

Mass Imprisonment and Trust in the Law

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This article examines the relationship between two facets of mass imprisonment—its novel comparative and historical scale and its pervasiveness in the lives of African Americans—and surveys respondents' beliefs about the harshness of the courts, and bias in the courts or among police. Analyses of national survey data show that as states' incarceration rates increased, so too did the probability that residents believed that courts were too harsh. However, while white Americans' opinions about the courts were sensitive to changes in the white incarceration rate, African Americans' opinions were not sensitive to changes in the African American incarceration rate. African American respondents who had been to prison or who had a close friend or family member who had been to prison were more likely to attribute racial disparities in incarceration to police bias and bias in the courts. The article concludes with a discussion of the possible consequences of declining trust in the law for the future of American punishment.

Keywords: incarceration; trust; institutions; macro-sociology; racial inequality

When a state incarcerates its residents at comparatively and historically unprecedented rates, it may begin to lose its residents' trust. This premise, stated or unstated, motivates much of the academic debate and public concern over mass imprisonment today. In the words of legal scholar William J. Stuntz (2011, 13), "No democratic society can incarcerate such a large fraction of its poor population and retain the goodwill of that population, all the

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more so when most poor inmates belong to a different race from most of the nation's citizens."

Mass imprisonment has two facets (Garland 2001), and each might separately contribute to the erosion of trust in the criminal justice system. The first is the novelty of American imprisonment's comparative and historical scale. Between 1970 and 2010, the U.S. imprisonment rate increased fivefold, from roughly 100 per 100,000 residents to roughly 500 per 100,000 residents. No other nation incarcerates such a large proportion of its population (Western 2006). The second facet is that imprisonment has disproportionate effects on particular marginalized groups. As the U.S. incarceration rate grew, it retained a striking racial disparity. African Americans today are imprisoned at about six times the rate of whites. The maintenance of such a high disparity as the imprisonment rate increased has meant that the experience of imprisonment now pervades the lives of many African Americans, whether directly through personal confinement or indirectly through ties to incarcerated friends and family members. These two facets of mass imprisonment—the novelty of its scale and its pervasiveness in the lives of African Americans—may separately affect the public's trust in criminal justice institutions.

In this article, we study the relationship between mass imprisonment and two sets of beliefs: beliefs about the harshness of criminal justice institutions and beliefs about the sources of racial disparity in imprisonment. We use these separate measures because previous research suggests that they might be weakly correlated. Sampson and Bartusch (1998), for example, find that African Americans are both more likely than whites to report dissatisfaction with police and less likely to tolerate deviance. Carr, Napolitano, and Keating (2007) report that while many African American youths in a sample of high-crime neighborhoods in Philadelphia were negatively disposed toward the police, the same respondents overwhelmingly supported increased and tougher law enforcement. Meares (1997) calls African Americans' dissatisfaction with both the level of crime and the scale of imprisonment in their communities their "dual frustration."

Our analysis belongs to a new generation of scholarship studying the macro-sociological consequences of mass incarceration (Western and Muller 2013). Previous studies in this tradition have focused primarily on mass imprisonment's effects on the wages (e.g., Western 2006), family life (e.g., Wakefield and Wildeman 2011), and health of prisoners and their families (e.g., Schnittker and John 2007; Massaglia 2008; Johnson and Raphael 2009). Previous research on the

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legitimacy of criminal justice institutions, meanwhile, has centered on racial differences in trust in the law (Unnever [forthcoming] reviews the literature). In this article, we bridge these literatures, using opinion data and data on the rate and pervasiveness of incarceration to understand the relationship between these two facets of mass imprisonment and respondents' assessments of the harshness and fairness of criminal justice institutions. Trust in the law has typically been the province of criminologists concerned about its influence on rates of offending. We argue that it deserves the attention of scholars of punishment as well. Depending on how the public acts on its confidence in criminal justice institutions, declining trust in the law could have important implications for the future of American punishment.

Mass Imprisonment and Trust in Criminal Justice Institutions

To study the relationship between mass imprisonment and trust in criminal justice institutions, we rely on two survey questions. The first question is part of the General Social Survey (GSS), an in-person survey of a random sample of adults conducted by the National Opinion Research Center at the University of Chicago. Since 1972, the GSS has asked respondents, "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?" We report the relationship between the incarceration rate and the three possible survey responses: "the courts are too harsh," "not harsh enough," or "about right." We place the most emphasis, however, on the belief that the courts are too harsh, as this response most clearly communicates a lack of trust. A declining number of respondents reporting that the courts are not harsh enough may signal a movement toward the belief that the current punishment regime is adequate. An increasing number of respondents reporting that the courts are too harsh, however, would suggest that more respondents believe that the courts exercise their power excessively.

