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The News Media, Public Opinion, and Criminal Justice Legislation: The Rise and Fall of Mass  
Incarceration

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## Abstract

### The News Media, Public Opinion, and Criminal Justice Legislation: The Rise and Fall of Mass Incarceration

By Hagar Elsayed

The United States has become the most punitive country in the world with over 2.2 million people in prison and 4.7 million people under community supervision. Previous studies suggest that all growth in the incarceration rate since the late 20th century can be mainly attributed to sentencing policy that put more people in prison for longer sentences. Public opinion is argued to be the main driving factor of the “tough on crime” era that produced these policies, and the news media’s distorted framing of crime is linked to this increase in public punitiveness. The incarceration rate has seen recent decline. In this paper, I continue to explore research on public opinion, coverage in the news media, and criminal justice legislation related to criminal justice and sentencing reform. I then conduct a content analysis of newspaper articles from the Lexis Nexis archive about the Sentencing Reform and Corrections Act of 2015 introduced in the Senate (and its equivalent Sentencing Reform Act of 2015 in the House) to explore how the media covered criminal justice reform within the context of a specific congressional bill. Using MaxQDA to conduct a qualitative analysis of coverage and collect quantitative data of mentions of themes, I find that fiscal cost is the major argument in support of criminal justice reform, non-violent drug offenders are distinguished from violent offenders as the beneficiary of reform, and coverage of this act is largely in the form of opinion articles with significant input from editorial boards, local and federal political actors, and religious leaders.

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## INTRODUCTION

The United States has become the most punitive country in the world. Controlling for the crime rate and the population size, the United States hands down longer sentences, spends more money on prisons, and executes more of its citizens than every other advanced industrial democracy (Enns 2016). The United States has the highest incarceration rate, which has been steadily increasing since the late 1970s. In fact, before the 1980s, the United States incarceration rate was comparable to other advanced nations but now has an incarceration rate six to ten times greater than that of other industrialized nations (Alexander 2010). There are currently more than 2.2 million people in prisons, and more than 4.7 million people under community supervision as of yearend 2014 (U.S. Department of Justice 2015). With drug offenses accounting for two-thirds of the rise in federal inmate populations and incarceration hitting African American and Latino men hardest (Alexander 2010), it is not a reach to say that the United States has an incarceration problem.

My literature review will be divided into eight sections to explore the formation of mass incarceration, its maintenance, and the eventual beginning stages of its reform as these stages relate to the news media, public opinion, and legislation. The first section will explore factors that contribute to mass incarceration and common explanations for mass incarceration. It will then debunk these explanations as insufficient for explaining the massive rise in the incarceration rate on their own. Factors and explanations include the crime rate, demographic changes, the economy, and the crack-cocaine epidemic.

The second section will explain how police procedure and the sentencing policies of the late 20th century are the real causes for mass incarceration. Previous studies on mass

incarceration typically agree that sentencing policies which imposed higher mandatory minimums, among other things, were the single greatest factor in the creation of mass incarceration by putting more people in prison and keeping them in prison longer.

The third section explores how the “tough on crime” era and mass incarceration would not have been possible without the drastic changes in public opinion and the rise in public punitiveness during the late 20th century that encouraged policymakers to impose tough sentencing laws to avoid seeming “soft on crime”. This section uses prior research to explain how public opinion plays a major role in the decision making of government and how the public drove the government to set the foundation for decades of mass incarceration.

The fourth section establishes the relationship between the news media and public opinion. Prior research has shown that public opinions follow the news media and not the other way around, and that most Americans base their knowledge of crime on what they read and hear in the news media. This section shows how the media’s episodic and overrepresented representation of violent crimes and drugs, and their overrepresentation of offenders of color, caused a moral panic that directly influenced public opinion by instilling a sense of fear of crime, thus making the public more punitive. Public opinion has been said to be a social construct, constructed by agenda-setting actors like the news media.

The fifth section then explores literature on the changing public attitudes towards the criminal justice system. This section explains how, while punitiveness is declining and support for rehabilitation is on the rise, both support and punishment have consistently been popular among the public. The section will then go on to explain how the public’s distinction between

non-violent and violent drug offenders has been crucial to the development of criminal justice and sentencing reform.

The sixth section explains how mass incarceration was maintained after the 1990s when the crime rate decreased, public punitiveness decreased, and media coverage of crime decreased. This section explains how the Prison-Industrial Complex, a network of private prisons and companies that rely on the prison industry as a market, was the driving force for the maintenance of mass incarceration by being a major obstacle to reform.

The seventh section explores the eventual realization of criminal justice reform in state and federal governments. This section explores why reform efforts before 2007 were largely unsuccessful, and why the incarceration rate began to finally decrease after 2007.

The eighth and final section of the literature review explores previous studies that look at the media's coverage of criminal justice and sentencing reform to look at arguments made for and against sentencing reform among other things.

I then dive into my research by explaining my methods and data in analyzing newspaper coverage of the Sentencing Reform and Corrections Act of 2015, which was introduced in the Senate in October of 2015 (and its equivalent Sentencing Reform Act of 2015 in the House). My research involves both quantitative data of how many times certain arguments and concepts were mentioned in articles, and qualitative data of how certain issues and arguments were discussed.

