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SOCIAL CONSTRUCTION AND POLITICAL DECISION MAKING IN THE AMERICAN PRISON SYSTEM(S)

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DISSERTATION
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A dissertation submitted in partial fulfillment of the
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By

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2013

ABSTRACT OF DISSERTATION

SOCIAL CONSTRUCTION AND POLITICAL DECISION MAKING IN THE
AMERICAN PRISON SYSTEM(S)

With over two million inmates, the United States' prison population is the largest in the world. Nearly one in one hundred Americans are behind bars, either in prisons or pre-trial detention facilities. The rapid growth in incarceration is well-documented. However, social science explanations often stop at the prison gates, with little work on treatment inside prisons. This black box approach ignores important bureaucratic decisions, including the provision of rehabilitative services and the application of punishment.

This dissertation offers a systematic analysis of treatment decisions inside the American prisons. I use a mixed methods approach, combining multiple quantitative datasets with environmental observation at four prisons, and original interviews of twenty-three correctional staff members. I offer the only large-n comparative analysis of American state prisons. Characteristics of the inmates as well as characteristics of staff are explored. I am able to analyze data at the state, facility and individual level. All of this is to answer a crucial and somewhat overlooked question; how do prison staff decide who should be punished and who should receive rehabilitative treatment?

I find that theories of social construction offer insight into the treatment of American prison inmates. Specifically, I find that socially constructed racial categories offer explanatory value for inmate treatment. Black and Hispanic inmates are less likely to receive important rehabilitative programs, including access to mental health and medical care. Black and Hispanic inmates are also more likely to receive punishment including the use of solitary confinement in administrative segregation units. I find, consistent with theories of representative bureaucracy that staffing characteristics also impact treatment decisions, with black and Hispanic staff members expressing lower preferences for punishment and prisons with higher percentages of black staff members utilize administrative segregation less.

I provide a historical overview of the changing social constructions of crime and prisons inside the United States, from colonial to present day America. I argue that the treatment of prisoners changes as our conception of crime changes. I discuss recent

bipartisan attempts at prison reform and offer my own suggestions for reform of the American prison system.

SOCIAL CONSTRUCTION AND POLITICAL DECISION MAKING IN THE
AMERICAN PRISON SYSTEM(S)

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April 13th, 2013

Dedicated to John and Martha

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Social Construction and Political Decision Making in the American Prison System(s)

With over two million inmates, the United States' prison population is the largest in the world (Walmsley 2007). Nearly one in one hundred Americans are behind bars, either in prisons or pre-trial detention facilities (Pew Center for the States). The rapid growth in incarceration is well-documented (Alexander 2010; Western 2005; Yates and Fording 2005). However, social science explanations often stop at the prison gates, with little work on treatment inside prisons. This black box approach ignores important bureaucratic decisions. This lack of inquiry is surprising, given the size of the American prison system. State spending on corrections in 2011 is estimated at fifty-one billion dollars, representing about three percent of total expenditures (National Association of State Budget Officers, 2011). Over 750,000 people are employed in state correctional departments (U.S. Department of Justice, 2006), working at 1,721 different prisons (Stephan, 2008).

One key feature of the American incarceral state is the disproportionate incarceration of racial minorities. In 2007, the incarceration rate for whites was 412 per 100,000 residents, compared to 2,290 for blacks and 742 for Hispanics. 2.3 percent of all blacks were incarcerated in 2007, compared to less than one percent for the white and Hispanic populations (Mauer and King 2007). Differences in incarceration rates cannot be explained by differences in criminal activity (Alexander 2010; Yates and Fording 2005; Western 2006). For instance, all racial groups have similar rates of drug use and drug dealing (Alexander 2010). However, the social construction of criminals varies by

race. Black, and especially black male, criminals are considered more threatening and more deserving of punishment than white criminals.

Empirically, one of the largest drivers of state incarceration rates is the size of the state's minority population (e.g. Beckett and Western 2001; Greenberg and West 2001; Jacobs and Helms 1996; Smith 2004; Sorensen 2002). Blacks are more likely to report unfair treatment by the police (Peffley and Hurwitz 2010) and police are more likely to punish black suspects (Close and Mason 2006, 2007; Ridgeway 2006). Blacks are more likely than whites to come into contact with police or other law enforcement officers (Alexander 2010). There is substantial evidence of racial discrimination in traffic stops, the most common interaction between police and the public (see Bradbury and Kellough 2011; Close and Mason 2006, 2007; and Theobald and Haider-Markel 2009).

How are treatment decisions made inside prison? If a police officer uses a subject's race as a heuristic for whether to conduct a traffic search, is it possible that a prison case worker will use an inmate's race as a heuristic for program participation? If a police officer is more likely to punish a black suspect, is it possible that a detention officer is more likely to punish a black suspect? Or is race irrelevant? Perhaps treatment decisions are fundamentally reflections of the inmate's crime or capability of being rehabilitated.

This dissertation offers a systematic analysis of treatment decisions inside the American prisons. I use a mixed methods approach, combining multiple quantitative datasets with environmental observation at four prisons, and original interviews of twenty-three correctional staff members. Characteristics of the inmates as well as

characteristics of staff are explored. I am able to analyze data at the state, facility and individual level. All of this is to answer a crucial and somewhat overlooked question; how do prison staff decide who should be punished and who should receive rehabilitative treatment?

Chapter one provides an overview of theoretical perspectives on the increase in incarceration in the United States. I argue that those theories, and specifically demographic explanations will help explain treatment decisions inside prisons. Chapter two discusses social construction as it relates to the criminal justice and the prison system in the United States. The chapter also provides an opportunity to describe the current American prison context. Chapter three considers the political actors responsible for making treatment decisions at the state and facility level. I portray prison staff as members of a bureaucracy, and connect insights from the street level bureaucracy literature. Chapter four provides the first two empirical tests. First, I analyze state level determinants of state correctional expenditures, and then I offer a detailed analysis of all 1,272 American state prisons. Chapter five contains another analysis, of 14,500 individual prison inmates. Chapter six gives ideas on what can be done to change treatment decisions in prison, offering a detailed explanation of representative bureaucracy effects. Chapter seven offers concluding remarks and suggestions for reform.

This dissertation provides an important contribution to our understanding of public policy implementation. It helps highlight some of the decision making processes of street level bureaucrats. Significant variation exists between and within states on the level of rehabilitative services and the use of punishment. This dissertation provides a systematic, quantitative analysis of those public policy outputs. This dissertation helps

expand our knowledge of bureaucratic decision making, and how such decision making is applied to an unsympathetic clientele. Social scientists have engaged in extensive research on the decision to incarcerate (e.g. Jacobs and Helms 1996; Smith 2004; Yates and Fording 2005), and on post-incarceral outcomes (e.g. Alexander 2010; Western 2006). However, little work has focused on decisions inside prisons. This dissertation endeavors to get inside those walls.

Chapter One- Crime, Social Construction, Race and Public Policy

One of the key features of the American criminal justice system is the prison

boom, which began in the 1970s and continued through 2010. Between 1972 and 1988,

the imprisonment rate in the United States doubled; from 1988 and 2007, the

imprisonment rate doubled again (Zimring 2010). In 2010, the total U.S. prison

population declined for the first time in 36 years, followed by another decline in 2011.

Figure 1.1 plots the growth in the total (state and Federal) prison population in the United

States from 1977 to 2011. The horizontal axis gives the year while the vertical axis

provides the total prison population. All figures provided by the Bureau of Justice

Statistics.

-Figure 1.1- Total U.S. Prison Population (1977-2011)

Total U.S. Prison Population
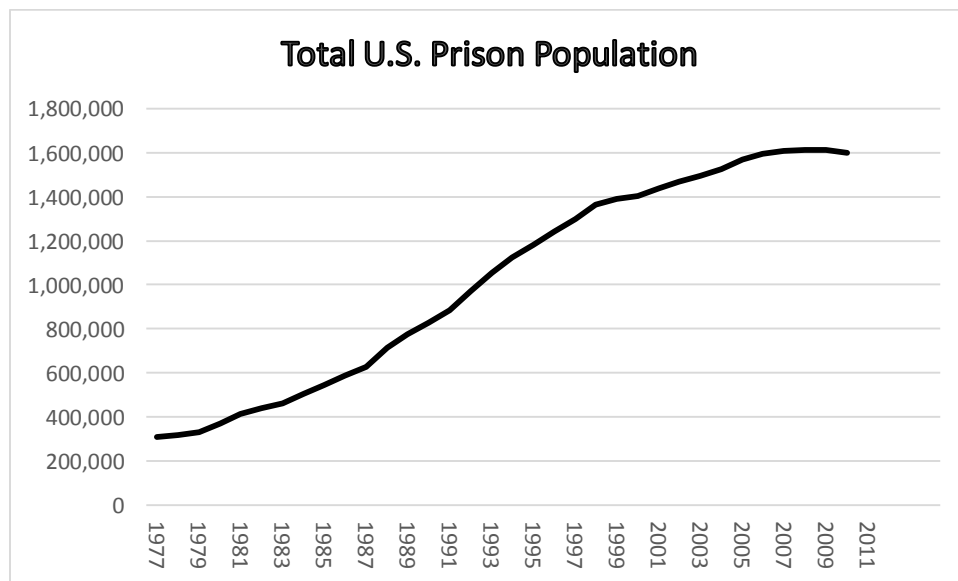
While the trend is clear, the reasons for the rapid increase in the American prison population are more complicated. Four types of theories are generally given, focusing on crime, socio-economic, demographics and political explanations (Pfaff 2008). I will discuss the first three broad theoretical perspectives, focusing especially on demographic explanations. The fourth category, political explanations will be discussed in detail throughout this dissertation.

Increased Crime and Increased Incarceration

The first theoretical perspective, that rising crime drives incarceration rates makes intuitive sense. After all, inmates have all been arrested and prosecuted before being placed in a prison facility. However, the relationship is more complicated. In many cases, crime has declined during the prison boom period. For example, the National Longitudinal Surveys of Youth asks respondents about their criminal activity. Self-reported rates of drug, property and violent crime were all higher in 1980 than 2000. Likewise, respondents to the National Crime Victimization Survey reported lower rates of crime victimization in 2000 than 1980 (Western 2006).

The Federal Bureau of Investigation tracks reported violent and property crime in the Uniform Crime Index. Although the Index omits important measures of criminal activity, such as drug crimes and domestic violence, the Index allows us to see violent and property crime trends from 1960 to 2010. Incarceration rates are available for the same time period. The next two figures, also common in this research, show the yearly crime rate and incarceration rate together. Figure 1.2 compares the national Index crime and incarceration rates per 100,000 citizens. Figure 1.3 compares the national violent crime and incarceration rates per 100,000. The black dotted line represents the crime

rates while the solid black line represents the incarceration rate. The scale for

incarceration is on the left and the scale for the crime rates is on the right.

-Figure 1.2 Incarceration and Index Crime Rates-
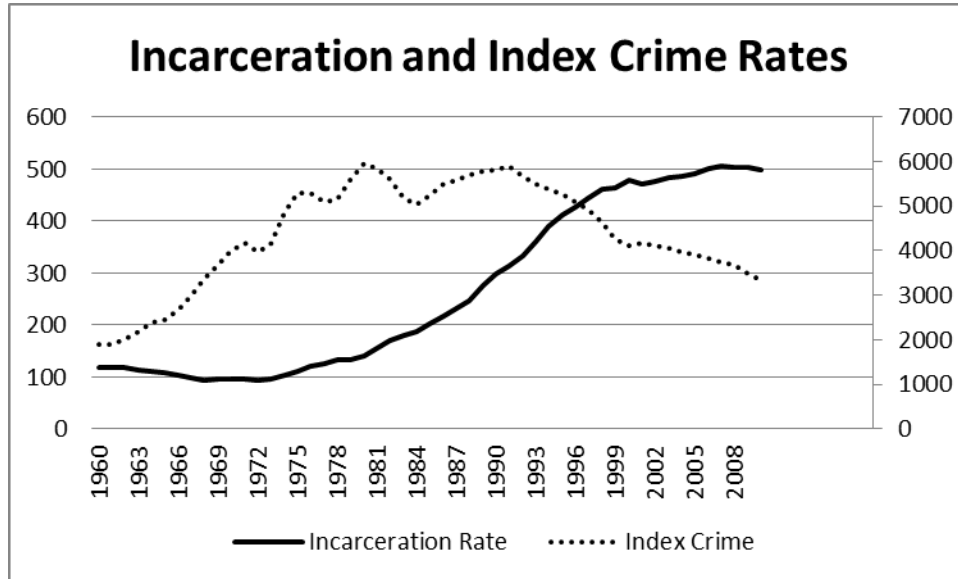
-Figure 1.3- Incarceration and Violent Crime Rates
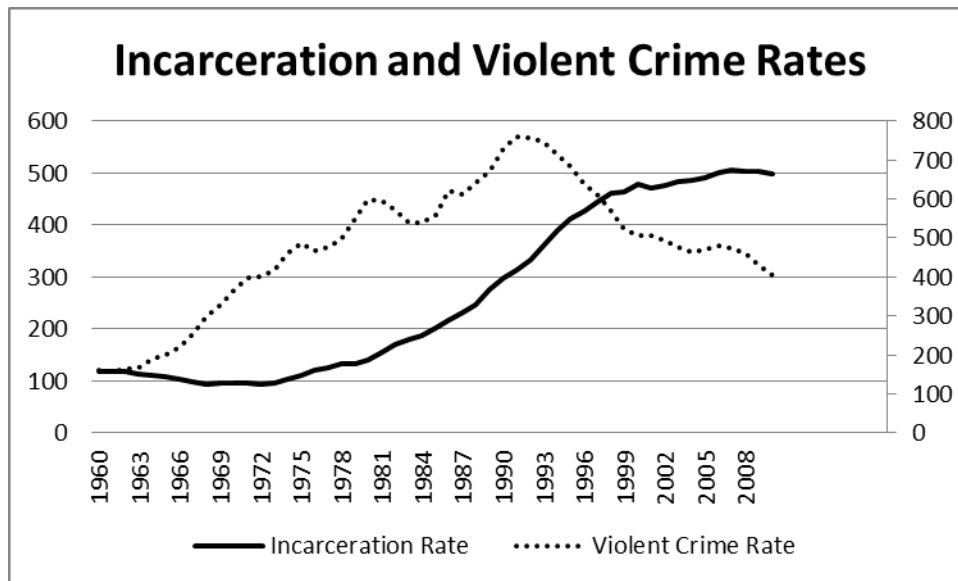
As can be seen in both figures, crime rates have fluctuated more than incarceration rates. The index crime rate is weakly positively correlated with the incarceration rate, at .11. The violent crime rate has a stronger relationship, but is still only moderately positively correlated with the incarceration rate, at .43. Crime rates alone do not completely explain the rise in incarceration. Two caveats should be mentioned. First, the increase in incarceration is partially explained by increased enforcement. Second, there are some methodological concerns with using crime rates to predict incarceration.

The prison boom is partly a result of increased arrests, increased prison admissions and an increase in prison sentence length. In 1980, 13 percent of violent crimes ended in a prison admission, compared to 28 percent in 2001. Likewise, prison admissions between 1980 and 2001 increased for property (6 percent to 11 percent) and drug crimes (2 percent to 12 percent). At the same time, the average prison sentence length increased. Between 1980 and 2001, the average time served for violent crime increased from 33 to 53 months, from 39 to 81 months for property crime and from 8 to 86 months for drug crimes (all figures, Western 2006). Similarly, Blumstein and Beck (1999) find that, for non-drug crimes, the increase in incarceration was caused by increased prison admissions per arrest and increased time served. For drug crime, Blumstein and Beck (1999) point to an increase in arrests, not an increase in drug use. In fact, the drug war increased at a time of decreasing drug use (Alexander 2010).

There are also methodological concerns with using yearly crime rates to predict incarceration rates. In 2001, the average time served for drug crime was 86 months, a little over seven years. If someone were sentenced to 86 months in 2001, that inmate

would still be in prison in 2008. A researcher may see an apparent disconnect between the 2008 incarceration rate and the 2008 crime rate, but many of those inmates were incarcerated pre-2008. Another factor is the impact of incarceration on crime rates. Steven Levitt (1996) estimated that incarcerating one inmate led to a reduction of 15 index crimes per year. Incarcerating career criminals may significantly reduce the crime rate. The crime rate in 2008 may be lower than expected because some career criminals were off the streets and therefore incapacitated.

Increased incarceration and/or increased arrests may also have an important deterrent effect. For example, part of the decline in property crime from 1980 to 1996 is attributable to a higher probability of arrest (Imrohoroglu, Merlo and Rupert 2004). Finally, Yair Listokin (2003) examined the mechanistic relationship (an increase in crime leads to an increase in prisoners) using prison admissions rather than the incarceration rate. Listokin helped control for the simultaneous connection between prison admissions and crime by including state abortion rates as an instrumental variable. Listokin found that even if there was no change in the propensity to incarcerate between 1970 and 1997, the increase in crime would have led to an 80 percent increase in the incarceration rate. Although that increase does not explain the entire prison boom increase (the incarceration rate grew nearly 500 percent, not only 80 percent), an increase in crime did have an impact.

Socioeconomic Status and Incarceration

A socio-economic explanation for incarceration also has intuitive power. The poor or less educated may turn to crime as an alternative to legal employment. High crime communities are often poor, urban, overcrowded and transient. Social disorganization theory suggests that these factors weaken the local residents' ability to

control crime. In addition, poor urban communities may develop subcultures that hold values conducive to crime. A relative lack of economic opportunity can create strain and stress on community members. Poor communities are also likely to attract stressed and strained individuals, who cannot afford to live elsewhere (Agnew 1999).

Stress may lead individuals to feel more negative emotions such as anger and frustration. An economically frustrated person may be more likely to commit a property crime. Since the community has more stressed individuals, one stressed person is more likely to come into contact with another stressed person. Tensions between stressed individuals may lead to more violent crime. Increased crime and victimization also increases stress and may prompt people to leave the community, especially those with economic resources. "The result is an amplifying loop. Deprived communities generate strain and crime, whereas crime contributes to a further deterioration in the community and more strain" (Agnew 1999).

Economic opportunity, or a lack thereof, may influence criminal behavior. The idea has popular resonance, as a stronger economy in the 1990s was one common media explanation for the reduction in crime during the same decade (Levitt 2004). Lower unemployment is estimated to have caused a reduction in the property crime rate in the United States in the 1990s (Imrohoroglu, Merlo and Rupert 2004; Raphael and Winter-Ember 2001). However, lower unemployment may have played a modest role in the 1990s crime reduction. Steven Levitt (2004) estimates that lower employment explains approximately 2 percent of a 30 percent decline in crime. Moreover, in a meta-analysis of twenty major studies, John Pfaff (2008) finds that the connection between economic variables and state incarceration rates is inconsistent, and that coefficients vary widely

between and within articles. The link between economic variables and incarceration is still somewhat open.

Variation in education may also explain incarceration rates. Criminal activity may be more costly for the better educated. Schooling increases individual wage rates and punishment may be more costly for high wage earners, in terms of time spent outside the labor market. The stigma of a criminal conviction is also costlier for white collar than blue collar workers. Education may help increase patience and risk aversion, thereby increasing the costs of criminal activity for the better educated. Finally, education keeps youth off the streets and limits the opportunities to commit crime (Lochner and Moretti 2004).

There is support for a link between educational attainment and incarceration. Individuals with higher education, test scores, grade point averages and/or positive attitudes towards school are less likely to engage in crime and delinquency (Arum and Beattie 1999). Lochner and Moretti (2004) find that education significantly reduces the probability of arrest and incarceration and that the results are caused by changes in criminal behavior, not differences in the probability of arrest. A one year increase in schooling results in a .1 percentage point reduction in the probability of incarceration for whites and a .37 percentage point reduction for blacks. Differences in educational attainment can explain as much as 23 percent of the black-white gap in incarceration (Lochner and Moretti 2004). A high percentage of high school graduates are incarcerated. For men between the ages of 20 and 40, 2.6 percent of whites are in prison or jail, 4.6 percent of Hispanics and 11.5 percent of blacks. For male high school dropouts between

the ages of 20 and 40, 6.7 percent of whites are in prison or jail, 6.0 percent of Hispanics and 32.4 percent of blacks (Western 2006).

Economic and educational attainment help explain some of the variation in incarceration. Some of the variables are related; individuals with higher levels of education tend to have higher wages. In the United States, economic and educational attainment are also tied in part to race. Blacks and Hispanics are more likely to live in poor communities and to have lower levels of education. Chapter 5 of this dissertation will attempt to untangle some of these relationships, as I analyze a survey of individual inmates. Before that, I will turn to the main explanatory variables and the third broad theoretical explanation mentioned by Pfaff (2008), demographics.

Demographics

The prison boom in the United States has disproportionately affected young black and Hispanic men, especially poor and less educated black men. While 1.6 percent of white men aged 20 to 40 are in jail or prison, 4.6 percent of Hispanic and 11.5 percent of black men aged 20 to 40 are in jail or prison (Western 2006). However, that analysis may be spurious. Less educated and poorer individuals are more likely to commit crimes, and minority communities are less educated and poorer. A racial explanation may really be a class or educational explanation. It is important to consider whether racial groups commit crimes at different rates, perhaps due to different class or educational levels.

Blumstein and Beck (1999) argue that "Drug offending is the major component of the overall growth" in incarceration. Between 1980 and 1996, 45 percent of the growth in the total incarceration rate is attributable to drug crimes. Unfortunately, there are no

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crime statistics on drug use, so it is impossible to systematically compare offenses to arrests and incarceration. However, there are social surveys comparing reported drug use. The Substance Abuse and Mental Health Services Administration surveyed 67,500 individuals and asked about illegal drug use. Overall, racial groups reported similar levels of drug use. Among youths 12 to 17, 11.1 percent of whites, 10.2 percent of Hispanics, 9.3 percent of blacks and 6 percent of Asians reported using illegal drugs. For all respondents, 8.1 percent of whites, 7.2 percent of Hispanics, 8.7 percent of blacks and 3.1 percent of Asians reported using illegal drugs (SAMHSA 2005). There are some suggestions that white students use harder drugs (cocaine and heroin) at higher rates than other racial groups (Alexander 2010). White students report higher levels of drug use than black students. Whites also have two to three times as many drug-related emergency room visits than blacks (Western 2006).

Black Americans do have higher rates of violent crime and violent crime victimization. However, that may be due to higher levels of social disorganization in primarily black communities. Peterson and Krivo (2005) performed a meta-analysis of articles on race and violent crime. For example, one reviewed article analyzed neighborhoods in Columbus, Ohio, and found zero significant differences in criminal violence between neighborhoods of varying racial composition when the neighborhoods were similarly disadvantaged. Another reviewed article found that disadvantaged neighborhoods exhibit more tolerance for crime and deviance, but no evidence of a unique black subculture of violence. One consistent finding in the meta-analysis was that structural disadvantage contributes significantly to violence for both blacks and whites, and that the findings were resilient to the exact operationalization of social

disorganization; i.e. poverty, income, family disruption and unemployment (Peterson and Krivo 2005).

While it is important to consider the determinants that lead to incarceration, I am primarily interested in treatment inside prison. It is important to consider whether black and Hispanic prisoners are likely to behave differently in prison than whites. If black inmates are systematically different than white inmates, it may bias my conclusions. The Bureau of Justice Statistics provides descriptive statistics on race and offense for state prison inmates. Figure 1.4 reports the percentage distribution by race and offense.

-Figure 1.4- Percentage Distribution of U.S. State Prison Population by Race and Offense, 2000
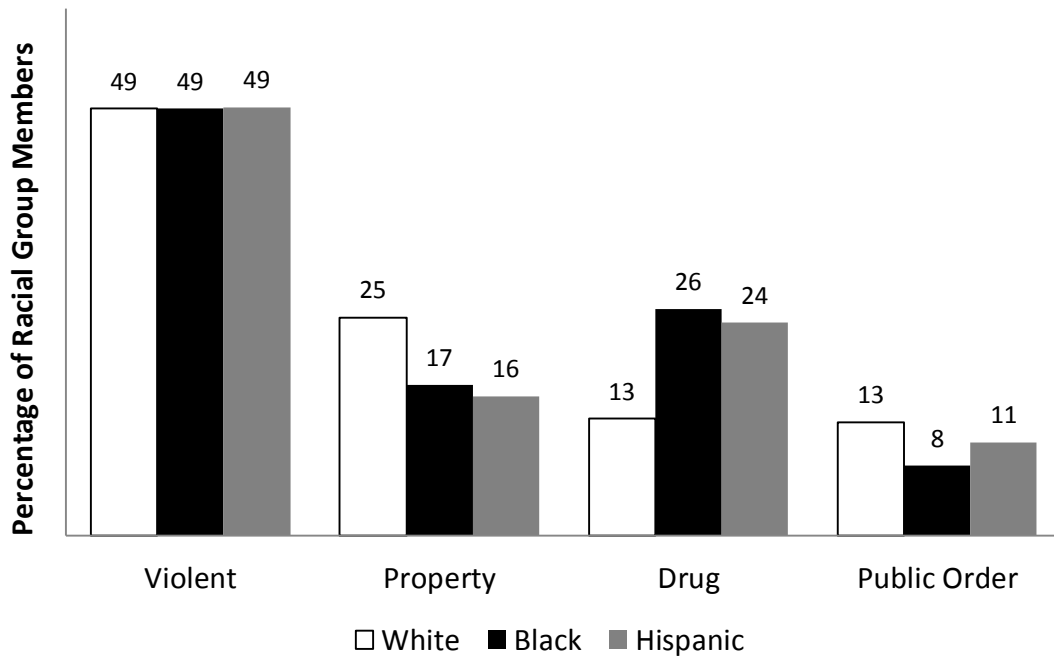
If black and Latino prisoners were truly more likely to behave differently in prison, this might be reflected in the types of offenses they committed which resulted in their incarceration. Figure 1.4 suggests little support for such differences. Remarkably, the percentage of violent offenders in state prisons was exactly the same for blacks, Latinos and whites at 49%. To the extent that there are differences across the races in prisoner backgrounds, black and Latino prisoners were significantly more likely to be convicted for drug offenses, while whites were more likely to be sent to prison for property and public order offenses. In later chapters, I will attempt to control for security classification at the facility level and for criminal history at the individual level, but Figure 1.4 suggests that inmate race may not be the best predictor for inmate violence.

If racial categories are not the best predictors of criminal activity, why would a public policy actor use racial categories? It may be that stereotypes about racial categories are salient, even if those stereotypes are wrong. I argue that understanding the social construction of racial categories helps explain treatment decisions inside prisons.

<center>Social Construction and Public Policy</center>

I argue that bureaucratic reactions and the allocation of punishment and treatment within prisons are partly based on socially constructed stereotypes of black and Hispanic inmates. Certainly, this is not the only possible explanation of bureaucratic decision making inside prisons. Punishment decisions in prison, for example, may be viewed as a necessary deterrent to future inmate misconduct. Punishment may also be necessary to ensure staff safety. The deterrence of crime is an old idea, stretching back to at least Cesare Beccaria (Maestro 1942) and it has many modern proponents as well (Logan and Gaes 1993; Wilson 1985).

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I certainly do not deny the rational basis for many decisions to treat and punish inmates. In fact, in Chapter Three, I offer several suggestions on how a rational choice perspective might be used in the study of correctional policy. More generally, the decision to treat and punish inmates, and criminal justice policy overall, are influenced by a variety of factors, of which the perceived group stereotypes of inmates are only one among many. Nevertheless, if we know that group membership influences decisions about punishment and treatment in a systematic way, and that the influence remains important after taking into account all manner of other explanatory forces (e.g., criminal history), it is imperative that social scientists investigate them to document the role that race and ethnicity play in determining punishment in the U.S.

Admittedly, other characteristics of institutions and inmates also play an important role in shaping punishment decisions, aside from the race and ethnicity of inmates and personnel. In terms of institutional characteristics, for example, it is likely that inmates in a maximum security prison will have a vastly different experience than inmates in a minimum security prison. The variation in treatment between an inmate at Kentucky State Penitentiary, the maximum security institute, and an inmate at Bell County Forestry Camp, a minimum security prison, is likely to be greater than the variation in treatment between white and black inmates within any one facility. In addition, even within a facility there are other characteristics of inmates, aside from race, that may influence punishment decisions, such as the inmate's behavior or criminal history. Thus, the race and ethnicity of the inmate is certainly not the only determinant of variation in punishment, nor is it expected to be the most important one in every instance.

Nevertheless, there are important reasons for focusing on the social construction of race as an important explanation of punishment decisions within prisons. Historically in the United States, different models of punishment and incarceration have followed racial patterns, as will be seen in the next chapter. Second, black and Hispanic citizens in the United States have faced racial discrimination in other areas of criminal justice policy, including encounters with the police, sentencing and ultimately incarceration. Third, as will be discussed below a large literature demonstrates that policy decisions in a number of other arenas, such as education, welfare and other government services are strongly influenced by the race of the target population. It would be quite surprising if these patterns of discrimination did not carry over into correctional policy. Prisons in the United States are often overcrowded and have high inmate-to-staff ratios. Since it is impossible to be fully informed about each individual inmate, prison staff faced with overwhelming caseloads are doubtless dependent on various heuristics such as racial stereotypes to simplify the myriad treatment decisions in modern, overcrowded prisons,. For all these reasons, historical, normative and empirical, although the race and ethnicity of inmates is certainly not the only explanation of punishment decisions, the race of inmates and prison personnel has special value for the study of American prisons.

Social construction refers to the "cultural characterizations or popular images of the persons or groups whose behavior and well-being is affected by public policy. The characterizations are normative and evaluative, portraying groups in positive or negative terms through symbolic language, metaphors and stories" (Schneider and Ingram 1993). Social constructionism challenges the view that knowledge is based on an objective, unbiased observation of the world (Burr 2003). Stereotypically, blacks and Hispanics are

portrayed as drug dealers and drug users, while actual drug use rates are similar across racial groups.

The categories that we place people into do not necessarily reflect real divisions (Burr, 2003, 3). For example, we may classify people into racial categories, as governments often do. We may classify people's race based on their ancestry, as in the United States, or based on their skin color, as in Brazil. Our current President, Barack Obama, would fall into different categories based on a given classification system. Racial categories vary over time (James, 2001). Race is not a biological, genetic construction, and indeed it is difficult to determine the race of an individual by examining their genes. Most scientists agree that the percentage of your genes that is reflected in your external appearance, the basis by which we talk about race, is in the range of .01 percent (Smedley and Smedley 2005). We may view race as a classification of real, physical differences, but in reality race is socially constructed to a large degree.

Social constructionism also argues that knowledge is historically and culturally specific. Social knowledge is therefore time- and culture-bound (Burr, 2003, 5). An individual who believes they can hear the voice of God may become a respected prophet in one culture, but be viewed as mentally ill in another culture. An atheist in 2012 is likely to be viewed more positively than an atheist in 1812. Sex with multiple partners may be considered a sign of liberation or a sign of moral bankruptcy. Drug use could be considered recreational, religious or as a dangerous behavior. Sometimes opium is a pain killer, sometimes opium is an illegal narcotic. The actions or substances do not change. Opium, chemically, remains opium. Instead, it is society's view of a behavior that varies.

Knowledge is a social process. What we know is derived through "the daily interactions between people in the course of social life that our versions of knowledge become fabricated" (Burr, 2003, 4). The knowledge that we socially construct determines how we address an issue. If drug use is a sign of deviance, then punishment becomes necessary. If drug use is a sign of addiction, then treatment and education become necessary. If drug use is part of a religious journey, then encouragement of the religious quest becomes necessary. We can begin to see how our views of drug users depend on the social construction of drug use. If drug use is deviant, then drug users are bad people. If drug use is a sign of addiction, then drug users are more sympathetic and should be helped. If drug use is part of a religious journey, then the drug users are people to be admired. Our definitions may change, but the chemical compounds ingested do not.

When societies form social constructions of different groups, political actors in those societies respond accordingly. Anne Schneider and Helen Ingram (1993) argue that social constructions influence the policy process. Public policies often target a specific group, and the social construction of that targeted population helps determine the policy options for that group. Schneider and Ingram write that "There are strong pressures for public officials to provide beneficial policy to powerful, positively constructed target populations and to devise punitive, punishment-oriented policy for negatively-constructed groups". These policy decisions then help influence which groups' society views as deserving and which groups society views as undeserving.

It is important to remember that the groups themselves are socially constructed. Societies form groups based on age, gender, occupation, ethnicity, religion, race, citizenship, region, hobbies or other features. Politicians can then identify with one group

over another, in an effort to gain an electoral advantage. One politician may identify with organized labor while another identifies with business interests. Or one politician may identify with Catholics while a rival identifies with Protestants. Once a politician is identified with one or more groups, it becomes easier to extract political support from those groups.

Groups can be measured on two dimensions; a positive/negative social construction and a weak/strong power dimension. Schneider and Ingram (1993) thus identify four groups. The advantaged, such as the elderly and veterans, are both powerful and have a positive social construction. The contenders, including the rich and unions, are powerful but have a negative social construction. The dependents, such as children and the disabled are weak but have a positive social construction. Finally, the deviants, such as criminals and drug addicts, are weak and have a negative social construction.

Power can be in the form of financial strength or the ability to marshal political resources. The rich, as individuals or businesses, have the financial capacity to fund many different politicians and political organizations. The elderly, especially as organized by the American Association of Retired Persons, have great power as a reliable voting bloc. If a politician runs afoul of the AARP, that politician can expect to be opposed by AARP members. Some groups have symbolic power. Veterans have strong symbolic power as former fighters in the country's wars. Children can also have strong symbolic power, even if they lack other resources. Pro-gun control advocates have used the symbolic power of child victims of gun violence against the more traditional organizational and financial power of the National Rifle Association.

A group's power and social construction can change over time. One can think of the power gains when a group is granted suffrage rights. Organizations can also experience shifts in the organization's reputation. The reputation of the United States' military has changed based on the perceived respectability of its wars. The military had a more positive social construction during the Second World War and the Korean War. During Vietnam, concerns over civilian casualties led some protestors to label soldiers "baby killers", a sign of a more negative social construction. By the time of the Gulf War and the post 9/11 War on Terror, the military once again had a more positive social construction and soldiers were commonly referred to as "heroes".

Knowing a group's power and social construction helps predict that group's treatment by policy makers. The two groups that stand out most, and illustrate the idea of social construction the best are the advantaged and deviant groups. The advantaged groups are likely to receive more benefits than they should receive and fewer sanctions than they should receive based on more objective criteria. We expect veterans and the elderly to be given extra benefits and to be shown more respect than other groups. The common desire to help an old lady across the street or to buy a veteran a beer is not a desire Americans often express toward criminals, ex-convicts or drug addicts. The deviant group is likely to have fewer benefits than they should receive and more sanctions than they would be expected to receive based on need. Political actors will attempt to gain public favor by punishing deviant groups (e.g. incarcerating drug addicts) while providing them with fewer necessary benefits (e.g. drug addiction treatment). The language we use to describe the different groups is illustrative. A veteran is usually considered brave or a hero. A drug addict is almost always considered a junkie.