The second question we analyze was asked in the *Washington Post*, Henry J. Kaiser Family Foundation, and Harvard University African American Survey (hereafter "the Kaiser survey"). This survey, fielded in 2006, was administered to a nationally representative sample of African American men and includes additional interviews with African American women and respondents of other racial and ethnic groups. The question we use directly addresses racial disparity in incarceration. It reads, "As you may know, young black men have a higher chance than most people of winding up in jail. For each please tell me whether you think it is a big reason, a small reason, or not a reason why this is true." Respondents were given the following seven options: (a) "More black men grow up in poverty"; (b) "Black men are less likely to think that committing crimes is wrong"; (c) "Police are more likely to target black men than whites"; (d) "Courts are more likely to convict black men than whites"; (e) "Many black parents aren't teaching their children right from wrong"; (f) "Black men have fewer job opportunities";

and (g) “Schools are failing black men.” We study all seven responses, focusing especially on options (c) and (d) regarding police and the courts. Using the Kaiser survey, Unnever (2008) finds that African American respondents are much more likely than white respondents to believe that police bias and bias in the courts are big reasons for racial disparity in incarceration.

Although we do not directly observe respondents’ willingness to resist or comply with systems of rule they deem excessive or unjust, other research has demonstrated that beliefs about fairness predict individuals’ willingness to interact with criminal justice institutions (Tyler 2006). Bobo and Thompson (2006), for example, find that survey respondents who perceive racial bias in criminal justice institutions are less likely to believe police will respond to calls for service. Like Peffley and Hurwitz (2010), however, we propose that substantive as well as procedural justice affects respondents’ assessments of criminal justice institutions. Thus, we study how the scale of incarceration in respondents’ states is related to their beliefs about the harshness of courts and how the pervasiveness of incarceration in respondents’ lives is related to their beliefs about the fairness of the courts and police. We view these beliefs as preconditions for respondents’ trust in criminal justice institutions. Beliefs about court harshness and police and court fairness thus function as proxies for trust in the law.

Because the GSS question about courts was asked in all sixteen waves of the survey from 1982 to 2002, it enables us to track aggregate state opinion about the harshness of the courts over time. Because the Kaiser survey asks respondents if they have ever been imprisoned or had a close friend or family member who has, it allows us to tie respondents’ beliefs to their direct or indirect experiences with incarceration. Thus, we can estimate the relationship between trust and the two facets of mass imprisonment that Garland (2001) highlights. The GSS and Kaiser survey questions also enable us to measure the two aspects of trust discussed in previous scholarship: beliefs about the appropriate level of enforcement and beliefs about bias in enforcement.

We use survey variation across states, years, and individuals to answer the following two questions: First, how is a state’s rate of imprisonment over time related to residents’ beliefs that the courts are too harsh? Second, how is the experience of having been imprisoned, or having a friend or family member who has, related to respondents’ beliefs about the sources of racial disparity in imprisonment?

Empirical Predictions

Although the available data do not enable us to cleanly distinguish the effects of public opinion on incarceration from the effects of incarceration on public opinion, the direction of the relationship we observe should strengthen our inference. For example, if rates of imprisonment reflect public opinion, a public that believes the courts are insufficiently harsh should drive up the incarceration rate. We should thus expect to find a positive relationship between a state’s

imprisonment rate over time and residents' beliefs that the courts are not harsh enough. If, on the other hand, rates of imprisonment influence public opinion, we might expect to find the opposite: an increasing scale of imprisonment may raise residents' suspicions. In this case, imprisonment rates would instead be positively related to the belief that the courts are too harsh. Peffley and Hurwitz (2010, 75) argue that criminal justice outcomes such as the incarceration rate, in addition to criminal justice procedures, should influence the public's evaluation of the justice system. Compared to their European counterparts, Americans are notoriously leery of state authority (Whitman 2003). If they perceive the penal arm of the state to be overreaching, they may conclude that the courts are too harsh.

How the experience of imprisonment—or of knowing a prisoner closely—might affect one's beliefs about the sources of racial disparity in imprisonment is less clear. Often friends and family members know the circumstances of an individual case intimately enough that they are unlikely to attribute the incarceration of a loved one to institutional failures. In Donald Braman's (2004) ethnography of prisoners and their families in Washington, D.C., for example, "Many criticized the operation of the criminal justice system or felt that their own case was exceptional, but few actually challenged the mainstream understanding of justice and punishment" (p. 103). Comfort (2007) interviewed the romantic partners of fifty incarcerated men, some of whom met their partners before they were incarcerated and some of whom met them while they were imprisoned. Of the women who met their partners prior to their partner's incarceration, roughly a third "generally supported the arrest and incarceration of their partners, agreeing with the law-enforcement authorities that the men were guilty of wrongdoing and deserved to be punished" (Comfort 2007, 176).

Direct or indirect contact with the criminal justice system, on the other hand, might expose individuals to racial bias in treatment by police officers, prosecutors, or judges. The remaining two thirds of Comfort's (2007) respondents "framed their explanations of their partners' predicaments in the context of 'mass incarceration,' referring repeatedly to their fatalism about men's likelihood of avoiding imprisonment and their perceptions of the U.S. criminal justice system as a corrupt instrument of oppression" (p. 151). These beliefs typically stemmed from perceived injustices in the handling of their partners' cases. Rosenbaum et al. (2005) find that learning about another person's negative experience with law enforcement undermines survey respondents' confidence in the police. Hagan, Shedd, and Payne (2005) report that high school students in Chicago are more likely to perceive injustice in the criminal justice system if they have had personal contact with police. Peffley and Hurwitz (2010) show that African American respondents draw general conclusions about the fairness of police and courts from their individual experiences with these institutions.