## LITERATURE REVIEW

### 1. TRADITIONAL EXPLANATIONS FOR MASS INCARCERATION DEBUNKED

The incarceration rate is affected by many factors, but the rise in mass incarceration rate after the 1990s is so unusual that traditional contributing factors to the incarceration rate are no longer sufficient in explaining the enormous rise in the incarceration rate. This section explores explanations that are commonly used to explain fluctuations in the incarceration rate, and then it discusses why they are not adequate explanations for the massive criminalization of Americans that has occurred since the 1970s.

#### *Crime Rate*

When explaining a growth in incarceration, it is typical to begin by looking at the crime rate, as many scholars have done (Enns 2016; Alexander 2016; Listoken 2016; Raphael and Stoll 2013). If incarceration rate fluctuates with the crime rate, then it is likely that an increased incarceration rate can be attributed to an increased crime rate. However, scholars have found insufficient evidence to support this hypothesis (Raphael and Stoll 2013, Enns 2016, Alexander 2010). While some criminologists attribute some of the increase in imprisonment to the propensity to commit crime, most studies find no relationship between crime rates and changes in incarceration. This is known as the “paradox in crime and incarceration” (Listoken 2003:182). Michelle Alexander (2010) explains that governments use punishment for social control and that punishment is typically unrelated to crime patterns. Enns (2016) finds that although the incarceration rate correlated with the increase in crime during the 1970s and 1980s, the crime rate began declining in 1990s while the incarceration rate continued to grow.

Enns (2016) explains that criminal activity fluctuates in a uniform and systematic way and cannot directly account for increasing prison populations.

### *Demographic Change*

Raphael and Stoll (2013) discuss the changing demographics of United States residents since 1980 and their relationship to the crime and incarceration rate since certain demographics are associated with a higher propensity to commit crimes, and thus, a higher incarceration rate. They found that the United States has become increasingly foreign-born, older, and more educated on average. Each of these demographics are associated with a lower propensity to commit crimes, and therefore a lower crime rate, a lower incarceration rate, and shorter sentences. With these demographic shifts, we should then expect to see the incarceration rate to decline with time. However, the incarceration rate since 1980 has countered this expectation with the prison population increasing at a significant rate despite these demographic changes that would account for lower incarceration rates. In fact, if these demographic changes did not occur, the United States would have seen a substantially greater increase in crime and incarceration rates.

### *The Economy*

According to Raphael and Stoll (2013), income inequality has greatly increased since the mid-1970s. There have been significant declines in the earnings of low-skilled workers, stagnant wages for the middle class, and greater inequality in the upper half of the income distribution as well. Furthermore, employment opportunities have decreased for lower skilled workers.

Lower wages and fewer job opportunities decrease one's potential of earning. Lower potential earnings make criminal activity more appealing, therefore the likelihood of engaging in criminal activity should increase as potential earnings in legitimate employment decline. According to Raphael and Stoll, there is considerable evidence that greater unemployment and lower wages contribute to an increase in economically motivated crimes. With an increase in the number of people involved with criminal activity, an increase in the incarceration rate is expected. To add to this, a stricter sentencing regime extends the length of these offenders. Therefore, with a larger number of people committing economically motivated crimes, more people are getting caught and sentenced, and harsher sentencing laws mean that not only are more people entering prison, but offenders are staying in prisons longer, increasing the prison population as a whole. Incarceration also decreases labor market opportunities for ex-convicts which increases the recidivism rate. However, while income inequality contributes to incarceration growth, especially among white men, Raphael and Stoll find that these economic changes only explain a small share of the growth, and they account for very little African American men for whom incarceration have increased tremendously.

### *Crack Epidemic*

The crack epidemic of the mid 1980s and early 1990s is commonly credited as a cause for an increase in violent crime during this time, and is often suspected to be the cause behind mass incarceration (Alexander 2010). While the second half of the 20th century saw a rise in drug activity in various subcultures of use and sales common in different decades, violent crimes are mostly attributed to the increased use of crack-cocaine beginning in the mid 1980s

in poor minority neighborhoods (Raphael and Stoll 2013). Raphael and Stoll explain the link between the crack epidemic and the rising incarceration rate. Drug epidemics affect incarceration growth through their impact on crime, and crack-cocaine is known to have psychopharmacological effects that predispose the user towards violence. However, while the link between crack-cocaine use and violent crime is clear, Raphael and Stoll argue that its role in the massive incarceration growth is limited. They reveal that in many states, incarceration growth was well on its way before the crack-cocaine epidemic, and it continued to grow after waning crack-cocaine use. Empirical tests fail to explain the role of crack-related violence on either incarceration rates or prison admission rates. However, while the crack epidemic is unlikely to have had a direct impact on incarceration rates, Raphael and Stoll explain that the crack epidemic, as well as other “War on Drugs” hysteria before the crack epidemic, certainly had an *indirect* effect on incarceration rates through policy.