While 'veterans' or 'drug addicts' or 'professors' are commonly understood groupings, our response to individuals within groups is more nuanced. Not every veteran, drug user or professor has the same attributes. We can take drunk driving as an example. Drunk driving is an action with a negative connotation. I have never met anyone who was 'pro-drunk driving'. Yet the animus we feel towards the guy on the 6 o'clock news, with mug shot prominently displayed, is not extended to every drunk driver. One can think of the DUI arrests of famous actresses like Lindsay Lohan and Amanda Bynes. In my own informal conversations regarding those two actresses' arrests, the humor of the situation was expressed more frequently than outrage. Former President George W. Bush's 1976 DUI arrest is another example. Referencing the event, the former president told CNN, "I'm not proud of that. I made some mistakes. I occasionally drank too much, and I did that night. I learned my lesson." (Crowley 2000). The 1976 episode did not define former President Bush in the same way that it defines ordinary Americans who are convicted of driving under the influence of alcohol.

Not every crime and not every criminal is considered the same. For some people, an arrest is the result of a one-time mistake in judgment. For others, an arrest is the reflection of a long career in crime. We do not view the career criminal and the one-time offender as the same. There is a common idiom that the punishment should fit the crime. However, I would argue that in many cases we do not make the punishment fit the crime; we make the punishment fit our stereotypic views of the criminal. There are some people who we went to help, and some people whom we want to harm. We don't want to help all 'criminals' any more than we want to help all 'professors'. Some members of a group are

more sympathetic than others. We are more likely to make positive exceptions for powerful than for weak groups.

The provision of government services involves important decisions. With limited resources, not all clients can be treated equally. Who gets funding, broadly speaking, and who is left out? Who is helped and who is punished? Resources are distributed in part based on perceptions of client worth. Clients who are deemed responsible for their own plight, such as those on general assistance welfare, are viewed more negatively than clients who are not responsible for their own condition, such as those who suffer from a disability (Barrilleuax and Bernick, 2003). Extra efforts are made to help worthy clients while extra efforts are made to punish unworthy clients (Maynard-Moody and Musheno, p. 144-151). Clients who are viewed as unmotivated or lazy, or who are viewed as constant troublemakers are also deemed unworthy (Maynard-Moody and Musheno, p. 99-104).

Prison staff also serve as policy makers in a sense because they make discretionary decisions about which inmates will receive punishment or treatment. In the course of this research, the social construction of inmates by prison staff became apparent in my interviews with twenty-three total staff members at two different prison facilities. I was lucky enough to have a wide variety of volunteers: correctional officers, treatment staff, supervisors and senior level wardens. Twenty-one of the twenty-three agreed that some inmates are more difficult to deal with than others. The vast majority of staff members were able to organize inmates into categories, with judgments about those groups' worth. An inmate's place in one or more groups helped to form an impression of that inmate's worth. This is especially helpful in an environment with a large inmate-to-

staff ratio. A caseworker may have a workload of 100 inmates; a correctional officer may supervise more than a hundred and a unit administrator (mid-level supervisor) may be in charge of a 130 inmate unit. With a large number of clients, forming categories and groupings may be necessary.

What are these categories? After asking whether some inmates are more difficult to deal with than others, I followed up by asking whether certain groups of inmates were more difficult. It was an open ended question, and a lot of thought seemed to go into each answer. Four of the respondents said that there were no patterns or significant differences. Seven of the staff members said that the mentally ill were more difficult to deal with, for reasons that may become clearer in the next chapter. Three staff members suggested that younger inmates were more difficult to deal with. Particularly relevant to this dissertation, five staff members replied with a racial response or at least a response that suggested some racial tension. The more difficult inmates were described as "wannabe gangbangers", "urban", and inmates with a "drug and thug" culture. More explicitly, one white female officer replied that "black inmates" were harder to deal with and one white male officer replied that "colored inmates" were harder to deal with. At no point did I ask if black (or Hispanic or white) inmates were harder to deal with than others. When one skeptical treatment staff member asked if I meant "racial categories", I replied that they were his categories, and his definition.

My interviews suggested some level of racial classification among prison staff members. In the next chapter, I take up the broader literature on the impact of race on criminal justice policy which also suggests that race influences a variety of racial disparities in outcomes in punishment and treatment. Before turning to that broader

literature, however, I conclude this chapter with a description of the theory that forms the basis for much of this research, the Racial Classification Model, developed by Joe Soss, Richard Fording and Sanford Schram.

Race and Criminal Justice Policy

Before the massive gains in Civil Rights during the 1950s and 1960s, the non-white segment of the American population was disenfranchised via formal segregation under various "Jim Crow" laws. Unsurprisingly, a time of great change was also a time of intense social unrest. The social disorders of the 1960s provided a difficult challenge for criminal justice staff and for previously dominant social groups. Images of riots, burning cities and militant nationalist groups such as the Black Panthers and the Nation of Islam increased racial threat (Feldstein 2005; Harper 1971; Harris 2000). With leaders like Malcolm X publicly denouncing the American government and advocating for a violent resistance, black violence was an increasing fear for white America. Criminal justice punitiveness increased in response. The social disorder of the 1960s led to not just a fear of crime, but specifically to a fear of black criminals.

The unrest of the 1960s led to a political response. In 1964, Republican Presidential candidate Barry Goldwater made crime control a political issue. Goldwater used fear of crime, especially white fears of blacks committing crime, in many of his campaign messages. In 1968, for the first time, crime rated as the top domestic issue in the country. 1968 was a time of great social disorder, with the assassinations of Martin Luther King Jr. and Robert F. Kennedy. King's assassination spawned riots in several American cities. A poll of Americans in 1968 found that 81 percent of respondents thought that law enforcement had "broken down" (Banks 2005, 95). Fear of crime and unrest had to be

addressed, and in the United States blacks offered a convenient target. Crime could be defined as a racial issue for political gain, and could also help roll back some of the gains of the Civil Rights movement.

Tough on crime policies helped conservative politicians drive a wedge between black and white voters. Lower class whites, who may have benefited from Democratic economic policies, could be driven to the Republican coalition based on crime and other social issues (Beckett 1997; Beckett and Sasson 2000; Jacobs and Carmichael 2001). Conservative politicians can also use crime to send racially coded signals to voters (Alexander 2011; Peffley and Hurwitz 2010; Western 2006). Just as the term "welfare queen" doesn't strictly stipulate the race of the recipient, politicians can say tough on crime, while voters hear, tough on blacks. Race becomes a useful heuristic, and policies towards blacks can be determined by general feelings towards blacks.

Increased perceptions of racial threat can in part explain the rapid increase in incarceration. In the United States, incarceration rates do not affect different racial groups equally. In 2007, the incarceration rate for whites was 412 per 100,000 residents, compared to 2,290 for blacks and 742 for Hispanics. 2.3 percent of all blacks were incarcerated in 2007, compared to less than one percent for the white and Hispanic populations (Mauer and King 2007). Differences in incarceration rates cannot be explained by differences in criminal activity (Alexander 2010; Yates and Fording 2005; Western 2006). For instance, all racial groups have similar rates of drug use and drug dealing (Alexander 2010). However, the social construction of criminals varies by race. Black, and especially black male, criminals are considered more threatening and more deserving of punishment than white criminals.

Empirically, one of the largest drivers of state incarceration rates is the size of the state's minority population (e.g. Beckett and Western 2001; Greenberg and West 2001; Jacobs and Helms 1996; Smith 2004; Sorensen 2002). Blacks are more likely to report unfair treatment by the police (Peffley and Hurwitz 2010) and police are more likely to punish black suspects (Close and Mason 2006, 2007; Ridgeway 2006). Blacks are more likely than whites to come into contact with police or other law enforcement officers (Alexander 2010). There is substantial evidence of racial discrimination in traffic stops, the most common interaction between police and the public (see Bradbury and Kellough 2011; Close and Mason 2006, 2007; and Theobald and Haider-Markel 2009).

The disparate treatment in interactions with the police is matched by disparate treatment in incarceration. Eleven percent of black men aged 25 to 29 are incarcerated and a third is under some type of correctional supervision (Weaver and Lerman 2010). Bruce Western estimates that the cumulative lifetime risk of incarceration for black males is twenty percent, while only three percent for white males. Black males are more likely to be incarcerated than to receive a bachelor's degree or serve in the military (Western 2006).

In part due to the statistical realities of disparate treatment, blacks are more likely to perceive unfairness in the criminal justice system and have lower levels of support for punitive measures (Engle 2005; Peffley and Hurwitz 2010). In a set of survey experiments when the race of a suspect varied, white respondents were more likely to view blacks as guilty of crimes, to envision that blacks would commit more crimes in the future and to suggest harsher punishments for blacks (Hurwitz and Peffley 1997; Peffley, Hurwitz, and Sniderman, 1997). Experimental studies with juvenile probation and police

officers found that black faces were associated with crime-relevant objects (Eberhardt et al 2004) and that a black prime led to preferences for harsher punishments (Graham and Lowery 2004).

If there are significant differences in incarceration, interactions with the police and views on crime, based on socially constructed racial categories, then it is likely that those categories will have explanatory value for treatment inside prison. This chapter ends with a discussion of the formal assumptions for this research, and the specific theoretical model that I incorporate into my dissertation.

The Racial Classification Model

The Racial Classification Model (RCM), introduced by Soss, Fording and Schram (2008; also see Scham et al. 2009 and Fording, Soss and Schram 2011) suggest that policy actors try to choose courses of action that they expect to be effective, in light of what they believe about the specific groups they aim to address. Perceived group characteristics can serve as proxies for more detailed information about a policy's intended target group. Group reputations can frame expectations of the consequences of treatment decisions on policy-target behaviors, and whether the decision is likely to be effective or ineffective. For example, if drug use is framed as a criminal activity, then drug users are viewed as bad people and drug treatment is likely to be viewed as ineffective. If drug use is framed as a public health issue, then drug users may be viewed as people with a disease, and drug treatment is likely to be viewed as more effective. Group stereotypes serve as an important cue when race is salient to a policy area, as in the case of criminal justice (Peffley and Hurwitz 2010, Nelson and Kinder 1996). As long

as race is salient, racial classifications can serve as a heuristic, even if the person in question is not generally hostile to any one race.

Racial classifications help policy actors in their decision making process. Formally, the Racial Classification Model is based on three premises;

1. To be effective in designing policies and applying policy tools to specific target groups, policy actors must rely on salient social classifications and group reputations; without such classifications, they would be unable to bring coherence to a complex social world or determine appropriate action.

2. When racial minorities are salient in a policy context, race will be more likely to provide a salient basis for social classification of targets and, hence, to signify target differences perceived as relevant to the accomplishment of policy goals.

3. The likelihood of racially patterned policy outcomes will be positively associated with the degree of policy-relevant contrast in policy actors' perceptions of racial groups. The degree of contrast, in turn, will be a function of (a) the prevailing cultural stereotypes of racial groups, (b) the extent to which policy actors hold relevant group stereotypes, and (c) the presence or absence of stereotype-consistent cues.

Research by Eberhardt et al (2004) illustrates how stereotypic-consistent cues may effect policy decisions. In one study, Eberthardt et al subliminally primed participants with black male faces, white male faces or no faces at all. Then participants were presented with objects on a computer screen that was severely degraded and became less degraded in small increments. Some of the objects were crime related (a gun or a knife) and some were unrelated to crime (a camera or a book). Participants were asked to write down what they thought the object was. Participants who were given a white face prime took longer to identify a crime related object while participants who were given a black face prime identified a crime related object much quicker.

In another study, Eberhardt et al (2004) presented police officers with black and white male faces and asked the question "Who looks criminal?" Participants were exposed to 40 black or 40 white male faces. One third of the police officers were asked to indicate how stereotypically black or white each face looked. Another third of the police officers were asked how attractive each face looked. Finally, a third of the police officers were asked whether they thought the face looked criminal. More black faces were viewed as criminal than white faces. Also, more black faces rated high on the stereotypical range were judged as criminal than black faces that rated low on the stereotypical range. Highly stereotypical black faces were more likely to be judged criminal than any other group.

Simply seeing a black face helped prime crime relevant stereotypes for study participants. It is unnecessary for people to be explicitly racist, to have some race based stereotypes. It is perhaps unsurprising that some prison staff members may have race based stereotypes. Black Americans are incarcerated at a higher rate than other racial groups, and simply seeing a lot of black inmates on a daily basis may be enough to link blacks to criminality. Some of the prison staff members did make racialized comments about inmates, saying that more difficult inmates were "wannabe gangbangers", "black inmates" "colored inmates" "urban", and inmates with a "drug and thug" culture. Once black inmates are stereotyped as being more criminal or harder to deal with than other inmates, it is possible that prison staff will seek harsher punishments for black inmates.

Racial classifications are not the only important stereotypes that policy actors and prison staff members use. Some of the staff members I interviewed said that younger inmates presented a challenge. Stereotypes about age are not always accurate, but it may be reasonable to expect the average 19 year old to be more

difficult than the average 49 year old. I was a handful at 19, and that was without the need to prove myself inside a prison. Staff also mentioned the mentally ill as more likely to be difficult, which is understandable. Knowing that a person has a mental illness is an important heuristic. There are surely differences between the various mental illnesses, but knowing there is an issue can serve as a red flag. Race is not the only stereotype that prison staffs use, whether implicitly or explicitly, but it is an important stereotype to consider. As will be seen in the next chapter, race has played an important role in the development in the American incarceral system.

Chapter Two- Social Construction and American Prisons, Past and Present

This chapter provides an overview of the historical development of the United States prison system(s). It is a journey with twists and turns, but one that helps illustrate social constructionism's argument that knowledge is time- and culture-bound (Burr, 2003, p. 5). American views on crime and criminals weave through history, sometimes being more punitive and sometimes being more rehabilitative. As will be seen in chapter six, the weaving and cycling can sometimes occur in a single state, within only a few years. I asked the Deputy Warden of Programs at one facility what he thought of the shifts between rehabilitation and punitiveness. He replied "I think it just goes in cycles". When I pressed him further and asked why he thought it went in cycles, he replied that when it came to political actors, "They want to lock everyone up, but that's expensive and they balk at the cost". It was an important insight that helps us to understand correctional policy, past, current and present.

The historical weaving begins in Colonial America and continues to the present. By the late 19th Century, all elements of current correctional policy were in place. The tradeoffs between punishment and rehabilitation, between scientific management and a moralistic need for vengeance, and the difficult aspects of inmate labor, were all in place by 1880. Understanding prisons in 1880 goes a long way to understanding prisons in 2012. Even some of the names remain the same. Current supermax and maximum security facilities are often called "penitentiaries" in honor of the early prisons that they closely resemble. There is evidence, as the Deputy Warden suggested that correctional policy really "just goes in cycles".

The final section of the chapter provides a detailed examination of the current American correctional system and its features. Although many are aware that the United States has the largest incarceration rate, fewer people are aware of the variety of environments that American prisoners experience. The basket of goods and services, if you will, varies tremendously. There is not a single American prison system, but rather fifty-one state and federal systems, 1,812 semi-autonomous prisons and the individual experiences of over two million inmates. The variety of incarceral environments is behind my insistence on adding an (s) to American prison system(s). In order to understand the current system, it is important to consider the historical growth of American incarceration, and to consider the different times and social values that influenced features of the American prison system(s).

Prisons in a Historical Context

In the United States, incarceration is a relatively new punishment, and prisons a relatively new invention. In Colonial America few punishments involved jail sentences, and the jails that did exist were no different architecturally than any other house in the community. Offenders were housed in rooms, rather than cells, and there was no attempt to separate offenders by gender, age or the severity of their crime. The warden and his wife were expected to live in the jail, and there were no uniforms to distinguish offenders from the rest of society. Colonial jails were "overcrowded, disorderly and unsanitary, and there were few or no security measures to prevent escapes" (Blomberg and Lucken, 2010, 22). Offenders were expected to pay for their own food and clothing, and the indigent sometimes starved in early American jails (Banks, 2005, 19).

In Colonial Boston, on average less than two percent of punishments involved a jail sentence. From 1710-1719, zero jail sentences were issued in Essex and Middlesex counties (Blomberg and Lucken, 2010, 23). This is not to suggest that punishment was rare, but that the equivalent of incarceration was rare. Colonial Americans were indeed punished, but public and physical punishments were the norm. Monetary fines were the most common punishment, but other options included floggings, banishment, shaming techniques and bondage or slavery. Methods of shaming included branding, the stocks, the pillory, mutilation and the public cage (Banks, 2005, 15). The community was expected to take part in the punishment, for example throwing rotten food on offenders placed in the stocks. The death penalty was the harshest punishment available in Colonial America, and large crowds gathered to watch the spectacle of a public execution.

Punishment between 1600 and 1790 reflected the special concerns and societal fears of the time period. Colonial communities were close-knit and rural, and conformity was expected at all times. The most important institutions were the family, the community and the church. Communities were generally distrustful of outsiders, and carefully policed their own. The reliance on self-monitoring is unsurprising, given the size of the communities. As late as 1760, only seven sites had more than 3,000 residents, and Philadelphia was the largest city, with approximately 23,000 people (Banks, 2005, p.14).

In an important precursor, colonies varied in crimes and punishment. Although punishment practices resembled those in England, geographic separation meant that the colonies only needed to "establish laws not contrary to those of England" (Blomberg and Lucken, 2010, p. 11). Colonies developed their ideas based on religion and geography. In

New England, there was a focus on moral offenses, while South Carolina ignored the same offenses. The punishment for offenses could vary as well. For example, in Massachusetts, twenty-five offenses were listed as punishable by death, while in Pennsylvania only murder was punishable by death (Blomberg and Lucken, 2010, p. 21).

Religion was extremely important, and criminals were viewed as sinners. A crime against the community was also a crime against God. Crime, like other sins, was viewed as a reflection of a depraved character. The sinner/criminal had to be punished because they were a bad person. The possible motives for committing the crime were unimportant. The list of sins/crimes was extensive, including "profanity, drunkenness, flirting, gossiping, blaspheming and practicing witchcraft" (Banks, 2005, p.14). The list of sinners/criminals who could be executed included "recidivists, murders, arsonists, horse thieves and incorrigible youth" (Blomberg and Lucken, 2010, p. 21). The punishments were designed to fit the community's view of the criminal. Since the criminal was viewed as a sinner, a depraved individual who offended not only the community but also offended God, the punishment tended to be public and physical.

The focus on public and physical punishment served a distinct political objective. Michel Foucault (1977) argued that the purpose of public punishments, especially public executions, was to "make everyone aware, through the body of the criminal, of the unrestrained presence of the sovereign. The public execution did not re-establish justice; it reactivated power" (p. 49). Public punishments in Colonial America served to reassert the authority of the community. The execution of a religious deviant afforded no opportunity for rehabilitation. Instead, the execution would serve as a reminder to the rest of the community. Likewise, public shaming was not intended to reform the offender.

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Indeed, the public shaming often "drove the offender to beg, swear and insult spectators" (Blomberg and Lucken, 2010, p. 20). Reform was not the goal of punishment in Colonial America. The goal was retribution and the reassertion of the community's authority.

Some important lessons can be drawn from the context of crime and punishment in Colonial America. The community will first decide how a criminal is viewed, and then the punishment is tailored to fit the criminal's social construction. If criminals are sinners, then punishment must be harsh and public. Second, although there were commonalities, significant variation occurred in the colonies. Views on crime, criminals and the necessary punishments varied across the colonies. This variation will be mirrored again and again across the American states.

The Birth of the American Prison System(s)

The rapid population growth in the late 18th and early 19th centuries helped undermine the Colonial system of punishment. From 1790 to 1830, the population of Massachusetts doubled, the population of Pennsylvania tripled and the population of New York increased fivefold. Western expansion and immigration on the East Coast helped undermine the tight bonds of earlier communities (Blomberg and Lucken, 2010, p. 26-27). The influx of new residents made community surveillance and attempts at enforcing absolute conformity impractical. A new diversity of opinions and views interfered with the prosecution of moral offenses. It became more difficult to punish the sinner/criminal once religious views became heterogeneous.

At the same time, new ideas from Enlightenment thinkers challenged the Colonial model. Colonial punishments were severe and inconsistent. The nature of the

punishments led to arbitrary enforcement. For example, when the death penalty was the punishment for a minor offense, the criminal was often acquitted, even if the judge or jury thought the offender was guilty (Blomberg and Lucken, 2010, p.32-33). An Italian philosopher, Cesare Beccaria, wrote perhaps the most thorough repudiation of the pre-Enlightenment model of crime, denouncing torture and capital punishment, the inconsistency in enforcement, the lack of proportionate punishment and the lack of a deterrent effect.

Beccaria wrote "The object of punishments is simply to prevent the criminal from injuring anew his fellow-citizens, and to deter others from committing similar injuries; and those punishments…..duly proportioned to the offence, will produce a more efficacious and lasting impression on the minds of men and inflict the least torture on the body of a criminal" (Maestro, 1942, p. 59). Beccaria was speaking of the now common idiom that the punishment should fit the crime. Beccaria criticized the inconsistency in enforcement, and the subsequent lack of a deterrent effect. He wrote "the greatest effect that any punishment has upon the human mind is not to be measured by its intensity but by its duration, for our sensibility is more easily and permanently affected by very slight but repeated impressions than by a strong but brief shock" (Maestro, 1942, p. 60).

Criminal justice reformers in early 19th century America were concerned with the same flaws that Beccaria identified. By the 1820s, most of the American states reformed their penal codes. New York repealed the death penalty for all offenses except murder and arson, Virginia reserved the death penalty for murder and some offenses committed by slaves, while Maine, Vermont and Michigan abolished the death penalty altogether (Blomberg and Lucken, 2010, 35). Physical punishments also declined, with

Pennsylvania banning the act of branding in1791 (Blomberg and Lucken, 2010, 36-37). With a decline in support for corporal and capital punishment, an alternative needed to appear. The alternative that emerged was incarceration.

The first attempts at incarceration were largely a failure. The first prisons, including Newgate in New York, Walnut Street Jail in Pennsylvania and Castle Island in Boston Harbor were overcrowded and inadequate for the care of inmates. As a consequence of these failures, states began constructing larger facilities. Massachusetts opened a state prison with a capacity for three hundred inmates in 1805, Pennsylvania opened Western Penitentiary in 1818 and Eastern State Penitentiary in 1823 while New York opened what would become known as Sing Sing prison in 1828 (Banks, 2005, 203-205). The push to build penitentiaries was not universal. Southern states, in particular, were reluctant to adopt prisons. In the South, slavery kept the majority of the poor under control and religious concerns sparked opposition from evangelical ministers. The Bible advocated "swift, severe, and bloody punishments", which matched the old Colonial model better than the new incarceral model. Southern states were also concerned about mixing white and free blacks in penitentiaries, a process that was thought to injure white and boost black pride (Banks, 2005, 51-54).

While the states differed in their desire to adopt prisons, there was also variation in the prisons themselves. The early prisons were penitentiaries with two common types, the Pennsylvania and Auburn models. In the Pennsylvania system, each inmate was placed in a single cell which was linked to a small courtyard. Inmates were completely alone while in their cell and wore hoods whenever they left their cell. Other than the Bible, no reading materials were provided and labor was considered a privilege. When an

inmate was given work, the labor was still conducted in isolation. Occasionally, the warden or interested members of the community would stop by an inmate's cell, providing the inmate an opportunity to confess their transgressions (Banks, 2005 38-41). The motivation behind the Pennsylvania system was to reform the inmate through quiet reflection and repentance, hence the term penitentiary.

The Auburn system offered an alternative form of incarceration. During the day, inmates worked together in prison workshops, while at night the inmates were separated into solitary cells. At all times, inmates were expected to be silent. Strict discipline was enforced by lockstep marching and whippings. The daily routine of Auburn system inmates was heavily regulated. The goal of the Auburn system was not the reform of the inmate, but rather to break the inmate's spirit and foster a state of complete submission to authority (Banks, 2005, p. 42-45). In an early example of policy diffusion, supporters of the rival Pennsylvania and Auburn systems lobbied state governments to adopt their preferred model. In 1831, the French government sent Gustave August de Beaumont and Alexis de Tocqueville to compare the two systems. The Frenchmen favored the Auburn system, largely based on cost effectiveness. In later writings, de Tocqueville mentioned the "contrast between the 'complete despotism' of the prisons to the 'most extended liberty' of the rest of U.S. society" (Banks, 2005, p. 44-45).

Time dampened enthusiasm for the Pennsylvania and Auburn systems. Any genuine reform caused by the careful reflection of inmates was balanced by the mental health issues caused by isolation and a lack of intellectual stimulation. In order to enforce the compliance of complete silence, prison staff committed many abuses, including corporal punishment that incarceration was supposed to replace. By the 1850s,

penitentiaries were approaching failure due to stagnation, abuse, debt, corruption and a lack of integrity. After the Civil War, the penitentiary system(s) were no longer sustainable.

As occurred earlier, the states took different paths in their response to the failures of the penitentiary system. Southern states began to abandon incarceration altogether. A system of convict leasing largely replaced penitentiaries in the South. In 1858, Virginia became the first state to lease its convicts to private businesses (in this case railroad and canal companies). The practice of leasing convicts and operating chain gangs spreads to Georgia in 1866, Arkansas in 1867, and to Florida and South Carolina in 1877. By the time Virginia returned to a penitentiary system in 1879, all the other Southern states leased out all or some of their convicts to private companies. The life expectancy of leased convicts was incredibly low, with 41 percent of leased convicts in Alabama dying in 1870. By 1883, one Alabama doctor reported that most leased convicts die within three years (Banks, 2005, p. 208-211).

While the Southern states adopted convict leasing, the rest of the country adopted different reforms. The 1870 meeting of the American Prison Society in Cincinnati, Ohio led to a Declaration of Principles for reform. The recommendations included scientific treatment of offenders and individualized care. Academic and vocational training, improved classification, indeterminate sentencing and parole were some of the other hallmark recommendations. By 1876, Elmira Reformatory was built in New York State. Reformatories offer a new model of prison governance. Instead of an emphasis on retribution or deterrence, for the first time rehabilitation was emphasized in American prisons (Banks, 2005, p. 210).

The post-Civil War reforms again highlight that treatment based on the social construction of inmates. In the South, inmates were viewed as a labor source, and were consequently leased. In fact, convict leasing offered an opportunity to reinstitute some of the labor controlling mechanisms of slavery. The tactic was legal, as the Thirteenth Amendment which formally abolished slavery allowed involuntary servitude as a punishment for convicted criminals (Blackmon 2008, 53). The death of a convict lessee was unimportant, because the state felt no responsibility towards the inmate.

Outside of the South, conceptions of inmates changed. No longer were inmates' sinners or rational actors that could be effectively deterred. Instead their deviance was a reflection of their environment. Under this conception, inmates could be taught skills and rehabilitated. Inmates who responded well to treatment or exhibited good behavior could gain privileges and even be released early. A focus on individualized treatment marked a shift from punishing an offence to treating an offender (Banks, 2005, 66). By 1929, the Federal Bureau of Prisons declared rehabilitation to be the fundamental aim and purpose of incarceration (Banks, 2005, p. 214).

The rehabilitative model depended largely on two assumptions. First, there was an assumption that social reform, together with affluence, would eventually reduce the frequency of crime. Criminal behavior was viewed as a reflection of environmental factors, and it was believed that an alleviation of poverty could therefore reduce crime. The second assumption was that the state is responsible for the care of offenders as well as their punishment and control. Consequently, the treatment of criminals was individualized and largely based on an individual's capability of being rehabilitated, and

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a central role was given to professionals such as parole officers and social workers who worked together to help reintegrate former prisoners (Garland 2001).

The rehabilitative model dominated the American prison system(s) until the 1970's. The effectiveness of rehabilitation was questioned, with scholars in the 1970's questioning whether the concept of rehabilitation had died (Halleck and Witte 1977). The idea that rehabilitation was a failed concept continued to gain momentum. By the 1990's it was declared that the job of a prison is to "administer justice, not treatment" (Logan and Gaes 1993). Logan and Gaes went further, stating that the very idea of individualized rehabilitative treatment "muddles the message of punishment, making it less principled and not necessarily more humane" (1993). If the rehabilitative model was losing support, what was the alternative?

Since the 1960s, the rehabilitative model has been gradually supplanted by a crime control model in which incapacitation and punishment have replaced reform and rehabilitation as the primary goals guiding the treatment of criminal offenders. There are several features which distinguish the new system from its predecessor. First, a popular strategy of the new system is "punitive segregation," which aims to separate the criminal from society, rather than reintegrate the criminal into society. Second, criminals are primarily seen as deviants or 'delinquents', rather than reflections of their social environments. Third, the role of case workers and parole officers has been reduced, while the importance of victims has increased. As a result, the goals of rehabilitation and reintegration were surpassed in priority by the goal of retribution (Garland 2001). Policies consistent with the crime control model include mandatory minimum sentencing, three strikes laws, a decline in rehabilitative programming, and a rise in segregation of

the inmates from society, both by building maximum security facilities and by placing facilities in rural areas.

Table one offers an overview of the various historical prison models. Note that the current American prison system(s) involve a mixture of the crime control and rehabilitative/reformatory models.

Table 1- Historical Prison Models

	Time Period	View on Crime	Responsible for Crime	Response
Colonial America	1600-1790	Reflection of sin	The criminal	Public, corporal punishment
Penitentiaries	1790-1860	Social disease	Society and the criminal	Solitary confinement
Convict Leasing	1860-1928	Labor Source	The criminal	Hard Labor
Reformatories	1860-Present	Social disease	Society and the criminal	Individualized Treatment
Crime Control	1970-Present	Reflection of deviance	The criminal	Incarceration

Throughout this chapter, we have explored the main conceptions of inmates and punishment/treatment options were established in the United States. Inmates can be viewed as sinners, rational actors or individuals in need of treatment. The subsequent responses can include punishments aimed at retribution or deterrence, or treatment aimed at rehabilitation. Inmates can also be viewed as labor to be exploited. The institutions built to achieve these goals all exist in the United States today. Reformatories are common, with rehabilitative programming occurring at many prisons. Inmate labor takes place in a range of environments, from prisons to work release centers, to the ubiquitous orange-clad road crews. Even the penitentiary exists in the current American context, in the form of maximum and super-maximum security prisons. The final section of this chapter will describe the American prison system(s) as exist in 2013.

The American Prison System(s) Today

The modern American incarceral environment has spawned significant interest among the non-incarcerated public. Fascination with the experiences and treatment of prison inmates has spawned acclaimed movies such as *Cool Hand Luke*, *Dead Man Walking* and *The Shawshank Redemption*. The National Geographic Channel's "Lockdown" series featured two seasons, consisting of twenty-two episodes, focusing on American prisons. MSNBC is in its tenth season of its significantly more exploitive "Lockup" series, with over 110 episodes documenting prison life. (A Warden lamented to me the public's desire to watch "Lockup Raw and other crap"). HBO contributed its own imagination of the prison environment, producing six seasons of the series "Oz". My own fascination with prisons probably began with being driven past California State Prison, Solano, on trips between my elementary school and my father's job at a nearby military base.

The fascination with prisons may be due to the American dominance in incarcerating its own citizens. With over two million inmates, the United States' prison population is the largest in the world, in both per capita and absolute terms (Walmsley 2009). Nearly one in one hundred Americans are behind bars, either in prisons or pre-trial detention facilities (Pew Center for the States, 2008). Since the early 1970's the American prison population skyrocketed, with thirty-six consecutive years of growth. The imprisonment rate in 2007 was over five times as large as the imprisonment rate in 1972. Between 1972 and 1988, the imprisonment rate in the United States doubled. Between 1988 and 2007, the imprisonment rate **doubled again** (Zimring 2010).

The incarceration of millions of people naturally comes at a high cost. In 2007, local, state and the federal government spent approximately 74 billion dollars on corrections expenditures. Those same entities employed a workforce of over 750 thousand corrections personnel. From 1982 to 2007, after adjusting for inflation, corrections expenditures increased by 255 percent (Kyckelhahn, 2011). Raw expenditure figures are likely to underestimate the actual costs of incarceration. A recent study found that the total cost to taxpayers in forty states was on average fourteen percent higher than the state's aggregate department of corrections spending (Henrichson and Delany, 2012). The amount of money spent on each inmate varies widely, with annual per inmate costs ranging from $17,285 in Alabama to $60,076 in New York (Henrichson and Delany, 2012). While some of the variation can be explained by differences in the cost of living, staffing levels and inmate services also play a role. For example, the staff to inmate ratio in Alabama facilities, 9.3, is approximately twice the size of the average staff to inmate ratio (Stephan, 2008).

I would like to note that the staff to inmate ratio is somewhat misleading, given the specialization of prison staff. As mentioned previously, a single caseworker may have over 100 inmates under their supervision, a single correctional officer may also watch over a hundred inmates and a unit administrator may be responsible for 130 inmates in a single unit. I visited four different prison facilities, and once worked as a detention officer in a jail. Prison/jail staff and their social science interviewers are constantly outnumbered, sometimes literally a hundred to one. If anyone doubts the dedication and bravery of American correctional staff, I would encourage them to walk across a prison yard or through a housing unit. Few things are scarier than entering a maximum security prison

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or a maximum security unit, and I hope that earns as much respect as the prison staffs deserve.

In 2005, there were 1,812 prison facilities in the United States. Of those, 1,406 were non-privatized state facilities, 415 were private facilities and 102 were federal Bureau of Prisons facilities. More than half of all correctional facilities were rated as minimum security, over twenty-five percent as medium security and more than twenty percent as maximum security. However, since minimum security facilities tend to be the smallest in terms of the number of inmates, the percentage of inmates in each of the security levels is very different. More than a third of state and federal inmates were housed in maximum security prisons, forty percent in medium security prisons and only twenty percent in minimum security facilities (Stephan 2008).

The approach to incarceration varies across and within states. A majority of prison facilities offer inmate programs, including work programs (88 percent of facilities), educational programs (85 percent of facilities) and counseling programs (92 percent of facilities). However, those percentages do not tell the full story. For example, only 28 percent of facilities offer a work release program, in which inmates can work in the community during the day. Instead, the majority of inmate work is in facilities support (jobs such as kitchen work, janitorial duty, etc) or in prison industries (agriculture or light manufacturing). It is unclear whether those types of inmate work programs properly prepare inmates for the types of jobs that are available to former felons.