Waning confidence in the police and the courts might also extend to state institutions generally. Weaver and Lerman (2010), for example, show that contact with criminal justice institutions reduces the likelihood that individuals will engage in several forms of political participation. Lee, Comfort, and Porter (this volume) report that the children of incarcerated parents are more likely to

perceive discrimination and less likely to trust the government. Matsueda and Drakulich (2009) find that survey respondents who perceive bias in policing are more likely to support government efforts to increase fairness and foster equal opportunity.

It is possible that individuals initially more cynical about the police and courts are more likely to eventually be incarcerated. Unobserved differences between the ever- and never-incarcerated may thus confound the relationships we estimate using the Kaiser survey. Such confounding poses less of a threat to our inference about the relationship between having a friend or family member imprisoned and beliefs about the police and courts. Moreover, studying the effects of vicarious prison contact on respondents' beliefs about courts and police versus schools, jobs, and poverty helps us to identify how knowing a prisoner is related to one's beliefs about criminal justice institutions in particular, in contrast to other exculpatory explanations of a friend's or family member's confinement.

State-Level Analysis

The GSS is designed to measure national trends in opinion, not opinion at the state level. National opinion surveys typically sample respondents so that, when aggregated, they form a nationally representative sample, not a representative sample within any given state. Since we are interested in variation in opinion across states and between African Americans and whites, we must first use the GSS to estimate opinions for African Americans and whites within each state. However, many states have few respondents and even fewer African American respondents. Since we use the GSS to explore variation in opinion over time, we cannot simply aggregate across years to increase the sample sizes within each state.

Recent work by Park, Gelman, and Bafumi (2006) provides a method for estimating state-level opinion from national survey data using multilevel regression and poststratification (hereafter "MRP"), even with relatively few respondents in each state. We first fit a multilevel logistic regression to the individual survey responses. Multilevel regression uses random effects to "borrow strength" across groups when those groups are small to provide better within-group estimates while properly reflecting the uncertainty inherent in small-group estimates (Gelman and Hill 2007). For example, with random effects for each state, the opinion estimate for a small state such as Vermont will borrow strength from other states, and its estimate will be pulled closer to that of the national average. The opinion estimate for a large state such as California, on the other hand, will have enough respondents from California to estimate a relatively precise opinion within that state. We include random effects for state and region and for a number of demographic categories: race, sex, age,¹ education,² and age-by-education. We also include four state-level predictors that we expect to be important correlates of state opinion: whether the state has a Democratic governor, the

Democratic share in the most recent presidential election,³ the unemployment rate in the state, and the homicide rate in the state.

Following this multilevel regression, we use poststratification to obtain state-level opinion estimates by race. Poststratification weights the predictions from the multilevel regression to create estimates that are representative within each state-race group. To do this, we first gather census data on the number of people in each state in each of our demographic cells (e.g., the number of African American male college graduates, ages 30–44 in New York). We generate predicted values from our multilevel model for each demographic cell, then sum over all cells within each state to produce aggregate state predictions. Lax and Phillips (2009) show that MRP performs remarkably well in generating state-level opinion estimates using only a single national survey.

Previous work using MRP has focused on analyzing state-level opinions on their own or on using the opinions as predictors in another model. In contrast, we are interested in understanding how state-level opinions about the courts vary with incarceration rates within each state. To do this properly, we must account for uncertainty in the state-level predictions (which is particularly high for small states) rather than simply treating the point estimates of each prediction as fixed and exactly correct. We draw a thousand simulations from the posterior distribution of our model and use those to compute a thousand state-level regressions of opinion on the incarceration rate, and we draw ten simulations from each state-level regression. This gives us a full posterior distribution of our regression coefficients that includes the uncertainty from both the state-level predictions and from the state-level regression model, and we use this distribution to compute point estimates and standard errors for the state-level regression.