## 2. THE REAL CAUSE OF MASS INCARCERATION: POLICE PROCEDURE AND SENTENCING POLICY

Michelle Alexander in *The New Jim Crow* traces mass incarceration to the policy response of the “War on Drugs.” She extensively discusses legal rules that allowed and incentivized police roundup of an unprecedented number of Americans, significantly poor minorities, for minor, non-violent drug offenses that allowed legal violation of the fourth amendment. She disputes the argument that crime rate is responsible for the increased incarceration rate, and instead she argues that changes to the law, particularly regarding prison sentences, are primarily responsible for mass incarceration. Similarly, Raphael and Stoll (2013) find that nearly all, if not all, of the growth in prison populations can be attributed to tougher

sentencing policy. Before the mid-1970s, the United States had a remarkably stable incarceration rate that can be attributed directly to the stable policy regime at the time (Raphael and Stoll 2013). However, crime policy has drastically changed since then. This section will explore the elimination of police constraints and incentives for sweeping arrests that allowed the massive rise of drug related arrests, and significant sentencing policy changes that have directly resulted in a higher incarceration rate.

### *Drug-Related Arrests*

Alexander (2010:60) argues that “convictions for drug offenses are the single most important cause of the explosion in incarceration rates in the United States. Drug offenses account for two-thirds of the rise in the federal inmate population and more than half of the rise in state prisoners between 1985 and 2000”. She blames the “War on Drugs” for the systematic mass incarceration of people of color in the United States and explains the increase in drug-related arrests by changes in the way that the police operated. In 1968, *Terry v. Ohio* made police searches legal with “reasonable articulable suspicion.” However, Alexander argues, that today, police have found it easier to initiate searches with unreasonable suspicion as long as one gives them “consent.” Alexander takes issue with this since police overuse this loophole by doing sweeps of buses and traffic stops for minor violations and asking for consent to search passengers. The issue is that most people are not aware of their right to refuse consent, and the Supreme Court has resisted efforts to require informing people of their rights (Alexander, 2010). However, even if one is informed and refuses to consent to a search, police can either arrest her anyway, or have her wait for a drug-sniffing dog which would not be considered a

search. These practices by police are not just loopholes but are systematically supported by the government. According to Alexander (2010), in 1984, the Drug Enforcement Agency (DEA) launched Operation Pipeline, which was a program that trained police officers to use minor traffic violations as “pretext” for searches, to extend traffic stops in order to be given consent to search, to coerce consent, and to use drug-sniffing dogs to obtain probable cause in the case that all else fails. However, Alexander cites that out of 100 bus sweeps, only about 7 offenses are discovered, and it is estimated that 95 percent of traffic stops yield no illegal drugs.

Alexander (2010) continues to explain that the reason police officers agree to prioritizing drug searches for two reasons: police departments are given huge cash grants for prioritizing drug-law enforcement, and in 1984 Congress amended the 1970 Comprehensive Drug Abuse Prevention and Control Act to allow police not only to seize cash and property of raids, but to keep and use all proceeds of asset forfeitures incentivizing police to make sweeping arrests of people of color for drug-related offenses that are usually non-violent or minor. In fact, four out of five drug arrests are for possession, and marijuana possession in particular has accounted for 80 percent of drug arrests since the 1990s.

Raphael and Stoll explain major sentencing policy changes that have been responsible to an increase in the prison population. The remainder of this section will be referencing their findings.

### *Indeterminate to Determinate Sentencing*

Determinate sentencing laws are fixed sentences for offences or very narrow ranges for minimum and maximum sentencing. On the other hand, indeterminate sentencing laws offer

offenders a wide range of minimum and maximum sentencing leaving it to the discretion of parole boards to determine length of sentence. Today, in states that have adopted determinate sentencing laws, the sentence is primarily determined by the sentencing judge with little to no influence from the parole board to adjust the sentencing. This has resulted in many offenders serving longer sentences in prison, often with no chance of parole or with little power given to parole if offered. Alexander explains that although these practices were put in place to keep violent offenders in prison longer, it usually affects non-violent drug offenders.

### *Structured Sentencing*

While the determinate sentencing laws reduce the discretion of parole boards on sentencing, structured sentencing reduces the discretion of judges. Structured sentencing refers to practices that impose structure through official advice handed down to judges, or mandatory structures imposed by judges for certain offenses. These guidelines are determined by state sentencing commissions that specify presumptive or voluntary sentencing guidelines that vary by crimes and criminal history of offenders. Presumptive sentencing guidelines are imposed on judges unless they make a case to deter from the sentence. Some states offer voluntary sentencing guidelines that act as suggestions rather than requirements.

### *Truth-in-Sentencing Laws*

Truth-in-sentencing laws require certain offenders to serve a minimum proportion of their sentences. This particularly affected violent offenders that were now required to serve a minimum of 85% of their sentence although it also affects other offenders but not to that

degree. In many cases, this abolishes or postpones parole making offenders serve more than they would without these laws.

### *Repeat Offender Laws*

Repeat offender laws refer to those that require harsher sentencing for criminal offenders who repeat the same crime or who repeat different felonies. They are also called “Three-strikes Law” implying that multiple offenses could result in a long sentence for even the smallest crime. While most states had similar laws before the rise of incarceration, these laws have become stricter and result in more severe punishment. These laws vary by state. While California’s “second striker” law imposes a double sentence for a second offense, Pennsylvania’s “three strikes” law is triggered when an offender is convicted of a felony after being convicted of two other felonies (they do not have to be the same felony). This also gives the court the discretion to increase the sentence beyond maximum sentences.