Similarly, while 85 percent of facilities offer educational programming, most of the focus is on GED programming. Fewer facilities offer any vocational training (52 percent), post-secondary courses (35 percent) or English as a second language (35

percent). Finally, while counseling programs are available at the vast majority of facilities, only 74 percent offer drug/alcohol treatment, 58 percent offer psychological treatment and only 48 percent offer parenting classes (all program statistics from Stephan 2008). Even if programs are offered, participation is not universal. The distribution of punishments is also uneven, with restrictions on privileges and placement in solitary confinement units varying across states and within state facilities.

While inmates are viewed negatively, as predators and deviants, in many ways inmates represent an especially vulnerable population. Fifty-six percent of state prison inmates (705,600 inmates in 2005) suffer from a mental illness, with a third suffering from major depression, thirteen percent having a previous suicide attempt, and eleven percent suffering from a psychotic disorder. Thirty-six percent of state prison inmates were dependent on or abused alcohol, while forty-three percent were dependent on or abused drugs. Frighteningly, ten percent of all inmates, and twenty percent of those with a mental illness, have been injured in a fight since admission to a prison facility (James and Glaze 2006).

Treatment differences have important consequences. The deprivation theory of prisons suggests that the prison environment itself can harm inmates. Prisons can have depersonalizing, stigmatizing and alienating effects on inmates. Prisons can contribute to feelings of powerlessness for inmates (Thomas 1977). Inmate behavior is in part an adaptation and a way to cope with the pains inherent in the prison environment. Isolation from family, friends and the rest of society may lead to maladaptive behaviors. For example, inmates in less safe prison environments may be more likely to become gang

affiliated. The behaviors learned in prison may continue after an inmate is released (Steiner and Wooldredge 2008).

Harsh prison conditions, including overcrowding and isolation may lead to increased recidivism (Chen and Shapiro 2007; Drago, Galbiati and Vertova 2008). Prisons that are overcrowded experience more violence, including inmate on inmate and inmate on staff assaults. These effects begin when a facility is as little as five percent over capacity (Gaes and McGuire 1985). Maximum security facilities are particularly violent (McCorkle et al, 1995; Steiner and Wooldredge 2008). Not surprisingly, isolation, lack of contact with family and fear for safety lead to stress for both staff and inmates. Inmates develop unhealthy coping mechanisms, including drug use and anti-social behavior and those coping mechanisms lead to increased incidences of mental illness (Nurse, Woodcock and Ormsby, 2003).

Many inmates live in an environment where the prison staff's resources are woefully inadequate. Mental health treatment is not universal, and rehabilitative programming varies greatly. Violence poses a threat to both inmates and staff. While on a tour of a maximum security facility, I asked how often do the inmates fight? The response was "everyday". The sergeant who was taking me on the tour didn't seem particularly disturbed by that fact. A lieutenant assured me that inmate on staff violence is in fact rare, no doubt a tribute to the interpersonal skills of the staff members and the inmate's knowledge that a staff assault required a mandatory minimum of a year in solitary confinement, in addition to added jail time.

Figures 2.1 and 2.2 present a comparison of state prison systems. Figure 2.1 gives the incarceration rate for each state (number of inmates per 100,000 residents). Figure 2.2 provides the average cost per inmate (adjusted for cost of living differences).

Figure 2.1- State Incarceration Rates
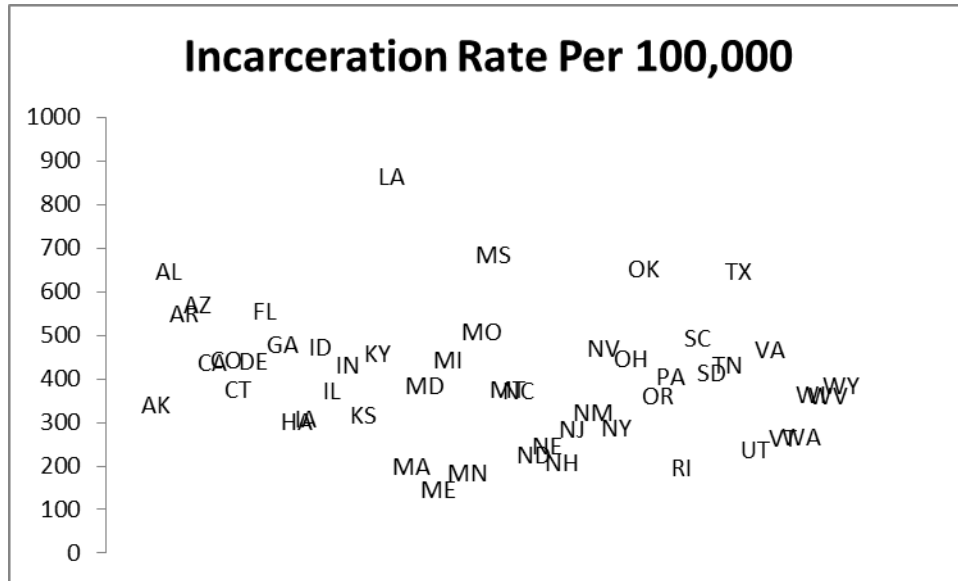
Figure 2.2- State Per Inmate Spending
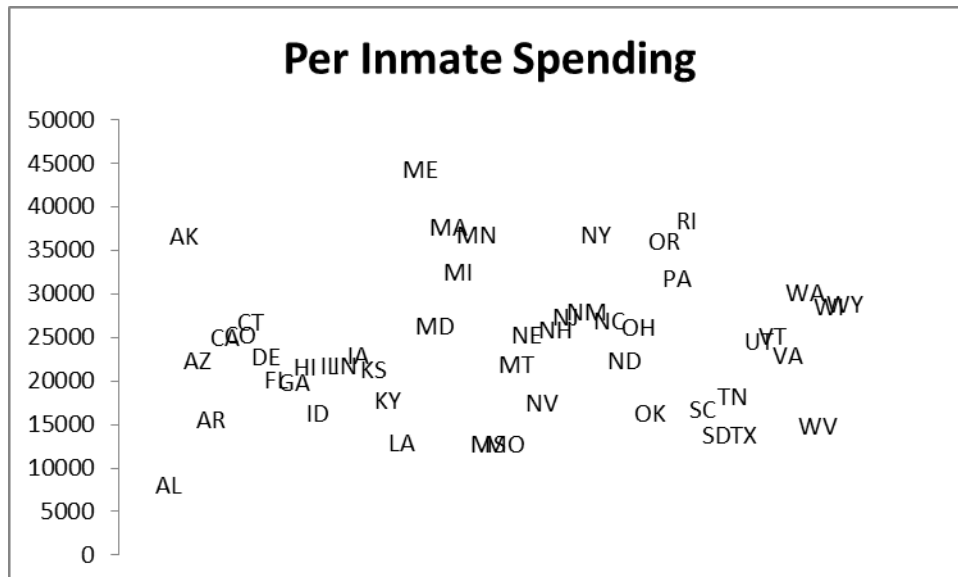
A quick glance at the graphs reveals a striking pattern. Many of the less punitive states, states that incarcerate at a lower rate, and that spend more per inmate, are located in Northern, more liberal states. Many of the more punitive states, states that incarcerate at a higher rate and spend less per inmate, are located in Southern states. Maybe the North follows the rehabilitative model and the South follows the crime control model. Are Southern states more punitive on average, due to cultural differences, or is there an alternative explanation?

The answer to this question will have to wait until the empirical investigation in Chapter Four. Chapter Three discusses the political actors responsible for making treatment decisions at the state and facility level. Socially constructed categories may be important, but it takes human political actors to use those categories. We are about to meet the political actors responsible for decision making in the American incarceral state.

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Chapter Three- The Deciders

"We must first rid ourselves of the illusion that penalty is above all (if not exclusively) a means of reducing crime…Instead, we must regard punishment as a political tactic".

-Michel Foucault, Discipline and Punish

Punishment is a fundamentally political decision. Political actors decide what is illegal, the level of enforcement, whether to convict a person for illegal activity and the penalty for a conviction. When the penalty is incarceration, the state has a monopoly on treatment. The state decides sentence length and where that sentence will be served. The state decides the rehabilitative programming for inmates and the acceptable punishments for misbehavior. An inmate, by necessity, has little to no influence on those important decisions. The state decides the quality of life for inmates, and in some cases whether the inmate will live at all. If political actors have control over many important decisions, it is important to consider possible limitations in the decision making process.

How do organizations and individuals make decisions? The perfect rational actor may set a goal and consider all possible alternatives, carefully weighing the expected utility of each outcome. Imagine the plethora alternatives when a rational actor is hungry. The rational actor would consider each restaurant in town, weighing cost, the quality of food and the friendliness of the wait staff. After choosing a restaurant, the rational actor will compare the expected utility of each dish. Possessing plenty of information, and the cognitive capabilities to consider all the information rapidly, the rational actor can determine the best possible meal for themselves. For the less rational among us, the questions may be much easier. Pizza or Mexican? McDonalds or Arby's?

Are organizations and individuals rational, or is decision making simplified? The answer depends on the situation and the complexity of the decision. In some cases, it is possible to consider most or even all alternatives. Imagine choosing a church to attend. The options in any town are relatively finite, and knowledge about each church's beliefs is readily available. Catholics believe one thing, Baptists another, Pentecostals a third. A Google search or a discussion between friends can quickly generate comparable information for each denomination. Other information, including the size of the church, its location and what activities the church offers are also readily available. Another simple decision is voting in an American presidential election. With only two viable alternatives, in a high information contest, voting for president is cognitively easy.

Deciding what to eat, however, is a much more difficult choice. A walk down any grocery store isle offers a potentially overwhelming number of options. Actually, a walk down any gas station isle is potentially overwhelming. Consider a rational actor who is buying a drink on a road trip. What is the expected utility from drinking a soda, milk, juice, water, or an energy drink? If a rational actor chooses to purchase a soda, will they select a Sprite, Pepsi, Diet Pepsi, Cherry Pepsi, Diet Cherry Pepsi, or a dozen other options? To use another example, one bar near the University of Kentucky has 45 beers on draft and even more options in bottles. The temptation, for me at least, is to order a Bud Light before making a riskier choice. Our emotional state matters as well. A doctor examining my food purchases made while I was stressed would conclude that I weigh 300 pounds and will soon die. Fortunately, my food purchases when not stressed are more reasonable.

The food example illustrates some of the limitations human decision makers face. We can become overwhelmed when given too many choices. Too many options and multiple decisions can lead to fatigue. Decision fatigue can lead to a loss of self-control, and less attention given to subsequent decisions (Vohs et al, 2008). An experiment at a German car dealership offered one group of customers a choice between four gearshift knobs, thirteen kinds of rims, twenty-five engine configurations and fifty-six interior colors. By the time the customer weighed each gearshift knob and rim option, they were cognitively tired. Affected by decision fatigue, the customers let the dealer pick the later options, which were more expensive. Physical fatigue can also impact decision making. An Israeli parole board granted a relatively high number of releases in the morning, but the number of releases decreased as time went on. Except for a brief uptick after a lunch break, the Israeli judges were more likely to deny parole, simply because they were tired (Tierney 2011).

There are a host of other cognitive limitations that human decision makers face. Psychologists have a laundry list of biases that human decision makers suffer from (see Kahneman 2011). To take one example, recalling information can be difficult, and the ease of recalling information varies (Schwarz 2004). My mother will periodically call me by one of my brother's names, although I am relatively certain that she does in fact know my name. I cannot recall the names of former co-workers or elements on the periodic table. However, I can easily recall the rosters of the last four University of Kentucky basketball team or the 2003 Carolina Panthers. Almost every one of my age cohort can recite the opening theme song to *The Fresh Prince of Bel Air*. I do not know if there is an

evolutionary advantage to knowing that it was in West Philadelphia that Will Smith was born and raised, but it is common knowledge.

Human decision makers rely more on information that is accessible, or easy to recall (Schwarz 2004). Decision makers also rely more on information that is available. I may not know the divorce rate in Kentucky, but if most of my friends are divorced, I will likely overestimate the probability of divorce (Tversky and Kahneman 1973, 1974). By the same token, if news coverage of violent crime is overrepresented with images of black males, just seeing a news story on violent crime may engender or activate negative racial stereotypes (Gilliam and Iyengar 2000). Human decision makers often have incomplete or inaccurate information, but that is not the only limitation. Humans do not weigh benefits and risks separately. Instead, our general emotion or feeling about an activity determines our choice (Finucane et al 2000). Whether termed emotional decision making, intuition or 'going with your gut', the same process is at work. In many instances, we are emotional rather than rational actors. When time is limited or we are fatigued, our reliance on emotion generally increases.

If human decision makers are cognitively limited and prone to biases in thinking, how are decisions made at all? How do we choose where to eat, which car to buy or whether to parole an inmate? Most problems have multiple alternative solutions. Because there are multiple solutions and most alternatives have multiple dimensions, trial and error does not work. Instead, "problem solving generally proceeds by selective search through large sets of possibilities, using rules of thumb (heuristics) to guide the search" (Simon et al, 1987). We simplify the decision by eliminating numerous options.

Sometimes the question, such as what to eat, is too difficult, so we ask an easier question: what is to eat that is nearby or that costs less than ten dollars.

Organizational decision making can also suffer from incomplete or inaccurate information. Henry Mintzberg and Frances Westley (2001) offer three decision making approaches. When an issue is clear, data is reliable and the context is structured, organizations can use design and planning that reflects rational choice models. However, when a situation is confusing or a few simple rules can help move forward, it is often better to act first and see what works. Maybe a state is beginning a rehabilitative pilot program. Will the program work? It may not be possible to know without trying the program first.

The organizational decision making process can vary greatly. Calls for change can come from outside or inside the organization. Citizens may be dissatisfied with a program, or may want the organization to adopt the policies of another organization. I may want Kentucky to adopt gambling because I want to gamble, or because I see the revenue that neighboring states are able to generate. The organization itself may identify problems and attempt to improve (Nutt 1998). Once an organization decides there is a problem, the search for alternatives can vary as well. The organization may consider ideas produced in house, ideas suggested by policy entrepreneurs or a broad search for alternatives (Mintzberg et al, 1976).

Problems with limited and inaccurate information, time and cognitive constraints are especially relevant to treatment inside prison. Systematic performance measures and best practices in corrections are largely absent. Information is fragmented and usually

confined to one state. Reform programs are usually only described, and it is unclear what

programs are most effective. It can be hard to directly compare the substance abuse (or

sex offender or whatever else) treatment program in Kentucky with the substance abuse

treatment program in Colorado. Treatment conditions may also vary within states.

Prisons vary in whether treatment programs are offered. If treatment programs are

offered, the type of program curriculum can vary. One of the most popular treatment

programs, Alcoholics Anonymous, is ineffective at reducing alcohol dependence (Ferri et

al, 2009). However, other drug and alcohol treatment programs have significant benefits

(Aos et al, 2001). If both programs were labeled as "alcohol treatment", we would miss

the variation in quality.

In the absence of solid information, individuals and organizations are likely to use

heuristics to simplify the decision making process. Given the lack of complete

information in correctional policy, and the significant constraints that political actors

face, it is likely that political actors rely heavily on heuristics as well. The next section

will describe the kinds of heuristics that are important when making correctional

decisions.

Heuristics for Political Actors

Human decision making can be a complicated process, with multiple possible

solutions. A lack of complete information and, perhaps more importantly, a lack of

cognitive resources precludes considering all alternatives. Moreover, for political actors,

a trial and error process creates huge risks. Imagine a trial and error process in military

policy that led to a massive battlefield defeat, or a trial and error process in health policy

that led to an epidemic. It is too risky to try every option, and the possibility of things going really well is outweighed by the possibility of things going very poorly.

Decision making is further complicated by opportunity costs. A political actor cannot devote time, or extensive time, to every issue. President Obama has preferences on a large variety of issues. The President has preferences on environmental causes, tax policy, defense, health care and civil rights, just to name a few. Every moment spent shaping tax policy is a moment not spent on the environment. Every moment spent reading about health care alternatives is a moment not spent campaigning. The President and all political actors face important constraints and choices regarding their time. New events may materialize that force a political actor to make rapid decisions with little information. A political actor could be a foreign policy expert, with thorough knowledge about South Asia. But if there is a crisis in Libya, that foreign policy expert may not have the same breadth of knowledge.

Political actors do not have complete knowledge of every possible situation. New challenges will arise, and a political actor will have to respond to a new situation. A trial and error approach is unlikely. If there is a confrontation with another country, it's infeasible to try economic sanctions on Monday, economic aid on Tuesday, a bombing on Wednesday, peace talks on Thursday and a full scale invasion on Friday. Political decision making is further complicated by the need for consensus. If every one of the one hundred United States senators proposed a unique public policy solution, it would be more difficult to achieve consensus. Given the difficulties, what heuristics can a political actor use to simplify the decision making process?

Two useful and related heuristics are political orientations, such as ideological and partisan identification. Both serve to drastically simplify the decision making process. Do I support Policy X? Well, do the likeminded "experts" or spokespersons of my ideology or of my political party, the people whom I generally agree with, support Policy X? For the most part, your political party or fellow liberals (conservatives) will suggest a policy option that is palatable for you. In addition to saving time, you also benefit from strengthening your relationship with political allies. It helps that, on most issues, liberals and conservatives, Republicans and Democrats, have different preferences. I may not agree with President Obama's health care plan, I may prefer a single-payer option, but I will likely prefer it to the Republican health care plan.

Certainly, knowing whether policy makers are conservative or liberal and Republican or Democratic provides a strong indication of their views and preferences on criminal justice policies. Republicans and conservatives place a higher priority on crime control. Studies indicate that Republican politicians spend more on law enforcement than Democrats (Caldeira and Cowart, 1980; Scheingold, 1984). In addition, most studies that have examined the determinants of state imprisonment rates have found a significant relationship between state conservatism and the imprisonment rate. This includes studies using national level time series data (Jacobs and Helms, 1996), state-level cross-sectional data (Greenberg and West 2001), and state-level panel data (e.g. Beckett and Western 2001; Jacobs and Carmicheal 2001; Smith 1994; Yates and Fording 2005). Conservatism serves as a useful heuristic. A conservative politician can look to other conservatives' responses to crime. Conservatives may also remember events that conform to

preconceived stereotypes about crime. Those cognitive processes help to shape the conservative response to crime.

Conservatives and conservative politicians favor responses to crime control that emphasize retribution, deterrence, and incapacitation, while liberals favor responses based on societal reform and rehabilitation (Beckett 1997). Three primary explanations for this relationship are offered. First, conservatives are more inclined to view crime as a matter of personal choice and focus on the offender's personal responsibility for their deeds, as opposed to the explanations given by liberals and moderates that concentrate more on the potential influence of offenders' environment and limited opportunities for economic success (Scheingold 1984). Second, some social theorists have argued that conservatives are more likely to employ law enforcement and incarceration as a means of asserting political authority to manage threats from the poor (Beckett and Western 2001; Garland 1990). Finally, conservative Republicans have stressed retribution and deterrence in bridge the gap between well-to-do fiscal conservatives and middle to lower class social conservatives, with whom they might otherwise have little in common (Beckett and Sasson 2000).

Even if there were no ideological or partisan differences on crime, there may be differences in treatment due to policy preferences on various social programs. Liberals may spend more on rehabilitative programming because liberals have more faith in public welfare and the ability of government programs to make a positive impact on people's lives. In a study of eighteen capitalist democracies, Alexander Hicks and Duane Swank (1992) found that center and left of center governments have higher levels of welfare effort. Increases in electoral competition also increased welfare effort (Hicks and Swank

1992). Left of center governments are associated with higher replacement rates for unemployment, while right of center governments are associated with larger cuts in unemployment benefits (Allan and Scruggs 2004). Similarly, Barrilleaux et al (2002) found that Democratic governments had higher per capita spending on welfare than their Republican counterparts. Democratic governments also spent more in states with high levels of electoral competition (Barrilleaux et al, 2002). In general, Democrats, liberals, women and blacks tend to support higher levels of government spending (Rudolph and Evans 2005).

The traditional conservative/liberal continuum has explanatory value for some aspects of criminal justice policy. The conservative ideology, with its emphasis on personal responsibility, deterrence and retribution seems to fit in well with the modern crime control model described by David Garland. Liberal emphasis on societal responsibility seems to match with the rehabilitative emphasis embodied in reformatories. However, there are reasons to think that ideology and partisanship may not be the best heuristic for treatment inside prisons. One reason is a political story, with Democrats moving to the right to attract voters. The second is an economic story, with a reminder that multiple principles sometimes conflict.

Prior to the 1960s, most American prisons practiced a rehabilitative model, operating under the assumption that social reform could reduce the frequency of crime and that crime was in part a reflection of environmental factors. The turn towards a harsher, retributive model of punishment began in 1964, with Republican Presidential candidate Barry Goldwater. Goldwater used fear of crime, especially white fears of blacks committing crime, in many of his campaign messages. In 1968, for the first time,

crime rated as the top domestic issue in the country. Tough on crime rhetoric became a staple of both political parties after the Goldwater race. Both Presidents Johnson and Nixon declared a war on crime, while President Reagan ratcheted up the Drug War. A turning point was the 1988 presidential race, in which incumbent George H.W. Bush faced Massachusetts Governor Michael Dukakis.

Massachusetts had a program of weekend furloughs for prison inmates. In 1976, the Massachusetts' state legislature passed a bill that would have ended the furloughs for first-degree murderers. Governor Dukakis vetoed that bill. Ten years later, in Governor Dukakis' second term, a black prisoner, Willie Horton, went missing during his tenth furlough. Horton was later captured in Maryland, after raping a woman and beating her fiancée. The George H.W. Bush campaign made extensive use of the incident, using television ads featuring Willie Horton's mug shot (Oshinsky 1991). The Willie Horton incident was not the only difficult criminal justice policy for Governor Dukakis to explain. During a nationally televised debate, the moderator asked Dukakis "Governor, if Kitty Dukakis was raped and murdered, would you favor an irrevocable death penalty for the killer?" Dukakis replied "No, I don't, and I think you know that I've opposed the death penalty during all of my life" (Estrich 2004). The Governor's response, coupled with the Willie Horton incident, damaged Governor Dukakis' and the Democratic Party's brand. The Democratic Party would soon lurch rightwards.

The ideological distance between Governor Dukakis and former President George H.W. Bush was significant. Dukakis explicitly supported the furlough program as a rehabilitative initiative, and expressed an unqualified opposition to the death penalty, in direct contrast to George H.W. Bush. By the time of the 1992 election, which featured

former Arkansas governor Bill Clinton, the ideological distance had shrunk considerably. Clinton proposed funding for an additional 100,000 police officers, an expansion of the death penalty, and use of a "three strikes and you're out" policy for violent offenses. In the course of the 1992 presidential campaign found time to execute a mentally retarded black man, Ricky Ray Rector. Four years, and a new candidate, had changed the relative positions of the parties significantly.

Democrats began to support increasingly punitive criminal justice policies. Since the 1990s, Democratic members of Congress have been more supportive of punitive measures such as the death penalty, three strikes laws and increased incarceration (Western 2006, p. 61). As governors, both Bill Clinton and George W. Bush executed mentally retarded death row inmates. The 2004 presidential election was between John Kerry, a death penalty supporter, and George W. Bush, who oversaw more executions than any governor in modern American history. While President Obama has been critical of discrimination in the criminal justice system, in October of 2004 he proudly took credit for passing 150 pieces of legislation that increased penalties for violent offenders.

The post 1988 rightward move by the Democrats is part of the reason why partisanship and ideology may not be the best predictors of prison treatment. Equally important is a move by the Republican Party to the left, on issues of criminal justice. While there may not be a large shift in the Republican Party away from personal responsibility towards examining societal factors, there is a move towards the left due to the literal costs of incarceration. Republican and conservative states, many of whom went on an incarceration binge throughout the 1980s and 1990s are faced with the increased budgetary strains of running large correctional departments. The costs associated with incarcerating

300,000 state prisoners in 1980 are naturally much lower than the costs of incarcerating 1.4 million state prisoners in 2010. The post 2007 Great Recession has further exacerbated problems by limiting state fiscal resources.

Some Republican politicians are adopting a "smart on crime" rather than "tough on crime" perspective, attempting to find cost effective solutions to crime control (Percival 2012). Smarter or softer on crime policy changes have occurred in Alabama, Kansas, Louisiana, North Carolina, New Mexico, South Carolina and Texas (Abramsky 2010). In fact, conservative politicians may have more maneuvering room for soft on crime reform, painting the reforms as fiscally responsible rather than lenient on criminals.

Kentucky provides an instructive example. Kentucky is a state that averages a citizen ideology of 32 (calculated by the author), a more conservative rating than Alabama, Louisiana, Mississippi and South Carolina. Kentucky currently has two fiscally conservative Republican senators, libertarian Senator Rand Paul, and Senator Mitch McConnell. In 2012, 37.8 percent of Kentuckians voted for President Barack Obama, down from 41.1 percent of the vote in 2008 (CBS News 2012). Although the Kentucky's governor and legislature were Democratic in 2010, the state is not exactly a paragon of the Left. Outside of Lexington and Louisville, Kentucky is a comparatively conservative state.

Kentucky is also a state that participated in the incarceral binging of the last two decades. Kentucky's prison population rose by forty-five percent between 1999 and 2009. Correctional spending increased 214 percent between fiscal year 1990 and 2010, to a 2010 total of 440 million dollars. In spite of increased spending, recidivism rates remained higher in 2009 than in the late 1990s. The system clearly needed examining, if nothing else, and in 2010 the Kentucky General Assembly commissioned a bipartisan, "Interbranch Task

Force on the Penal Code and Controlled Substances Act" to review existing correctional and broader criminal justice practices (Levine 2012).

A bipartisan duo, Republican Senator Tom Jensen and Democratic Representative John Tilley introduced a bill to implement the taskforce's recommendations. The result was House Bill 463, the Public Safety and Offender Accountability Act. Voting on the bill took place in February 2011. The bill passed unanimously in the Senate and with a single dissenter in the House before being signed into law by Democratic Governor Steve Beshear.

House Bill 463 reads like it was drafted by reformatory proponents. Features of the modern crime control system are absent. This is not a bill designed to punish. The legislation strengthens probation and parole, focuses on data-driven, results oriented reforms and tracking mechanisms. Prison space is designed to be used for the most serious offenders. The bill offers benefits to fiscal conservatives, in the form of 422 million dollars in savings over the next decade, and benefits to liberals because a portion of those savings are dedicated to substance abuse programs, mental health treatment and recidivism reduction (Levine 2012).

The law has already generated significant changes. One aspect of the bill was to allow police officers to issue citations, rather than arrests, for low-level non-violent offenses. This is largely responsible for a nine percent drop in the number of people arrested. The state is also relying on increased community supervision (probation and parole), which eases pressure on local jails (Levine 2012). The bill has already seeped down to at least some of the implementers in Kentucky's prisons. In my tours and interviews, the new house bill was brought up, unprompted, by multiple prison staff

members. Although the new rehabilitative emphasis was not mentioned by correctional officers, it was mentioned by multiple treatment staff members, unit administrators and both Wardens that I interviewed.

I noticed some interesting examples of the impact of House Bill 463 and the changing social construction of crime in Kentucky. In September of 2012, I conducted interviews and toured Western Kentucky Correctional Complex (WKCC). WKCC is located in rural Eddyville, Kentucky, a four hour drive from Lexington. Eddyville is a tiny town of 2,300 residents, close to the Mississippi River and the pleasant if also small city of Paducah. Prison is a major industry in the area, and Western Kentucky Correctional Complex is only a few miles from the state's only maximum security prison, Kentucky State Penitentiary, which I was also fortunate to tour. The differences between WKCC and Kentucky State Penitentiary are readily apparent, and enough to support the conclusion that there is not a single, universal American prison system, but 1,668 different fiefdoms. The first time I drove towards Kentucky State Penitentiary, the edifice was so intimidating that I turned my car around and returned to my hotel. Western Kentucky Correctional, despite its razor wire and guard towers, was not nearly as frightening.

Western Kentucky Correctional Complex is a multiple security level facility housing approximately 700 inmates. Most of the inmates are housed in dormitory style minimum and medium security units, but the prison does have an administrative segregation (solitary confinement unit). I interviewed the Deputy Warden in charge of programming, who told me about the recent changes at the facility, especially in regards to rehabilitative services. He specifically mentioned the new house bill, and the Department of Corrections increased emphasis on rehabilitation. The Deputy Warden described the

various programs available, some of which offer "good time" (time off the inmate's sentence) for participation. He expressed the view that "Rewards are always better than punishments", and that programs help occupy the inmates' time. The principle of opportunity costs extends to inmates. Time spent learning carpentry or horticulture is time not spent getting into trouble.

I interviewed a Classification and Treatment Officer, who discussed the impact of House Bill 463. Her job changed in July of 2012, when the case management system was overhauled to meet the criteria of the House Bill. There was a new emphasis on motivational interviewing and individualizing treatment plans. Previously, prison staff would assign inmates to various programs. Now, the inmates were taking part in the conversation, and the inmates were asked what programs they might want to participate in. The Classification and Treatment Officer said that with the House Bill, "The whole mindset is changing". Previously, the correctional system "hasn't been working and the state is broke, so we need to try something else". During the course of the interview, she expressed a lot of enthusiasm and said that staff shouldn't forget that inmates are people too. After the interview, she was also happy to provide me, unprompted, with formal descriptions of the twenty-two treatment programs at WKCC. It is also worth noting that the Classification and Treatment Officer described herself as between a conservative and a moderate.

One particular program at Western Kentucky Correctional Complex stood out. WKCC runs a Substance Abuse Program (SAP) that is a perfect example of the new house bill. SAP is a 12 step based program, offered in a secluded wing of the prison. 55 inmates participate, and are not allowed contact with the rest of the prison inmates. It is a regimented program and there is a focus on group accountability. Program inmates who

misbehaved were placed in orange vests, while program inmates who were thriving had the honor of wearing green vests. The program involves intense therapy under the supervision of a group of substance abuse counselors. The regimentation and length of the program (four phases which usually take six months) may seem difficult to fulfill. But the program employs one of the most significant carrots possible. Upon completion of the Substance Abuse Program, the inmate is released. SAP is a model of the old scientific, individualized reformatory treatment. You are in prison for a reason, to deal with substance abuse issues. Once you have addressed those issues, you are allowed back into the community. The punitiveness and segregation of the modern crime control model is absent. SAP exists to aid rehabilitation and reentry, not separation from society. At the same time, the state of Kentucky saves money by having inmates serve shorter sentences.

The example of House Bill 463 and Western Kentucky Correctional Complex illustrates a few points. First, a conservative principle, cost effectiveness and fiscal responsibility can be used to further a liberal goal, rehabilitation. Second, the traditional ideological explanations have less predictive ability because of convergence between rightward lurching Democrats and leftward leaning Republicans. A fairly conservative state like Kentucky can introduce a reform that would traditionally be considered liberal. Traditional ideological explanations may have less power than explanations based on social construction. Only two of the twelve people I interviewed at WKCC identified themselves as liberals. However, seven of the twelve agreed that most inmates at WKCC could be rehabilitated.

Before moving on to any formal tests of ideology based or socially constructed based theories, I need to introduce the rest of the players in our drama. House Bill 463 gave

an example of apparent enthusiasm or at least acceptance of implementing new public policy. Having discussed the elected officials who impact correctional policy, I will now describe an equally if not more important, set of political actors; the bureaucrats inside America's prison system(s).

Administrative Discretion and the Implementation of Public Policy

State and federal legislative, judicial and executive actors design and pass public policies. The implementation of those policies is then delegated to the bureaucracy. When a program is unsuccessful, there is a temptation to blame legislative, judicial or executive actors for poor planning or poor design. However, a program can fail at the implementation stage. Political actors have coercive, normative and remunerative powers, but sometimes those powers are not enough (Van Meter and Van Horn 1975). The Texas and California Departments of Corrections provide a clear example. Judges in both states declared prison conditions to be unconstitutional. Rather than making quick and effective changes to ensure compliance, both state correctional departments fought the court decision. In California, the approach is to move slowly, and only comply with parts of the court order (Liptak 2011). In Texas, the Department of Criminal Justice actively fought against the *Ruiz v. Estelle* ruling for over two decades (Perkinson 2010).

Implementation is "affected by the extent to which policy deviates from previous policies" (Van Meter and Van Horn 1975). Implementation is also influenced by how much organizational change is required (Van Meter and Van Horn 1975). An incremental change is likely to lead to fewer backlashes than a major reform. One reason for Texas' backlash against the *Ruiz* ruling was that virtually all prison operations were drastically changed. Finally, the degree to which the organization and political actors agree on goals

influences implementation (Van Meter and Van Horn 1975). The primary goal for the Texas Department of Criminal Justice was strict control while the primary goal for Judge William Justice was ensuring the constitutional rights of the inmates. There is a tradeoff between security and rights, and that led to goal disagreement. Sometimes political actors agree on goals but not on costs. State agencies can act strategically to reduce access to programs, in an effort to reduce costs (Keiser 2001). Rather than faithfully implementing all legislative, executive and judicial policies, bureaucrats can push back and fight for their own preferences.

If there are difficulties in implementation, why do legislative, executive and judicial actors delegate at all? One reason is that these actors face limited resources and opportunity costs. Limited resources, in the form of budget constraints become increasingly apparent in a time of fiscal difficulty. Resources can also be limited cognitively. The average state legislator is unlikely to have technical expertise in the building or staffing of prisons. How large should prison cells be? How many staff members are needed for physical security to be maintained? Does the prison need enough equipment for ten riot squad members or for twenty? The list of questions is potentially endless. If we remember the lessons of decision fatigue, we can understand why politicians may want to limit such technical choices. The choices are also unlikely to generate any significant political costs. The average voter will not know the technical minutiae of prison administration including who authorized the decision and the potential pros and cons of the decision. I doubt many politicians have lost their jobs for failing to decide the optimal number of pepper spray canisters to purchase for the state correctional department.

In addition to the cognitive and financial resource constraints that elected officials deal with, there are important opportunity costs. Even an issue that is of deep importance to a politician cannot completely occupy the politician's time. Former President George W. Bush made educational reform a top priority, and spent a great deal of time and resources on the No Child Left Behind Act. Although it was a high priority it was not the former president's only priority. Time spent on the No Child Left Behind Act entailed less time to develop tax policy or plan the invasion of Iraq. Even if educational policy was the only issue former President George W. Bush was concerned about, it would be physically impossible to go to each school district and ensure the Act's compliance. Time is a finite resource, and every moment spent on educational reform is a moment not spent on national security concerns, economic reforms, fundraising, spending time with family or relaxing. Some discretion must be given to the bureaucracy because legislative, executive and judicial actors do not have the resources to make every decision.