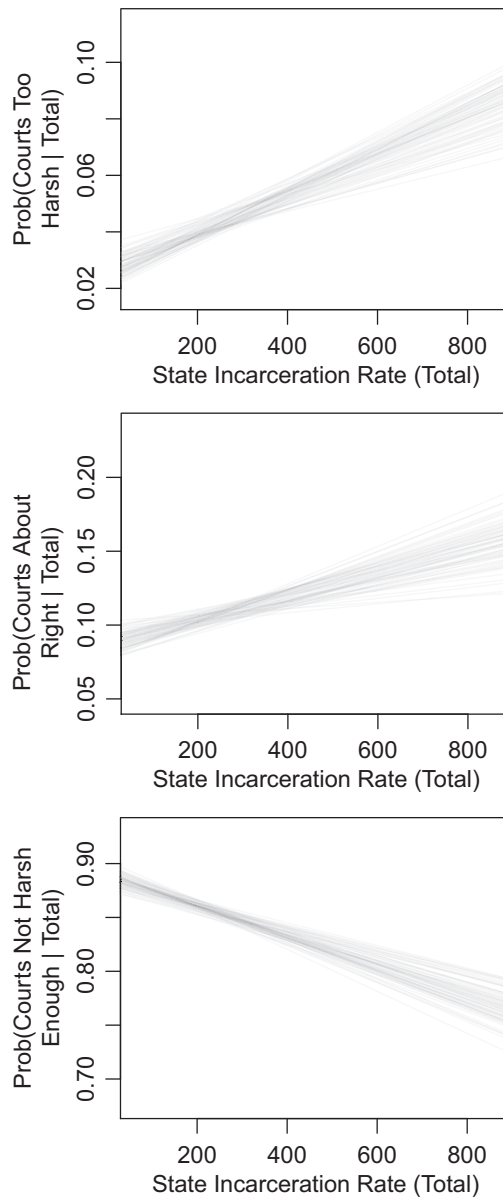
State-Level Results

We begin by studying the relationship between the total incarceration rate and respondents' beliefs about the courts in the forty-three states sampled by the GSS from 1982 to 2002.⁴ Figure 1 depicts the bivariate relationship between the total incarceration rate and the probability a respondent agrees with each of the three survey responses. The figure shows that higher incarceration rates are associated with a greater probability of agreeing that the courts are too harsh and a lesser probability of agreeing that the courts are not harsh enough. There is a positive, but weaker, relationship between the incarceration rate and the belief that the courts are about right.

In Table 1 we model these relationships using linear regression with a variety of controls. Model 1 depicts the simple bivariate relationship shown in Figure 1. Model 2 adds state random effects and four state predictors—whether the state has a Democratic governor, the Democratic share in the most recent presidential election, the unemployment rate in the state, and the homicide rate in the state.⁵ We adjust our estimates for these possible common causes of the incarceration rate and opinion about the courts to ensure that they do not confound the

FIGURE 1

Bivariate Relationship between Total Incarceration Rate and GSS Respondents' Beliefs about the Harshness of the Courts, Forty-Three States, 1982–2002



bivariate relationships depicted in Figure 1. Row 2 of Table 1 shows that adding these controls strengthens the observed relationship between the incarceration rate and respondents' beliefs about the harshness of the courts.⁶

TABLE 1
 Linear Regression of the Probability a GSS Respondent Believes Courts Are “Too Harsh,” “About Right,” or “Not Harsh Enough” on Total Incarceration Rate

		Too Harsh	About Right	Not Harsh Enough
(1)	Raw data	.067 (.012)	.073 (.020)	-.142 (.025)
(2)	State predictors and state random effects	.087 (.014)	.136 (.020)	-.229 (.023)
(3)	Model (2) with linear time trend	.044 (.012)	.024 (.019)	-.082 (.023)
(4)	Model (2) with year fixed effects	.039 (.011)	.015 (.020)	-.066 (.023)

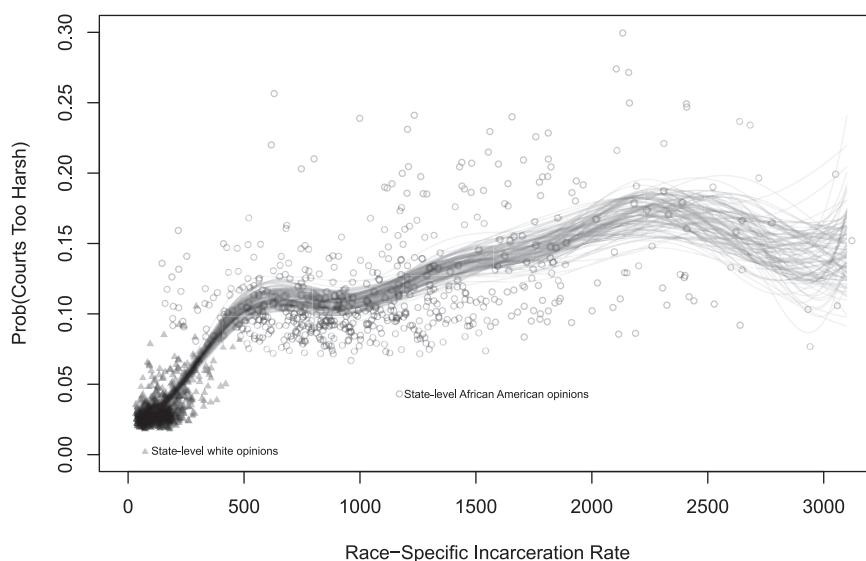
However, there is a strong national time trend in incarceration. It is possible that an unobserved variable exhibiting a similar national time trend confounds the relationship between the incarceration rate and opinions about the courts. To check this, model 3 includes all the predictors from model 2 and adds a linear time trend. This attenuates the coefficients for all three outcomes, but the relationship remains statistically significant for the opinions that the courts are too harsh and not harsh enough. Model 3 controls for any observed variable with a secular increasing or decreasing time trend. However, many possible confounders, such as the crime rate or economic growth, exhibit national trends that fluctuate over the period under study. To account for this, model 4 adds year fixed effects to the predictors from model 2. As in model 3, the coefficient is reduced but remains statistically significant for the opinions that the courts are too harsh and not harsh enough.

Together, these results provide evidence that the United States’ increasing incarceration rate is associated with declining trust in the courts. As the incarceration rate increased, more Americans believed that the courts were too harsh and fewer believed that they were not harsh enough. Our findings suggest that, rather than increasing Americans’ confidence in criminal justice institutions, the growing scale of incarceration has shaken it.

