based approaches, the majority of predictors measuring economic and social disadvantage were not related to variations in incarceration—although there is some indication that states with wealthier residents have lower incarceration rates. This may be due to the indirect impact of prosperity on crime or due to more progressive approaches to crime control that rely less on traditional sanctions such as imprisonment and more on other policies such as social programs/welfare (Carroll & Cornell, 1985).

Our second set of models assesses the intersection of race and determinate sentencing more directly. These models explore whether racial threat is a historically contingent force influencing imprisonment levels (Hypothesis 3) and whether determinate sentencing moderates such association (Hypothesis 4). Estimates are presented in Table 3.

Model 4 replicates the fully specified baseline model but includes an interaction term capturing the effect of percentage of Blacks on imprisonment levels over time. Drawing on racial threat theory, we test for linear and curvilinear

Table 3. The Intersection of Percentage of African American With Time and Determinate Sentencing.

Variables	Model 4		Model 5		Model 6	
	Coefficients	SE	Coefficients	SE	Coefficients	SE
Violent crime rate \times 100	.016**	.006	.015*	.006	.016**	.006
Property crime rate \times 100	-.001	.001	-.001	.001	-.001	.001
Unemployment rate	-.002	.003	-.002	.004	-.002	.004
Income per capita \times 1,000	-.006	.004	-.007#	.006	-.006	.004
Fiscal health	-.013	.020	-.014	.020	-.014	.020
Percent ages 18-25	.006	.008	.008	.008	.007	.008
Percent Latino	-.006	.004	-.006	.004	-.005	.004
Citizen ideology \times 100	-.041	.044	-.053	.045	-.044	.045
Percent Republican Legislature	.007	.009	.008	.009	.008	.009
Republican Governor	.009	.006	.010	.006	.009	.006
Drug arrest rate	.737***	.195	.627**	.202	.727***	.197
% Black (ln)	.209*	.084	.243**	.083	.211*	.085
Determinate sentencing	-.071***	.017	-.154***	.042	-.183***	.043
% Black (ln) \times Trend (linear)	-.003***	.000			-.003***	.001
% Black (ln) \times det. sentencing			.037#	.019	.052**	.019
Year (linear)	.083***	.005	.084***	.005	.083***	.005
Year (squared)	-.001***	.000	-.001***	.000	-.001**	.000
Constant	4.431***	.163	4.494***	.166	4.418***	.163
Adjusted R ²	.984		.984		.984	

Note. The dependent variable is the natural log of state incarceration rates with fixed and period effects. Models correct for first-order serial autocorrelation and heteroskedasticity. # $p < .10$. * $p < .05$. ** $p < .01$. *** $p < .001$ (two-tailed).

relationships (Liska, 1992). Both specifications were independently significant, but this pattern was inconsistent when both interactions were entered simultaneously. We retain the interaction between percentage of Blacks and the linear trend (Model 4) because including the term reduced threats to the estimation of main effects and was more parsimonious for substantive interpretation; also, this particular specification has been more consistently used in similar studies (see, for example, Jacobs & Carmichael, 2001). Consistent with Hypothesis 3, results indicate that the relationship between percentage of Blacks and imprisonment is not constant over time. Although such association is positive and strongly significant throughout the study period—that is, larger Black populations are associated with higher imprisonment rates—the negative

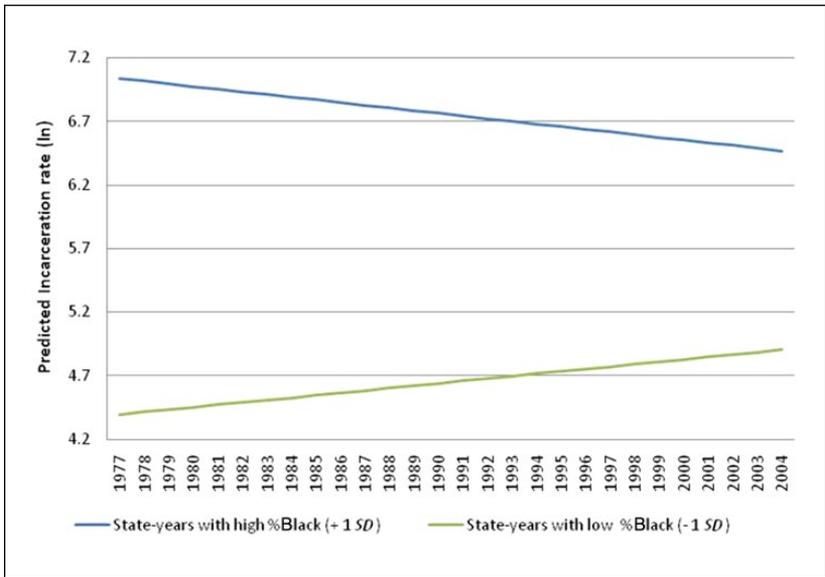


Figure 1. The association between percentage of African American and predicted state-level incarceration rates over time for state-years with low/high levels of percentage of Blacks (ln; ± 1 SD).
Note. $N = 1,349$ state-years. Estimates derived from Model 4, Table 3. All covariates centered on their means.