Whether an agency complies with a political order is one aspect of implementation. Agencies are also given authority of their own, and allowed to make various decisions independently. This delegation of authority is called bureaucratic discretion. Bureaucratic discretion refers to the range of policy options available to the bureaucracy. Two types of discretionary authority are available to agencies; the "authority to make legislative-like policy decisions" and "authority to decide how general policies apply to specific cases" (Bryner 1987, 6). The potential power of unelected bureaucrats is significant. When it comes to implementing public policy, administrators are policy makers in their own right (Shumavon and Hibbeln 1985).

One famous example of bureaucratic discretion and the power of a bureaucracy to shape policy is environmental protection. Some members of Congress have a preference for clean air or clean water. Since those members face time and other resource constraints, every possible decision regarding clean air or clean water. Instead, an agency, the Environmental Protection Agency is created and given authority to develop environmental regulations. Even the most environmentally conscious member of Congress does not know the optimal level of each chemical that can cause water pollution. A large agency is able to have many specialists with an expertise in one area. Those experts can develop rational, scientific regulations.

The Environmental Protection Agency highlights some of the practical advantages to delegating authority to agencies and street-level bureaucrats. Agencies have expertise and are able to respond quickly to unexpected situations (Kerwin, 2003, p. 30). Agencies have organizational resources that are not available to legislative or executive decision makers and agencies have the ability to concentrate sustained attention to a single problem (Rourke, 1969, p. 39). Agencies have access to policy networks, through which ideas are exchanged and policies diffused (Mintrom and Vergari, 1998). Some policies are capable of rapid diffusion, and bureaucrats are likely to be aware of the latest trends (Makse and Volden 2011). By allowing discretion, policy experimentation can take place rapidly. Overall, bureaucratic discretion is defended as "a means of reducing conflict, reducing the coercive nature of government, permitting Congress to take on an increasingly larger policy agenda, and providing a process of decision making that champions bargaining and negotiation in administration" (Bryner, 1987, 5).

Bureaucratic discretion operates at two different levels; agency level policy, and the policy decisions of street level bureaucrats (for reviews of the top-down versus bottom-up approaches, see Matland 1995 and Sabatier 1986). Just as political actors cannot make every decision, the managers in an agency also cannot make every decision. If a superintendent is making a hiring decision, the superintendent cannot simultaneously teach a class. If a principal is designing a new curriculum, the principal cannot simultaneously meet with parents. Since managers cannot make every decision, authority is delegated to lower level employees. These lower level employees are known as street level bureaucrats. Street level bureaucrats include teachers, police officers, counselors, welfare caseworkers, code enforcement employees and correctional staff. Due to their numbers and direct interactions with the public, street level bureaucrats are the most common government officials that citizens meet with. Many people will not meet an elected representative, or a high level manager, but most people have interacted with teachers, counselors or police officers.

Street level bureaucrats have "considerable discretion in determining the nature, amount, and quality of benefits and sanctions provided by their agencies" (Lipsky, 1980, 13). Street level bureaucrats have discretion and are forced to make decisions. Organizational rules require decisions to be made. Organizational rules "specify the duties and obligations of officials, discretion allows them freedom of action" (Hupe and Hill 2007). Street level bureaucrats seek to manage their work loads and see themselves as professionals. Street level bureaucrats operate in a variety of environments, implement a variety of tasks and make a variety of decisions. In their interactions with citizens,

street level bureaucrats are public officials who make political decisions (Hupe and Hill 2007).

Street level bureaucrats determine which clients benefit from a particular program and which clients are left out. Assuming resource constraints and a non-entitlement decision formula, only a certain number of clients can benefit from a particular program. For example, only a certain number of clients can participate in a job training or substance abuse program (Lipsky, 1980, p. 58). Street level bureaucrats also determine which clients are sanctioned. Those decisions can have a huge impact on a client. A teacher who writes up a student may mark that student as a trouble maker. A police officer who arrests a citizen for drug possession is not only placing that citizen at risk of incarceration. The citizen is also at risk of losing future government benefits, like student loans or welfare aid, and at risk of future job difficulties (due to the 'check' box for felons on most job applications).

Correctional officers have similar reward and punishment powers as school teachers (Liebling 2000). Correctional officers also experience many of the same temporal, cognitive and financial resource constraints as other street-level bureaucrats (Brehm and Gates 1997; Lipsky 1980; Schaufeli and Peeters 2000). Individual correctional workers have high levels of discretion. Prison staffs have coercive power, which includes the ability to place inmates in solitary confinement, to take away certain privileges and to search the inmate. Prison staffs also have power to reward prisoners, including granting privileges, generating favorable reports and the selection to desired jobs within the prison. Corrections workers have less formal power, such as varying norms of enforcement and accommodation (Liebling 2000). Not to be forgotten, prison

staffs also have the very real threat and actual occurrence of violence. Under certain conditions, corrections workers can use violence against inmates ranging from the use of pepper spray to lethal force.

Given the important powers that street-level bureaucrats possess, one would hope that power is largely unbiased. Although an ideal is apolitical and scientifically managed administration, (Locke, 1982; Wilson 1887; but see Svara 1998), that ideal may be impossible to attain. Each member of the bureaucracy brings their own personal life experiences, unique socialization and preferences to their job. Each bureaucrat has their own conception of justice and fairness, which can affect outcomes (Kelly 1994). Each prison staff member has their own preference point for rehabilitation or punishment. Obviously, that preference is constrained by law, procedure and other staff, but staff can try to achieve their preferences as much as possible. The Classification and Treatment Officer that I spoke with might desire increased rehabilitative services for inmates, but her view was not shared by every staff member I interviewed. Some interviewees, especially among the security staff, expressed a desire for increased punishments, fewer luxuries and even an expansion of the prison or the prison's administrative segregation units. Bureaucrats do bring their own views and preferences to their job, and those preferences impact public policy outcomes.

Agency managers and street level bureaucrats also have more information than their supervisors. The Warden of a prison has a better idea about the details of the facility than his or her boss, whether that boss is an elected official or a higher up in the Department of Corrections. Likewise, a sergeant has a better idea of the details of their unit then their warden, and a correctional officer has a better idea of the details of their

assignment than their sergeant. Information can be kept secret from supervisors, even when there is no malicious intent. It is similar to any other large organization. The teaching assistant has a better idea of their section than their professor, the professor has a better idea of their class then the department chair, and the department chair has a better understanding of the department than the Dean of the college.

Production is organized by a team making it difficult to discern responsibility (Miller 1992, p. 128). If there is an incident in the prison, who is to blame? One could blame the inmate, the officer, their supervisor, the treatment staff, or the senior leadership. If an inmate is released and commits a new crime, who is at fault? It can be difficult to know who is responsible for a given outcome. Given these conditions, bureaucrats have considerable discretion over whether to comply, shirk or even sabotage a supervisors order (Brehm and Gates, 1997, p. 32-35). If a correctional officer fails to do a security check, if a treatment officer fails to follow a manual, if a supervisor gives a warning instead of a formal punishment, will anyone know? Prisons are certainly bound by a large number of policies, procedures and standards, but ensuring the complete implementation of all those policies is difficult.

If bureaucrats can shirk their responsibilities, why would an agency give discretion? Street level bureaucrats receive discretion for two main reasons; first, work situations can be complicated and flexibility may be necessary (Lipsky, 1980, 15). For example, police officers may need to be flexible on public intoxication charges during major holidays. Behavior that warrants a ticket on December 30th may not warrant a ticket on December 31st. Second, there are human dimensions of a situation that may require more lenient or stringent responses, based on the circumstances (Lipsky, 1980,

15). Returning to our police officers, some areas of a city are more dangerous than others, and some suspects are more dangerous than others. It is unrealistic and potentially unsafe, to require police officers to react identically in different environments.

To review, while a state legislature may set a speed limit and a state agency may prioritize law enforcement objectives, it is the decision of an individual police officer whether to write a ticket or to give the offending motorist a warning. How does the police officer decide whether to write the ticket? Steven Maynard-Moody and Michael Musheno describe two coexisting narratives for front-line workers. Under the state-agent narrative, front-line workers are concerned with following rules, proper procedures and professional norms. Under the citizen-agent narrative, front-line workers are concerned with identifying clients who are worthy citizens and those who are not. Once a client's worth is determined, the client's worth determines the treatment option (Maynard-Moody and Musheno, 2003).

The state-agent narrative may be difficult in a correctional environment. The Kentucky Department of Corrections has 7 categories of inmate disciplinary infractions, listing a total of 101 possible offenses, ranging from littering and faking an illness at the least severe end to sexual assault and inciting a riot at the most severe end. The first difficulty is that the supervision of multiple inmates and fulfilling other job responsibilities may make the enforcement of every rule impossible. It is a correctional officer's job to supervise inmates. It is also a correctional officer's job to do security checks, document a variety of events, address inmate concerns and manage movements. If an officer is making sure that the fire extinguishers in his unit are of working order, that officer cannot simultaneously write up an inmate for littering.

Before returning to graduate school to pursue my PhD in political science, I served as a Detention Officer with the Mecklenburg County (Charlotte, North Carolina) Sheriff's Office. My job was often to directly supervise between 50 and 70 inmates in a single unit. It is difficult to maintain visual contact of that many people, let alone enforce every possible rule infraction. The list of possible infractions was numerous at the jail. I could not, by virtue of other job responsibilities, spend all my time writing reports because inmates did not have their shirt tucked in or because an inmate kept an orange from the lunch cart. If I had attempted to do that, I have no doubt that my supervisor's would have kindly told me to pick my battles. Inmates can also, not surprisingly, be difficult. An officer who makes a big deal out of every issue is likely to have more, not fewer, inmates committing that infraction. The admonition not to let someone get under your skin is particularly relevant in an incarceral environment.

The state-agent narrative may be unrealistic, but the citizen-agent model may have more promise. Many of the staff members that I interviewed mentioned that some inmates caused more trouble than others. Staff would argue that a core group of trouble makers or a small percentage of inmates were constant problems. It was easy for these bureaucrats to place inmates into good or bad categories. If an inmate was a constant disciplinary problem and caused difficulties for staff, then a minor rule infraction was less likely to be ignored. However, if an inmate was generally well behaved, a verbal warning might suffice. A Lieutenant informed me that all inmates cannot be treated the same. This particular Lieutenant, a very engaging and entertaining interview, was also very quotable. When it came to dealing with people and dealing with inmates, it was "Like a golf course. You can't play every hole with the same club".

That some inmates are difficult, while others generally follow the rules, is not surprising. Inmates are, after all, humans. A correctional officer at Kentucky State Reformatory told me about her job, which involved a lot of interaction with inmates. She said that some inmates were more difficult to deal with, but there weren't any groups of inmates that were particularly challenging. I pressed further, asking if there were any patterns, and she gave me one of my favorite quotes from this research. She disagreed that there were patterns and instead said "It's like Wal-Mart. Some people are assholes, some aren't". A useful lesson to be sure, but it invites an important question. How do staff members decide who is a good inmate and who is a bad inmate? How do staff members decide if an inmate is an asshole or not?

As discussed previously, both in my own work experience and during my facility tours, the effective rate of inmates to staff is quite high. A single officer may be responsible for the supervision of 70 to 100 inmates. And the identity of those inmates may change frequently as inmates are transferred across or between prisons or as one inmate's sentence ends and another inmate's sentence begins. Prison staffs, like other street level bureaucrats, face large caseloads and demands for quick decisions. In many cases, it is not possible to know each inmate personally or to have a lot of information about each inmate. The amount of turnover in law enforcement should also be considered. Many people, myself included, have very brief tenures in law enforcement, which precludes the ability to get to know many, let alone most, inmates.

Street level bureaucrats in most instances do not know each client personally. A police officer may only know a client in the context of a traffic stop. A teacher may only know a student in the context of a 30 person class. A welfare caseworker may make a

decision based on a brief interview or on a client's record. Street level bureaucrats face

cognitive and temporal constraints, and limited information. In many cases, a decision

must be made within a few minutes. Do I write this ticket? Do I help this student? Do I

sanction this welfare recipient? In order to manage their difficult workloads, street level

bureaucrats utilize heuristics to simplify the decision making process.

Heuristics serve as a cue about the client's worth. It may be impossible to know

everything about a client, but cues about a client's behavior may exist. The case of

dressing up for a job interview comes to mind. Wearing a suit to a job talk is in no way a

reflection of a candidate's abilities as a teacher or a researcher. If I give a presentation,

whether I wear a suit or whether I wear a tank top, jeans and flip flops has nothing to do

with the content of my presentation. The slides remain the same, my discussion of the

slides remain the same. However, wearing a suit sends a set of signals suggesting

professionalism, conformity and an interest in making a good impression. Moreover,

wearing a suit reminds decision makers of **other people** who wore suits to a job talk. I

wear the same clothing; therefore I must be like those other people. Heuristics about a

group enable street level bureaucrats to make quick decisions about individual clients.

Heuristics are value neutral. It may be a good time to return to our public park and

our pickup sports games. This time, imagine you are picking a basketball team out of a

group of strangers. You know nothing about their basketball playing skills; you only

know their physical characteristics. I would select the tallest people first and the people

who look the most athletic. Height and basketball prowess are not completely correlated.

Tyrone "Muggsy" Bogues had a fourteen season career in the National Basketball

Association, in spite of only standing 5'3". Still, the average 6'10" basketball player is

remarkably better than the average 5'3" basketball player. Height is an imperfect, but very helpful predictor.

The specific heuristic related to a specific group may be positive or negative. A bank may use income as a heuristic when making a loan determination. A high income may signal financial responsibility and an ability to pay the loan back. Of course, some wealthy people are extremely irresponsible financially, and could lose the bank money. But the high income heuristic is going to work at a much higher rate than assigning loans randomly. Similarly, a police officer may view elderly women as less violent and less threatening. Although my grandmother could, in theory, shank a police officer, the probability is low. Crime in general is a young man's game, with crime peaking around age 18 and then falling dramatically. Most criminals have aged out by their thirties (Farrington, 1986). Although the heuristic will be wrong at times, the general rule that young men are more likely to commit crimes performs well.

The concern, of course, is that some heuristics will lead to discriminatory practices. One popular heuristic is based on socially constructed racial categories. Race as a heuristic wouldn't be as much of a problem if the heuristic was accurate. If blacks were more likely to commit crimes, then the racial heuristic would be valuable. Drug dealing offers a useful example. While the typical stereotype of a drug dealer may be a young black male on a corner, that stereotype is inaccurate. People of all races use and sell drugs at similar rates. Suburbanites do not drive to the inner city to purchase their drugs. People buy drugs from their friends and neighbors. The only demographic group that uses drugs at a significantly higher rate is white youth (Alexander 2010 p. 97-98). The extent to which drug use/abuse is a serious problem is open for debate. In 2009, an estimated 21.8

million Americans were current illicit drug users (Substance Abuse and Mental Health Services Administration 2010). However, the enforcement of drug laws does not affect those 21.8 million Americans equally.

The use of race based or other discriminatory heuristics is particularly worrisome because of the dominant position that street level bureaucrats have vis-à-vis their clients. Clients are in a "non-voluntary" position when dealing with street level bureaucrats, and cannot refuse the decisions of staff members. In some cases, street level bureaucrats have nothing to lose by upsetting clients (Lipsky, 1980, p. 54-58). Imagine an inmate that is upset with a correctional officer's decision. What can the inmate do? The inmate could complain, but grievances are handled by prison staff. An inmate could say that the officer is lying, but it is unlikely that a prison manager would defer to an inmate over a correctional officer.

In addition to the dominant power relationship, street level bureaucrats can blame the client for any failure to reach a desired outcome. A prison official is unlikely to receive much blame if an inmate is a recidivist (Lipsky, 1980, p. 54-58). Unworthy clients have not just done bad things, unworthy clients are seen as bad people. Even the best, most effective prison may not be able to change every inmate. Repeatedly, when asked whether most inmates could be rehabilitated, staff said that the inmate could if they wanted to change. A failure could thus be blamed on the inmate's unwillingness to change. A reputation as a good or bad inmate can build on itself. Inmates who are viewed as constant troublemakers are deemed unworthy (Maynard-Moody and Musheno, p. 99-102). A correctional officer is free to punish that inmate. If the inmate complains, well that is to be expected because the inmate is a trouble maker!

Although correctional workers have numerous formal and informal powers, their power is not absolute. A correctional worker's decision can become illegitimate, if inmates refuse to comply. Inmates can exert psychological and in some case physical pressures on staff members, and a staff member who attempted to enforce every regulation is unlikely to be successful. Rather than a hierarchical top-down model, the prison environment is better represented as a series of accommodations among inmates and between inmates and staff (Liebling 2000; Britton 2003 p. 64-65).

While correctional workers share many similarities with other bureaucrats, one key feature stands out. Due to the negative social construction of prison inmates (Schneider and Ingram 1993), we might not expect systematic variation in inmate treatment. Perhaps all inmates will receive equally (bad) treatment. Maybe any differences in state level funding can be explained by resource capacity. Maybe the social construction of inmates is unimportant. After all, unlike suspects, inmates have all been convicted of a crime. Since all inmates are convicted, the ideas of "good" and "bad" inmates may seem far-fetched. Or perhaps the social construction of inmates is based on the inmate's offense. Perhaps drug offenders are viewed differently than violent offenders, and those differences are more important than the differences between a white and a black drug dealer. This dissertation examines those questions. Shortly, we will begin the empirical tests, with an examination of variation in state level resources for America's prison system(s). But first, it is important to consider an alternative theory and decision making mechanism that may help to explain treatment in American prisons.

Rational Choice and Correctional Policy

This dissertation focuses on determinants of treatment in American prisons. I

argue that theories of social construction and the race of inmates and prison personnel

provide a powerful explanation of those treatment decisions. However, other theories

could provide alternative explanations of those decisions. One obvious theory of decision

making is that of rational choice. On the one hand, in Chapter Two, the voluminous

literature in behavioral economics and psychology reviewed there clearly showed that

classic rational choice theories do not provide a realistic depiction of actual decision

making by either ordinary citizens or policy makers, whose decisions are heavily

influenced and biased by cognitive limitations and use of various heuristics.

Nevertheless, rational choice theory could provide a normative model of how policy

decisions could or should be made in the correctional arena. Although I will not be able

to "test" the expectations of rational choice theory in my dissertation, given the

limitations of the available data, which do not include the actual decisions of inmates or

policy makers, I point out below how rational choice models can provide a starting point

for examining correctional decision making.

For a decision to be rational, it must satisfy three basic criteria: the decision must

be optimal, given the actor's beliefs; the beliefs must be supported by the available

evidence; and the evidence "must result from an optimal investment in information

gathering" (Elster 2007, p. 191). A rational decision involves making the "best" possible

choice. "Best" is used to denote preference. Preferences need to be ranked, and need to be

transitive. I prefer Ford to Chevy and I prefer Chevy to Toyota, so I prefer Ford to

Toyota. Preferences need to be complete. I need to be able to say that I prefer A to B,

prefer B to A or I am indifferent to either. I prefer President Obama to former

Massachusetts Governor Mitt Romney. I prefer former Massachusetts Governor Mitt

Romney to former Presidential candidate Pat Buchanan. I am largely indifferent to a

choice between Pat Buchanan and Pat Robertson. For many purposes, preferences that

are transitive and complete are all we need to define an act as rational (Elster 2007, p.

194-195).

The classical rational choice model was described by Herbert Simon. The model

features a rational actor who faces some type of decision. The actor has to choose

between multiple alternatives, those choices lead to varying payoffs, and the actor has

ordered preferences (Simon 1955). For example, an actor could choose whether to

participate in a lottery. Both choices participation and nonparticipation have a different

payoff; the value or expected utility that the actor receives. If the expected benefits from

participating outweigh the costs of nonparticipation, the actor will participate. In cases

with more than two options, a rational actor can order the alternatives based on each

option's expected utility. A rational actor faces a choice, knows the expected benefits to

each choice, and chooses the most preferred option.

There are multiple variants of the expected utility model. One variant is von

Neumann–Morgenstern (NM) expected utility. Under NM expected utility, preferences

are transitive and complete. As previously noted, transitive means that if A is preferred to

B and B is preferred to C, then A is preferred to C. Complete means that for any choice

between two options, A is preferred to B, B is preferred to A, or the actor is indifferent.

NM expected utility can be summarized as $\sum pi\ u(xi)$ where pi is the probability of an

occurrence and u(xi) is the expected value of that occurrence (Schoemaker 1982). A

common example is whether to participate in a lottery. Imagine a lottery ticket costs one dollar. The payoff for winning is 100 dollars, and the probability of winning is two percent. The expected value of the lottery ticket is two dollars because u(xi)=.02(100). The expected value of the lottery ticket is more than the ticket costs, so our rational actor will purchase the ticket.

However, prospect theory suggests that we do not weigh options in such a fashion. Individuals weigh gains and losses, rather than a final value. Daniel Kahneman and Amos Tversky and others have conducted a number of experiments involving choices between hypothetical sums of money. In their original experiment, for example, Kahneman and Tversky (1979) gave participants a choice between an eighty percent chance at receiving $4,000 and a certain shot at receiving $3,000. Most respondents chose the certain 3,000 dollar option. Next, the same respondents were given a choice between a twenty percent chance at receiving 4,000 dollars and a twenty-five percent chance at receiving 3,000 dollars. The substitution axiom of utility theory states that if B is preferred to A, than any (probability) mixture (B, p) must be preferred to the mixture (A, p). However, most respondents did not follow the substitution axiom of rational choice theory. After selecting the B option in the first scenario, the same respondents picked option A, the twenty percent chance at receiving 4,000 dollars in the second scenario (Kahneman and Tversky 1979).

Three principles govern prospect theory that make decisions very different from the rational choice model. First, individuals begin with a reference point, and outcomes that are better than the reference point are considered "gains" while outcomes worse than the reference point are considered "losses." Second, values of outcomes (e.g., monetary

value) increase with diminishing sensitivity. The difference between 100 and 200 dollars seems much greater than the difference between 900 and 1,000 dollars. A gift of one hundred dollars to a poor high school student is immense, while giving Bill Gates an extra one hundred dollars is basically meaningless. The final and most important principle of prospect theory is loss aversion. Losses are weighed more heavily than gains. Most people fear losing 100 dollars more intensely than the prospect of gaining 150 dollars (Kahneman 2011, p. 282-284).

Prospect theory has implications for political actors, both elected officials and bureaucrats. If a politician endorsed a weekend prison furlough program, like the one that existed in Massachusetts in the 1980s, where prisoners are given opportunities to experience life outside of prison before being released, there may be rehabilitative benefits. An inmate who is able to spend a weekend with family may be better able to connect with the family upon release. The inmate may also experience psychological benefits from seeing their family. The prison may also benefit because a weekend furlough could be used as an incentive to induce good behavior. However such a program is risky, because the inmate may not return on time or could try to escape. A political actor would need to decide whether the benefits, both in terms of possibly lower recidivism rates and in terms of fulfilling a desired policy preference, outweigh the risk of an inmate escaping, committing more crimes and creating a huge political loss for the incumbent politician presiding over this policy. Those risks may be greater for Democratic politicians than Republican politicians. If something goes wrong, a Democratic politician can be more easily penalized, because an escape plays into the

preexisting narrative that Democrats are soft on crime. A Republican with a track record of being tough on crime may be better able to withstand those challenges.

The same pressures exist for prison staff. Suppose a Warden wants to start a program offering horticulture classes to inmates. The inmates could benefit from learning a useful skill, and from a hobby that occupies their time. The prison could benefit from cheap labor to manage a prison garden or farm. Yet there may be drawbacks. Officers who place a higher value on security, or who place a high value on deterrence, may become upset with the Warden. The risk of something going wrong also looms large. The Warden may suffer bad publicity and staff dissatisfaction if one of the horticulture inmates hits a staff member with a shovel. The risk of something going wrong may convince political actors, whether elected or unelected, to maintain the status quo or to stiffen penalties and punishment.

Keeping the status quo is likely less risky than attempting a new reform or program. Imagine an instance of divided government, in which the legislature is Democratic and the governor is a Republican. Assume that the Democratic legislature prefers sentencing reform to reduce the prison population while the Republican governor prefers to keep the relatively harsh sentencing guidelines. If the Republican governor prefers the status quo to reform, as is likely, then the governor can veto the new sentencing reform guideline. However, the Republican governor may worry about the risks of vetoing the legislation. Maybe the state is in favor of sentencing reform, or the governor would prefer to trade his non-veto for votes on another issue. Still, if preferences are strong enough or risks low enough, and the governor prefers the status quo, a veto is likely.

What if the Democratic legislature and the Republican governor value cooperation? A game referred to as "Battle of the Sexes" helps illustrate what would happen. In the Battle of the Sexes scenario, a husband and wife want to go out for the evening, but have different preferences. They decide to go to either a ballet or a boxing match and agree to make a final choice over the phone later. The husband and wife have an incentive to be together, but there is no predicting whether they will choose the boxing match or the ballet. The game's prediction is indeterminate (Elster 2007, p. 323). If the Democratic legislature and the Republican governor have an incentive to cooperate, then it is impossible to know whether they would choose accept sentencing reform. It is likely that some sort of agreement could be reached, to trade votes and allow either political actor their preference on sentencing reform in exchange for reciprocity on another issue. For the husband and wife, they could agree to go to the ballet first and then to the boxing match on a different night, or vice versa.

Our hypothetical Republican governor and Democratic legislature may have reason to cooperate on the issue of correctional policy. As mentioned previously, conservative political actors sometimes experience a conflict between tough on crime policies that emphasize personal responsibility and policies that are fiscally prudent, while liberal political actors sometimes face a conflict between an emphasis on social responsibility and rehabilitation with a fear of being Dukakis'd. With the ambiguity inherent in those tradeoffs, there may be room to maneuver and compromise. For example, minimum security prisons often offer a wide variety of rehabilitative programming, appealing to liberals, and a much lower cost per inmate. It costs the state of Kentucky 14,475 dollars per year to incarcerate an inmate at Bell County Forestry

Camp, a minimum security facility in southeastern Kentucky. In contrast, it costs the state of Kentucky 26,769 dollars per year to incarcerate an inmate at Kentucky State Penitentiary, the maximum security facility. Given the large number of inmates, those costs can add quickly. Perhaps there is a space for both political parties to get some of what they want.

Game theory may also provide insights into bureaucratic decision making. A sequential game makes sense within the prison environment. In one game, two armies are confronting each other at the border of their countries. General One can either retreat, leaving a status quo value of (3, 3) or can invade. The second general can either fight, with outcome (1, 1) or retreat and cede part of his territory for an outcome (4, 2). In this game, General One knows that General Two's threat to fight is an empty threat, so the danger of a (1, 1) outcome cannot happen. The equilibrium is (4, 2) for this particular game, because the first general can only improve his outcome, from 3 to 4 (Eltser 2007 p. 327).

The game may provide some insight into bureaucratic interactions. Consider Kentucky's House Bill 463. The House Bill is designed to move the Department of Corrections in a more rehabilitative direction. It is likely that some correctional officers and supervisors would prefer to maintain the status quo. Some correctional officers and supervisors may prefer security over rehabilitative programming, a defensible position. What if a security-minded supervisor is in the same position as General One? (For the purposes of this example, the more rehabilitative model is the new status quo). A security-minded supervisor could simply refuse to implement the new programs. The Department of Corrections could threaten to fight the refusal, like General Two, but if the

threat is not credible, then the security-minded supervisor would improve his or her position.

An especially interesting game would involve sequential actions between a correctional officer and an inmate. In this case, the inmate has a similar role to General One, but instead of invading another country, the inmate has to decide whether to comply with a rule. If there is not a credible threat to deter the inmate, then the inmate is likely to break the rule. Alternatively, there could be a credible incentive that could make the inmate want to comply with the rules. As the Deputy Warden said "Rewards are always better than punishments".

As the previous discussion made clear, there is room for theories of rational choice in the analysis of correctional policy. Some potential sequential decisions, such as a staff members' decisions to shirk or not, or an inmate's decision to comply with rules or not, could benefit from game theory explanations. Still, the data and existing literature on racial predictors for criminal justice policy suggest that theories of social construction that are based on a more realistic model of human decision making that emphasizes a heavy reliance on heuristics about race and ethnicity offer a more realistic explanation of prison decisions, especially as they apply to racial disparities in prison punishment decisions. Policy makers do not have perfectly defined preferences. For example, the analysis below of correctional expenditures examines spending between 2000 and 2006, where liberal and conservative policy makers do not have clearly diverging spending preferences. The more the correctional population in the United States has grown, the more muddled ideological predictors have become, as conservatives worry about crime but also about the cost to incarcerate. Even more importantly, as this chapter makes clear

the decision making of prison staff does not resemble the perfectly informed optimizer of rational choice theory. In a job where a caseworker is responsible for a hundred inmates and a unit administrator supervises multiple staff members and a hundred and thirty inmates, decision making is more likely to be "fast and frugal." When workers have high caseloads, limited time and limited information, they more likely to rely heavily on the use of heuristics to guide their decision making.

The next chapter analyzes state level correctional expenditures and offers the first analysis of state prison facilities. Now is the time to go behind the prison walls and try to understand the treatment decisions that occur inside.

Chapter Four- Inside the State and Inside the Department Of Corrections

Philosophers such as Fyodor Dostoyevsky, Mahatma Ghandi[1] and Jesus Christ[2] suggested that a society is judged by how it treats its weakest members. Dostoyevsky, himself a former convict, said that 'The degree of civilization in a society can be judged by entering its prisons'. Prison officials are allowed to place sharp restrictions on the rights of inmates, limiting property, movement, and access to friends and family. If I took away someone's property, it would be considered theft. If I locked someone in a room, and only let them out based on my decisions, it would be considered kidnapping. Incarceration allows the state many restrictions that are otherwise illegal. Treatment decisions are in part a reflection of the values of the state.

The inmate experience is not universal. Doing time in one state does not entail the same experiences as doing time in another. If I was given the choice between going to prison in Denmark or Pakistan, I would spend my incarceral days in Copenhagen. Given the choice between prison in Canada and prison in the United States, I will go with the Canadians. Given the choice between doing time in Mississippi and doing time in Massachusetts, I'll head to Boston. Finally, given the choice between incarceration at a maximum security facility and a minimum security facility in Mississippi, I'll pick the minimum security facility every time. Although these are stereotypes or heuristics, I feel more comfortable making those decisions than going through trial and error.

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[1] "A nation's greatness is measured by how it treats its weakest members." Mahatma Ghandi
[2] "They also will answer 'Lord, when did we see you hungry or thirsty or a stranger or needing clothes or sick or in prison and did not help you?' He will reply 'I tell you the truth, whatever you did not do for one of the least of these, you did not do for me.' Matthew 25:44-45

Total State Prison Expenditures

Part of the difference in incarceral experiences is based on resources, broadly and narrowly conceived. Money isn't everything, but it is certainly a lot. A contrast can be made between the American states that spend the most and the least on corrections, Maine and Alabama. The state of Maine spends six and a half times as much on each inmate than the state of Alabama. Maine also spends six and a half times on inmate health care as Alabama does. Each correctional officer in Alabama (9.5 inmates per correctional officer) is responsible for over three times as many inmates as their counterpart in Maine (2.9 inmates per correctional officer). Not surprisingly, inmates in Maine are more likely to participate in therapy or counseling, to receive psychotropic medication and to live in a less crowded facility. In addition to spending the lowest amount per inmate of any state and having the highest ratio of inmates to correctional officers, Alabama also has the most overcrowded prison system in the country, operating at 179 percent of designed capacity in 2005 (Stephan 2008).

Money can be spent in a variety of ways. I would hesitate to describe the living conditions in Maine as more luxurious, however. The majority of correctional spending goes towards construction, salaries, and medical care. Southern states do save some money by running large prison farms, and other quirks. For example, Alabama, Florida and Kentucky are proud of their no air conditioning for inmates' stance, which, of course, is also a no air conditioning for staff stance. Considerable savings are no doubt generated from cheaper food and utilities. But again, the majority of spending goes towards construction, salaries and medical care. Another misconception about "luxuries" concerns

inmate entertainment. At the facilities I visited in Kentucky, entertainment, such as televisions, music, etc. and sporting equipment, including weights, pool tables, basketballs, etc., were all purchased with inmate funds. Inmate commissary purchases, for snack food, toiletries, etc., are priced high above the normal market rate and some of the subsequent profits are used to provide entertainment goods. The differences between Alabama and Maine's correctional budgets are not the result of Maine's prisoners laying on king size beds in large cells, playing Xbox 360. The differences are in staffing and treatment, broadly defined.

Presumably, from the victim's perspective, a crime committed in Alabama is no worse than the same crime committed in Maine. I cannot imagine being more upset about having my car stolen in Tuscaloosa than if my car was stolen in Portland. My family will likely be equally upset if I am killed in Mississippi or in Rhode Island. If the offense is the same, or virtually the same, why are there differences in the treatment of state prisoners? Based on the demographic and political findings in the literature review, I provide two hypotheses.

Hypotheses

(H1) The State Politics Hypothesis: The level of state correctional resources will be positively related to the level of state liberalism, after controlling for the economic resources of the state.

(H2) The Social Construction Hypothesis: The level of state correctional resources will be negatively related to the percentage of the state's population that is black (Latino), after controlling for the economic resources of the state.

Data

The sample for this analysis includes six years of state correctional expenditures, for 2000 and 2002-06. The data is from the U.S. Department of Justice, Bureau of Justice Statistics *Justice Expenditure and Employment Extracts*. All data is aggregated at the state level, yielding 294 observations (excluding Nebraska). The data is cross-sectional, time series and was estimated with a generalized linear model.

Dependent Variables

The dependent variable of interest is state correctional expenditures. Three measures are used, overall spending per inmate, institutional spending per inmate and construction spending per inmate. Institutional spending per inmate only includes spending at the facility level, not construction or administrative spending. All expenditures are adjusted according to a state consumer price index, to account for variation in state cost of living.

Explanatory Variables

The primary explanatory variables of interest are measures of state liberalism, and state racial demographics. To measure state partisanship, I use the percentage of Democrats in the lower house, the percentage of Democrats in the upper house, and whether the governor is a Democrat. Alternative partisan models, including discrete dummies control of the house, senate, and complete partisan control were estimated, but are not reported. Alternate partisan models do not substantively change the result. I include a measure of citizen ideology, from the revised 1960-2008 citizen ideology series, developed by Berry et al (1998). A higher value on the citizen ideology measure

indicates a more liberal state. Citizen ideology is hypothesized to have a positive association with state correctional spending.