Figure 1 and Table 1 report the relationship between the total incarceration rate and the opinions of all African American and white respondents to the GSS. African Americans, however, are more likely than whites to report that the courts are too harsh and less likely to report that they are not harsh enough. In Figure 2, we disaggregate state-level opinions by race and plot them against race-specific state incarceration rates. We relate African American opinion (shown as hollow circles) to the African American incarceration rate and white opinion (solid triangles) to the white incarceration rate and fit a smooth curve depicting the relationship.⁷

Figure 2 reveals three things. First, the differences in black and white opinion are apparent. The probability that whites report that the courts are too harsh is seldom more than .10 for any given state. The probability for African Americans,

FIGURE 2
 Bivariate Relationship between the Race-Specific Incarceration Rate and GSS Respondents' Belief That Courts Are Too Harsh



NOTE: Dots represent mean probabilities within each state-year. The solid triangles (concentrated in the lower left) relate the white incarceration rate to white opinion. Hollow circles relate the African American incarceration rate to African American opinion. A smooth curve summarizes the relationship.

on the other hand, ranges from roughly .07 to .30. Second, there is little overlap in the African American and white incarceration rates. Few African Americans experience an incarceration rate as low as the highest rate for whites, and few whites experience an incarceration rate as high as the lowest rate for African Americans. Third, white opinion responds to changes in the race-specific incarceration rate, but African American opinion does not. As the incarceration rate of whites increases, white respondents are more likely to report that the courts are too harsh. For African Americans, on the other hand, the relationship is flat. In analyses not shown here, we run models 1–4 separately by race. Doing so confirms a significant and positive relationship for whites and a weaker relationship that is flat and not significant for African Americans once we account for a linear time trend or for year fixed effects (equivalent to models 3 and 4).

African Americans' beliefs about the harshness of the courts are not sensitive to the African American incarceration rate in their state. Instead, they may reflect a durable suspicion based on African Americans' historical experience with criminal justice institutions (Hagan, Shedd, and Payne 2005; Blackmon 2008; Muhammad 2010). High rates of racial disparity in imprisonment long preceded the prison boom (Western 2006). Whites in states with the highest white incarceration rates, by contrast, have only recently begun experiencing a level of

incarceration that African Americans have experienced for decades. Whites' growing dissatisfaction with the courts may stem from surprise at the excesses of an institution they previously held to be just. As James C. Scott (1990) points out, "The anger born of a sense of betrayal implies an earlier faith" (p. 107).

It is also possible, as Todd Clear (2007) has argued, that above some threshold, high rates of incarceration erode the bonds of informal social control that prevent crime. African Americans are not only more likely to be incarcerated than other groups; they are also more likely to be the victims of crimes (Kennedy 1997). Using data from Chicago, Sampson and Loeffler (2010) show that incarceration is highly spatially concentrated (see also Fagan, West, and Holland 2003). As Clear (2007) argues, the removal of a sizable proportion of the population in these communities "has broken families, weakened the social-control capacity of parents, eroded economic strength, soured attitudes toward society, and distorted policies; even after reaching a certain level, it has increased rather than decreased crime" (p. 5). If the rate of incarceration in African American communities has crossed this threshold, residents responding to the resulting deficit of informal controls may not adjust their beliefs about the harshness of the courts.

Individual-Level Analysis

State-level GSS data enabled us to study the effects of the first facet of mass imprisonment: its novel comparative and historical scale. The Kaiser survey allows us to study its second facet by relating respondents' opinions about the sources of racial disparity to their degree of direct or indirect contact with incarceration. Survey respondents report whether they themselves have been incarcerated or whether they have a close friend or family member who has. We create separate indicator variables for respondents who have been to prison and respondents who have not been to prison but have a close friend or family member who has.⁸ We measure our outcomes by creating seven indicator variables for each of the seven possible survey responses to the question about the sources of racial disparity in incarceration.⁹ We set these variables to 1 if the respondent believed the explanation to be a "big reason . . . why young black men have a higher chance of winding up in jail," and 0 otherwise.

We fit separate logistic regressions of the seven opinions about the sources of racial disparity on indicators of direct and indirect contact with the criminal justice system and a set of covariates including age, party identification, education, income, and whether the respondent resided in an urban area.¹⁰ We then calculate the first difference in the predicted probability that a respondent with direct or indirect contact with incarceration agreed with each of the seven reasons for disparity, as compared to a respondent with no contact with incarceration. We restrict the sample to African Americans, since the Kaiser survey questions focus on reasons for black incarceration and because our goal is to examine the pervasiveness of incarceration among African Americans.¹¹