slope of the interaction term suggests a progressive weakening of the overall main, positive relationship between race and incarceration. Figure 1 provides a visual representation of this finding; plotted lines show the time-dependent association between high/low levels of percentage of Blacks and predicted incarceration rates based on Model 4 estimates centered on their means. The converging trajectories of these lines illustrate how the main effect of African American presence on imprisonment has become smaller through 2004.

In Model 5, we add to the baseline model an interaction term assessing the association between minority threat and incarceration rates in states with determinate sentencing. In Model 6, we include both sets of interactions simultaneously.

Estimates presented in Table 3 are also used to assess whether the main effect of percentage of Blacks on incarceration is moderated by the implementation of determinate sentencing (Model 5). We hypothesized that jurisdictions with racial threat and reduced release discretion should have higher incarceration rates due to the effect of higher penalties applied to the

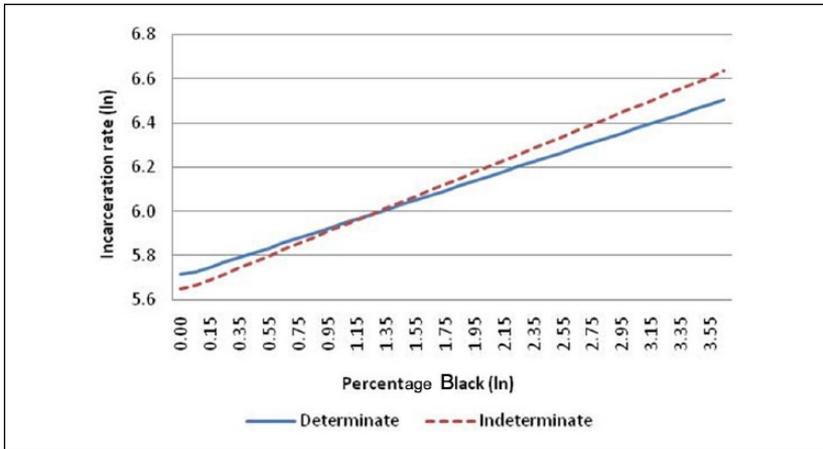


Figure 2. The association between percentage of African American and state-level incarceration rates by type of sentencing system (determinate vs. indeterminate). $N = 1,349$ state-years.

population at-large triggered by racial threat (Hypothesis 4). This argument was supported by our empirical estimates. In states with determinate sentencing, the relationship between percentage of Blacks and incarceration is stronger; in states with indeterminate sentencing, this relationship is weaker, yet positive and significant. In Model 6, we combine the two interactions derived from Hypotheses 3 and 4. Results continue to support the relationships uncovered by our earlier routines—that is, over time, racial threat has a decreasing but positive influence on incarceration rates, whereas at the same time, this influence has been moderated by determinate sentencing.

Figure 2 provides a graphical representation of the interaction effect between percentage of Blacks and determinate sentencing. It shows that the relationship between imprisonment and racial threat is sensitive to the legal framework governing release decisions. More importantly, it shows that the moderating impact of determinate sentencing is the greatest when the fraction of African American residents is relatively small. Prior research by conflict and racial threat theorists has shown that this particular context is more likely to trigger a harsher set of punitive decisions (Jackson & Carroll, 1981; Liska, 1992). In contrast, in jurisdictions where Blacks represent a larger share of the population, punitive reactions tend to be less pronounced. Thus, in this context, the moderating effect of determinant sentencing is less important—In fact, as shown in Figure 2, the two trend lines converge when the percentage of Blacks reaches approximately 3.49% of the population,

Exp (1.25) = 3.45. Above this point, incarceration rates in states with determinate sentencing will be lower than in their counterparts without it.

We applied a series of sensitivity tests to the models presented in Table 3 and found that results were robust to a number of specifications. The interaction effects corresponding to Hypotheses 3 and 4 remained stable when eliminating state fixed effects or when modifying our set of control variables (e.g., adding additional covariates such as government ideology, or poverty rates, or modifying the measurement of others such as percentage of Republicans in the Legislature). We also reran our models by first including our key independent variables and interactions (percentage of Blacks, determinate sentencing) and then adding our statistical controls, and found that the direction, significance, and magnitude of coefficients did not change substantively. We also took a number of steps to reduce the threat of multicollinearity—a prevalent issue in fixed-effects models such as those presented here (see, for example, Greenberg & West, 2001). We centered all continuous variables, minimized the number of potentially redundant control variables, and examined the stability in parameters (particularly standard errors) across different model specifications. However, because multicollinearity is amplified by interaction terms, models presented in Table 3 should be interpreted with caution.³ We also examined scatterplots of the residuals graphed on the fitted and predicted values and found no systematic pattern in the distribution of the state years. We failed to uncover additional interactions between percentage of Blacks and other covariates. Three-way interactions relating our two independent variables with our time-trend variables were not significant either. Consistent with our examination of the baseline models, we respecified our final models using year dummies and found similar results to those presented in Table 3. Finally, we generated an alternate set of estimates based on a feasible least-squares routine and found that patterns for our independent variables remained stable.⁴