For the social construction variables, I use the state's racial and ethnic demographics, specifically the percentage of blacks and Hispanics in the state's population. Whites are the reference category. The racial and ethnic variables are drawn from the 2000 U.S. Census. Three control variables are included, the number of prisoners to allow for possible economies of scale, plus measures of the state poverty rate and the gross state product. The state poverty rate and gross state product are measures of a state's capacity to spend. A richer state spend more on corrections simply because that state has more money to spend, not because the state is less punitive. I also adjust for price differences across the state. Some regions (the South) have cheaper food and labor markets than other regions (such as the Northeast).

Results

The following tables provide descriptive statistics for the number of prisoners in the state prison population and for each of the three correctional spending dependent variables. All spending figures represent the per inmate spending for each category. Table 2.1 provides descriptive statistics for the correctional spending dependent variables.

Table 2.1 - Correctional Spending Per Inmate, in Dollars

	Mean	Standard Deviation	Minimum	Maximum
Total Spending	105766	286916	750	3502507
Institutional Spending	88838	250304	636	3101274
Construction Spending	3270	9655	0	78660

Table 2.2 shows the annual number of inmates and the level of correctional spending for the entire US state prison system, for the years analyzed.

Table 2.2- Total Correctional Spending Per Year

	Total Correctional Spending ($1,000)	Number of Prisoners
Year 2000	32439778	1238389
Year 2002	35275071	1276616
Year 2003	36542461	1295542
Year 2004	35872556	1316772
Year 2005	38608851	1340311
Year 2006	40622422	1377645

The results for the full model are included in Table 2.3.

Table 2.3 – Political and Demographic Effects on Spending

Explanatory Variables	Total Spending	Institutional Spending	Construction Spending
% Hispanic State Population	-3989 *	-3387 *	-194 ***
	(2334)	(2007)	(70)
% Black State Population	-6123 ***	-5141 ***	-191 ***
	(2327)	(2002)	(70)
% State House Democrats	-328503	-287686	-14580 **
	(215527)	(186904)	(6731)
% State Senate Democrats	205072	172868	4660
	(205630)	(178326)	(6421)
Democratic Governor	-17484	-13859	-918
	(32917)	(28782)	(1076)
Citizen Ideology	4805 ***	4102 ***	183 ***
	(1545)	(1340)	(48)
Number of Prisoners	1.44	1.17	0.05
	(1.52)	(1.31)	(0.05)
Gross State Product	-0.28	-0.23	-0.01
	(0.18)	(0.15)	-(0.01)
Poverty Rate	2616	2535	277
	7004	6073	219
Number of Observations	294	294	294
*p<.10, **p<.05, ***p<.01			

Discussion

Some support exists for the state politics hypothesis (H1). Citizen ideology is a significant positive predictor of state correctional spending, and in the expected direction. More liberal states do, on average, spend more than their conservative counterparts on total, institutional and construction spending. The effects are quite substantial and independent of the state's capacity to spend on corrections. A unit increase in state liberalism is associated with 4,100 dollar increase in per inmate institutional level spending. Those increases can add up quickly. The average state prison population is 26,908 inmates; a unit increase in state liberalism would lead to an additional $110,322,800. One can easily imagine the quality of life improvements for an inmate in a more liberal state.

However, there is very little support for a partisan influence on correctional expenditures. The percentage of Democrats in the state senate and having a Democratic governor does not have a statistically significant impact on correctional expenditures. In the only case where there is a partisan effect, the percentage of state house Democrats is associated with a **negative** effect on construction spending. Alternative estimations including dummy variables for Democratic control of each house, and interactions between ideology and Democratic representation were similarly insignificant. It is possible that political and economic pressures moved the two parties closer together on prison construction. After the 1988 presidential election, the Democrats moved to the right on prison construction to avoid being labeled as soft on crime, whereas in the fiscal crisis Republicans have been looking for ways to reduce state dollars on corrections.

Stronger support exists for a demographic explanation. The state black and the state Hispanic population were associated with a negative effect on each of the three spending variables. A unit increase in the state's black population is associated with a per inmate decrease of 5,140 dollars of institutional spending. Similarly, a unit increase in the state's Hispanic population is associated with a per inmate decrease of 3,490 dollars of institutional spending. A unit increase in the state's black population would lead to a decrease of $138,307,120 in the average prison system, and a unit increase in the state's Hispanic population would lead to a decrease of $93,908,920 in the average prison system. While the results are suggestive, it is unclear whether policy makers are using the race of the state population when deciding how much to spend on prisons.

At this point it is important to look more closely at correctional spending. Total, institutional spending and construction spending are not the only important expenditures. A state could build two new prisons in the 2000-2006 time period, with a budget outlay in the millions. That hypothetical state could offer few rehabilitative treatments, but the new prison construction could inflate spending and suggest a more rehabilitative state. Or a state could throw all of its inmates into solitary confinement, drastically raising spending and appearing to be more generous than is actually the case. It is worth asking what this money is spent on, a level of detail that is not available from the *Justice Expenditure and Employment Extracts*.

A Closer Look at State Expenditures

Correctional budgets are diverse. Although most of the money goes to personnel costs, for guards, administrators and other staff, there is other spending on treatment and programming. One large expense is medical care, including mental health care. A 2011

Supreme Court decision ruled that California's prison system failed to deliver minimal

care to prisoners with serious medical and mental health problems, and that lack of care

produced "needless suffering and death" (Liptak 2011). It is important to remember that

mental health care is woefully inadequate. Fifty-six percent of state prison inmates

(705,600 inmates in 2005) suffer from a mental illness, with a third suffering from major

depression, thirteen percent having a previous suicide attempt, and eleven percent

suffering from a psychotic disorder. Less than a third of those inmates have received any

kind of mental health treatment since admission to their prison facility (James and Glaze

2006).

It is important to consider not just the total budget outlays of a state correctional

department, but to also consider how much money is spent on rehabilitative services such

as mental health care. The Bureau of Justice Statistics provides detailed cross sectional

data on state correctional expenditures. The data come from the *State Prison*

Expenditures, 2001 study and offer a detailed, disaggregated look at correctional

expenditures. I will specifically focus on medical and mental health care, an area of

particular concern. The analysis was conducted in Stata 10 and utilized ordinary least

squares regression.

Dependent Variables

I focus on three dependent variables, which measure medical and mental health

resources. The first is medical care per inmate, measured in consumer price adjusted

dollars. The second dependent variable is the percentage of inmates who are receiving

psychotropic medication. With fifty-six percent of state prison inmates suffering from a

mental illness, including a third suffering from major depression, thirteen percent have a

previous suicide attempt, and eleven percent suffering from a psychotic disorder, the need

for psychotropic medication is great. Finally, I include the percentage of inmates

participating in mental health therapy, as a complementary treatment method.

Explanatory Variables

The explanatory variables of interest focus on the social construction hypothesis. I

include the percentage of state prison inmates who are black, the percentage of state

inmates who are Hispanic and the percentage of inmates who are not white, black or

Hispanic. The percentage of white inmates is the reference category. Three economic

controls, gross state product, tax revenues per capita and tax resources per capita are

included. Finally, the state's violent crime rate is included as a control. Table 2.4 presents

the ordinary least squares model estimation. Partisan and ideological variables, included

in alternate estimations, were insignificant.

Table 2.4- Political and Demographic Effects on Inmate Mental Health Care

Explanatory Variables	Medical Care Per Inmate	% Inmates Receiving Medication	% Inmates in Therapy
% Black Inmates	-1408 *	-12.066 **	-18.877 ***
	(720)	(4.843)	(5.914)
% Hispanic Inmates	930	-9.062	-14.347
	(1207)	(8.165)	(9.929)
% NonBWH Inmates	-1233	-2.126	-37.001 ***
	(1073)	(7.193)	(8.779)
Tax Revenues Per Capita	1.175 ***	0.002	0.005 **
	(0.301)	(0.002)	(0.002)
Gross State Product	0.000	0.000	0.000 *
	(0.001)	(0.000)	(0.000)
Tax Resources Per Capita	-0.014	0.002	0.000
	(0.023)	(0.000)	(0.000)
Violent Crime Rate	0.564	-0.012 **	-0.003
	(0.724)	(0.005)	(0.006)
Number of Observations	50	49	47
*p<.10, **p<.05, ***p<.01			

There is some support for the social construction hypothesis, at least for black prisoners. States with large black inmate populations, spend, on average, less on medical care for each inmate, have a lower percentage of inmates receiving psychotropic medications and lower percentages of inmates in mental health therapy. Even though fifty-six percent of state prisoners have a diagnosable mental illness, no state comes close to treating fifty-six percent of its inmates. Vermont comes closest, with thirty-five percent of inmates receiving therapy and twenty-eight percent receiving psychotropic medication. The averages, sixteen percent of inmates in therapy and thirteen percent on psychotropic meds, are lower still.

Although there is provisional support for the social construction hypothesis, the analyses thus far are certainly not definitive, for several reasons. There are many more treatment decisions than placement in a therapy program. Correctional staffs have substantial power, including the ability to issue severe punishments. More importantly, a reliance on aggregate state level data on prison treatment and punishments can be misleading. There are not simply 51 state and federal prison systems. In 2005, there were 1,812 different facilities that offered their own mix of treatments. Further, there are over two million prison inmates, some of whom have very different experiences. The prison experience is not universal. The experience of an inmate at maximum security Kentucky State Penitentiary is vastly different than at the minimum security Bell County Forestry Camp. In addition, simply showing a racial disparity state spending on prisons and treatment does not provide the most convincing evidence for the social construction hypothesis. Too many important variables cannot be included in the analysis (e.g., prison facility security level, racial demographics of the facilities, punishments as a dependent

variable), and the analysis really needs to focus on decisions made within prisons instead of between states. In other words, the analysis of state policy thus far does not take into account many important characteristics of prisons as institutions or other characteristics of inmates. To overcome these and other limitations with the state expenditure analysis, therefore, and to better understand treatment decisions within prisons, I now turn to an analysis of American state prison facilities.

An Analysis of American State Prisons

The American prison system(s) is tremendously varied. The operation of the facilities varies, with 102 federal, 1,295 state and 415 privately operated prison facilities in 2005. The security level of the facilities also varies, with 969 low or minimum security facilities, 480 medium security facilities, 350 maximum security facilities and 22 supermax facilities. The inmate population varies, from work release centers with fewer than 20 inmates to behemoths like California's Corcoran State Prison, which housed over seven thousand inmates in 2005. One can imagine the extremely different prison experiences represented by these facilities.

In the state of Kentucky alone, there are reformatories, a penitentiary, work camps, training centers, halfway houses, probation and parole services, rehabilitative programs and severe punishments. The state has thirteen adult prison facilities scattered throughout the state. Each facility has a different composition of staff and inmates, in terms of race and special needs. Many of the inmates at Kentucky State Reformatory have severe health concerns, unlike the mostly physically healthy inmates at the state's minimum security facilities. The facilities also vary widely in terms of safety. Fights that would be rare at a minimum security facility are common at the Penitentiary. Consider an

inmate's experience at Bell County Forestry Camp versus the experience of an inmate at Northpoint Training Center, which suffered a riot in August 2009.

The differences, small and large, may not mean much to civilians, but take on a heightened value in a correctional environment. A Lieutenant at Kentucky State Reformatory told me that when the inmates have little "The minor becomes major". We can think of the lesson of prospect theory, where losses are weighed more than gains and reference points are critical. My six year old niece has dozens of books in her room. If I took a single book from her, would she even notice? However, if you take a book from an inmate, who may only have a couple to read, the issue becomes more serious. The goods and services offered to inmates vary between and within facilities. An event that is ignored in one environment may cause an argument or physical confrontation in another.

To use one example, consider the differences between the most dissimilar facilities, a work release versus a supermax facility. In a work release facility, the inmates are allowed to work in the community during the day, often at private sector jobs. Inmates at work release facilities have additional privileges, such as increased recreational activities, programs and personal property. An inmate at a work release facility might have a cell decorated with books, pictures of family members and other personal belongings. An inmate at a work release may share a room with another inmate, allowing for useful interpersonal reactions. An inmate at a work release facility lives in a relatively safe, clean and mentally healthy environment.

Next, consider an inmate in a supermax facility. Built to house the most dangerous inmates, supermax facilities rely on intense isolation and security measures. Most inmates are confined to a single cell for 23 hours a day. Exercise is often conducted

in a small cage, secluded from the rest of the inmates. Access to the outside world is severely curtailed and communication is limited. Personal property is also restricted, and any items that might be a security concern are confiscated. Tensions between inmates and between staff and inmates are high. Violent offenses such as assaults are common. In addition to the threat of violence, some supermax facilities are unsanitary, as inmates resort to "gassing", which involves throwing human excrement or other bodily fluids on staff or other inmates.

During my time as a detention officer in the Mecklenburg County Sheriff's Office, I visited both the work release center and worked in some of the jail's work crew units. The work release center seemed quiet, clean and more respectful of the inmates. One of the employees that worked in an office at the work release center actually referred to the inmates as "our guests", as though they were hotel guests (some detention officers would derogatorily refer to the jail as Hotel Meck). The jail's work crew units were similar. There was a sense of purpose as the inmates lined up reasonably to receive their assignments for the day. The inmates who worked, whether outside or inside the jail, were generally friendlier than the general population. The inmates at Bell County Forestry Camp also seemed friendlier, and wanted to strike up more conversations with me while I was on my tour.

Maximum security facilities, and the administrative segregation units of non-max facilities, are a different story. My tenure with Mecklenburg County involved rare trips to the administrative segregation units. The first thing I noticed was how loud the units were, with inmates constantly screaming at each other and at officers. Inmates were also served food in their own cells, instead of the communal eating that other inmates

experienced. The administrative segregation units at Kentucky State Penitentiary were quieter but no less intimidating. While inmate to staff ratios may be high in other cases, there was a noticeable and intimidating staff presence in KSP's administrative segregation units. Inmates were locked in single cells and exercised individually. Inmates were also not required to shower daily, leaving a strong stench in the unit.

While extreme, the comparison of a work release and a maximum security unit is helpful. Prisons vary in size, living conditions, cleanliness, safety and in the rehabilitative services and punishments that are utilized. An inmate in a work release center or minimum security facility generally has more access to job training, substance abuse counseling and other important mental health care than an inmate in a maximum security facility. Work release centers also utilize lesser punishments than higher security facilities (indeed the harshest punishment at a work release center is a transfer to a higher security facility). In contrast, a supermax facility is in effect solitary confinement. Access to the outside world and visitation rights can also vary by prison facility. Visitation is a privilege that could be taken away for disciplinary infractions. The impact of seeing a spouse or girlfriend or child should not be understated. For many inmates, increased family connectedness is a hugely important incentive to rehabilitation.

Access to rehabilitative programming is often necessarily limited. With limited financial resources, it may not be possible to pay for programming for all inmates. Security concerns are also important. If an inmate is an assault risk, the threat to staff and other inmates may overwhelm any benefit from rehabilitation. It is important to know what drives treatment decisions, whether access is simply a function of security concerns

and the potential to be rehabilitated, or whether treatment decisions are based on the state political environment and the social construction of the inmate.

The hypotheses for this stage of the research should be familiar. I focus on socially constructed racial categories (the percentage of inmates at each facility who are black, Hispanic, and other, with whites as the reference category) and the state political context. The hypotheses are divided into expectations for rehabilitative services and punishments. Formally, the hypotheses for this section are:

(H1) The Social Construction Hypothesis: The treatment of state prisoners will vary systematically based on the racial and ethnic makeup of the prison population.

(H1A) The Rehabilitative Services Hypothesis: Prisons with higher percentages of black and/or Hispanic inmates will be less likely to provide rehabilitative services.

(H1B) The Punishment Hypothesis: Prisons with higher percentages of black and/or Hispanic inmates will be more likely to use punishment.

(H2) The State Politics Hypothesis: More liberal states will provide less punitive treatment.

(H2A) The Political Rehabilitative Services Hypothesis: State prisoners in liberal states will be more likely to receive rehabilitative services than those in conservative states.

(H2B) The Political Punishment Hypothesis: State prisoners in liberal states will be less likely to be punished than those in conservative states.

Data

The data come from the 2000 Bureau of Justice Statistics *Census of Federal and State Correctional Facilities* (2000 Census). The 2000 Census surveyed all 1,668 in operation in 2000. The sample for this analysis includes all 1,272 state operated, non-privatized prisons. The data span a wide variety of correctional institutions that housed state prisoners in 2000. All security levels, minimum, medium, maximum and supermax are included. Work release centers, work camps, reformatories and penitentiaries are included. Jails, as well as other local and regional detention facilities are excluded. Federal facilities are also excluded due to resource differences, and significant differences in the prison population (Federal offenders are disproportionately drug offenders). Finally, privatized prison facilities were excluded due to a lack of comparability with other state facilities. Privatized facilities have a financial incentive and there are significant differences in the prison population. For example, private facilities can refuse to admit inmates based on mental or health illnesses. Therefore the medical and mental health challenges faced by state operated facilities are likely greater than those faced by private facilities.

Dependent Variables

I examine several different measures of prison services and punishments as dependent variables so my findings are less subject to the vagaries of a single measure. Prisons offer a variety of services and punishments, and any single variable may be inadequate. By including multiple dependent variables, I hope to ease concerns over measurement and validity. It may be easy to argue for an idiosyncratic reason for a single

treatment variable. Doing so becomes harder with six treatment variables. The dependent variables broadly fall into two categories **rehabilitative treatment** and **punishment**.

Rehabilitative Treatment

I utilize four prison level measures of rehabilitative treatment, labeled *Counseling Rate*, *Medication Rate*, *24 Hour Mental Health Care Rate* and the *Work Release Rate*. Counseling Rate refers to the percentage of inmates receiving mental health counseling, Medication Rate to the percentage of inmates receiving psychotropic medication, 24 Hour Medical Care Rate to the percentage of inmates placed in specialized 24 hour mental health units with constant access to medical personnel and Work Release Rate refers to the percentage of inmates participating in work release programs. As mentioned previously, but which really can't be mentioned enough, fifty-six percent of state prison inmates (705,600 inmates in 2005) suffer from a mental illness, with a third suffering from major depression, thirteen percent having a previous suicide attempt, and eleven percent suffering from a psychotic disorder (James and Glaze 2006).

The percentage of inmates in a work release center offers a measure of the facility's commitment to rehabilitation. Work release centers are designed to reintegrate the offender into society. Work release offers intense, required rehabilitative programming, while allowing the offender to work in the community. For example, the Mecklenburg County Sheriff's Office Work Release Center requires inmates "Residents are required to attend classes on issues such as accepting criticism and problem solving, conflict resolution, time management, good work habits, stress management, parenting

and job retention, according to their individual needs" (Mecklenburg County, Work

Release and Restitution Center).

Table 2.5 offers descriptive statistics for the rehabilitative treatment variables.

	Counseling Rate	Medication Rate	24 Hour Medical Care Rate	Work Release Rate
Mean	14.98	10.14	2.25	13.25
Standard Deviation	36.94	25.78	11.14	30.03
Minimum	0.00	0.00	0.00	0.00
Maximum	99.90	72.56	100.00	100.00

Punishment

In addition to the rehabilitative services variables, I include two punishment

variables, labeled *Disciplinary Action Rate* and *Administrative Segregation Rate*.

Disciplinary Action refers to the percentage of inmates in the facility under a disciplinary

infraction. Such sanctions represent the least severe form of punishment within the

prison, yet they can significantly affect the life of a prisoner. Examples include

disciplinary actions that take away commissary privileges, result in the loss of a prison

job, or result in a visitation restriction. The second punishment variable, *Administrative*

Segregation Rate is the percentage of inmates in the facility that are placed in

administrative segregation units. Administrative Segregation is a formal punishment,

involving solitary confinement and other intense restrictions. For example, an inmate in

administrative segregation will have most of their personal property taken away, will be

forced to eat alone in their cells and will often be forced to exercise alone. Inmates must

stay in administrative segregation cells 23 hours a day. Administrative segregation is one

of the harshest punishments a prison can enforce.

Explanatory Variables

The explanatory variables of interest test the social construction and state politics hypotheses. In addition, controls for state economic conditions and the security level of the facility are included.

Social Construction Explanatory Variables

The social construction explanatory variables focus on the racial demographics of the prison population. Three variables are included in the equation labeled *Percent Black*, *Percent Hispanic* and *Percent non-WBH*. Percent Black is the percentage of prison inmates that are black, Percent Hispanic is the percentage of inmates who are Hispanic and Percent non-WBH is the percentage of inmates who are not white, black or Hispanic; this includes Asian, American Indian and two or more races categories. White inmates are the reference category. Also note that the Bureau of Justice Statistics uses Hispanic as a racial rather than ethnic identifier.

Prisons vary widely in terms of the percentage of the black and Hispanic inmate populations, as reflected in Table 2.6.

Table 2.6- Descriptive Racial Statistics for Inmate Populations

	% Black Inmates	% Hispanic Inmates
Mean	46.33	8.91
Standard Deviation	21.04	12.06
Minimum	0	0
Maximum	98.71	73.4

State Partisan Variables

To measure state partisanship, I use the percentage of Republicans in the lower house, the percentage of Republicans in the upper house, and a dummy variable for whether the governor is a Democrat. Alternative partisan variables were included and did not substantively change the results. I include a measure of citizen ideology, from the revised 1960-2008 citizen ideology series, developed by Berry et al (1998), where higher values on the citizen ideology measure indicate a more liberal state.

Security Level and State Condition Controls

I include controls for the security level of the facility, *Medium Security Facility* and *Maximum Security Facility*. Medium Security Facility is a dummy variable that indicates whether the facility is a medium security facility. Maximum Security Facility is a dummy variable that measures whether the facility is a maximum or supermax facility. State level controls are included, *Per Capita Mental Illness, Per Capita Income* and *Per Capita Revenues*. By controlling for security level, a state's capacity to fund corrections and the mental health need, the hope is that any remaining variation in treatment is a measure of a treatment decision, rather than capacity.

The model is estimated using ordinary least squares regression with standard errors clustered by state. Standard regression techniques may exaggerate levels of statistical significance of coefficient estimates for state-level variables (Moulton 1990; Primo, Jacobsmeier and Milyo 2007). State level data are often clustered. In this case, because prisons are clustered within states, such observations violate the normal regression independence assumptions. Following the suggestions of Primo, Jacobsmeier and Milyo (2007), I estimate the equation using regression with standard errors clustered

by state. Alternative estimations with state fixed effects, not reported, did not change the substantive findings for socially constructed racial effects at the facility level.

Results

Rehabilitative Services

Table 2.7A reports the results for the social construction model, without controls.

Table 2.7A- The Impact of Race on Rehabilitation, without Controls

Explanatory Variables	Counseling Rate	Medication Rate	24 Hour Medical Care	Work Release Rate
Percent Black	-0.002 ***	-0.002 ***	-0.049 ***	-0.001 ***
	(0.001)	(0.000)	(0.018)	(0.000)
Percent Hispanic	-0.001	-0.002 **	-0.049 *	-0.004 ***
	(0.001)	(0.001)	(0.029)	(0.007)
Percent non-WBH	-0.298 **	-0.130	-4.800	0.200 **
	(0.124)	(0.086)	(3.723)	(0.096)
Number of Observations	1051	1077	1089	1272
Adjusted R-Squared	0.007	0.017	0.005	0.037
*p<.10, **p<.05, ***p<.01				

As hypothesized, percent black is negatively related to all four rehabilitative treatment variables. In addition, percent Hispanic is negatively related to three out of four rehabilitative treatment variables. In the simple model, support for the social construction hypotheses exists. In all four dependent variables, prisons with higher percentages of black and/or Hispanic inmates receive lower levels of important rehabilitative treatment. Still, the simple model explains relatively little variation in treatment rates, with an adjusted R-squared of around one percent for three of the four dependent variables. We need to consider the prison security level and state characteristics that play a factor in

these treatment decisions because the impact of the race variables could change once important omitted variables are included in the equation.

Table 2.7B reports the results for the social construction model, with controls for security level and state conditions.

Table 2.7B- The Impact of Race on Rehabilitation, with Security Controls

Explanatory Variables	Counseling Rate	Medication Rate	24 Hour Medical Care	Work Release Rate
Percent Black	-0.002 ***	-0.002 ***	-0.071 ***	-0.001 **
	(0.001)	(0.000)	(0.018)	(0.000)
Percent Hispanic	-0.003 ***	-0.003 ***	-0.124 ***	-0.002 ***
	(0.001)	(0.001)	(0.034)	(0.001)
Percent non-WBH	-0.359 ***	-0.149	-6.629	0.246 ***
	(0.136)	(0.093)	(4.079)	(0.093)
Per Capita Mental Illness	-0.007 ***	-0.002	-0.072	-0.002
	(0.002)	(0.002)	(0.066)	(0.003)
Per Capita Income	-0.004	0.005 *	0.329 **	0.000
	(0.004)	(0.003)	(0.127)	(0.003)
Per Capita Revenues	-0.009	-0.002	0.131	-0.009
	(0.009)	(0.006)	(0.260)	(0.006)
Medium Security Facility	0.084 ***	0.063 ***	2.087 ***	-0.288 ***
	(0.026)	(0.018)	(0.782)	(0.017)
Maximum Security Facility	0.185 ***	0.147 ***	4.430 ***	-0.293 ***
	(0.029)	(0.020)	(0.884)	(0.019)
Number of Observations	1051	1077	1089	1272
Adjusted R-Squared	0.047	0.065	0.033	0.259

*p<.10, **p<.05, ***p<.01

After controlling for security level, support for the social construction hypotheses increased. The percentage of black and the percentage of Hispanic inmates are significantly related to rehabilitative treatment in all four equations. Prisons with higher percentages of black and Hispanic inmates utilize lower levels of counseling, mental health medication and 24 hour medical care. Even after controlling for security level, prisons with higher percentages of black and Hispanic inmates use work release at a

lower level. The state level controls, for per capita income, revenue and mental illness, are largely insignificant.

It is important to know what impact the state political context may have. Political explanations are popular in the state incarceration rate literature (Pfaff 2008) and most studies that have examined the determinants of state imprisonment rates have found a significant relationship between state conservatism and the imprisonment rate (Beckett and Western 2001; Greenberg and West 2001; Jacobs and Carmichael 2001; Jacobs and Helms, 1996; Smith 1994; Yates and Fording 2005). Examining state level variables may also give some insight into whether the state political and economic context is as important as the facility level context. Table 2.7C reports the results for the full model, including the state partisanship variables.

Table 2.7C- Full Model Estimation for the Impact of Race on Rehabilitation

Explanatory Variables	Counseling Rate	Medication Rate	24 Hour Medical Care Rate	Work Release Rate
Percent Black	-0.002 ***	-0.002 ***	-0.070 ***	-0.001 **
	(0.001)	(0.000)	(0.020)	(0.000)
Percent Hispanic	-0.004 ***	-0.003 ***	-0.117 ***	-0.002 **
	(0.001)	(0.001)	(0.038)	(0.001)
Percent non-WBH	-0.331 **	-0.148	-7.032 *	0.276 ***
	(0.139)	(0.095)	(4.169)	(0.095)
Per Capita Mental Illness	-0.007 ***	-0.001	-0.089	-0.002
	(0.003)	(0.002)	(0.073)	(0.002)
Per Capita Income	-0.005	0.004	0.320 **	0.002
	(0.004)	(0.003)	(0.130)	(0.003)
Per Capita Revenues	-0.011	-0.001	0.177	-0.017 ***
	(0.010)	(0.007)	(0.279)	(0.006)
Medium Security Facility	0.087 ***	0.064 ***	2.083 ***	-0.291 ***
	(0.026)	(0.018)	(0.789)	(0.017)
Maximum Security Facility	0.179 ***	0.144 ***	4.424 ***	-0.289 ***
	(0.030)	(0.021)	(0.896)	(0.019)
Republican Governor	0.047	0.002	0.346	-0.058 ***
	(0.029)	(0.020)	(0.855)	(0.019)
Percent Republicans Upper	0.102	-0.078	-3.254	0.259 ***
	(0.133)	(0.091)	(3.948)	(0.090)
Percent Republicans Lower	0.094	0.157	2.727	-0.258 **
	(0.156)	(0.107)	(4.604)	(0.103)
Citizen Ideology	0.000	0.000	-0.014	-0.001
	(0.001)	(0.001)	(0.035)	(0.001)
Number of Observations	1042	1068	1080	1263
Adjusted R-squared	0.062	0.061	0.030	0.267

*p<.10, **p<.05, ***p<.01

The social construction hypothesis retains its explanatory value, with percent black and percent Hispanic inmates remaining negatively related to the level of rehabilitative services. State partisan variables lack explanatory value, except for the work release rate. However, the results are contradictory, with percent upper house Republicans being positively associated with the work release rate while percent lower house Republicans and Republican governors exerting a negative effect on the work release rate. The contradictory results for the state partisanship variables may be idiosyncratic.

While the full model contains many state level variables, there are surely some unobserved differences between the states. It is possible that the effects seen will disappear if I could successfully control for all intra-state differences. In addition, I am interested in bureaucratic decision making and whether there appear to be differences at the facility level caused by bureaucratic discretion. As an alternative estimation, I model the four rehabilitative variables with state fixed effects. Table 2.7D reports the results.

-Table 2.7D The Impact of Race on Rehabilitation with State Fixed Effects

Explanatory Variables	Counseling Rate	Medication Rate	24 Hour Medical Care	Work Release Rate
Percent Black	-0.001	-0.002 ***	-0.106 **	-0.001
	(0.001)	(0.000)	(0.042)	(0.001)
Percent Hispanic	-0.003 ***	-0.005 ***	-0.361 ***	-0.003
	(0.001)	(0.001)	(0.085)	(0.002)
Percent non-WBH	-0.001 ***	-0.001 ***	-0.008	0.008
	(0.004)	(0.000)	(0.005)	(0.004)
Medium Security Facility	0.081 ***	0.064 ***	2.243 ***	-0.272 ***
	(0.017)	(0.009)	(0.685)	(0.047)
Maximum Security Facility	0.081 ***	0.117 ***	4.754	-0.292 ***
	(0.017)	(0.013)	(1.194)	(0.056)
Number of Observations	1051	1077	1089	1272
Adjusted R-Squared	0.486	0.416	0.079	0.409

*p<.10, **p<.05, ***p<.01

Support for the social construction hypothesis mostly remains with the addition of state fixed effects. The counseling rate for black inmates and the work release rate for all three minority groups remain negative, but do not quite approach the threshold for statistical significance. The rest of the findings are consistent with the previous analysis. Prisons with higher percentages of minority, especially black and Hispanic inmates, report lower counseling, medication and 24 hour medical care rates.

Racial demographics, especially for black and Hispanic inmates, seem to play a critical role in the determination of services. The effect of racial demographics also

appears to have a significant substantive effect. In order to provide a visual representation

of the results, I estimated effect sizes for the dependent variables, with the percentage of

black inmates as the explanatory variable of interest. For the counseling, psychotropic

medication and 24 hour medical care variables, I used the prediction for a medium

security facility in a state with a Republican governor, while all other variables were set

to their means. I then changed the percentage of the black prison population in 10 point

increments. I repeated the same measure for the work release variable, except that I used

the prediction for a minimum security facility in a state with a Republican governor,

while all other variables were set to their means. Work release is most commonly

practiced in minimum security facilities. The following graphs show the predicted level

of rehabilitative treatment as the black prison population varies. The dotted black lines

represent upper and lower 95 percent confidence intervals, while the solid black line in

the middle represents the actual prediction.