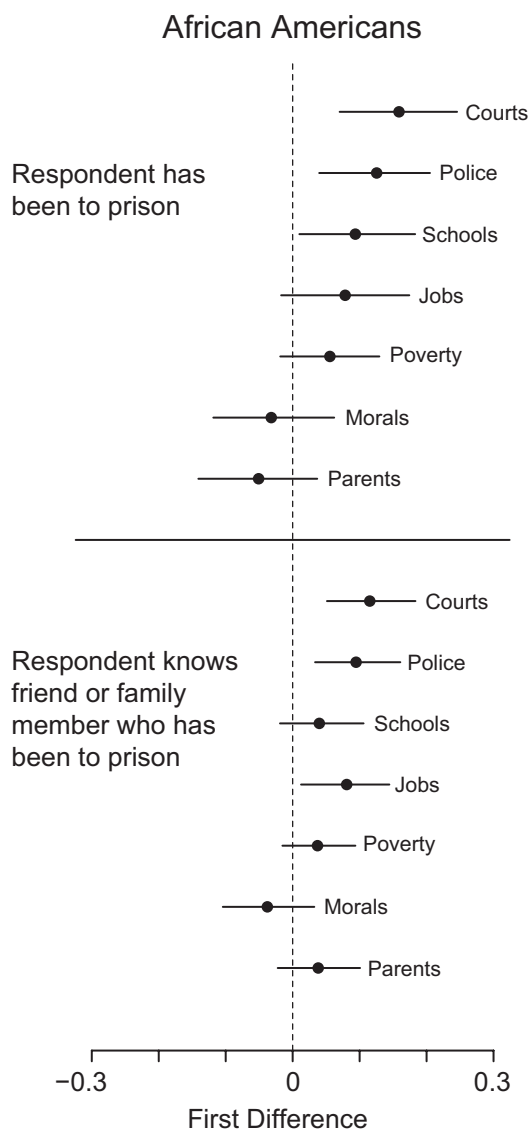
Individual-Level Results

Figure 3 plots the first differences for respondents with direct contact with incarceration and respondents with indirect contact with incarceration. The top half depicts first differences in the predicted probability of agreeing with each of the seven explanations for racial disparity for African American respondents who had been to prison versus the reference category, African American respondents with no direct or indirect experience with incarceration. The predicted probability that an African American respondent believed that the courts were a big reason for racial disparity in incarceration was .16 greater for respondents who had been to prison. Similarly, the probability that an African American respondent believed the police were a big reason for racial disparity was .13 greater for respondents who had served time. The only other difference significantly greater than zero was for the opinion that “schools are failing black men.”

The results for African Americans who had not been to prison, but were close with someone who had, exhibit a similar pattern. These are shown in the bottom half of Figure 3. The difference in the predicted probability that bias in the courts was a big reason for racial disparity in incarceration was .11 for respondents who knew someone who had been to prison versus respondents who did not. For the belief that the police were a big reason for racial disparity, the predicted probability of respondents with ties to a prisoner was .09 greater than for respondents with no ties to a prisoner. The only other opinion for which there was a significant difference between respondents with a tie and respondents with no tie to a current or former prisoner was in the belief that “black men have fewer job opportunities.”

The results of our analysis of the Kaiser survey demonstrate that the second facet of mass imprisonment—its pervasiveness in the lives of African Americans—is negatively related to survey respondents’ trust in criminal justice institutions. African American respondents who have been to prison or who have not been to prison but have a close friend or family member who has are more likely to believe that racial disparity in incarceration stems from the fact that “courts are more likely to convict black men than whites” and that “police are more likely to target black men than whites.” It is possible that respondents who hold the law in low regard are more likely to have been imprisoned than other respondents or that prisoners’ and former prisoners’ friends and family seek to absolve them. The fact that the friends and family members of current or former prisoners are more likely than those with no ties to prisoners to attribute racial disparity in incarceration almost exclusively to police bias or bias in the courts, however, suggests that the pervasiveness of incarceration in the lives of many African Americans has led them to perceive criminal justice institutions as unfair. Respondents simply interested in exculpating incarcerated friends and family members could just as easily blame poverty, jobs, or schools. Our results show that they instead restrict their criticism primarily to the courts and the police.

FIGURE 3
 Relationship between Contact with the Criminal Justice System and African Americans' Opinions about the Sources of High Racial Disparity in Incarceration



NOTE: Dots and lines depict point estimates and 95 percent confidence intervals of the first difference in the predicted probability a survey respondent agreed that each of the listed reasons was a “big reason . . . why young black men have a higher chance of winding up in jail.” Respondents with direct or indirect contact with incarceration are compared to a reference group of respondents with no contact with incarceration.

Summary of Findings

Our results show that both facets of mass imprisonment—its comparatively and historically unprecedented scale and its pervasiveness in the lives of African Americans—are negatively related to public trust in criminal justice institutions. The higher a state's incarceration rate, the more likely its residents are to believe the courts are too harsh and the less likely they are to believe they are not harsh enough. Moreover, African Americans' contact with the prison system, whether through personal confinement or through knowing a current or former prisoner, increased their likelihood of believing that police bias and bias in the courts were big reasons for racial disparity in incarceration.

But the relationship between states' incarceration rates and residents' opinions about the harshness of the courts varied by race. White respondents' belief that the courts are too harsh increased with the white incarceration rate in their state. However, we found no relationship between the African American incarceration rate and African Americans' opinion that the courts were too harsh. It is possible that African Americans' beliefs about the harshness of the courts reflect a durable suspicion that is, above some threshold, unresponsive to increases in the African American incarceration rate. High levels of incarceration, as Clear (2007) has argued, might also undermine the informal controls that prevent crime. If African American incarceration rates have surpassed the threshold above which incarceration promotes crime by disrupting communities, the local loss in informal crime prevention may offset residents' dissatisfaction with high incarceration rates, and African Americans' beliefs about court harshness may remain unchanged by further growth in incarceration.