### *Mandatory Minimum*

Mandatory minimum laws specify minimum sentences for specific offenses. Every state currently has some form of mandatory minimum sentencing laws. Many of these laws apply to violent offenses but also often apply to possession and trafficking of illegal drugs, making drug-offenders vulnerable to longer sentences. While mandatory minimums already existed in many states, mandatory minimum laws became harsher, and were also imposed by the federal government with several laws including the Anti-Drug Abuse Act of 1988 that increased mandatory minimum sentences for many low-level and non-violent offenses such as mere

possession (Beckett, 1999). To encourage states to adopt mandatory minimum sentencing laws similar to those in the Anti-Drug Abuse Act, the Bureau of Justice Assistance was then authorized to award grants to states that imposed such penalties.

While these laws discussed above considered in isolation can either reduce or extend sentencing times, on average they extend sentencing times significantly.

### 3. PUBLIC OPINION AND THE “TOUGH ON CRIME” ERA

Peter Enns’ central claim in *Incarceration Nation* (2016:12) is that “the rise of mass incarceration in the United States reflects, in large part, a political response to the public’s rising punitiveness.” Public opinion influences the incarceration rate in two ways: ballot initiatives such as the “three-strikes laws” described above, and indirectly through the behavior of legislators. In this section, I will focus on the latter. Enns (2016) first does an over-time analysis of public opinion regarding criminal justice policy using survey data from the Roper Center for Public Opinion Research. Looking at public opinion responses to three survey questions regarding courts’ treatment of criminals, support for the death penalty, and punishment or rehabilitation in prisons from 1970 to 1982, Enns found that the U.S. public has grown more punitive over time in all three categories. The percentage of people that believed the main emphasis of prisons should be punishment instead of rehabilitation doubled from 8 percent to 19 percent while the percentage of people in support of rehabilitation dropped by almost 30 percent from 73 percent to just 44 percent.

Enns then uses survey data from the Roper Center Public Opinion Archives, the American National Election Study (ANES), as well as the General Social Survey (GSS), to identify

opinion questions related to treatment of criminals, death penalty, spending on the criminal justice system, and confidence in the police. While responses in support of the first three categories imply punitiveness, it is lack of confidence in police that suggests more concern for crime and greater support for “tough on crime” policies. Responses to thirty-three questions that were asked repeatedly between 1953 and 2012 were analyzed. As shown in Fig. 1, Enns finds that, not only do all questions follow strikingly similar patterns, but when combined to calculate overall public punitiveness, Enns finds that significantly rising levels of punitiveness from the mid 1960s into the 1990s. This offers strong empirical evidence for public support for “tough on crime” policy during this time, and also shows that punitiveness has been decreasing since the 1990s.

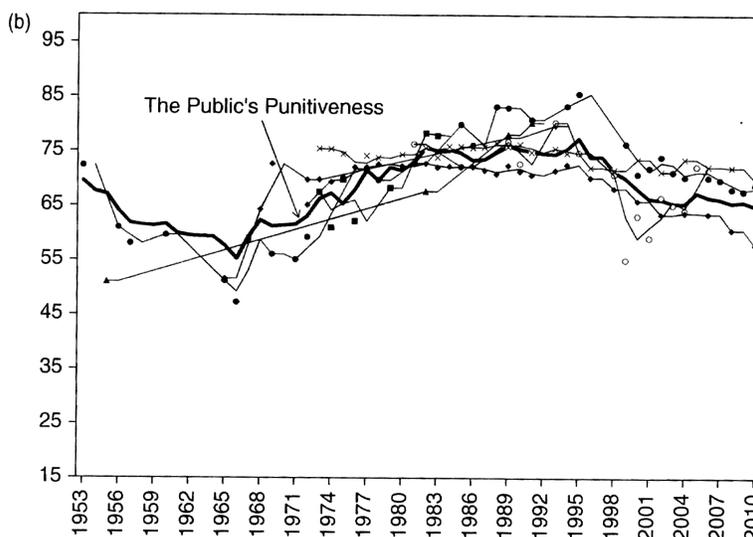


Fig.1: Enns (2016). Seven indicators of the public’s punitiveness from 1953 to 2010: (a) natural metric and (b) set to a common intercept.

Enns continues to explain that public opinion is important because it relates closely to the decision making of government. Politicians adapt their behavior depending on perceived public opinion to please their constituency and enhance their chances of reelection. Although

other considerations play into political decision making, public opinion is nonetheless meaningful in the eyes of political actors. Judges, for example, avoid deviating too far from public preferences in fear of media attention and public scrutiny.

However, one may then ask whether public opinion is in fact influencing politicians, or if politicians are the ones influencing public opinion. Enns explores this question through an analysis of rhetoric used during the 1964 and 1968 presidential campaigns since they aligned with rising public punitiveness, and then compared patterns in the rhetoric to public attitudes toward crime and punishment to see which came first. He expects political elites' attitudes to follow rather than precede public opinion since politicians face an electoral incentive to consider the public, and since it is unlikely for politicians to have the ability to manipulate public opinion over long periods of time considering their limited terms. Enns finds that although many scholars suggest Barry Goldwater's "tough on crime" rhetoric during his 1964 presidential campaign influenced the public's rising punitiveness during that time, there is not adequate evidence to support the claim that public punitiveness *followed* Goldwater's rhetoric. While crime being cited as the "most important problem" when surveying the public rose during that year, Enns found that none of the ninety-four reasons the American National Election Services (ANES) found for supporting Goldwater referred to crime. Enns even found that those that were least informed about the election expressed the most concern about crime.