Figure 3A- Predicted Impact of Race on the Medication Rate
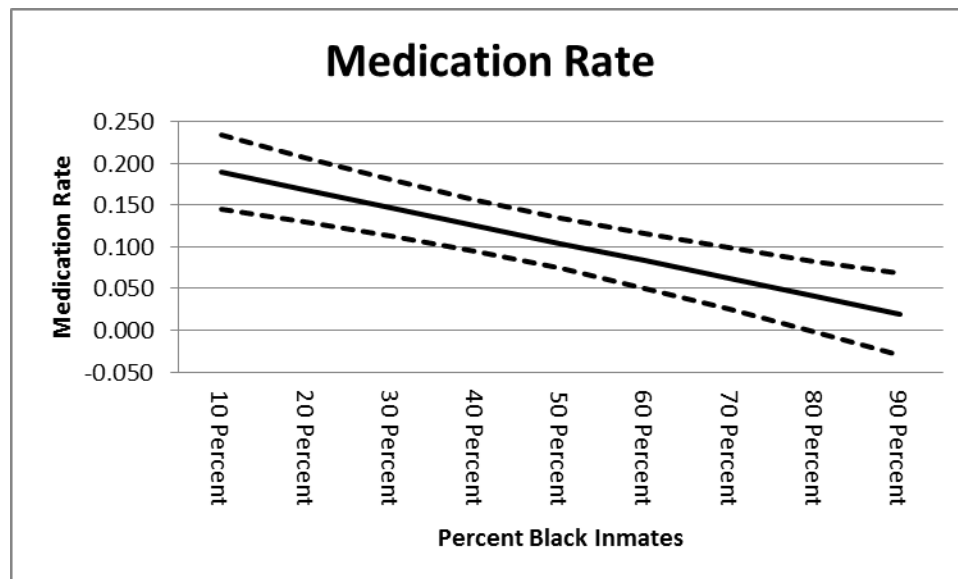
Figure 3B- Predicted Impact of Race on the Counseling Rate

Counseling Rate
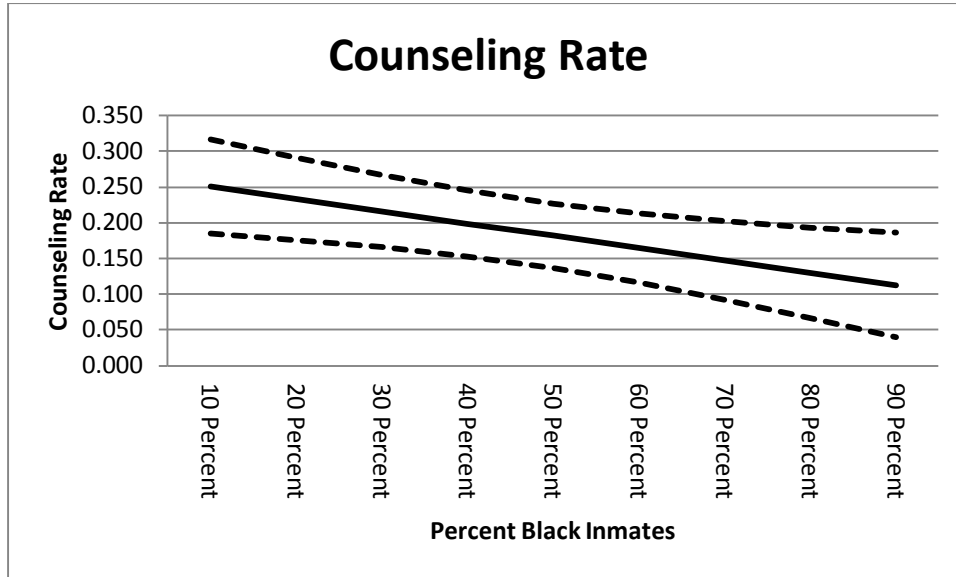
Figure 3C- Predicted Impact of Race on the 24 Hour Mental Health Care Rate

24 Hour Mental Health Care Rate
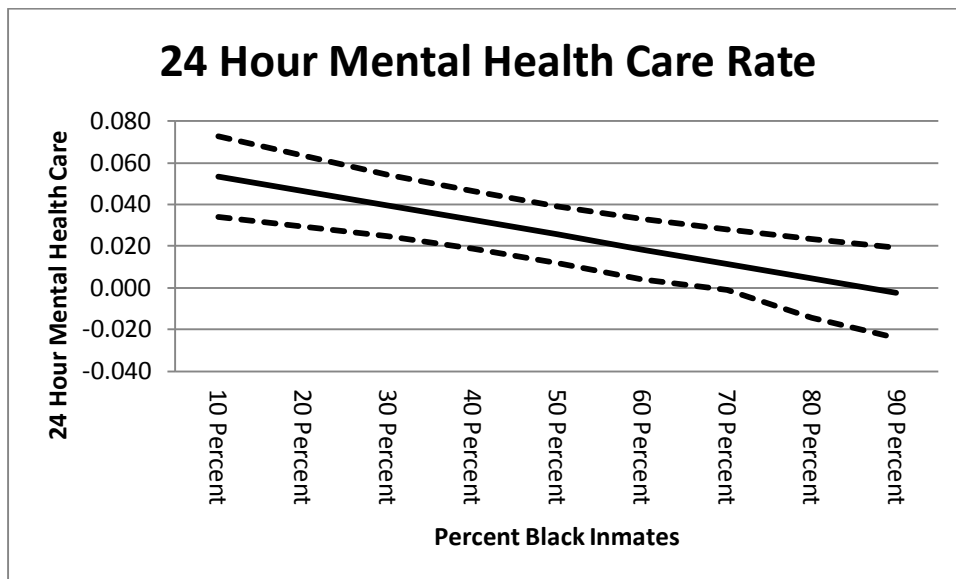
Figure 3D- Predicted Effect of Race on the Work Release Rate
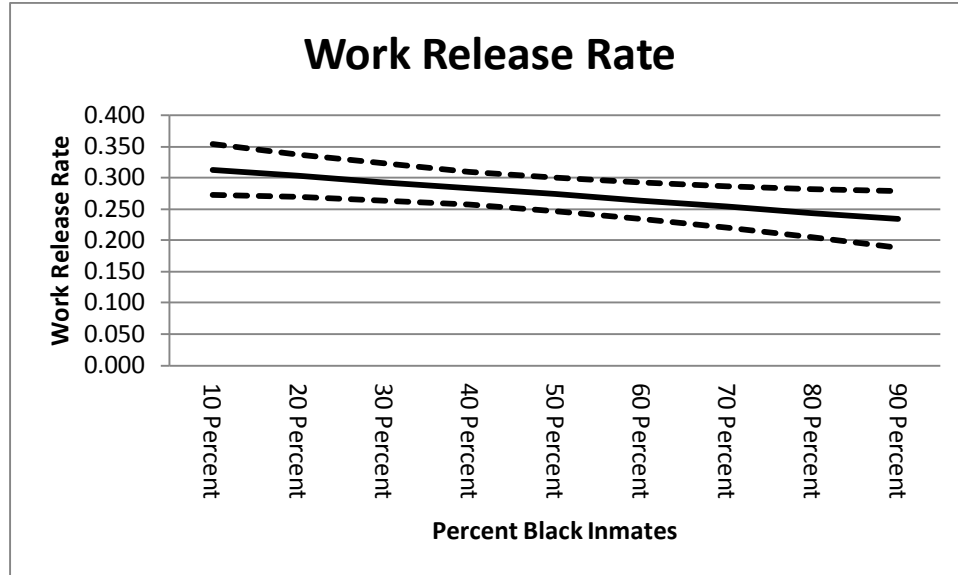
The trend in treatment is clear from the graphs. As the black inmate population

increases, the predicted level of rehabilitative treatment decreases. To use one example, a

prison with a ten percent black population is predicted to have 25 percent of its inmates

participating in mental health counseling, while a prison near the mean percentage of

black inmates (mean of 46 percent, prediction at 50 percent black) is predicted to have 18

percent of its inmates participating in mental health counseling. A prison with a ninety

percent population (lower than the maximum value) is predicted to have 11 percent of its

inmates participating in mental health counseling. With over fifty percent of state prison

inmates suffering from a mental illness, most inmates are underserved. However, prisons

with higher percentages of black and Hispanic inmates seem particularly underserved.

Punishment

I will now turn to the results for the two punishment variables. One important

methodological consideration needs to be addressed. The original variables included in

the BJS survey are heavily negatively skewed. This is because many prisons do not suffer

from the kind of serious inmate misconduct that requires a disciplinary action or an

administrative segregation unit. In fact, if an inmate is a serious disciplinary problem at a

minimum security facility, that inmate is likely to be transferred to a higher security

facility. Many prisons report a 0 value for the disciplinary action and administrative

segregation rates, because those prisons do not have disciplinary actions or an

administrative segregation unit.

I take the log of both the disciplinary action and the administrative segregation rate.

0 value prisons are removed from the analysis. The analysis retains 669 prisons for the

disciplinary action rate and 536 prison facilities with administrative segregation units.

Table 2.8 A presents the results for the simple social construction model.

Table 2.8 A- The Impact of Race on Punishment, without controls

Explanatory Variables	Disciplinary Action Rate	Administrative Segregation Rate
Percent Black	0.3991 ***	0.0001
	(0.2058)	(0.0003)
Percent Hispanic	0.3108	0.0014 **
	(0.5321)	(0.0008)
Percent non-WBH	0.3092	0.0000
	(0.3325)	(0.0003)
Number of Observations	669	538
Adjusted R-Squared	0.0064	0.027
*p<.10, **p<.05, ***p<.01		

Some support exists for the social construction hypothesis. Prisons with higher

percentages of black inmates have higher disciplinary action rates while prisons with

higher percentages of Hispanic inmates have higher administrative segregation rates.

Figure 2.8B presents the results for the social construction variables with added controls.

Table 2.8B- The Impact of Race on Punishment, with Security Controls

Explanatory Variables	Disciplinary Action Rate	Administrative Segregation Rate
Percent Black	0.5206 ***	0.0028
	(0.2489)	(0.0005)
Percent Hispanic	0.6457	0.0019 **
	(0.5258)	(0.0009)
Percent non-WBH	0.3822	0.0003
	(0.4329)	(0.0006)
Per Capita Mental Illness	0.5740	0.0006
	(0.9842)	(0.0014)
Per Capita Income	-2.7810	-0.0052 **
	(2.1951)	(0.0026)
Per Capita Revenues	1.2714	-0.0011
	(3.4575)	(0.0050)
Medium Security Facility	2.5711	-0.0083
	(6.7843)	(0.0075)
Maximum Security Facility	35.6943 ***	0.0459 ***
	(11.7970)	(0.0146)
Number of Observations	669	538
Adjusted R-Squared	0.0496	0.1133

*p<.10, **p<.05, ***p<.01

Support for the social construction hypothesis remains, after adding in various
control variables. Prisons with higher percentages of black inmates are associated with
higher use of disciplinary actions prisons with higher percentages of Hispanic inmates are
associated with higher use of administrative segregation units. The largest driver is the
security level, with maximum security facilities using punishment at a higher level, as
would be expected. Table 2.8C presents the full model, with the addition of the partisan
control variables.

Table 2.8C- The Impact of Race on Punishment, Full Model

Explanatory Variables	Disciplinary Action Rate	Administrative Segregation Rate
Percent Black	0.3744 *	0.0004
	(0.2296)	(0.0005)
Percent Hispanic	0.1798	0.0022 **
	(0.4152)	(0.0009)
Percent non-WBH	0.4023	0.0005
	(0.5409)	(0.0006)
Per Capita Mental Illness	0.8905	0.0012
	(1.1539)	(0.0019)
Per Capita Income	-2.4595	-0.0056 *
	(1.9986)	(0.0029)
Per Capita Revenues	1.2376	-0.0013
	(4.8777)	(0.0058)
Medium Security Facility	1.0925	-0.0061
	(6.9515)	(0.0076)
Maximum Security Facility	36.2335 ***	0.0463 ***
	(11.8653)	(0.0120)
Republican Governor	-2.5898	-0.0085
	(15.5756)	(0.0121)
Percent Republican Upper	49.9390	-0.0216
	(83.7307)	(0.0861)
Percent Republican Lower	-60.0876	0.1162
	(79.4002)	(0.1073)
Citizen Ideology	0.7202	0.0005
	(0.1890)	(0.0010)
Number of Observations	666	536
Adjusted R-Squared	0.0636	0.122

*p<.10, **p<.05, ***p<.01

The results hold for the social construction variables. Prisons with higher

percentages of black inmates are associated with higher disciplinary action rates and

prisons with higher percentages of Hispanic inmates have higher administrative segregation rates. Finally, I estimate an alternative model, with state fixed effects. Table 2.8D reports the results.

-Table 2.8D Punishment Model with State Fixed Effects-

Explanatory Variables	Disciplinary Action Rate	Administrative Segregation Rate
Percent Black	0.9673	0.0010 *
	(0.4015)	(0.0005)
Percent Hispanic	1.3420	0.0037 **
	(0.8537)	(0.0019)
Percent non-WBH	0.4384	0.0005
	(0.7455)	(0.0833)
Medium Security Facility	2.7471	-0.0031
	(8.0605)	(0.0104)
Maximum Security Facility	43.8727	0.0430 ***
	(14.5471)	(0.0145)
Number of Observations		538
Adjusted R-Squared		0.2952
*p<.10, **p<.05, ***p<.01		

The alternative estimation offers mixed results. While the significance of the disciplinary action rate disappears, and may be partially due to state level variation, the percentage black and percentage Hispanic inmates are both positive and statistically significant. This suggests that facilities with higher percentages of black and Hispanic inmates may be more punitive.

Discussion

Correctional staffs control access to important rehabilitative services and can implement harsh punishments. In many ways, inmates represent a vulnerable population,

in terms of mental health and important life skills. While over half of all state inmates suffer from a diagnosable mental illness, models predict that less than twenty percent receive mental health counseling, and less than twelve percent receive psychotropic medication. The results are worse for black and Hispanic inmates. Prisons with higher percentages of black and Hispanic inmates provide lower levels of mental health counseling and psychotropic medication. A prison with a ten percent black population is predicted to have 25 percent of its inmates participating in mental health counseling, while a prison near the mean percentage of black inmates is predicted to have 18 percent of its inmates participating in mental health counseling. A prison with a ninety percent black population is predicted to have only 11 percent of its inmates participating in mental health counseling.

Correctional officials also control work release programming. Work release centers and other work programs provide some of the strongest, most concentrated rehabilitative programming available to inmates. Work release typically involves structured life skills, parenting, job skills and substance abuse counseling. The goal of work release is to reintegrate the inmate into society, rather than simply fulfill goals of punishment and deterrence. Only a fraction of inmates are able to participate in work release programs. Unfortunately, models suggest that race plays an important role in determining how many inmates will participate in work release. Prisons with higher percentages of black and Hispanic inmates have lower percentages of inmates participating in work release. Indeed, for all eight rehabilitative treatment variables, prisons with higher percentages of black and Hispanic inmates have lower levels of participation in rehabilitative treatment.

Theories of social construction help explain variation in inmate punishment. Prisons with higher percentages of black and Hispanic inmates are more likely to use disciplinary actions and to place inmates in administrative segregation units. The use of harsh solitary confinement has an effect. In The House of the Dead, Fyodor Dostoevsky wrote "But I am firmly convinced that the belauded system of solitary confinement attains only false, deceptive, eternal results. It drains the man's vital sap, enervates his soul, cows and enfeebles it and then holds up the morally withered mummy, half imbecile, as a model of penitence and reformation" (Dostoevsky 2004). The reformatories of the 1870s were a response to the failure of penitentiaries in the 1850s. Solitary confinement may solve goals of incapacitation and deterrence, but it certainly fails as a rehabilitative tactic, while increasing the mental health problems of inmates.

Treatment varies greatly. At the most extreme ends, work release emphasizes rehabilitation and reintegration, while administrative segregation emphasizes control and punishment through solitary confinement. Treatment decisions seem to be influenced, at least in part, by the social construction of the targeted population. Some inmates may need to be confined in an administrative segregation unit, because of threats to staff and other inmates. However, models suggest that some punishment decisions are influenced by inmate demographics. If treatment decisions are based on race, effectively discriminating against black and Hispanic inmates, then those decisions are immoral and out of sync with the professed democratic norms of American society.

However, the previous analyses may suffer from ecological fallacy. A prison with higher percentages of black (Hispanic) inmates may use punishment more, but that does not mean that black (Hispanic) inmates are being punished more. Perhaps white inmates

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in these prisons are punished at a higher rate. It is important to consider evidence of socially constructed racial effects at the facility and individual levels. The next chapter analyzes treatment decisions at the individual level. Rehabilitative treatment and punishment remain the dependent variables, but the explanatory variables will focus on attributes of the inmates rather than attributes of the prison. I will show evidence of the power of race and ethnicity to account for treatment at the individual level, with a full set of controls for spurious effects.

Chapter Five- Individual Level Treatment

Most American prisons face significant resource constraints. Many prisons are overcrowded, understaffed and lack sufficient programming options. Inmates are in many ways a vulnerable population, with mental health challenges, a relative lack of education and minimal life skills. Rehabilitation is not the top priority in many prisons, and the modern crime control model of incarceration emphasizes control and deterrence. In prisons that do emphasize a rehabilitative model, resource constraints hamper the ability to provide inclusive and individualized treatment. If over fifty percent of inmates have a diagnosable mental illness, but only twenty percent receive treatment, a critical choice must be made. Which inmates will receive treatment?

In my field interviews at two Kentucky state prisons, I asked staff members whether most inmates at their facility could be rehabilitated. Twelve of the twenty-three staff members agreed that most inmates could be rehabilitated. Six other staff members indicated that some proportion of inmates could be rehabilitated. Only two people flatly said no, although the remainder did not answer the question. Perhaps more importantly than their answer to whether or not most inmates could be rehabilitated was the differentiation between inmates who could and could not be rehabilitated. This section will describe some of those comments, within the broader frame of political science and public administration.

Differentiation can occur for several reasons. Some clients evoke feelings of sympathy or hostility by their demeanor. Some clients are judged as worthier than others. Front-line workers may give services to clients who are thought to respond more

favorably to treatment. Services would then be based upon chances of success rather than based upon need. Some street-level bureaucrats attempt to triage clients. In cases of triage clients with low chances of success are not given services and clients with high chances of success are not given services. Instead, services are concentrated among clients who's chances of success are most improved by receiving services (Lipsky, 1980, 106-111).

How did the correctional staff I interviewed view inmates? Which inmates are viewed as more capable of being rehabilitated? Part of the answer depended on the specific occupation of the prison staff. Treatment workers, such as case workers and social service clinicians were more positive in their views on rehabilitation. Unit administrators, employees with a mixture of security and treatment roles, were also broadly positive of the inmates' ability to be rehabilitated. Correctional officers, whose job is arguably the most dangerous, were split exactly fifty-fifty on the question of rehabilitation. Half of all correctional officers agreed that most inmates at their facility could be rehabilitated while half answered no, or argued that a smaller percentage of inmates could be rehabilitated. The job roles of employees play some role in shaping the views of staff, and those views can sometimes change. The concluding chapter of this dissertation will detail one unit administrator whose views changed upon leaving security and taking on a more rehabilitative role.

In addition to differences among occupational categories, there was a wide variety of responses to who could be rehabilitated. An inmate's ability to be rehabilitated, in staff's view, hinges on two categories; a desire to change and an ability to change. Some inmates were viewed as committed to a criminal lifestyle, and not wanting to change. These inmates are viewed as "core troublemakers". The estimate of core troublemakers

varied, from less to ten to around twenty-five percent of the population. The only

consistent demographic marker for these trouble makers was their youth. Multiple staff

members talked about the difference between a "convict" and an "inmate". A convict was

an older prisoner, who generally did not cause problems. I was memorably told that a

convict will run a scam to get extra commissary, but that convicts were respectful and

wouldn't break many rules. The convicts will scam you, and couldn't be trusted, but they

were basically good guys. Inmates, in the vernacular, were younger and determined to

prove their toughness to the rest of the population.

The desire to change was also impacted by their charge. Not every inmate in the

prison on a drug charge believed they had a problem with drugs, just as not every inmate

in the prison on a sex offense charge believed they had a sex related problem. A worker

in the Sex Offender Treatment program told me that the inmates who want to change are

more engaged in programming. Some of the inmates were resistant to change and were

"stuck on stupid". The Sex Offender Treatment workers also argued that rehabilitation

was not a dichotomous variable, but that there were different levels of change. The sex

offender treatment involves difficult cognitive restructuring and thinking about their

offense, so it is perhaps unsurprising that some inmates do not want to face the gravity of

their treatment needs.

The ability to change was also a recurring theme. The same Sex Offender

Treatment worker told me that educational level matters and those inmates with minimal

education tended to struggle. Inmates with antisocial behavior also struggled with

rehabilitation. A Social Service Clinician, responsible for treatment in a mental health

unit, echoed those sentiments, stating that anti-social inmates and those with borderline

personalities have difficulty being rehabilitated. Some inmates would also act in a demanding, entitled fashion. The Social Service Clinician said that she tries to confront those inmates who are resistant to change and that she works hard to establish boundaries. The same Social Service Clinician expressed dismay at the lack of sufficient resources dedicated to rehabilitation, and a lack of enough programming. She felt that was a reflection of the Department of Corrections' philosophy. "I don't think the mission is to rehabilitate, but to warehouse", she told me. Finally, she mentioned the tensions between security and treatment. An inmate may act one way with her, and she will attempt to deescalate the situation, while if the inmate acts identically to security staff, that inmate is sent to administrative segregation. One would do well to remember how difficult the correctional environment can be.

Most treatment decisions are made by correctional officers or other treatment staff. Correctional workers face large caseloads, the need for quick decisions and limited information. Imagine a case worker that has to select inmates for participation in substance abuse counseling. What if fifty inmates apply for the program, but there are only twenty slots? Who should the correctional worker select? Should the program select inmates with the most serious substance abuse problems or the inmates with the highest chance of successfully completing the program? It is possible that an inmate with an addiction to methamphetamine would benefit greatly from a substance abuse program, but would only have a ten percent chance of successfully completing the program, while an inmate with a mild drinking problem would benefit less, but has an eighty percent chance of successfully completing the program. With limited resources, the correctional worker may not have a correct choice, but rather a choice with multiple tradeoffs.

Now imagine that the correctional worker in charge of selecting inmates for a rehabilitative program has limited information. Maybe the only information available is the inmate's charge, demographics and disciplinary history at the facility. Or maybe each inmate briefly interviews for the substance abuse program. Either way, the correctional worker will not have complete information about the inmate and their likelihood of success. Perhaps an inmate is very eloquent and can give a good interview, but that inmate is a con artist who knows the right buzzwords to say. Perhaps another inmate has poor communication skills, but has a real commitment to changing a harmful lifestyle. Perhaps an inmate's charge is not a true reflection of their character. The correctional worker cannot spend unlimited time researching every inmate and making a decision based on complete information. Instead, the correctional worker needs a set of behavioral predictors that simplify a complex decision.

Our hypothetical correctional worker has a question that has many possible answers: who should participate in a substance abuse program? A trial and error process is impractical and potentially dangerous. If the correctional worker took a risk, and admitted a methamphetamine user with a violent criminal history, the decision could backfire. The methamphetamine user with a violent criminal history could use the substance abuse program, which typically have lower levels of security and more freedom of movement, as an opportunity to assault staff or other inmates. It is important to remember that in the prison environment, when the wrong decision is made, it is possible for someone to end up hurt or even killed.

As the discussion of limited information and high caseloads in Chapter Three, given time constraints, limited resources and the potentially heavy consequences attached

to risky decisions, problem solving is likely to proceed "by selective search through large sets of possibilities, using rules of thumb (heuristics) to guide the search" (Simon et al, 1987). The correctional worker may automatically exclude any inmate with a history of violence inside or outside of prison. Or the correctional worker could exclude inmates who are not recommended to the program by other staff. Decisions may be framed by a choice to maximize potential benefits or maximize potential success.

Many potential heuristics can help delineate worthiness in the correctional environment. An inmate with a history of staff assaults could easily and logically be considered unworthy. An inmate with a history of staff assaults poses a threat to security. Some heuristics serve as a proxy for security threats. For example, most criminals "age out" in their thirties (Farrington, 1986). Therefore an inmate in his sixties is less likely to be violent than an inmate in his twenties. Age is a useful, if not perfect heuristic. Education is another valuable heuristic. An inmate with a high school degree is likely to have a higher probability of success in rehabilitative programming than an inmate who dropped out of school in the eighth grade. The better educated inmate has shown an ability to follow directions and commit to a program.

Some heuristics are based on socially constructed stereotypes. Racial stereotypes are particularly significant in America. The Racial Classification Model (RCM), introduced by Soss, Fording and Schram (2008) suggest that policy actors try to choose courses of action that they expect to be effective, in light of what they believe about the specific groups they aim to address. Social group characteristics can serve as proxies for more detailed information about a policy's intended target group. Group reputations can frame expectations of the consequences of treatment decisions on policy-target behaviors,

and whether the decision is likely to be effective or ineffective. Group reputations serve as an important cue when race is salient to a policy area, as in the case of criminal justice (Peffley and Hurwitz 2010). As long as race is salient, racial classifications can serve as a heuristic, even if the correctional worker is not generally hostile to any one race.

When I worked for the Mecklenburg County Sheriff's Office, I often used heuristics to quickly assess an inmate's threat level. Older inmates were always thought of as less threatening. Inmates with neck tattoos, or who obviously worked out, were considered more threatening. I also used at least one race based heuristic. In Charlotte, one of the most infamous gangs is the Hidden Valley Kings (HVK). The HVK were predominately young black males with long dreadlocks. Obviously not every inmate with long dreadlocks was a Hidden Valley King, but some of them were. Whenever I saw a young black male with long dreadlocks, I was more cautious of security concerns. My race based heuristics were not particularly good at predicting threat. I once commented to a fellow officer that one of the Hispanic inmates seemed like a pretty nice guy. My fellow officer informed me that the Hispanic inmate was a leader in the gang MS 13.

Do race based heuristics serve as cues in the correctional environment? The previous analysis at the facility level suggests that such heuristics are used. This chapter provides another test for socially constructed heuristics that systematically effect treatment decisions. Again, I focus on rehabilitative services and punishment decisions.

Hypotheses

(H1) The Social Construction Hypothesis: Black and Hispanic inmates will receive more punitive treatment than their white counterparts.

(H1A) The Rehabilitative Services Hypothesis: Black and Hispanic inmates will be less likely to receive rehabilitative services.

(H1B) The Punishment Hypothesis: Black and Hispanic inmates will be more likely to be punished.

Data

The data for this chapter come from the Bureau of Justice Statistics *Survey of Inmates in State and Federal Correctional Facilities, 2004* (2004 Survey). The 2004 Survey involved personal interviews in both state and federal prisons that provided information about the inmate's offense, criminal history, pre-incarceration life, participation in treatment programs and punishment inside prison. The 2004 Survey is a nationally representative sample of inmates, selected in a two-stage process. Prisons were selected in the first stage and inmates within the sampled prisons were selected in the second. In the first stage 290 State prisons were selected, including

225 male facilities and 65 female facilities. The 14 largest male prisons and 7 largest female prisons were selected with certainty. The remaining facilities were selected based on probability proportional to size. From the 290 state prisons, approximately 1 in every 85 males and 1 in every 24 females in were selected. There were 14,499 complete interviews for the State survey.

Dependent Variables

The 2004 Survey contains a wealth of information about the interviewed inmates, allowing me to include multiple treatment dependent variables. By including multiple dependent variables, I hope to ease concerns over measurement and validity. The

dependent variables are grouped into two categories **rehabilitative treatment** and **punishment**.

Rehabilitative Treatment

I include four measures of rehabilitative treatment as dependent variables, labeled *Mental Health Counseling, Self Help Counseling, Substance Abuse Treatment* and *Educational Programs*. All four measures involve participation in programs led by professionally trained treatment staff. *Mental Health Counseling* is a dichotomous variable for whether the inmate has participated in mental health counseling led by a professionally trained counselor at any time during their incarceration. *Self Help Counseling* is a dichotomous variable for whether the inmate has participated in self help or group counseling led by a professionally trained counselor at any time during their incarceration. *Substance Abuse Treatment* is a dichotomous variable for whether the inmate has participated in a specialized substance abuse treatment program at any time during their incarceration. Finally, *Educational Programs* is a dichotomous variable for whether the inmate has participated in any educational programming at any time during their incarceration. Educational programming can include a basic literacy course, general equivalency diploma (GED) program or a college level program.

Punishment

In addition to the four rehabilitative treatment variables, I include three punishment variables, labeled *Write-Ups, Disciplinary Action,* and *Administrative Segregation*. *Write-Ups* is a dichotomous variable for whether the inmate has been written up while incarcerated. A write-up is a formal disciplinary report for misbehavior,

and is the least severe of the three punishment variables. A write-up may function as a warning or lead to a formal punishment. For example, an inmate may be written up for having nuisance contraband, which is having too much of a state issued product. If an inmate had two blankets when only one was issued or if an inmate had too many rolls of toilet paper, which would be considered nuisance contraband. The contraband would be taken away, and the inmate written-up, but that would be the extent of the punishment. Or an inmate could be written up for missing a work assignment or being disrespectful to staff. Neither behavior would necessarily result in additional punishment.

Some write-ups lead to more significant punishment. In contrast to nuisance contraband, some contraband has serious consequences. If a weapon or gang paraphernalia was discovered in an inmate's possession, the inmate would be written up, but additional punishment is also likely. Write-ups are the beginning of any future disciplinary action. About half of the 2004 Survey's respondents reported being written up during their incarceral career. Given the plethora of possible disciplinary infractions- nuisance contraband, missing a work assignment, talking back to staff, and sexual activity, along with more serious offenses such as drug use and assaults- most inmates could be written up at one point or another.

Disciplinary Action is the second punishment dependent variable. *Disciplinary Action* is a dichotomous variable for whether the inmate receives a more significant punishment than a written warning. A disciplinary action can include loss of privileges, loss of visitation rights, loss of good time, a higher custody level, transfer to another facility, an additional sentence or time spent in administrative segregation. *Disciplinary Action* represents a harsher punishment than a write-up. Disciplinary actions also

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represent a higher commitment from the prison staff, because inmates can appeal their punishment in a formal disciplinary hearing.

The final punishment dependent variable is *Administrative Segregation*. *Administrative Segregation* is a dichotomous variable for whether the inmate is placed in an administrative segregation (solitary confinement) unit. Administrative segregation is one of the harshest punishments that a prison can enforce. An inmate in administrative segregation will have most of their personal property taken away, will be forced to eat alone in their cells and will often be forced to exercise alone. Inmates must stay in administrative segregation cells 23 hours a day. About fifteen percent of the survey respondents reported being placed in an administrative segregation unit at some point in their incarceration.

Explanatory Variables

The 2004 Survey offers an opportunity to explore a nuanced examination of inmate characteristics. Nearly three thousand variables are included in the 2004 Survey, capturing many aspects of the inmate's pre-incarceral and incarceral life. The main explanatory variables of interest focus on the social construction of the inmate. Models also include measures of the inmate's pre-incareration life and criminal history.

Social Construction Explanatory Variables

Six social construction explanatory variables are included. Four variables measure the inmate's race and ethnicity, *Black, Hispanic, Asian* and *American Indian*. All four variables are dichotomous dummy variables. White inmates are the reference category. It is hypothesized that all four groups will experience worse treatment outcomes than white

inmates, but that the effects will be strongest for black inmates. Around forty-three percent of respondents identified as black, seventeen percent as Hispanic, five percent as American Indian and one percent as Asian.

I also include measures of the inmate's age and gender. *Age* is the inmate's age, ranging from sixteen to eighty-four year olds, with a mean age of thirty-five. It is expected that older inmates will have a positive social construction, and viewed as worthier clients. I also include a measure of the inmate's gender. *Female* is a dichotomous variable for whether the inmate is a woman. I expect female inmates to have a more positive social construction than their male counterparts. However, since I control for fixed effects at the facility level, it is not expected that gender will be statistically significant. Most prison facilities are segregated by gender.

Pre-Incarceral Life

I include four measures of the inmate's pre-incarceral life as control variables. *Drug User* is a dichotomous variable for whether the inmate used drugs before their arrest. *Drug User* includes all illegal drugs, including marijuana. Drug users are expected to participate more in rehabilitative programming, especially substance abuse and mental health counseling, due to higher levels of need. Drug users are also expected to be punished more frequently, because many drug users continue their use in prison. *Highest Grade Attended* is a measure of the inmate's education level. The average surveyed inmate did not complete high school, and in fact stopped attending school in the tenth grade. The inmates surveyed ranged from the equivalent of no formal education to a

master's degree. It is hypothesized that better educated inmates will be more likely to participate in rehabilitative services and less likely to be punished.

Working Before Arrest is a dichotomous variable for whether the inmate was employed at the time of their incarceration. An inmate who was capable of being employed may have life skills that improve their chances at success in rehabilitative programming. Finally *Ever Homeless* is a dichotomous variable for whether the inmate was ever homeless in their pre-incarceral life. Nearly ten percent of the inmates reported being homeless, offering another indication of the vulnerability of this population. It is expected that inmates reporting being homeless will participate more in rehabilitative programming, due to increased need, and will be punished more, due to maladaptive life skills.

<center>*Criminal History*</center>

The second set of controls measure the inmate's criminal history. Three variables are included, labeled *Violent Offender, Number of Arrests* and *Number of Incarcerations*. *Violent Offender* is a dichotomous variable for whether the inmate was convicted of a violent offense, such as assault or murder. Violent offenders are expected to have a negative social construction compared to non-violent offenders. Violent offenders are expected to participate less in rehabilitative services and to be punished more. *Number of Arrests* and *Number of Incarcerations* measure the number of times an inmate has been arrested and incarcerated, respectively. A higher number of arrests/incarcerations suggest a longer criminal history and a propensity towards trouble making, or at least a propensity towards getting caught. An inmate with a higher number of

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arrests/incarcerations is expected to have a negative social construction, participating less

in rehabilitative services and being punished more

Data was analyzed in Stata 10, using conditional logit models. Conditional logit

allows for fixed effects, which in this case were grouped by the facility code. Each model

is therefore explaining **within** facility variation, after controlling for prison fixed effects.

Results

Table 3.1A presents the results for the rehabilitative treatment dependent

variables. The explanatory variables are the demographic variables, without any controls.

Table 3.1A- The Impact of Race on Individual Rehabilitative Treatment, without controls

Explanatory Variables	Mental Health Counseling	Self Help Counseling	Substance Abuse Treatment	Educational Programs
Black	-0.211 ***	-0.265 ***	-0.270 ***	-0.107 **
	(0.071)	(0.041)	(0.061)	(0.053)
Hispanic	-0.342 ***	-0.288 ***	-0.319 ***	-0.210 ***
	(0.101)	(0.054)	(0.084)	(0.072)
American Indian	-0.245 *	0.137 *	0.058	0.041
	(0.142)	(0.078)	(0.113)	(0.098)
Asian	-0.529	-0.517 *	-0.201	-0.418
	(0.402)	(0.201)	(0.303)	(0.287)
Female	-0.544	0.378	1.972 *	1.541
	(1.117)	(0.727)	(1.102)	(0.979)
Age	0.007 **	0.009 ***	-0.003	0.003
	(0.003)	(0.002)	(0.003)	(0.002)
Number of Observations	12985	14494	13836	14216
Pseudo R2	0.037	0.006	0.004	0.002
*p<.10, **p<.05, ***p<.01				

In the simple social construction model, black inmates are less likely to

participate in professional mental health counseling, self-help or group counseling,

substance abuse treatment and educational programs. Similarly, Hispanic inmates are less

likely to participate in all four rehabilitative treatment programs. American Indian

inmates are slightly more likely to participate in self-help or group counseling and less

likely to participate in mental health counseling. Asian and female inmates were virtually

indistinguishable from the white male reference group. Finally, older inmates were more likely to participate in mental health and self-help or group counseling.

Table 3.1B presents the results for the social construction variables, with additional controls for the inmate's pre-incarceral life.

Table 3.1B- The Impact of Race on Individual Rehabilitative Treatment, with Socioeconomic Controls

Explanatory Variables	Mental Health Counseling	Self Help Counseling	Substance Abuse Treatment	Educational Programs
Black	-0.220 ***	-0.246 ***	-0.252 ***	-0.097 *
	(0.074)	(0.043)	(0.064)	(0.056)
Hispanic	-0.279 ***	-0.210 ***	-0.244 ***	-0.109
	(0.108)	(0.058)	(0.089)	(0.076)
American Indian	-0.272 *	0.102	0.037	0.041
	(0.149)	(0.083)	(0.118)	(0.102)
Asian	-0.341	-0.440 **	-0.063	-0.399
	(0.411)	(0.216)	(0.313)	(0.313)
Female	-1.976	0.325	1.804	1.362
	(1.400)	(0.880)	(1.183)	(1.070)
Age	0.015 ***	0.018 ***	0.006 **	0.012 ***
	(0.003)	(0.002)	(0.003)	(0.003)
Drug User	0.893 ***	0.869 ***	0.948 ***	0.832 ***
	(0.073)	(0.040)	(0.062)	(0.053)
Highest Grade Attended	0.021	-0.006	0.012	0.021 *
	(0.015)	(0.008)	(0.013)	(0.011)
Working Before Arrest	-0.004	-0.065	-0.017	-0.064
	(0.069)	(0.040)	(0.059)	(0.052)
Ever Homeless	0.256 ***	0.315 ***	0.288 ***	0.189 **
	(0.101)	(0.064)	(0.087)	(0.080)
Number of Observations	12200	13712	13035	13395
Pseudo R2	0.033	0.039	0.037	0.028
*p<.10, **p<.05, ***p<.01				

The addition of the pre-incarceral values help improve the explanatory power of the model. Drug users and the formerly homeless are more likely to participate in all four rehabilitative treatment programs, likely due to increased need. The social construction variables remain significant, with black inmates less likely to participate in all four programs, while Hispanic inmates are less likely to participate in mental health counseling, self-help or group counseling, and substance abuse treatment. American Indian inmates were less likely to participate in mental health counseling and Asian

inmates were less likely to participate in self-help or group counseling. Older inmates were also more likely to participate in all four rehabilitative services.