Consequences of Declining Trust in the Law

The fallout from reductions in trust in criminal justice institutions will depend on how the public responds. In this section we consider three responses to declining trust—political resistance, crime, and avoidance of authorities—and how each may affect the future of American punishment. Political resistance has the capacity to reduce the imprisonment rate. Crime, in contrast, is likely to increase it. Avoidance, provided there are group-based differences in it, may instead widen racial disparity in incarceration.

Criminal justice policy and practice are less insulated from the whims of public opinion in the United States than they are in comparable European nations. Comparative scholars often adduce this fact in their explanations of American exceptionalism in punishment (Whitman 2003; Lacey 2008; Garland 2010). As Whitman (2003) notes, "It is surely the case that Americans punish more harshly because the management of the punishment system is much more given over to democratic politics" (p. 199). But the justice system's susceptibility to democratic control also increases its sensitivity to waning public confidence. Bobo and Thompson (2010) show that a majority of African Americans

are willing to engage in jury nullification for nonviolent drug possession cases.¹² If imprisonment in the United States has reached proportions so great as to be considered excessive, it may have begun to erode its basis of political support. Opponents of mass imprisonment should thus be heartened by news of the courts' or the police's eroding legitimacy, as it could portend the long-run unviability of extreme rates of incarceration.¹³

The fact that whites' belief that the courts are too harsh is closely tied to the white incarceration rate may also create new possibilities for forming coalitions opposing mass imprisonment (see Forman 2012). Scholars and advocates in the past have queried whether mass imprisonment could be politically sustained if it affected as many whites as it does African Americans (Loury 2002; Mauer 1999). Although racial disparity in incarceration shows few signs of lessening, imprisonment affects many more white Americans today than it did only 30 years ago. This lamentable fact may nonetheless enable white Americans to imagine a shared fate with their African American counterparts, who traditionally have borne the brunt of harsh punishment (Loury 2008; Unnever and Cullen 2009). Still, class-based inequality in imprisonment and institutional barriers blocking the political influence of those most affected by crime and punishment pose formidable challenges to efforts to end mass incarceration (Western 2006; Miller 2008).

Declining trust in the law may also increase crime and with it imprisonment. A large body of evidence in psychology suggests that people obey the law not because they fear it, but because they believe it is legitimate (Tyler 2006; Tyler and Huo 2002; Tyler et al. 2007; Meares 2009). Some argue that as imprisonment becomes ever-present, it loses its ability to deter (Stuntz 2011, 54). Ethnographic evidence from sociology documents that young people turn to gangs and violence when they feel that the state does not protect them (Anderson 2000; Venkatesh 2006). Waning trust may also reduce the likelihood that residents report crime, thereby forcing police to rely on the very "hunches and generalizations" about the community that first undermined its trust in legal institutions (Kinsey, Lea, and Young 1986, 39).

The idea that incarceration disinclines inmates toward criminal justice authorities and integrates them into new networks of offenders has a long pedigree in sociology (e.g., Sykes 1958) and has recently been taken up by economists studying peer effects (Bayer, Hjalmarsson, and Pozen 2009). Rios (2011) argues that youths' encounters with police at an early age lead them to view police as antagonists and embrace law breaking. Short-run increases in crime due to dwindling trust may thus enlarge, rather than reduce, the prison population.

Finally, group differences in trust in criminal justice institutions may widen racial disparity in imprisonment. This is because beliefs about inequality in criminal justice enforcement can be self-confirming (Loury 2002; Harcourt 2006). Compared to other groups, African Americans are more likely to perceive injustice in the administration of criminal law (Hagan and Albonetti 1982) and more likely to believe that police misconduct occurs regularly (Weitzer and Tuch 2004). In one study, the belief that police engage in racial profiling undermined African American—but not white—survey respondents' degree of support for the police (Tyler and Wakslak 2004).

Survey, interview, and ethnographic evidence demonstrates that African American youths rarely call the police, believing either that police will not respond or that they will wrongfully apprehend them (Carr, Napolitano, and Keating 2007). Others fear the informal sanctions of being labeled a “snitch” or cooperator (Natapoff 2004; Rosenfeld, Jacobs, and Wright 2003; Rios 2011). A resident of a poor African American community in Washington, D.C., told Weizter (2000, 144), “In my neighborhood, there’s tension, animosity. A lot of residents are afraid of officers.” An African American woman interviewed by Stoutland (2001, 242) in the Roxbury section of Boston “was so distrustful of police that she believed the best strategy was to eliminate contact with them.” Goffman (2009) describes the strategies young African American men devise to avoid police contact. One of her respondents explained to his 12-year-old brother, “You hear them coming, that’s it, you gone, period. Because whoever they looking for, even if it’s not you, nine times out of ten they’ll probably book you” (p. 344).