Enns then offers Lyndon Johnson's 1964 campaign as another case study to look at the relationship between political elites and public opinion. He found that while Johnson expressed liberal views about crime during his campaign, emphasizing the need to address the social roots

of crime, his rhetoric abruptly turned punitive following his inauguration to suit the punitive public.

Furthermore, Enns compared Richard Nixon's 1960 and 1968 presidential campaigns for his crime rhetoric. While in 1960, Nixon gave 282 speeches or public remarks, crime was only mentioned 3 times in an international affairs context rather than a domestic crime context. In 1968, on the other hand, Enns (2016; 61) claims that his 1968 acceptance speech for the Republican nomination "placed more emphasis on crime than his entire 1960 campaign." An analysis of internal memos during the Nixon campaign found that the campaign consistently used poll data and public opinion data, suggesting that Nixon's focus on law and order was a strategic attempt to gain voter support by aligning his campaign focuses with voter preferences.

#### 4. THE NEWS MEDIA'S ROLE IN INCREASING PUBLIC PUNITIVENESS

If the public punitiveness affects political elite attitudes and criminal justice policies, what then causes public punitiveness? According to Drakulich and Kirk (2016), public opinion is a social construct influenced by social actors like the media. Many scholars agree and argue that the primary source of public concern is in fact the news media (Beckett 1999; Enns 2016; Opportunity Agenda; Dorfman and Schiraldi 2001; Hartman & Golub 1999). Dorfman and Schiraldi (2001) share findings that 76% of the public claim that they form their opinions about crime from what they read and see in the news compared to 22% from personal experience. Furthermore, a 1998 report by Public Agenda found that daily TV news viewers in Baltimore were more likely to think that crime and drugs were the city's greatest problem compared to

those that watch the news less frequently (67% compared to 42%) despite Baltimore's declining crime rate. Researchers such as Jones (1976), Altheide (1997), and Dowler (2003) claim that the media's influence is felt through the construction of public concern - a theory known as "agenda setting". Simply put, issues stressed by news media, in turn, focus public opinion on these issues.

Iyengar and Kinder (1987) define agenda-setting theory as the process by which issues are made important to the public through attention in the media. According to Iyengar and Kinder, Walter Lippmann was one of the first theorists to warn of the power that news organizations possess on determining what the public thinks about. They extend this argument by conducting empirical experiments to test the influence of the media in shaping public opinion.

Iyengar and Kinder examined trends in television news coverage over time, and they compared them to public opinion. They found that public opinion trends were parallel to news coverage trends, proving a correlation, but in order to establish a causal relationship between news coverage and public opinion, they then incorporated measures of real world conditions (energy, inflation, unemployment, and presidential elections) to the analysis. They found that for every seven stories broadcasted about energy, public responses citing energy as the country's most important problem increased by about 1 percent, and that public opinion was actually unaffected by real world conditions. They also found similar results for inflation, with an increase in 1 percent citing inflation as the country's biggest problems after five stories per month on inflation, real world conditions having no effect. However, unlike television news coverage of energy and inflation, television news coverage had a weaker, if any, relationship to

Americans' public concern over unemployment, where real world conditions was the only determinate of public concern. Iyengar and Kinder explain that this may be attributed to the low level of news coverage on unemployment, implying that networks and possibly the public as well regard unemployment as less newsworthy. Overall, these findings strongly support the agenda-setting hypothesis that news organizations have a strong influence on what issues the public considers important.

Because of news media's significant influence on public opinion, news organizations have the power to create concern where statistics show little to be concerned about. While murder accounts for less than 1 percent of all crimes, it was the focus of 17 percent of crime stories analyzed in a study of Los Angeles local news from 1996-1997 (Gilliam and Iyengar 2000). Crime is disproportionately presented on local news, with some channels crime accounting for more than 75 percent of coverage (Gilliam and Iyengar 2000). When it comes to explaining how news coverage covers crime and its impact on public punitiveness, Enns (2016) first reports the crime rate in the 1960s and 1970s using FBI's Uniform Crime Reports (UCR). He focuses on this time period because this time period is associated with national public concern and the beginning of many political responses to crime. He finds that different kind of crimes typically move in tandem. He focuses on the violent crime rate, since these crimes received the most attention in the news. Since different crime rates move in tandem, an examination of violent crime coverage should have important implications on the coverage of other crimes. He then compared these crime rates to crime reporting in six newspapers around the world.

Interestingly, he finds that crime rates began increasing in the 1960s and continued through the 1970s, and news coverage of crime closely followed these rising crime rates. Public

punitiveness was a result of the increased coverage of crime. Media coverage shaped public perception of crime leading to a sense of more violent crime, and associations of violent crimes with racial minorities.

Enns then extends the time range from 1953 to 2010 including data from congressional hearing and presidential statements. He finds that the news is influenced by crime rates, that public punitiveness is influenced by news coverage and crime rates, and that political attention to crime follows public punitiveness. However, Enns continues to explain that although news coverage actually tracks the crime rate, this does not give us an idea of how news is covered and does not mean that this coverage gives Americans a complete look into crime in America. News coverage disproportionately covers violent crimes and crimes committed by people of color. While certain news frames (“episodic” frames) and “crime scripts” promote these misconceptions about crime (Enns 2016; Gilliam and Iyengar 2000), news coverage that use “thematic” news frames that put crime in more a political and historical context do not necessarily correlate to more punitive public attitudes (Iyengar and Kinder 1987) . This is what happened with public attitudes about the death penalty when media coverage emphasized the “innocence” frame; public support for the death penalty declined (Enns 2016).