Discussion

Research has highlighted the relevance of racial threat and minority presence to explain both variations in levels of punishment and the uses of punishment across different populations (for a review, see Jacobs & Carmichael, 2001, Western, 2006). However, as Greenberg and West (2001) noted, prior analyses have often conceived of the relationship between social forces and incarceration rates “mechanically, as if state conditions automatically produced a given type and level of penal response . . . slight[ing] the policy choices that structure a state’s responses to its circumstances” (p. 616). This study contributes to ongoing efforts to further specify the relationship between policies and imprisonment. Specifically, it explores whether the relationship between

African American presence and incarceration rates is a historically contingent process and whether the implementation of legal changes altering the structuring of prisoner releases enhanced or mitigated the influence of this social force on incarceration rates.

Our results confirm some findings from prior research: Controlling for socioeconomic and political covariates—including crime levels and law enforcement patterns—variations in incarceration rates are positively associated with larger African American populations and negatively associated with determinate sentencing. Contrary to other studies, however, we find that the strength of the relationship between the size of African American populations and imprisonment weakened throughout the study period; in other words, although greater African American presence continues to be related to higher imprisonment rates, the magnitude of this relationship decreased between 1978 and 2004. We suggest that this inconsistency vis-à-vis past research may be derived from differences in the scope of prior studies and the operationalization of African American presence. Greenberg and West (2001), for example, use three waves of data through 1990 and define Black population more narrowly (see also Jacobs & Carmichael, 2001). These two factors are critical as we argue that the declining visibility of race to explain variation in imprisonment may be linked to the emergence of competing categories of offenders increasingly defined as “dangerous” based on nonracialized factors (Jacobson, 2005). Over time, but particularly since the early 1990s, the definition of “dangerous populations” has expanded to include a growing number of administratively defined offenders classified as dangerous on the basis of actuarial instruments (Garland, 2001) or in terms of their ultimate impact in prison populations (Jacobson, 2005).⁵ For example, as the justice system has become increasingly focused on managing risk (Feeley & Simon, 1992), probation and parole violators have become the target of sentencing and corrections policies that seek to contain that risk (Jacobson, 2005). In 2000, state prisons admitted roughly 203,000 parole violators, up from approximately 27,000 violators in 1980; between 1977 and 2000, there has been a sevenfold expansion in the number of parole violators entering prison (Travis & Lawrence, 2002). Furthermore, it is likely that the increasing conservatism of the citizenry or government has triggered an emerging rhetoric of “law and order” that emphasizes general surveillance and control (see, for example, King & Wheelock, 2007; Stucky, Heimer, & Lang, 2005). Our argument does not discount the role of race in triggering more punitive responses, or as an engine of rhetorical strategies of politicians and media outlets. However, we suggest that prison systems are increasingly influenced by emerging categories of offenders that have progressively obscured the significance of race (Zatz, 1984).

Broad initiatives of sentencing reform seeking to reduce discretion by various courtroom actors may also affect the role of race in the configuration of overall

levels of punishment. However, these policies have not always shaped processes and outcomes of the justice system in the intended ways, partially because they interact with broader social forces through mechanisms often overlooked by policy makers and scholars. One such policy is determinate sentencing. Our results indicate that in states with low levels of African American presence, the abolition of discretionary parole release has mitigated the positive association between the size of African American populations and imprisonment levels. This is largely consistent with the literature on the main effects of determinate sentencing (e.g., Greenberg & West, 2001; Stemen & Rengifo, 2011). In states with higher African American presence, however, the abolition of discretionary parole release has strengthened the relationship between the size of African American population and incarceration rates. This unintended pattern, we argue, is explained by the fact that coercive responses to the threat posed by greater minority populations cannot be mobilized toward specific subpopulations of offenders.