Table 3.1C presents the full model, which includes measures of the inmate's criminal history.

Table 3.1C- The Impact of Race on Individual Rehabilitative Treatment, Full Model

Explanatory Variables	Mental Health Counseling	Self Help Counseling	Substance Abuse Treatment	Educational Programs
Black	-0.206 ***	-0.257 ***	-0.246 ***	-0.092 *
	(0.077)	(0.044)	(0.066)	(0.057)
Hispanic	-0.259 **	-0.204 ***	-0.221 **	-0.094
	(0.112)	(0.060)	(0.092)	(0.079)
American Indian	-0.270 *	0.078	0.053	0.027
	(0.154)	(0.085)	(0.122)	(0.105)
Asian	-0.434	-0.443 **	-0.109	-0.427
	(0.442)	(0.225)	(0.331)	(0.326)
Female	-2.082	0.385	1.951	1.378
	(1.404)	(0.891)	(1.196)	(1.090)
Age	0.013 ***	0.016 ***	0.005	0.010 ***
	(0.004)	(0.002)	(0.003)	(0.003)
Drug User	0.846 ***	0.812 ***	0.870 ***	0.773 ***
	(0.077)	(0.041)	(0.065)	(0.055)
Highest Grade Attended	0.027 *	-0.002	0.015	0.029 **
	(0.016)	(0.009)	(0.013)	(0.012)
Working Before Arrest	-0.046	-0.074 *	-0.059	-0.057
	(0.074)	(0.042)	(0.063)	(0.056)
Ever Homeless	0.171	0.281 ***	0.230 **	0.177 **
	(0.107)	(0.067)	(0.092)	(0.084)
Violent Offender	-0.056	-0.088 *	-0.312 ***	-0.044
	(0.082)	(0.045)	(0.073)	(0.059)
Number of Arrests	0.015 ***	0.017 ***	0.019 ***	0.009 ***
	(0.004)	(0.003)	(0.003)	(0.003)
Number of Incarcerations	0.040 ***	0.045 ***	0.050 ***	0.038 ***
	(0.010)	(0.009)	(0.010)	(0.009)
Number of Observations	11507	13030	12311	12692
Pseudo R2	0.041	0.047	0.052	0.032
*p<.10, **p<.05, ***p<.01				

Not surprisingly, violent offenders were less likely to participate in self-help or group counseling, and less likely to participate in substance abuse treatment. A violent inmate may be restricted from group counseling due to security concerns. In addition, violent offenders and drug offenders are negatively correlated; so many violent offenders may not have the same substance abuse problems. Inmates with a longer criminal history,

as measured by the number of arrests and the number of incarcerations are more likely to participate in all four rehabilitative treatment programs. This could be caused by a higher level of need, or increased incarcerations could increase the number of chances for placement in a rehabilitative treatment program.

After the addition of pre-incarceral and criminal history controls, the social construction variables remain significant. Black inmates were less likely to participate in all four programs, while Hispanic inmates were less likely to participate in mental health counseling, self-help or group counseling, and substance abuse treatment. American Indian inmates were less likely to participate in mental health counseling and Asian inmates were less likely to participate in self-help or group counseling. Older inmates were also more likely to participate in all four rehabilitative services. Even after controlling for objective pre-incarceral and criminal history controls, the full model suggests that correctional workers still use socially constructed racial and other demographic variables as heuristics.

Punishment

Table 3.2A presents the results for the three punishment dependent variables, with social construction dependent variables and no additional controls.

Table 3.2A- The Impact of Race on Individual Punishment, without Controls

Explanatory Variables	Write-Ups	Disciplinary Action	Administrative Segregation
Black	0.189 ***	0.171 ***	0.204 ***
	(0.042)	(0.041)	(0.057)
Hispanic	-0.245 ***	-0.254 ***	0.036
	(0.055)	(0.056)	(0.080)
American Indian	0.249 ***	0.180 **	0.049
	(0.083)	(0.082)	(0.118)
Asian	-0.204	-0.452 **	-0.407
	(0.194)	(0.198)	(0.294)
Female	-0.684	-0.838	-0.283
	(0.786)	(0.739)	(1.074)
Age	-0.027 ***	-0.029 ***	-0.022 ***
	(0.002)	(0.002)	(0.003)
Number of Observations	14190	14448	13208
Pseudo R2	0.016	0.019	0.010
*p<.10, **p<.05, ***p<.01			

There is support for a socially constructed explanation for punishment decisions, especially for black inmates. Black inmates were more likely to be written up, more likely to be given a disciplinary action and more likely to be placed in an administrative segregation unit. American Indian inmates were more likely to be written up and given a disciplinary action. Contrary to expectations, Hispanic inmates were less likely to be written up and given a disciplinary action, while Asian inmates were less likely to be given a disciplinary action. Older inmates were less likely to receive all three punishment variables.

Table 3.2B presents the results for the social construction explanatory variables, with the addition of controls for the inmate's pre-incarceral life.

Table 3.2B- The Impact of Race on Individual Punishment, with Socioeconomic Controls

Explanatory Variables	Write-Ups	Disciplinary Action	Administrative Segregation
Black	0.186 ***	0.182 ***	0.221 ***
	(0.043)	(0.043)	(0.059)
Hispanic	-0.244 ***	-0.252 ***	0.012
	(0.059)	(0.059)	(0.085)
American Indian	0.248 ***	0.159 *	-0.006
	(0.086)	(0.085)	(0.123)
Asian	-0.144	-0.394 *	-0.381
	(0.202)	(0.210)	(0.316)
Female	-0.550	-1.044	-0.935
	(0.845)	(0.870)	(1.306)
Age	-0.022 ***	-0.025 ***	-0.017 ***
	(0.002)	(0.002)	(0.003)
Drug User	0.365 **	0.381 ***	0.329 ***
	(0.039)	(0.039)	(0.054)
Highest Grade Attended	-0.020 ***	-0.022 **	-0.028 **
	(0.008)	(0.008)	(0.012)
Working Before Arrest	0.133 ***	0.053	0.033
	(0.041)	(0.040)	(0.054)
Ever Homeless	0.252 ***	0.276 ***	0.279 ***
	(0.067)	(0.066)	(0.086)
Number of Observations	13527	13668	12421
Pseudo R2	0.025	0.028	0.016
*p<.10, **p<.05, ***p<.01			

Inmates with prior drug use and the formerly homeless were significantly more likely to receive all three forms of punishment, possibly due to a higher propensity for rule violations. Prior drug users may be more likely to continue their drug use inside prison, a serious infraction that can lead to administrative segregation. Better educated inmates, as measured by the highest school year attended, were less likely to receive any of the three forms of punishment.

Although we have not yet considered the inmates' prior criminal history, there is support for a socially constructed explanation for punishment decisions. Black inmates were more likely to be written up, more likely to be given a disciplinary action and more likely to be placed in an administrative segregation unit. American Indian inmates were more likely to be written up and given a disciplinary action. Contrary to expectations, Hispanic inmates were less likely to be written up and given a disciplinary action, while Asian inmates were less likely to be given a disciplinary action. Older inmates were less likely to receive all three punishment variables.

Table 3.2C presents the results for the final full model, which includes important controls for the inmate's criminal history.

Table 3.2C- The Impact of Race on Individual Punishment, Full Model

Explanatory Variables	Write-Ups	Disciplinary Action	Administrative Segregation
Black	0.199 ***	0.191 ***	0.199 ***
	(0.045)	(0.045)	(0.061)
Hispanic	-0.239 ***	-0.251 ***	0.041
	(0.061)	(0.061)	(0.087)
American Indian	0.208 **	0.149 *	-0.007
	(0.089)	(0.088)	(0.127)
Asian	-0.085	-0.370	-0.376
	(0.208)	(0.214)	(0.321)
Female	-0.630	-1.081	-1.006
	(0.834)	(0.870)	(1.332)
Age	-0.023 ***	-0.026 ***	-0.019 ***
	(0.002)	(0.002)	(0.003)
Drug User	0.394 ***	0.403 ***	0.328 ***
	(0.041)	(0.041)	(0.057)
Highest Grade Attended	-0.020 **	-0.022 **	-0.029 **
	(0.009)	(0.009)	(0.012)
Working Before Arrest	0.168 ***	0.088 **	0.045
	(0.043)	(0.043)	(0.058)
Ever Homeless	0.219 ***	0.258 ***	0.250 ***
	(0.070)	(0.069)	(0.090)
Violent Offender	0.559 ***	0.488 ***	0.293 ***
	(0.045)	(0.044)	(0.058)
Number of Arrests	0.009 ***	0.008 ***	0.010 ***
	(0.003)	(0.003)	(0.004)
Number of Incarcerations	0.018 **	0.011	0.017
	(0.008)	(0.008)	(0.010)
Number of Observations	12863	12985	11750
Pseudo R2	0.038	0.037	0.022
*p<.10, **p<.05, ***p<.01			

Violent offenders were significantly more likely to be written up, to receive a

disciplinary action and to be placed in administrative segregation. Inmates with a higher

number of arrests were also more likely to be written up, to receive a disciplinary action and to be placed in administrative segregation. An inmate with multiple arrests may have demonstrated their ability to be caught misbehaving or their ability to inspire law enforcement officials to take the time to fill out punishment paperwork. Inmates with higher numbers of incarcerations were more likely to be written-up but not more likely to receive a disciplinary action or to be placed in administrative segregation.

The full model lends support to the social construction hypothesis, at least for black, American Indian and older inmates. Black inmates were significantly more likely to be written up, to receive a disciplinary action and to be placed in administrative segregation than their white counterparts, even after considering age, socio-economic status and the inmate's criminal history. American Indian inmates were also more likely to be written up and to receive a disciplinary action. Older inmates were less likely to be punished across all three dependent variables. Contrary to expectations, Hispanic inmates were less likely to be written up or to receive a disciplinary action.

Discussion

Treatment decisions inside prison present significant difficulties for prison staff. Many American prisons are overcrowded, understaffed and lack sufficient programming options. Inmates present mental health challenges, a relative lack of education and minimal life skills. Correctional workers face large caseloads, the need for quick decisions and limited information. A program coordinator will often have more qualified inmates than openings for a treatment program. A correctional officer will often be overwhelmed by a multitude of inmates, many of whom are committing rule violations at any one point in time. An already difficult work environment is further complicated by

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the very real threat of violence. A poor decision by a business owner may result in the loss of profit. A poor decision by a correctional worker may result in the loss of life.

Given the difficulties of the correctional decision making environment, correctional workers are likely to use heuristics to simplify the decision making process. Some heuristics are warranted and likely necessary to maintain security. A convicted rapist may benefit from professional individualized mental health counseling, but concerns over staff safety may be more important. A convicted murderer may benefit from self-help or group counseling, but the safety of the other inmates may be more important. A former drug user may have more mental health difficulties and need more help with substance abuse problems than a non-drug user. Heuristics can offer an efficient mechanism for decision making.

Heuristics can also allow for the possibility of discrimination. Models suggest that black and Hispanic inmates are less likely to participate in mental health counseling, self-help or group counseling, substance abuse treatment and educational programming. Models also suggest that black inmates are more likely to be written up, subject to disciplinary action and placed in solitary confinement units. Although disappointing, it is perhaps unsurprising that black inmates seem to suffer from discrimination inside prison, given evidence of racial discrimination in other areas of criminal justice. Treatment decisions inside prison may exacerbate challenges faced by young black men in American society. It is important to remember that incarceration is a common experience for black males. Bruce Western estimates that black males are more likely to attend prison than to attend college, get married or join the military (Western 2006). In 2010, an estimated 39 percent of state and federal inmates were black, and 23 percent were

Hispanic. Any potential discrimination in treatment decisions has the capacity to affect hundreds of thousands of young, in many ways vulnerable men.

The next chapter will consider one final explanation for treatment decisions. If the social construction of prison inmates seems to matter, will the social construction of the prison staff also matter?

Chapter Six- Representative Bureaucracy and Inmate Treatment

The prison environment offers a great venue to test the impact of a diverse workforce. Prison staffs have similar reward and punishment powers as school teachers (Liebling 2000), while experiencing many of the same temporal, cognitive and financial resource constraints as other street-level bureaucrats (Brehm and Gates 1997; Lipsky 1980; Schaufeli and Peeters 2000). Individual correctional workers have some discretion over specific inmate treatment decisions. Prison staff may punish inmates, placing prisoners in solitary confinement, taking away certain privileges or searching an inmate. Staff can also reward prisoners, granting privileges, generating favorable reports and providing desired jobs within the prison. Less formal powers, such as varying norms of enforcement and accommodation are available to staff, as is the use of force (Liebling 2000).

Although prison staffs have numerous formal and informal powers, their power is not absolute. Staffs are usually outnumbered by inmates, and resources are often limited. Inmates can exert psychological and in some cases physical pressure on staff members. A staff member who attempted to enforce every regulation is unlikely to be successful. Rather than a hierarchical top-down model, the prison environment is better represented as a series of accommodations among inmates and between inmates and staff (Liebling 2000; Britton 2003 p. 64-65). Given the overcrowding prevalent in many American prisons, it may not be possible to get all inmates to comply with every rule. The sheer number of possible infractions may preclude strict enforcement of every regulation.

During recent field interviews, I was able to learn about the disciplinary process at multiple prisons in one state (Kentucky). The Kentucky Department of Corrections has 7 categories of inmate disciplinary infractions. The categories offer guidelines for what punishment is permissible. For example, an inmate convicted of assaulting a staff member will be placed in administrative segregation (solitary confinement) for between one and two years. The Department lists a total of 101 possible offenses, ranging from littering and faking an illness at the least severe end to sexual assault and inciting a riot at the most severe end. The penalties can range greatly, including a loss of commissary privileges, loss of good time or placement in an administrative segregation unit. Once an infraction is written up, the formal disciplinary process begins.

A unit administrator at a prison in western Kentucky prison described the sequence of events. Disciplinary hearings are scheduled weekly, involving the inmate and three staff members, a Captain, unit administrator and a security staff member. The inmate is given a designated legal aid and is allowed to testify, call witnesses and present evidence. The three member disciplinary board will then reach a decision and inform the inmate of the punishment, if any. It is important to remember that this is the official disciplinary procedure, and some incidents are handled informally. For example, a correctional officer could opt to talk to an inmate about their behavior rather than write a formal report. Finally, supervisors play a role, sometimes throwing out a correctional officer's formal report if that report is deemed without merit and altering punishment length. At one Kentucky prison, the warden discussed changing an inmate's punishment for assaulting a staff member from two years to one year in administrative segregation.

Given the discretion available to prison staff, it is important to consider whether staffs have different preferences, and whether those preferences affect decision making.

While correctional workers share many similarities with other bureaucrats, especially police, one feature stands out. Inmates in the United States have a strong negative social construction (Schneider and Ingram 1993). Given the generally negative view of inmates, we might expect punishment preferences of staff to be homogenous. If all inmates are viewed negatively, a largely black staff may punish identically to a largely white staff.

There are compelling reasons why prison staff may have homogenous preferences, with a uniformly negative view of inmates. Most prisons have a paramilitary structure, and officers are expected to follow the hierarchy and to be loyal to their fellow officers. Officers are expected to keep inmates at a distance, and often view inmates as threatening (Britton 2003), which may limit the ability of correctional officers to be advocates. Studies of police and correctional officers suggest that occupational norms are more important than an individual's traits (Niederhoffer, 1967; Haney, Banks, and Zimbardo, 1973). Contrary to the predictions of representative bureaucracy theories, Ronald Weitzer (2000) suggests that black police officers may be more punitive than their white counterparts, especially when dealing with black civilians. Although the bulk of the literature seems to suggest that prison staff would have heterogeneous preferences, it is far from a settled question.

However, there are compelling reasons why correctional workers, especially white and minority correctional workers, would have divergent views on inmates. As a

group, blacks and especially black males receive disparate treatment in the area of criminal justice. Blacks are more likely to report unfair treatment by the police (Peffley and Hurwitz 2010) and police are more likely to punish black suspects (Close and Mason 2006, 2007; Ridgeway 2006). Blacks are more likely than whites to come into contact with police or other law enforcement officers (Alexander 2010). There is substantial evidence of racial discrimination in traffic stops, the most common interaction between police and the public (see Bradbury and Kellough 2011; Close and Mason 2006, 2007; and Theobald and Haider-Markel 2009).

In the United States, blacks and whites experience vast differences in incarceration. Eleven percent of black men aged 25 to 29 are incarcerated and a third is under some type of correctional supervision (Weaver and Lerman 2010). Bruce Western estimates that the cumulative lifetime risk of incarceration for black males is twenty percent, while only three percent for white males. Black males are more likely to be incarcerated than to receive a bachelor's degree or serve in the military (Western 2006). The views of correctional workers may match the views of the majority of Americans. Among the wider public, blacks are more likely to perceive unfairness in the criminal justice system and have lower levels of support for punitive measures (Engle 2005; Peffley and Hurwitz 2010). There is evidence that minority corrections workers have less punitive views than their white counterparts (Jurik 1985).

If minority correctional staff members have different views on criminal justice, it is possible that minority correctional workers will make different decisions. Theories of representative bureaucracy offer a mechanism for translating those preferences into differences in treatment.

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Representative Bureaucracy

Donald Kingsley first developed the theory of representative bureaucracy. Kingsley studied the British civil service and argued that bureaucrats should reflect the values of the ruling class. Kingsley reasoned that "no group can safely be entrusted with power who do not themselves mirror the dominant forces in society" (1944, p. 282). According to Kingsley, the British had a representative bureaucracy when "Ministers and Civil Servants share the same backgrounds and hold similar social views" (1944, p. 273). For Kingsley, it was important that the dominant forces, not all groups were represented. In the United States, a more pluralistic approach to representative bureaucracy developed.

The beginnings of a representative bureaucracy can be traced back to President Andrew Jackson. Jackson attempted to move from the elitist composition of previous administrations to a more inclusive bureaucracy (Meier 1975). From Jackson's presidency until after the Civil War, patronage arrangements between political machines and citizens developed. By giving jobs to previously excluded groups, including immigrants and the poor, a more representative bureaucracy and a more responsive bureaucracy was established (Gottfried 1988, p. 3-4). Concerns over corruption and unqualified bureaucrats led to a backlash in the form of the Progressive movement.

Many of the Progressive reformers sought to limit political participation to those who could exercise their franchise responsibly. It was thought that political machines thrived on "an ignorant and corruptible populace". Immigrants, African Americans and the poor were not seen as properly prepared to participate (Stromquist 2006, p.67). The Progressives championed civil service reform, restricting access to the bureaucracy in similar ways to their restrictions from political participation. After the Civil War,

reformers gained their first federal victory, with the Civil Service Act of 1871. The Act

was short lived, however, with Congress denying funding after 1873. Reformers gained a

larger victory in 1883, with the Pendleton Civil Service Act. Spurred by the assassination

of President James Garfield by a disgruntled office seeker, the Pendleton Act established

a merit system for the federal civil service. The merit system was characterized by

"competitive examinations, relative security of tenure, and political neutrality" (Gottfried

1988, p. 5-6).

As access to political participation was expanded, access to government

employment also expanded. The Civil Rights Act of 1964 and multiple executive orders

from President Lyndon Johnson attempted to eliminate employment discrimination

(Gottfried 1988, p. 55-56). In 1970, the United States Civil Service Commission stated

that "the Federal Government should in their employment mix, broadly reflect, racially

and otherwise, the varied characteristics of our population" (Krislov and Rosenbloom,

1981, p. 23) while the 1978 Civil Service Reform Act also called for "a work force

reflective of the Nation's diversity" (Selden, 1997, p. 38). The historical trends beg an

important question; why would the government want to encourage a diverse

bureaucracy?

Governments encourage diversity because diversity impacts implementation

(Bradbury and Kellough 2011). Although an ideal is apolitical administration, (Wilson

1887), that ideal may be impossible to attain. Each member of the bureaucracy brings

their own personal life experiences, unique socialization and preferences to their job. The

crux of diversity, the reasoning behind inclusiveness, is that experiences vary based on

race, ethnicity, class, religion, gender, socio-economic background, occupation,

immigrant status, region and many other factors. Those different experiences lead to different preferences. Bureaucrats may prefer certain outputs and/or certain clients. Treatment decisions are decided in part by expectations of client behavior and judgments of client worth (Barrilleuax and Bernick, 2003; Maynard-Moody and Musheno 2003; Schneider and Ingram 1993). Expectations of client behavior and client worth vary along with the experiences of different bureaucrats.

Government employees are not apolitical actors. The bureaucrats within agencies have preferences and seek to implement those preferences. A diverse bureaucracy is likely to be more inclusive in its decision-making, especially towards traditionally disadvantaged groups. Diverse bureaucracies are more egalitarian because of the link between passive (descriptive) and active representation. Passive representation becomes active representation, when the views of minority bureaucrats are different than the views of other bureaucrats, and those differences manifest in treatment decisions (Bradbury and Kellough 2008, 2011). Active representation, whether caused by the adoption of a 'minority representative role' (Selden 1997) or simply a difference in preferences between minority and other bureaucrats, can lead to positive policy outcomes for minority clients. An opportunity to achieve equity outside the bureaucracy (i.e. to address discrimination in society) is enhanced by equity within the bureaucracy (Kranz, 1976, p. 116-118).

Scholars have tested for the effects of representative bureaucracy across a variety of policy arenas. In the Farmer's Home Administration minority bureaucrats were more likely to state that representing minorities was one of their roles in the organization. Bureaucrats who thought that extending access to minorities was part of the agency's

goals were also more likely to state that representing minorities was one of their roles. There was a direct impact on policy outcomes. Bureaucrats who valued representing minorities as one of their roles awarded more loans to minorities (Selden et al, 1998).

Increases in representative bureaucracy also affected educational policy outcomes. Increased representation was associated with increased performance. For example, an increase in the percentage of female math teachers led to an increase in the math scores of female students. An increase in the percentage of female teachers also led to higher SAT scores for female students (Keiser et al, 2002). Similar findings existed for Latino students. A larger percentage of Latino teachers were associated with more Latino students in classes for gifted students and fewer punishments. After reaching a critical mass, the percentage of Latino principals in a school district was also associated with more Latino students in classes for gifted students and fewer punishments (Meier, 1993). There may also be an interaction between minority representation and agency discretion. Meier and Bohte found that minority student performance experienced greater increases in organizations that emphasized teacher discretion (2001). Finally, descriptive representation also affected policy outcomes in the realm of criminal justice. An increase in the percentage of female police officers was associated with an increase in the reporting of sexual assault victimization, and in arrests for sexual assault (Meier and Nicholson-Crotty, 2006). An increase in female staff members was also associated with an increase in child support enforcement (Keiser and Soss, 1998; Wilkins and Keiser 2006).

Two improvements can be made to the existing representative bureaucracy literature. First, studies often focus on either differences in views between minority and

white bureaucrats or differences in policy outputs based on staff differences. An explicit link should be made, first establishing that bureaucrats have different preferences, and then testing to see if those preferences lead to different policy outcomes. Second, studies often focus on the treatment of a sympathetic clientele; i.e. students, loan applicants or crime victims. Are there similar treatment differences when dealing with a clientele with negative social constructions? In order to test these questions, I first examine the punishment preferences of correctional workers.

The Criminal Justice Drug Abuse Treatment Studies

The Criminal Justice Drug Abuse Treatment Studies (CJ-DATS) was conducted by the National Institute on Drug Abuse between 2002 and 2008. Five separate surveys were conducted, and I focus on the Survey of Correctional, Probation and Parole Staff. The selection process worked as follows. First, the CJ-DATS selected a nationally representative, cross sectional sample of 150 adult prison facilities. 58 facilities were chosen for their focus on drug and alcohol treatment, the other 92 prisons were selected randomly. From this set of 150 adult prison facilities, a random sample of front-line workers was selected. In all, 734 front-line workers from adult facilities responded to the survey. The CJ-DATS offers significant advantages over previous work (Jurik 1985) including a large sample of minority and female workers.

The CJ-DATS asked respondents about their punitive views towards inmates. Three measures are particularly important; the survey respondent's support for rehabilitation, support for deterrence and support for "just desserts" punishment. These measures match previous studies of correctional workers' views (Cullen, Fisher and Applegate 2000; Applegate, Cullen and Fisher 1997; Cullen et al 1993). Support for

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rehabilitation measures the respondent's preferences for matching, providing and increasing treatment for offenders. Support for deterrence measures the respondent's preferences for deterring future criminals by punishing current offenders. Support for "just desserts" punishment measures the respondent's preferences for punishing current offenders for their moral failings. "Just desserts" punishment can be thought of as retributive, moralistic, Biblical type punishment.

Each question asks the respondent for their level of agreement with various crime reduction strategies, on a five point scale (from 1=strongly disagree to 5=strongly agree). I use three corresponding additive indices as my dependent variables. All three indices are included in the survey, constructed by the National Institute on Drug Abuse. I performed confirmatory factor analysis (available upon request), and the results support the grouping of questions into the three indices. Table 4.1 provides the questioning wording, and the survey items that make up each subscale.

Table 4.1- Question Wording

TO WHAT EXTENT DO YOU AGREE OR DISAGREE WITH THE FOLLOWING STATEMENTS ABOUT CRIME REDUCTION? *(from 1=strongly disagree to 5=strongly agree)*

The best way to reduce crime is to…

Rehabilitation-

1. Make sure criminals get effective treatment for addictions and other problems while they're in prison/jail, or on supervision in the community.

2. Provide criminals with treatment to address addiction, mental health problems, or other problems

3. Make sure that the treatment provided is matched to the offender's needs

4. Provide more treatment, jobs, and educational programs to address problems that often contribute to crime

Deterrence-

1. Show people who use drugs they will be punished severely if they don't stop

2. Deter future offenders by severely punishing criminals who are caught and convicted

3. Deter future criminal by severely punishing drug users who are caught and convicted

Just Desserts Punishment-

1. Use the —eye for an eye, tooth for a tooth principle

2. Punish addicts in prison/jail to stop them from using drugs

Explanatory variables focus on the demographic and educational characteristics of the survey respondents. Race and ethnicity is coded as black, Hispanic and other race

(with whites as the omitted reference category). I hypothesize that minority correctional workers will have less punitive views of inmates than white correctional workers. Gender is coded as a 1 for a female respondent and as a 0 for male respondents. Education is measured by a series of dummy variables for associates degree, college degree, and graduate degrees (with a high school education as the omitted reference category). I expect correctional workers with higher levels of education to be less punitive in their views than correctional officers with lower levels of education. Age is also a series of dummy variables broken down into ten year increments, to capture cohort differences.

H1 The Minority Views Hypothesis: Minority correctional workers will have less punitive views than white correctional workers.

CJ-DATS Results

Table 4.2 provides summary statistics for the dependent and explanatory variables.

Table 4.2- Descriptive Statistics of Explanatory Variables

Variables	**Mean**	**Standard Deviation**	**Minimum**	**Maximum**
Rehabilitation	4.2514	0.5923	1	5
Deterrence	3.1538	0.9529	1	5
"Just Desserts"	2.7224	0.8793	1	5
Black	0.3422	0.4748	0	1
Hispanic	0.0449	0.2072	0	1
Other Race	0.0449	0.2072	0	1
Female	0.5537	0.4975	0	1
Associates Degree	0.0965	0.2955	0	1
College Degree	0.4856	0.5002	0	1
Some Graduate School	0.1124	0.3161	0	1
Masters Degree	0.1268	0.3330	0	1
Age- Thirties	0.3709	0.4834	0	1
Age- Forties	0.2354	0.4245	0	1
Age- Fifties Plus	0.1341	0.3410	0	1

Next, I estimate the results for all three dependent variables. I use ordinary least squares regression for each model.

Table 4.3- Full Model Estimation of Preferences

Explanatory Variables	Support for Rehabilitation	Deterrence	Just Desserts
Black	0.136 ***	-0.078	-0.201 ***
	(0.051)	(0.080)	0.074
Hispanic	0.099	-0.358 *	-0.387 **
	(0.118)	(0.187)	0.178
Other Race	0.006	-0.195	0.068
	(0.120)	(0.190)	0.178
Female	-0.092 *	0.323 ***	0.159 **
	(0.047)	(0.075)	0.070
Associates Degree	0.038	-0.076	0.041
	(0.092)	(0.146)	0.135
College Degree	0.142 **	-0.253 **	-0.189 **
	(0.063)	(0.100)	0.094
Some Graduate School	0.248 ***	-0.166	-0.185
	(0.089)	(0.140)	0.131
Masters Degree	0.291 ***	-0.628 ***	-0.432 ***
	(0.087)	(0.137)	0.128
Age- Thirties	0.025	-0.051	-0.078
	(0.061)	(0.096)	0.089
Age- Forties	0.139 **	-0.197 *	-0.143
	(0.068)	(0.107)	0.100
Age- Fifties Plus	0.078	-0.294 **	-0.392 ***
	(0.077)	(0.122)	0.114
Number of Observations	622	625	627
Adjusted R-Squared	0.0356	0.0693	0.0504
*p<.10, **p<.05, ***p<.01			

As hypothesized, black corrections workers have higher levels of support for rehabilitation and lower levels of support for just desserts punishment. Hispanic corrections workers have lower levels of support for both deterrence and just desserts punishment. Those with higher levels of education, especially bachelors and masters

degrees, have higher levels of support for rehabilitation and lower levels of support for deterrence and just desserts punishment. Older workers were also less punitive, while female corrections workers were more punitive across all three measures.

Although there is variation in punitive views, it is unclear if those preferences translate into differential policy outputs. One of the drawbacks to previous research on representative bureaucracy was a focus on either differences in views or differences in policy outputs. Ideally, we would first test for differences in views and then test for differences in policy outputs. Fortunately, I am able to test both aspects of the passive-active representative bureaucracy link, using data from the Bureau of Justice Statistics.

Staff Demographics and Punishment Decisions in Prison

The Bureau of Justice Statistics collects punishment statistics for all state and federal correctional facilities. The data is from the 2000 Bureau of Justice Statistics Census of Federal and State Correctional Facilities. My sample excludes federal and private facilities, leaving only state-run, non-privatized facilities. The sample includes 1246 state prisons (out of a universe of 1295 state prisons), spanning all security levels and all fifty states.

Dependent Variable

One of the harshest punishments available to prison staff is placement in an administrative segregation (solitary confinement) unit. Administrative segregation units place inmates in a single cell, where the inmate is kept isolated for 22 to 23 hours a day. Inmates in administrative segregation units have minimal visitation, exercise and rehabilitative opportunities (Pizarro and Stenius 2004). Administrative segregation cells often have strict property restrictions, so that an inmate may only have a Bible, legal papers,

toiletries and bedding during their 23 hour per day isolation. Small luxuries, like the ability to shower daily are also unavailable to inmates in administrative segregation units. In the most extreme cases, an inmate can be placed in such an environment for years. I focus on this harsh official punishment, and my dependent variable is the *Administrative Segregation Rate*.

Administrative Segregation Rate is the percentage of inmates within each facility who are placed in an administrative segregation unit. However, not all prisons have an administrative segregation unit. Administrative segregation units are designed to punish serious prison misconduct, especially violent offenses. Thankfully, not every prison has incidences of misconduct that require solitary confinement. A prison may also choose not to build an administrative segregation unit, because the units are more expensive to build and more expensive to operate than medium or minimum security units. In Kentucky, the cost to incarcerate a single inmate at Kentucky State Penitentiary, the maximum security facility, is $26,769 per year compared to $14,475 per year at the minimum security Bell County Forestry Camp.

Given the number of prisons without an administrative segregation unit, the original variable included in the BJS Census is negatively skewed. I take the log of the administrative segregation rate. The analysis is only comparing between prisons with administrative segregation units, and the 0 value prisons are dropped. 527 prison facilities remain after removing the 0 value prisons.

Explanatory Variables

There are three groups of explanatory variables that I use in this analysis; security characteristics at the facility level, staff and inmate demographics, and the interactive effects between staff and inmate demographics.

Security Characteristics

I include three dummy variables for security level. *Super Max Facility* is coded as a 1 if the facility has a super maximum security custody level and a 0 otherwise. Super Max facilities are a relatively new invention in American corrections, (Pizarro and Stenius 2004) and are built to house "the worst of the worst". Super Max facilities should have the highest percentage of inmates in administrative segregation units, out of all security levels. *Maximum Facility* is coded as a 1 if the facility is a maximum security facility and a 0 otherwise. *Medium Security Facility* is coded as a 1 if the facility has a medium security custody level and a 0 otherwise. Minimum security facilities are the omitted reference category. It is expected that supermax, maximum and medium security facilities will utilize punishment more than minimum security prisons. I also include *Inmate to Staff Ratio* as a control variable. A higher number indicates a larger number of inmates per staff member, and serves as a proxy for facility level resources.

Inmate and Staff Demographics

I include two variables, labeled *% Black Inmates* and *% Hispanic Inmates* to measure the racial demographics of each prison. The percentage of white inmates is the omitted variable category. I hypothesize that prisons with a higher percentage of minority inmates will have a higher disciplinary action and restricted population rate. For staff

demographics, I include *% Female Staff*, *% Black Staff* and *% Hispanic Staff* to measure the percentage of female, black and Hispanic staff respectively.

Interactive Effects Between Staff and Inmates

One of the keys to representative bureaucracy theory is the opportunity for minority staff to serve as advocates for their minority clients. For example, we would expect the effect of representative bureaucracy to be particularly strong as the percentage of black staff members increases in a prison with a high percentage of black inmates. Two interactive variables were created to measure various racial contexts. The variables are labeled *% Black Staff * Black Inmates*, and *% Hispanic Staff * Hispanic Inmates*. I hypothesize that the use of administrative segregation will be lower in prisons with a higher level of minority staff **and** minority inmates.

The two main hypotheses for this analysis are:

H2 Inmate Race Hypothesis: Prisons with a higher percentage of black (Hispanic) inmates will utilize administrative segregation at higher rates.

H3 The Representative Bureaucracy Hypothesis: Prisons with a high percentage of black (Hispanic) inmates and a high percentage of black (Hispanic) staff, will utilize administrative segregation at lower than predicted rates.

Bureau of Justice Statistics Prison Census Results

Table 4.4 provides summary statistics for the dependent and explanatory variables.