##### 5. CHANGING PUBLIC OPINION AFTER THE “TOUGH ON CRIME” ERA

As mentioned above, Enns (2016) found that public punitiveness only increased through the 1960-1980s during the moral panic of the “War on Drugs”, and it has been declining ever since. Opportunity Agenda (2014) argues that the public is becoming more interested in spending tax dollars on alternatives to incarceration like rehabilitation, treatment, and support

efforts. However, they also find that the public is especially supportive of this for non-violent/low-level drug offenders. Their findings support the claim that the “tough on crime” era was characterized by a period of unusually high punitive attitudes and numbers of people citing crime as the number one issue in America.

While rehabilitation is becoming more popular and punishment is becoming less popular, both options for dealings with crime have been popular with the majority over the years (Opportunity Agenda, 2014; Thielo, 2015). Opportunity Agenda (2014) reports that rehabilitation has always been popular but was less popular during the “tough on crime” era at about 51% of people in support of rehabilitation. However, Thielo (2015) reports that while rehabilitation has been and continues to be an increasingly popular alternative to incarceration among the public, punitive policies have also received majority support over time. He reports that, in the past 40 years, public support for the death penalty for those convicted of murder has not declined under 60%, and public support for harsher courts, although significantly decreasing from 85% to 62% from 1994 to 2013, has remained popular amongst the majority. Therefore, there is simultaneous public support for both punishment *and* rehabilitation. This suggests that there are more nuanced complexities within public opinion about crime and criminal justice reform.

One of those nuances is the different attitudes towards non-violent drug offenders and violent offenders. Opportunity Agenda (2014) reports that studies show a large distinction among Americans between violent and non-violent offenders. Multiple studies found that the public are more likely to support reform for non-violent drug offenders and that the public find violent offenders as deserving of harsher punishments (Opportunity Agenda 2014; Thielo 2014;

Krisbert 2016). The Mellman Group (2016) find that 61% of Americans in a 2016 study believe that too many drug criminals are in federal prison, and that that space should be reserved for those convicted of violent acts or terrorism. Furthermore, they find that 8 in 10 voters support judicial discretion with sentencing for drug offenders.

While changing attitudes towards drug and increased public support for rehabilitation and reform may provide the opportunity for political leaders to move policy in a less punitive direction (Thielo, 2016), several studies argue that meaningful progress in criminal justice reform cannot happen if support for reform does not extend beyond drug offenders (Drakulich and Kirk 2016; Beckett, Reosti, and Knaphus 2016). While drug offenses accounted for the majority of increase in the federal and state incarceration rate between 1985 and 2000 (Alexander, 2010), Drakulich and Kirk report that only about one fifth of the growth in state prison population can be explained by the increase in drug incarceration whereas violent offenders explain more than half of the growth. They argue that if we focus only on this portion of the prison population, then we will have a reduced impact on the system at large.

## 6. THE PRISON-INDUSTRIAL COMPLEX AND MAINTENANCE OF MASS INCARCERATION

The 1960s saw a rise in criminal activity and the news media noticed. Increased sensational coverage of crime influenced public opinion by promoting excess fear of crime, making the public more punitive and support stricter criminal justice legislation. As I have shown, politicians are influenced by public opinion and reacted to the rise in public punitiveness by imposing the “War on Drugs”, acting “tough on crime”, and prompting the massive sweeping of thousands of drug offenders, mostly Latino and African-American men,

and introducing new sentencing laws that increased sentence times, affecting the overall population of the prisons. These systematic changes to prison admission and sentencing have been the main cause for the rise in prison populations beyond the 1990s as well.

However, according to Enns (2016), the 21st century saw a decline in crime, crime coverage in the news, and public punitiveness. Since the 1990s, the public has shifted away from harsh enforcement and sentencing policies, support for mandatory minimums has been on the decline, and support for rehabilitation, treatment, and support efforts has garnered more interest (Opportunity Agenda; Thielo, 2016; Mellman Group, 2016; Krisbert, 2016). Since these are some of the greatest factors that promoted mass incarceration, you would expect the incarceration rate to decline. However, the data tell a different story. Following the “tough on crime” era of the late 20th century, the incarceration rate continued to significantly increase until 2007/2008, when the correctional population peaked at 7.3 million in 2007 and the incarcerated population peaked at 2.3 million in 2008 (U.S. Department of Justice 2015). While the harsh sentencing policies of the late 1990s that stayed in place after the moral panic subsided are the ultimate reason for the maintenance of the increasing incarceration rate, the desire for reform was increasing but the system did not listen. Beckett (1999) argues that the maintenance of mass incarceration can be attributed to the Prison-Industrial-Complex (PIC), which is the system of private prisons and corporations that were created as a result of the rise in incarceration and then relied on prisons as an industry to make financial gain.