African American residents’ avoidance of the police may, in turn, affect police officers’ beliefs about them. “Nobody here will talk to police,” an officer told Peter Moskos (2008, 81), a sociologist who spent a year as a police officer in Baltimore’s Eastern District. “Half the public hates us. The other half is scared to talk to us.” Where trust in the law is low, officers’ contact with residents in the communities where they work is limited almost exclusively to those involved in crime. Officers’ infrequent interaction with law-abiding residents, Moskos claims, can lead them to form biased opinions about the level of offending in a community:

By having only limited contact with the noncriminal public, police officers perceive the criminal element as even larger than it is. A sergeant estimated, “Ninety-five percent of the people in Sector Two [of the Eastern District] are criminals or don’t like the police. . . . The fact that people don’t want the police or the court system are the two biggest problems.” (p. 47)

If officers’ beliefs about the amount of crime in the communities where they work are influenced by the fact that residents avoid them, and if this leads them to feel justified in making a high rate of arrests, low levels of trust in the law could increase racial disparity in punishment.¹⁴

In summary, declining trust in criminal justice institutions could have different effects on punishment depending on the public’s response. As the incarceration rate increased, more Americans, and particularly more white Americans, believed the courts to be too harsh. These beliefs could increase the political resistance opposing mass imprisonment. However, declining trust may also increase crime and, in turn, punishment. Individuals who believe that the law is legitimate and affords them protection are less likely to break it. If distrust in the law leads police working in African American communities to overestimate the level of crime in those communities, moreover, it might also lead them to make more arrests there. Localized deficits of legitimacy could therefore reproduce racial disparity in imprisonment without directly affecting crime.

Conclusion

As the incarceration rate rose between 1982 and 2002, so too did Americans' belief that the courts were too harsh. White residents' relatively low probability of considering the courts too harsh increased with the rise in the white incarceration rate. African Americans' relatively high probability of agreeing that the courts are too harsh, on the other hand, did not depend on the African American incarceration rate.

African Americans who have been imprisoned or who have contact with someone who has, however, are more likely to believe that racial disparity in incarceration stems from police targeting young black men and from courts' willingness to convict black men. This suggests that as incarceration grows more ubiquitous, a greater share of African Americans will believe the justice system is rigged against them.

This circumstance would pose a challenge to American democracy even if it had no measurable consequences. As incarceration touches the lives of more white Americans, however, it may begin to undermine its base of support. Mass imprisonment was ushered in by a political constituency that had little direct experience with crime or punishment. As Stuntz (2011, 192) observes, in the second half of the twentieth century, "White suburbanites' power over local prosecutors and trial judges grew, even as those officials focused a larger share of their attention on crime in urban black communities." The results of our analysis suggest that white residents' relative insulation from the experience of incarceration has begun to erode. The white incarceration rate has risen and with it white residents' opinion that courts are too harsh. Although racial disparity persists and racial gaps in beliefs about the harshness of the courts remain, growing white dissatisfaction with criminal justice institutions may increase the size of the political constituency opposing mass imprisonment.

But previous scholarship also suggests that those who believe the law is just are more likely to abide by it. Increasing crime could increase the level of punishment that bred distrust in the first place. Moreover, ethnographic and interview evidence has shown that African Americans' suspicion and avoidance of police can lead police to form biased impressions of the level of crime in African American communities. Justifying widespread arrests is easier when an entire community is considered suspect. If distrust in the law engenders more punishment, and more punishment more distrust, it may be hard to break free from the self-confirming equilibrium of racial disparity in imprisonment.

Notes

1. We use four categories for age: 18–29, 30–44, 45–64, and 65+.
2. We use four categories for education: less than high school, high school graduate, some college, and college graduate.
3. In the GSS, we linearly interpolate this share for nonelection years.
4. We end our analysis in 2002 because integrated panel data on state incarceration rates by race from the *Corrections Yearbook* are unavailable after this point (Camp and Camp 1982–2002).

5. Following Bafumi and Gelman (2007), we use random effects over fixed effects due to their superior statistical properties in analyzing time-series cross-sectional data, and we add the within-state means of each state-level predictor to our model to eliminate any unmodeled correlation between the predictors and the random effects. This did not substantively alter the results.

6. To allay concerns about the causal ordering of partisanship and public opinion, we also ran models 2–4 without state partisanship predictors. Because the partisanship measures are weak predictors of opinion in this case, the results were substantively identical to those reported in Table 1.

7. Specifically, we fit a generalized additive model (Wood 2004) with a penalized smoothing spline for the incarceration rate.

8. We do not create a separate variable for those who have both been imprisoned and have a friend or family member who has, since this response needed to be volunteered unprompted by the respondent and thus may be subject to bias in reporting and because the majority of former prisoners will likely know other former prisoners.

9. The seven options are: (a) “More black men grow up in poverty”; (b) “Black men are less likely to think that committing crimes is wrong”; (c) “Police are more likely to target black men than whites”; (d) “Courts are more likely to convict black men than whites”; (e) “Many black parents aren’t teaching their children right from wrong”; (f) “Black men have fewer job opportunities”; and (g) “Schools are failing black men.”

10. As with the GSS, dropping party identification makes no substantive difference in the results.

11. Sixteen percent of African American survey respondents had been imprisoned and half had not been imprisoned but had a friend or family member who had. We also ran all models for whites and, as expected, found no relationship between whites’ contact with incarceration and their beliefs about racial bias in criminal justice institutions.

12. This number increased to nearly 70 percent for African American respondents randomly assigned to a defense claim that the arresting officer had been motivated by racial bias.

13. This interpretation is consistent with the discussion of domination and legitimacy in Weber (1978, 213).

14. Loury (2002, 30–31) describes a similar self-confirming equilibrium between young African American men and taxi-cab drivers.

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