Table 4.4- Descriptive Statistics for Prison Census

Variables	Mean	Standard Deviation	Minimum	Maximum
Administrative Segregation Rate	1.914	6.648	0	100
Super Max Facility	0.019	0.135	0	1
Maximum Facility	0.224	0.417	0	1
Medium Facility	0.328	0.470	0	1
Inmate to Staff Ratio	3.565	1.995	0.288	18.111
% Black Inmates	45.282	21.651	0	98.706
% Hispanic Inmates	8.704	11.966	0	73
% Female Inmates	7.854	24.039	0	100
% Black Staff	23.193	25.082	0	100
% Hispanic Staff	4.521	10.036	0	89.964
% Black Staff * % Black Inmates	0.134	0.171	0	0.858
% Hispanic Staff * % Hispanic Inmates	0.011	0.042	0	0.592

Next, I estimate the model for the administrative segregation rate. There is concern that standard regression techniques do not correct for clustered standard errors in state-level. As pointed out in Chapter Four, standard OLS regression techniques may exaggerate levels of statistical significance of coefficient estimates for state-level variables (Moulton 1990; Primo, Jacobsmeier and Milyo 2007). Prisons are clustered within states, and these data therefore likely violate the normal regression independence assumptions. Following the suggestions of Primo, Jacobsmeier and Milyo (2007) I estimate fixed effects for each state and standard errors clustered by state using regression in Stata 12. While using HLM is an alternative approach, the unit of interest here are the policy decisions within the prison facility, rather than state characteristics. Table 4.5 reports the results of the effect of representative bureaucracy on inmate punishment.

Table 4.5 Representative Bureaucracy Effects on Inmate Punishment

Explanatory Variables	Logged Administrative Segregation Rate
Supermax Facility	2.207 ***
	(0.416)
Maximum Facility	0.791 ***
	(0.221)
Medium Facility	0.067
	(0.250)
Inmate to Staff Ratio	-0.353 ***
	(0.105)
% Female Inmates	-0.008 **
	(0.003)
% Black Inmates	0.025 **
	(0.010)
% Hispanic Inmates	0.027
	(0.023)
% Black Staff	0.030 **
	(0.014)
% Hispanic Staff	-0.012
	(0.011)
% Black Staff * % Black Inmates	-0.054 **
	(0.023)
% Hispanic Staff * % Hispanic Inmates	0.020
	(0.028)
Number of Observations	527
R Squared	0.4824
*p<.10, **p<.05, ***p<.01	

The regression results in Table 4.5 provide some support for both hypotheses. Prisons with higher percentages of black, but not Hispanic, inmates have higher administrative segregation rates. The results also suggest that the interaction between the percentage of black inmates and the percentage of black staff members is statistically significant in a negative direction. The coefficients associated with the two main effects variables are conditional effects indicating the impact of that variable when the variable

with which it interacts equals zero. Since the dependent variable has been log transformed, however, the main effects coefficients lack a simple interpretation.

Because interactions are difficult to interpret, I present in Figure 4 the conditional effects of the percentage of black inmates on the rate of (logged) administrative segregation at different levels of black staff, based on the regression results in Table 4.5. The vertical axis displays the predicted values of the rate of administrative segregation at the 527 facilities with solitary confinement, while the percentage of black inmates is on the horizontal axis.

-Figure 4. First Differences Prediction of the Impact of Race of Inmates on
Administrative Segregation across Race of Staff
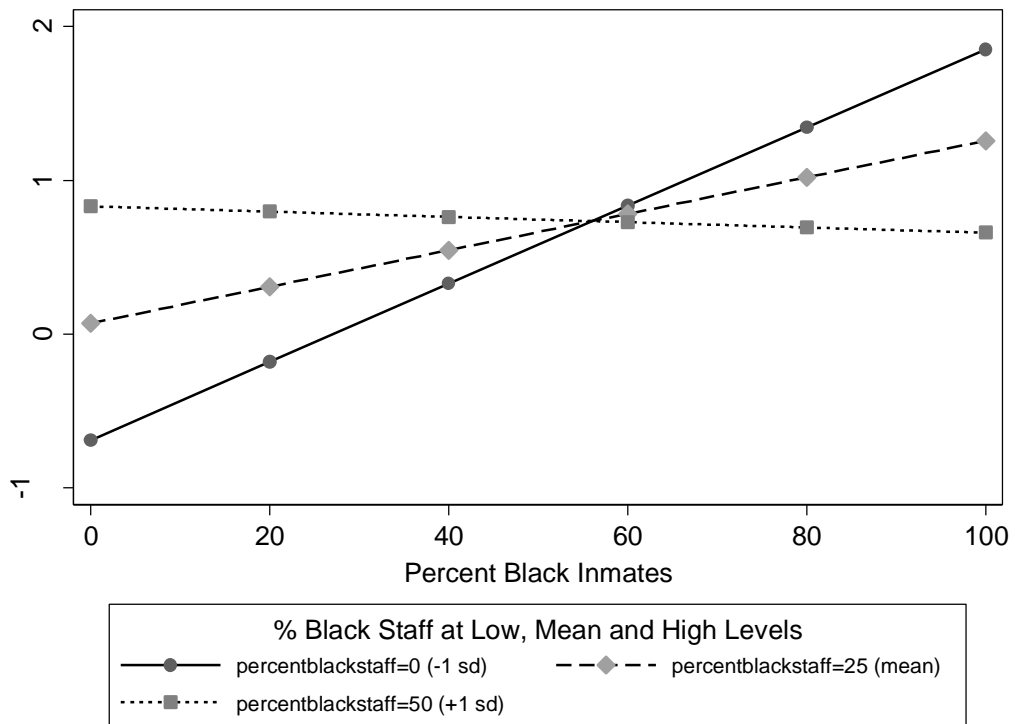
The "first differences" plot shows clearly how the impact of the percentage of black inmates on solitary confinement in a facility changes as the percentage of black staff members in the facility increases from a low of 0% (or 1 standard deviation below the mean of black staff) to 25% (the mean) to 50% (1 standard deviation above the mean). When the percentage of black staff is low at 0%, the rate of solitary confinement increases steeply as the percentage of black inmates rises. When the percentage of black staff is high, at 50%, however, the rate of solitary confinement for such institutions is unaffected by the percentage of black inmates: i.e., the line is essentially flat.

Thus, at average and low levels of black staff, solitary confinement of prisoners is much greater for facilities with a large percentage of black inmates. But at higher levels of black staff, the race of the inmates makes no difference on rates of solitary confinement. Perhaps this is due to the fact that black staff are less likely to subject black inmates to discriminatory treatment. A black staff member may give an inmate a fairer hearing or write a fairer report than a white staff member would. Or perhaps black staff help to reduce the kind of incidents that result in higher rates of solitary confinement in facilities with higher proportions of black inmates. An inmate could be sent to administrative segregation for assaulting a staff member. Perhaps black staff are able to maintain better relationships with black inmates, making an assault on staff less likely. Unfortunately, the data do not allow us to choose between these or other possible interpretations of the findings.

My field work suggests that correctional staff are able to place inmates into deserving and undeserving categories, and sometimes those categories are racially based. The CJ-DATS survey results suggest that minority staff are less punitive in their views

than white staff. Theories of bureaucracy suggest that bureaucrats seek to implement their preferences, and theories of representative bureaucracy suggest that minority workers can serve as advocates for minority clients. However, it may be necessary to do further field work or to use more nuanced data to gain insight into the exact causal mechanism that seems to be at work.

Discussion

While significant research on the treatment of minorities in the criminal justice system exists, very little work examines treatment inside prisons. Previous research finds that treatment inside prison effects recidivism, future criminal activity, future wages and future political activity (Chen and Shapiro 2007; Drago, Galbiati and Vertova 2008; Weaver and Lerman 2010; Western 2006). Previous research also suggests that racial minorities face disparate treatment during arrests, sentencing and post-incarceral experiences. As an addition to this literature, I examined punishment inside prison.

Unfortunately, it seems as though prisons with higher percentages of black inmates have higher administrative segregation rates. Black Americans, who face discrimination in other areas of criminal justice policy, may also face discrimination in the implementation of official prison punishment. However, my analysis also suggests that staffing characteristics matter. Results from the CJ-DATS survey suggests that minority, better educated and older workers are less punitive and more supportive of rehabilitation. Analysis of the Bureau of Justice Statistics 2000 Survey of State and Federal Correctional Facilities (BJS Survey) suggests that changes in staff demographics can translate into changes in inmate treatment.

My findings suggest that black staff members may serve as advocates for black prisoners or possibly black staff and black inmates have fewer of the tensions that lead to placement in administrative segregation units. At average and low levels of black staff, solitary confinement of prisoners is much greater for facilities with a large percentage of black inmates. But at higher levels of black staff, the race of the inmates makes no difference on rates of solitary confinement. Although further research should try to identify a clearer causal mechanism, it is possible that that a more representative bureaucracy may have an effect on the treatment of prison inmates.

In addition to normative concern over the treatment of prisoners, harsh punishment is expensive at a time when many states are suffering budgetary constraints. In Kentucky, the cost to incarcerate a single inmate at Kentucky State Penitentiary, the maximum security facility, is $26,769 per year. The cost to incarcerate an inmate at the minimum security Bell County Forestry Camp is significantly less, at $14,475 annually. While some inmates present a higher security concern than others, it is important to be cognizant of the costs of incarceration. Punishment is not free, and factors that impact the use of punishment should continue to be explored.

The prison environment offers substantial insights into bureaucratic decision making. There are a great variety of facilities, programs, punishments, clients and providers in the American prison system. With the world's largest prison population, treatment decisions have the potential to impact millions of people, not just the inmates themselves, but their families and everyone who comes into contact with a former inmate. An understanding of how those decisions are made and the impact of those decisions is critical. A more representative prison bureaucracy may lead to more

equitable incarceral treatment. In the final chapter, I will consider that option, along with

other possibilities for reform. Having spent the majority of this dissertation asking what

treatment looks like inside prison, I will now ask an important question; what can be

done?

Chapter Seven- What Can Be Done?

Prisons serve an important role in modern societies. Some people are violent, predatory and need to be incapacitated. Prisons exist in part to separate predatory individuals from the rest of society. Prisons can also provide an important reformative role. Skills learned in prison, educational programming, life skills, and work can help reduce recidivism. Well-structured work programs can ease the transition into full time employment upon release. Prisons also provide important medical and mental health services for people who might not otherwise get help. Although prisons are not the ideal location for mental health services, prisons do help fill an important service gap. However, prisons are expensive for citizens and potentially damaging for inmates. Prisons are not the best solution to every criminal justice problem.

The United States is unique among Western democracies in its enthusiasm for incarceration. The United States has the highest incarceration rate in the world, with 756 per 100,000 Americans in jail or prison. The countries closest to matching our zeal for incarceration are Russia (629), Rwanda (604) and Cuba (531). Our incarceration rate is six and a half times as high as our Canadian neighbors, and five times as high as our British allies. The French, Dutch, Belgians, Swiss, and Germans all manage to incarcerate fewer than 100 per 100,000 of their citizens (Walmsley 2009). Our preference for tough on crime policies has led to an explosion of incarceration, nearly a non-stop four decade escalation in punishment from the 1970s until 2010.

The incarceration of millions of people naturally comes at a high cost. In 2007, local, state and the federal government spent approximately 74 billion dollars on

corrections expenditures. Those same entities employed a workforce of over 750 thousand corrections personnel. From 1982 to 2007, after adjusting for inflation, corrections expenditures increased by 255 percent (Kyckelhahn, 2011). Raw expenditure figures are likely to underestimate the actual costs of incarceration. A recent study found that the total cost to taxpayers in forty states was on average fourteen percent higher than the state's aggregate department of corrections spending (Henrichson and Delany, 2012). The amount of money spent on each inmate varies widely, with per inmate costs ranging from $17,285 in Alabama to $60,076 in New York (Henrichson and Delany, 2012).

The incarceral binge of the past few decades has created a political crisis. But the crisis is yielding an opportunity, and the possibility of a shift in the political construction of crime in the United States. Some Republican politicians are adopting a "smart on crime" rather than "tough on crime" perspective, attempting to find cost effective solutions to crime control (Percival 2012). Smarter or softer on crime policy changes have occurred in Alabama, Kansas, Louisiana, North Carolina, New Mexico, South Carolina and Texas (Abramsky 2010). In fact, conservative politicians may have more maneuvering room for soft on crime reform, painting the reforms as fiscally responsible rather than lenient on criminals.

Kentucky is one of the states that participated in the incarceral binging of the last two decades. Kentucky's prison population rose by forty-five percent between 1999 and 2009. Correctional spending increased 214 percent between fiscal year 1990 and 2010, to a 2010 total of 440 million dollars. In spite of increased spending, recidivism rates remained higher in 2009 than in the late 1990s. The system clearly needed examining, if nothing else, and in 2010 the Kentucky General Assembly commissioned a bipartisan,

"Interbranch Task Force on the Penal Code and Controlled Substances Act" to review existing correctional and broader criminal justice practices (Levine 2012). A bipartisan duo, Republican Senator Tom Jensen and Democratic Representative John Tilley introduced a House Bill 463 to implement the taskforce's recommendations. The bill passed unanimously in the Senate and with a single dissenter in the House, before being signed into law by Democratic Governor Steve Beshear.

House Bill 463 is not a bill designed to punish. The legislation strengthens probation and parole, focuses on data-driven, results oriented reforms and tracking mechanisms. Prison space is designed for the most serious offenders. The bill offers benefits to fiscal conservatives, in the form of 422 million dollars in savings over the next decade, and benefits to liberals because a portion of those savings are dedicated to substance abuse programs, mental health treatment and recidivism reduction (Levine 2012). The law is largely responsible for a nine percent drop in the number of people arrested, and an increased reliance on community supervision (probation and parole), which eases pressure on local jails (Levine 2012). The bill has already seeped down to at least some of the implementers in Kentucky's prisons.

The time is ripe for reform. A 2011 Supreme Court decision ruled that California's prison system failed to deliver minimal care to prisoners with serious medical and mental health problems, and that lack of care produced "needless suffering and death" (Liptak 2011). The standards for prison conditions are rising, and costs will rise accordingly. At the same time, there is an increased emphasis on cost effective and data driven treatment. Finally, the country is continuing to liberalize on issues of crime. The widespread acceptance of medical marijuana and the recent marijuana legalization

successes in Colorado and Washington are an example. How long can a state afford to incarcerate non-violent marijuana users?

Inspired by the 2011 Supreme Court decision regarding California's prisons, I decided to ask my interviewees what they would do in a similar situation. After discussing California's dilemma, I asked, "If the state did release some inmates, what sort of inmates should be released?" Their responses varied but all showed a lot of thought. It was one of the few questions where the staff members would pause and carefully consider their response. Some refused to answer the question, and felt they were not qualified to make such a decision. Sixteen of the twenty-three staff members did provide an answer.

Five of the sixteen interviewees responded that non-violent drug offenders should be released, and that sex offenders should not be released. An additional respondent said that non-violent drug offenders should be released while violent offenders stay. The emphasis on a criminal record based determination was not universal. One female correctional officer argued that not all murders are the same, and that even violent offenders cannot be placed in a single category. Six of the interviewees suggested a look at the inmate's institutional history and behavior. Inmates who completed more programs and had stayed out of trouble were viewed as more appropriate to be released. Several staff members at Kentucky State Reformatory argued for an individualized approach and the use of a risk assessment.

It is worth noting that the responses were clustered by prison. Respondents at Western Kentucky Correctional Complex were more likely to say that non-violent drug

offenders should be released, and sex offenders should stay, while respondents at Kentucky State Reformatory were more likely to suggest some sort of individualized, risk based approach. The culture of each prison varies, and the culture within prison can vary based on assignment. A Social Service Clinician at Kentucky State Reformatory argued that security personnel have a different culture, and was resistant to treatment. It was especially difficult for her, because she viewed treatment as improving security. One can see her point, in the correctional environment. An inmate undergoing effective treatment is likely to be easier to deal with than an inmate who is experiencing mental health difficulties.

I had the opportunity to speak to a female Unit Administrator, who had shifted from a security to a treatment emphasis over the course of her nine year career. She considers herself a conservative in her personal life, but more of a liberal in her work capacity. When speaking of the inmates, she repeated a phrase I often heard, that not everyone incarcerated was bad. She argued that her job was not to punish, because the inmates were already punished. Earlier in her career, she was a captain in a security unit, but she changed her whole philosophy upon switching to treatment. She attributed part of the change to more interaction with inmates and their family members, and part of the change to the Department of Corrections move towards a more rehabilitative policy. She offers a strong example that views on inmates are socially constructed and can be changed.

A Warden also told me that his views on inmates and corrections had changed over the course of a long career. As an overseer of the disciplinary process, the Warden expressed the need for inmates to view the process as fair. He spoke often of an increased

emphasis on reentry programs and a move towards evidence based practices. The Warden considered himself a conservative, "not a bleeding heart liberal", and argued that most inmates were in the middle when it came to rehabilitative chances. Yet the Warden expressed an interest in finding the right level of programming that was helpful, and giving the inmates basic life skills. The Warden was even critical of the restrictions placed on sex offenders upon release. Sex offenders have significant restrictions on where they can stay upon release, making it difficult to find placements for released inmates who don't have connections in the outside world. The Warden viewed the restrictions from a political lens, saying sometimes we've "Legislated ourselves into a corner".

Another senior level supervisor spoke of the political nature of incarceration. I asked the Deputy Warden of Programs at one facility what he thought of the shifts between rehabilitation and punitiveness. He replied "I think it just goes in cycles". When I pressed him further and asked why he thought it went in cycles, he replied that when it came to political actors, "They want to lock everyone up, but that's expensive and they balk at the cost". This Deputy Warden was not soft on all of the inmates, saying perhaps a third of his inmates were incorrigible and that the administrative segregation unit could have some plaques on the door, because of consistent repeat offenders. At the same time, he argued that "Rewards are always better than punishments." The views of a single correctional worker can be complicated, but that is consistent with bureaucratic theories of worth. Some inmates were good, some inmates were bad. The crucial missing link is the decision making that delineates bad from good.

Prison administration can be improved. The current American incarceral state is extremely expensive, especially in a time of economic recession. A more cost effective and individualized approach seems to offer promise. This dissertation argues that not all inmates are treated the same way, and many of the treatment differences can be partially explained by racial categories. That is not to suggest that all inmates should be treated exactly the same way. Some inmates pose more of a threat to society than others. Some inmates would benefit more from rehabilitative programming. A move towards a risk assessments and individualized treatment seems beneficial. It would not be an entirely new approach to correctional administration, it would be a return to the pre-1970s model. We can gain some advantages by realistic, individualized goal setting, matching of resources and rethinking the social construction of crime.

Possibilities for Reform

Realistic, Individualized Goal Setting

A complete crackdown on crime is not a goal, or at least an attainable goal for the United States. We cannot lock up every criminal. In 2009, an estimated 21.8 million Americans were current illicit drug users. Only a fraction of those drug users were arrested. Our incarceration binge has not ended drug use. A recent article in the *Economist* points out that since 1998 world consumption of cocaine and marijuana has increased by fifty percent and use of opiates has tripled. The negative externalities of the Drug War, billions of dollars in revenue for organized crime and 70,000 drug related murders in Mexico alone in the last five years (Economist 2013). A universal end to drug use would have many societal benefits, but it is currently an unrealistic goal.

Universal rehabilitation is also an unrealistic goal. During my interviews, treatment staff often mentioned that inmates needed both the ability and the desire to change. Not every inmate has the ability and or the desire to change. Not every inmate can reenter society as a fully functioning citizen. Individualized treatment plans should exist for each inmate, with realistic goals for improvement. It would also be beneficial if prison administrations were able to offer incentives such as early release. Truth in sentencing or minimum sentencing laws takes away the ability to offer such incentives. An inmate with a history of good institutional behavior should not be treated exactly the same as an inmate with a history of negative institutional behavior, simply because both inmates have the same charge.

Individualized treatment and a reemphasis on reform and rehabilitation are necessary, if only because of the incredible costs of punishment. Under the rehabilitative model, inmates are not sinners or rational actors that can be effectively deterred. Inmates who respond well to treatment or exhibit good behavior can gain privileges and even be released early. A focus on individualized treatment is a shift from punishing an offence to treating an offender (Banks, 2005, 66). The state is responsible for the care of offenders as well as their punishment and control. We should return to the time when a central role was given to professionals such as parole officers and social workers who worked together to help reintegrate former prisoners (Garland 2001).

What are the goals for each inmate? Is the goal punishment or rehabilitation or restitution? Once we know the answer to that question, we can prescribe a solution. If a man steals a car, and the goal is restitution, then that man needs to work to pay back the theft, not to spend years in prison. If a woman is a drug addict, then she needs access to

substance abuse treatment, not a lengthy sentence. If a man commits a heinous act, and punishment is required, then placement in a maximum security facility may be justified. I am not suggesting that we release every inmate into society, that we parole Charles Manson and empty all the nation's prisons. Yet we cannot afford to place millions of Americans under correctional supervision. Some people need to be incarcerated, but not all.

It is also important to know what our goals are upon release. What do we expect from an inmate? The current model is a hardworking, drug free member of society. We expect a drug addict to reenter society and not screw up. In many ways it's an unreasonable expectation. The correctional population on average is less educated, has less work experience, and has more mental illnesses than the larger public. Peoples' capabilities vary. While on tour at Kentucky State Penitentiary, I was told that the average educational level of the inmates was the fourth grade. There are a lot of failings, personal and societal, that lead to a population of American men reading at the fourth grade level. Until we can fix those failings, it is important to be realistic with our expectations.

It is not elitist to say that some people have a harder time keeping a job than others. Not everyone has the life skills and discipline necessary to be a successful employee. Some people are more impulsive or prone to drug use than others. While prisons should work hard to improve the life skills of their inmates, success may not be possible for every inmate. Being unemployed is not a crime, and continual employment may be an unrealistic goal for former inmates. It is also important to note that not all punishments are issued by the state. People who lack life skills and steady employment

are subject to numerous informal social sanctions. In many ways, those informal sanctions are punishment enough in themselves. Modest, and more importantly individualized goals may offer more opportunities for successful reintegration into society.

Matching Resources

The American prison population in many ways is a vulnerable population. Men with mental health issues, low educational attainment, economic difficulties and minimal life skills make up the bulk of the American prison population. Prisons have become a way to manage the underclass, and warehouse the mentally ill. To the largest extent possible, we need to match inmates and rehabilitative programming. Mentally ill inmates should be provided with mental health services. Illiterate inmates should be taught to read. Inmates with minimal job skills should be given job training. The majority of inmates will at some point be released, and if we do not match resources, the inmates will simply cycle back into prison.

Mental illness is not only a concern for inmates, but is also a concern for staff. Mentally ill inmates are more likely to commit assaults and to engage in other antisocial behavior. Our negligence in treating mental illness causes staff to be assaulted, harassed and sometimes killed. Correctional workers already operate in dangerous, low prestige and low paying environments. Helping to lower the danger of those environments is the least we can do. If a prison lacks the proper resources to treat mental illnesses, then the prison should not have mentally ill inmates. Prison guards do not have the same intensive training as mental health professionals. Even the best prison guard cannot take the place of a therapist. A prison that lacks enough psychotropic medication for its inmates should

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transfer any inmates that it cannot handle. If a state's entire prison system lacks the resources and capabilities to treat its mental ill inmates, then those mentally ill inmates should be sent to mental hospitals. A prison is a prison. A mental health hospital is a mental health hospital. It is necessary to match resources and to address a problem, mental illness, with the proper response, mental health treatment.

Similarly to mental health, substance abuse problems should also be matched with substance abuse resources. Inmates with a drug addiction should be given drug addiction treatment. The Substance Abuse Program (SAP) at Western Kentucky Correctional Complex is one example of a model program. SAP is a 12 step based program, that offers regimentation and an emphasis on group accountability. The program involves intense therapy under the supervision of a group of substance abuse counselors. Upon successful completion of the program (four phases which usually take six months), the inmate is released. SAP is a model of the old scientific, individualized reformatory treatment. You are in prison for a reason, to deal with substance abuse issues. Once you have addressed those issues, you are allowed back into the community. The punitiveness and segregation of the modern crime control model is absent. SAP exists to aid rehabilitation and reentry, not separation from society. At the same time, the state of Kentucky saves money by having inmates serve shorter sentences.

Matching resources also involves maintaining a diverse and better educated staff. Chapter six suggests that minority correctional workers and better educated correctional workers have less punitive views and are more supportive of rehabilitation. Prisons with larger minority staff populations punish less and may be better advocates for minority inmates. Inmates do need advocates. It should be a cause for concern that, in a

democracy, inmates have such little power and little right to appeal a treatment decision. If nothing else, a diverse staff would allow for a diversity of opinions. Prison staff, whenever possible, should place a premium on workforce diversity. It may also help to periodically transfer staff, in order to prevent any single workplace culture from becoming too entrenched.

Most American prisons are overcrowded and underfunded. One option is to build more prisons, and to properly fund those prisons. A second option is to reduce the prison population. States should rationally analyze their prison budgets and prioritize which inmates need incarceration. Charles Manson should probably stay in prison. Gang leaders should probably stay in prison. Violent predators should probably stay in prison. Drug users, petty criminals and small time cons pose less of a threat. Incarceration is one option, but not the only option. Crime can be deterred through fines, warnings or community service. Crime can also be ignored. Americans can be arrested for disorderly conduct or trespassing. A homeless man, sleeping in a park, can be arrested for trespassing. But maybe being homeless is enough of a punishment. Or maybe society's response could be, let's find this person a home. Our decisions are choices. It is important to remember that we don't actually have to incarcerate two million people. It's a choice, not a requirement.

Cost considerations are important. In Kentucky, an inmate at a medium security facility costs the state approximately fifty dollars per day, while an inmate at a maximum security facility costs the state approximately seventy dollars per day. For a single year, a medium security inmate costs the state over eighteen thousand dollars. Entry level correctional officers in Kentucky make twenty-two thousand dollars a year. With fewer

inmates, the Department of Corrections could hire more guards, making for a safer environment for both staff and inmates. The release of, say two inmates, would allow for the hiring of a school teacher in Fayette County (Lexington, Kentucky). Budgets are finite. More money spent on incarceration is less money spent on education or any other programs. States should adopt best practices and cost effective approaches to crime. If someone steals a thousand dollars, and incarceration for a year costs eighteen thousand dollars, maybe incarceration is too expensive. Maybe requiring the person to pay the money back and to pay an additional fine is enough.

Rethinking the Social Construction of Crime

Crime is a social and political concept. Societies differ in what is a crime and what is not. Some behavior that is encouraged in one society is condemned in another. The role of drugs, the role of sex or the role of women is not universal. In the late 1800s, cocaine, opium and heroin were available for over the counter purchase. In the 1920s, the sale, manufacture and transportation of alcohol were prohibited. The chemical composition of heroin and of alcohol did not change along with its legal status. Heroin is heroin, alcohol is alcohol. Our response to drug or alcohol use is what changes. Contraception was legal in the United States until the 1870s, and then was legal again in the 1970s. Contraception did not change, our views on contraception changed.

Two features of the American criminal justice system stand out, and require a rethinking of the social construction of crime; the social construction of drug use and the social construction of violence against women.

Drug Use

In 1970, the Controlled Substances Act combined all federal drug laws into one statute and greatly enhanced federal law enforcement power. The beginning of the Drug War had a contradictory start. Part F of the Controlled Substances Act established the National Commission on Marijuana and Drug Abuse, to study marijuana use in the United States. In 1972, the Commission recommended the decriminalization of marijuana and other methods to discourage drug use. Instead of following the Commission's recommendations, the United States has followed a decades long, expensive War on Drugs, focused more on interdiction and incarceration than on rehabilitation.

In 2009, an estimated 21.8 million Americans were current illicit drug users. Only a fraction of those drug users were arrested. The likelihood of arrest for drug use varies systematically by race and class. We are very adept at incarcerating young black and Hispanic males for drug possession and drug dealing. It is unclear how a black cocaine user is any different than a white cocaine user. It is unclear why a poor heroin addict is more of a threat to society than a rich heroin addict. By punishing young black and Hispanic men disproportionately, we are punishing them for being young and black (Hispanic), not for being drug users or drug dealers.

The prohibition of alcohol in the United States, from 1920 to 1933, offers the clearest analogy to the current drug war. During Prohibition, drinking alcohol did not disappear. Instead, a black market emerged to fill the unmet demand. The great benefactors of Prohibition were members of organized crime, just as drug gangs and cartels benefit now. Prohibition also made the consumption of alcohol more dangerous,

as the quality of ingredients was compromised. Some drugs today are dangerous in part due to the additives in drug production. There is certainly no governmental agency regulating the quality of drugs. The uncertainty of quality is an added risk to drug users. Overdoses and other serious medical problems could be reduced with government regulation of drugs.

There are many arguments against drug legalization. Opponents will argue that drugs should be banned because drugs are dangerous and cause health problems. There are serious health problems related to drug use. Still, drug legalization may be the least bad option. A comparative analysis shows that drug policy varies within and outside the United States. Fourteen American states have decriminalized marijuana, and an additional two have legalized marijuana. Marijuana is available for legal purchase in Spain and the Netherlands. Portugal has perhaps the most comprehensive drug policy, decriminalizing the use of all drugs and instead focusing on getting addicts into treatment and preventing recreational users from becoming addicts (Economist 2013).

Decriminalization is another option, but it has flaws. In a decriminalized environment, drugs are still supplied and partially controlled by organized crime. Instead, a carefully regulated, legal drug regime would weaken and lessen the violence of drug cartels. Regulation would also help eliminate the harmful additives placed in many drugs. Even if all drugs were legalized, there would be room for federal, state and local governments to decide where drugs could be purchased, where drugs could be used and the strength of the drugs. Governments are able to ban smoking of cigarettes in certain environments, and zoning laws restrict many vices.

Drug use should be treated the same way we treat alcohol. There are drug users and drug addicts, just as there are alcohol users and alcoholics. Some drug (alcohol) users are functional and some are not. Some drug addicts need rehabilitative treatment and some alcoholics need rehabilitative treatment. Certain activities, such as driving, while under the influence of alcohol are banned. Driving while under the use of narcotics would also be banned. Crimes committed under the use of alcohol are enforced. There does not need to be a special crime that prohibits assaulting people while drunk, because there is a crime that prohibits assault. There does not need to be a special crime that prohibits theft while under the influence of drugs, because there is a crime that prohibits theft.

Support for the legalization of marijuana has increased dramatically since the mid-1990s. Less than thirty percent of respondents favored legalizing marijuana in 1995, but a majority of Americans favored legalization in 2011 (Economist 2013). Legalization has the advantage of weakening organized crime, providing regulated quality, freeing law enforcement resources and adding tax revenue. The natural experiments in Colorado and Washington will allow public policy analysts to weigh the benefits of marijuana legalization. The legalization of other drugs will likely be more controversial. Still, the alternative is an unregulated market that benefits criminal organizations, organizations willing to use violence to control market share. Drug legalization is the least bad option, and should be seriously considered.

Violence Against Women

Not every crime is over-enforced. Our zeal for punishing drug users does not signal a zeal for punishing all crime. One category of crime that is tragically under-

enforced is violent crime against women. An estimated 1.3 million women are victims of an assault by an intimate partner in the United States, every year. One in every four women will experience domestic violence in their lifetime. Witnessing violence between parents is the strongest risk factor for transmitting violence from one generation to the next. Boys who witness domestic violence are twice as likely to abuse their own partners. Thirty to sixty percent of people who abuse their partners also abuse their children (all statistics from National Coalition Against Domestic Violence, 2007).

Most domestic violence incidences are not reported to the police. A large stigma exists against reporting, and there is a fear that the assailant will retaliate against the victim. A similar experience occurs in rape. One in six American women has experienced an attempted or completed rape. Nearly ninety thousand women reported they were raped in 2008, and another estimated 75,000 women do not report being raped. Out of every 100 rapes, only 46 get reported. Only 12 of those rapes lead to an arrest, 9 get prosecuted, 5 lead to a felony conviction and only 3 out of every 100 rapists will spend even a single day in prison (RAINN, 2012). A CBS News investigation reported that at least 20,000 rape kits were never sent to crime labs for testing (Keteyian, 2009). The reason? At 1,500 dollars per kit, it is often deemed too expensive to test the kits.

The American criminal justice system is broken. Marijuana use is treated more seriously than rape or domestic violence. It is considered rational to spend 18,000 dollars a year to incarcerate a single inmate in a Kentucky state prison while 1,500 dollars is too expensive to test a rape kit. My father was physically abusive to my mother, and was never punished. An ex-girlfriend was raped by an acquaintance and felt rebuffed when she filed a police report. It seems, to me at least, that violence against women is a larger

problem in our society than drug use. In order to come to terms with problems like violence against women, we need to rethink our conception of crime.

Final Thoughts

The American prison experience is varied. Rehabilitative services and punishments vary by prison and by inmate. The experience of prison inmates is often ignored. However, incarceration is a government function, and it is important to understand how treatment decisions inside prison are made. Crime is a political phenomenon. Political actors decide what a crime is, what the punishment for the crime will be and how to enforce that crime. Political actors decide whether or not to use incarceration as a punishment. Political actors decide how inmates will be treated during their incarceration.

I have presented evidence for systematic variation in treatment based on socially constructed racial categories. Black and Hispanic inmates are punished more often and receive fewer rehabilitative services. The composition of the prison staff also effects inmate treatment, with minority and better educated correctional workers preferring rehabilitative goals more than their white and less educated counterparts. More work should be done to uncover other systematic patterns. Analyses of individual or individual state prison systems may add depth to our understanding of prison administration. Organizational features should be carefully analyzed, and best practices identified. This dissertation offers a large N analysis of state prisons, but further work is welcomed and needed.

The American prison system is not a monolith. A work release center is very different than a maximum security facility. The minimum security wing of a prison will operate differently than the administrative segregation unit of the same prison. Some prisons are better funded than others. Some prisons offer more rehabilitative services. Some prisons punish more. The same variation is evident for individual inmates. Importantly, treatment is determined by political actors. It is not simply that variation exists; variation is determined by political actors.

Our prisons are a reflection of our culture and of our politics. The tradeoffs between incapacitation, punishment and rehabilitation are explicit political choices. The choices impact millions of people and cost billions of dollars. We decide what values to emphasize in prisoner treatment. Some of the decisions in past correctional policy were based on racially constructed social categories. What will we base our decisions on in the future? Whatever the choice, the decision is ours to make.

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Curriculum Vitae

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TEACHING AND RESEARCH INTERESTS

Organizational Theory	Criminal Justice Policy
Public Policy Analysis	Bureaucratic Decision Making
State and Local Politics	Race, Ethnicity and Politics

Publications

"The Teleprompter Presidency: Comparing Obama's Campaign and Governing Rhetoric" (with Yu Ouyang, John Poe, Austin Trantham and Richard Waterman). Forthcoming at *Social Science Quarterly*

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"Punitive Views and Punishment Decisions: Representative Bureaucracy in US State Prisons." Under Review at *Social Science Quarterly*

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TEACHING

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