The PIC gets its name from the well-documented Military-Industrial Complex, which refers to the 1960s when the military made a commitment to the mass production of weapons after a time of panic led by President Eisenhower (Smith and Hattery 2010). The mass

production of weapons encouraged the need to engage in war and military conflict to use the weapons. Similarly, Smith and Hattery (2010) argue that the moral panic of the “War on Drugs” and the following expansion of the prison industry that incarcerated millions of Americans has led to the need to create and expand the infrastructure to support this growing population. Private prisons were created as a solution for overcrowding of prisons. They have increasingly added more prison beds to fill and corporations have taken advantage of this massive second class population as a source of cheap labor (Beckett, 1999). In fact, between 1990 and 2009, the private prison industry expanded by more than 1600% (Eisenberg 2014). Therefore, this population supports a growing and flourishing market and the demand for change in the public had little chance to stand against corporate and financial interests.

The prison industry has become one of the biggest industries in the country, employing more than any *Fortune 500* company with the exception of General Motors by only 1999 (Beckett 1999). While private prisons themselves only host about 9% of the prison population, many aspects of prison life have been privatized such as medical care, transportation, and food services (Eisenberg 2014). Beckett explains that prison expansion has ensured a market for a variety of goods and service vendors including private companies that offer consulting, construction and architecture, management, security, drug testing and detection, and many, many more. These industries that have profited off of and encouraged the expansion of the prison industry remain a substantial obstacle to criminal justice reform (Eisenberg, 2014; Opportunity Agenda). Eisenberg (2014) explains that the three largest private prison companies make up 80% of the market for private prisons, and spend an annual estimated amount of \$4.5 million on lobbying. She continues to explain that opposition to prison reform is common even

within our own government for those with economic and political interests in the prison industry.

## 7. CRIMINAL JUSTICE REFORM

Since 2007, state and federal correctional populations have been decreasing. According to the U.S. Department of Justice (2015), there has been a 1% average annual decrease in the correctional population since 2007. Some say that the United States has entered the “beginning of the end of mass incarceration” (Eisenberg 2014:86). While the decline in the incarceration rate shows signs of progress, it is long overdue. The incarceration rate increased almost instantly after the rise in public punitiveness in the 1970s and 1980s, but public punitiveness has been declining since 1992 and the first sign of progress wasn’t seen until 2007 (Enns, 2016).

King (2007) looks at state reforms from 2004-2006, which can give us insight into why efforts at reform had not translated to significant decrease in incarceration. King finds that between 2004 and 2006, 22 states enacted legislative reforms to sentencing policies or probation/parole procedures. Despite these reforms, the incarceration rate continued to increase. King finds that reforms fell into three areas: drug treatment and diversion, community supervision reforms, and sentencing law reforms. King explains that although these reforms did not result in any significant changes to the prison population, they signify attitudes of rehabilitation, reentry, and reduced sentencing - attitudes that were often condemned in past years.

Beckett et al. (2016) later offered an extended analysis of state criminal justice reform policy trends from 2000 to 2013. They find that prior to the 2007 recession, many states

continued to enact “tough” anticrime legislation. During this time, punitive provisions outnumbered progressive provisions by a ratio of 3:1. This may suggest that King’s findings were only part of the picture because he limited his research to progressive reforms and did not consider the punitive provisions that would overshadow the effects of progressive reforms. Eisenberg (2014) finds that the punitive provisions mainly targeted sex offenders but sometimes drug and violent offenders as well. The progressive provisions on the other hand were limited to parole and drug policy. What is interesting is that, according to Beckett et al. (2016), on the onset of the recession, the table was completely flipped and progressive provisions have outnumbered punitive provisions by a ratio of 3:1 since. However, the progressive provision enacted have been almost exclusively limited to drug and parole policy. Drug reforms peaked in 2011 when ten states reduced penalties for drug offenders and five expanded diversionary sentencing options.

You could say that the 2007 economic recession and the entrance of the Obama administration marked the beginning for “decarceration” (Eisenberg, 2014). Eisenberg says that the Justice Department under President Obama proposed specific platforms to reduce prison overcrowding and mass incarceration such as revamping mandatory minimum practices to return discretion to judges. Furthermore, Eisenberg explains that state enactment of early release bills and decriminalization of low-level offenses such as marijuana possession has been a result of the fiscal pressures of mass incarceration during a time of economic crises and the judicial concerns about the human cost of prison overcrowding. However, reforms have overwhelming been limited to non-violent drug offenses with 23 states passing laws to repeal or reduce mandatory minimum sentences for non-violent drug offenses, and on the federal

level Congress passing bills like the Fair Sentencing Act of 2010 which reduced the 100:1 disparity of weight for crack and powder cocaine needed to trigger the mandatory minimum sentencing to 18:1. While there have been significant reforms in the federal government, the decline in the incarceration rate can mainly be attributed to reforms at the state level (Eisenberg 2014). In fact, Eisenberg reports that in 2011 the Supreme Court declared the overcrowding in California prisons, the largest state prison system in the world, was unconstitutional. Although California was unable to meet the Supreme Court's requirement that its prison occupancy rate be reduced to 137.5% of design capacity by 2013, the state was singlehandedly responsible for more than 50% of the recent prison population decrease. While these reforms and the declining incarceration rate make the future for criminal justice reform look hopeful, legislators have not looked beyond drug and parole reform in their efforts to reduce the correctional population - the next section explores this in more detail.