More generally, we propose that, as intended, determinate sentencing insulates the release process from social forces (Jacobs & Carmichael, 2001; Stemen & Rengifo, 2011). Specifically, it insulates that process against short-term adjustments to overall punitiveness; these narrow calibrations are made through changes in discrete practices (e.g., reduced parole rates, longer time served before release) in response to those forces and can lead to increased incarceration rates over time if practices become embedded. Determinate sentencing reduces discretion and prevents some system actors from changing practices in response to social forces. Determinate sentencing, however, cannot insulate against social forces that set long-term levels of punitiveness for the system as a whole. Racial threat is one such force that determines long-term levels of punitiveness, by influencing the structure of the justice system (e.g., setting statutory sentence lengths, appellate procedures, defendant rights, time served requirements). Thus, as our findings confirm, regardless of the presence or absence of determinate sentencing, states with larger African American populations have higher levels of punitiveness compared with other states. Determinate sentencing then has a paradoxical impact when minority populations are high; it insulates the release decision from the short-term impact of race but stabilizes the level of punitiveness for all defendants at the level directed at minorities. We propose that in the absence of racial threat, determinate sentencing insulates release decisions as well, but sets a level of punitiveness for all defendants at the level directed at nonminorities.

Our argument is limited by the fact that we focus on a single structural policy change. Other penal policies designed to ensure the parity, certainty, or severity of court-imposed sentences have been presumed to affect incarceration rates by altering the flow of inmates into the prison system. For

example, research has shown that presumptive sentencing guidelines have reduced sentencing disparities in some states (Miethé & Moore, 1985; Zatz, 1984) and can act as a moderating factor, slowing prison population growth and reducing prison populations but only when such guidelines are sensitive to prison capacity (Marvell, 1995; Nicholson-Crotty, 2004). Other policies such as specific forms of mandatory sentencing laws could have enhanced the association between race and imprisonment (see, for example, Schlesinger, 2011), although such impacts may be comparatively smaller than those linked to more structural reforms. More generally, more systematic research is needed to understand the issue of policy adoption and the forces affecting the content and timing of policy changes in the states. Declining economic conditions and increasing fiscal strain can influence the adoption of specific sentencing and corrections policies, including feedback loops between crime, incarceration, and policy responses (Garland, 2001; Link & Shover, 1986). We believe that a first step in that direction is to develop analytical models such as those presented in this article that explicitly document policies and consider their interactions with other social forces.

Appendix

States Adopting Determinate Sentencing Laws, 1970-2004

State	Adoption date	State	Adoption date
Arizona	1994	Minnesota	1980
California	1976	Mississippi	1995 ^c
Colorado	1979 ^a	New Mexico	1977
Connecticut	1981 ^b	North Carolina	1981
Delaware	1990	Ohio	1996
Florida	1983	Oregon	1989
Illinois	1978	Virginia	1995
Indiana	1977	Washington	1984
Kansas	1993	Wisconsin	1999
Maine	1976		

Note. Determinate sentencing has been used to describe (a) systems without discretionary parole release and (b) systems with presumptive recommended sentences for offenses such as sentencing guidelines or California's use of presumptive sentences (Bureau of Justice Assistance, 1996, 1998). Our operationalization of determinate sentencing does not take into consideration whether states provide recommended sentences.

^aIndeterminate sentencing reinstated in 1985.

^bIndeterminate sentencing reinstated in 1990.

^cIndeterminate sentencing reinstated in 2000 for first-time nonviolent offenses only (coded as determinate for 2000-2004).

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Notes

1. We do not argue that the rhetoric of race and crime became less visible through the 1990s and 2000s. Rather, we suggest that policies and other actions of state officials and administrators may have moved away from a heightened interest in controlling Black populations to the management of new categories of offenders that due to high numbers (e.g., conditional-release violators) or long stays in prison (e.g., sex offenders) exert new pressure on correctional systems.
2. This article does not address the impact of racial threat or determinate sentencing on race-specific outcomes (Bridges & Crutchfield, 1988). Instead, we focus on examining the conditional effect of racial threat on imprisonment and the specific role of determinate sentencing policies.
3. While multicollinearity is a pervasive estimation challenge identified in similar studies (e.g., Greenberg & West, 2001), we find that in our most exhaustive models (Table 3), the variance inflation factors (VIFs) derived from an ordinary least squares (OLS) model were not excessively large; with the exception of race predictors, all control and independent variables had VIFs < 30 and 9 had VIFs < 10.
4. Using the Feasible Generalized Least Squares approach, the direction of effects and significance patterns were not different from those presented in Table 2, although the OLS coefficients for percentage of Blacks and determinate sentencing were somewhat higher. The specification of period fixed effects via year dummies did not alter these results. Results are available on request.
5. To examine this proposition, we replicated the approach of similar studies (e.g., Greenberg & West, 2001). Consistent with their results, we find that the Percentage of Blacks \times Time interaction is positive and more pronounced in the 1980s compared with the 1970s. However, when expanding the time frame through 2004,

the sign of this interaction becomes negative, suggesting a more recent shift in the dynamics of race and imprisonment, which we interpret as indication of the rise of new and competing categories of dangerousness. Results are available on request.

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