## 8. MEDIA COVERAGE OF CRIMINAL JUSTICE REFORM

While we have touched on some of the reasons that pushed reform from a vision to a potential reality, this section explores media coverage of criminal justice and sentencing reform to understand the story that has been told about criminal justice reform in the media. A 2014 study conducted by the Opportunity Agenda analyzed the content of 26 mainstream print news outlets, five broadcast outlets, and six news blogs during the time frame of January 1 - June 30, 2013 for coverage on criminal justice reform using the Nexis database. According to their findings, cost was by far the most often cited argument for reducing the prison population, with state lawmakers and editorial boards emphasizing the impracticability of maintaining the

current prison population during straining economic times. The cost-based argument was even emphasized in titles of articles like one which headlined “Shrink prison system to save money.” While other arguments in support of reform like human costs, societal costs, and moral costs were mostly absent, when they were mentioned these arguments were typically undeveloped. Mentions of racial disparity and racial bias in the criminal justice system were very rare. Furthermore, there was very little discussion of fundamental reforms such as reducing sentencing for those convicted of more serious crimes (rather than non-violent drug crimes), repealing mandatory minimums, or decriminalizing drugs. The general story that the media offered was that there is widespread agreement across policymakers, editorial boards, and reform advocates that there are too many people in American prisons and that overcrowding has led to inhumane prison conditions. Fiscal costs are the main motives for reform, and discussion of value-based arguments for reform are largely absent. Opportunity Agenda (2014) argues that the story being told is incomplete since the cause of mass incarceration is rarely explored, as are links between race, poverty, and crime.

Beckett et al. (2016) extend Opportunity Agenda’s (2014) research by analyzing trends in state-level correctional policy between 2000 and 2013 and supplementing this data with an analysis of stories in print newspapers on criminal justice reform between 2008 and September 20, 2014. They looked at the sources cited, the arguments advanced on behalf of the reforms under discussion, the arguments against those reforms, and the social groups that the reforms were intended to benefit. Beckett et al.’s findings resembled Opportunity Agenda’s findings in that fiscal costs by-far exceeded any other argument for reform, and value-based arguments like human rights and racial justice, although not entirely absent, were expressed less

frequently. However, Beckett et al.'s study finds that the vast majority of media stories of criminal justice reform focused on policy changes that would benefit "drug offenders" and "non-violent"/"non-serious" offenders. In fact, only two articles in their sample of 163 discussed policy reforms that would benefit violent offenders. While Opportunity Agenda (2014) finds that Democrats were mostly cited as sources in media stories on criminal justice reform, Beckett et. al's study finds that Republicans were more often cited, suggesting that this is because Republicans are less likely to be called "soft on crime". Beckett et al. consider the possibility that the involvement of Republicans has enabled widespread recognition for the need for sentencing reform by introducing quasi-religious arguments for reform such as forgiveness and redemption. However, they argue that their findings and other research do not support this claim and that Republican involvement has not broadened the discussion around criminal justice reform since fiscal costs were routinely emphasized as arguments for reform, and concepts such as forgiveness and redemption were very rarely discussed. Beckett et al. conclude that while criminal justice reform seems to be going down a progressive path, media coverage of criminal justice reform reveal that there are cultural barriers to the realization of comprehensive reform since policymakers and reform advocates do not appear to be willing to make the case for reform based on human costs, and reforms that extend beyond non-violent drug offenders.

## SUMMARY OF LITERATURE REVIEW

The United States contains only 5% of world's population, but almost 25% of its prisoners (Alexander, 2010). While mass incarceration has made a major mark on our society as a whole, its mark on minority communities is the most troubling. It is expected that one in three young black men (Sentencing Project 2013) and three in four young black man in the nation's capital, Washington D.C., (Alexander 2010) can expect to spend time in prison if current trends continue. In 1930, 22% of all of those admitted to prison were black; by 1992, this percentage had climbed to 51%. (Beckett 1999). Drug offenses alone account for two-thirds of the rise in federal incarceration and half the rise in state incarceration from 1985 to 2000 (Alexander, 2010). Drug arresting procedures that targeted low-income communities of color and sentencing policies that put more people in prison for longer have been the major factors responsible for mass incarceration (Alexander, 2010; Raphael & Stoll, 2013). As discussed, the driving factor for the "War on Drugs" and the "Tough on Crime" era was the rising public punitiveness from the 1960s through the 1980s, which were influenced by the news media's overrepresentation of violent crimes, sensational coverage of drugs, and the news media's association of crimes with African Americans and minorities. Furthermore, incarceration contributes to the perpetuation of an oppressive cycle towards minorities not only by the mass imprisonment of African American and Latino men and women, but by the obstacles in place for ex-convicts to re-enter society including employment discrimination, housing discrimination, denial of the right to vote, denial of food stamps and other public benefits, and exclusion from jury service (Alexander, 2010). These obstacles, in turn, increase the recidivism rate (Raphael and Stoll 2013).

Incarcerated people are treated as second class citizens, exploited by the massive web of corporations that rely on prisons as an industry and maintain mass incarceration by playing as major obstacles for criminal justice reform (Smith and Hattery 2010). Public opinion polls have shown that there has been an increasing desire for reform from the public and increasing support for rehabilitation, despite consistent support for punitive policies as well (Opportunity Agenda, 2014; Thielo, 2015). An analysis of public opinion shows that, although the public remains punitive, the public's attitudes towards drug offenders has become less punitive and the public is increasingly in support of rehabilitation and treatment over punishment for non-violent drug offenders (Opportunity Agenda, 2014; Mellman Group, 2016).

Despite efforts from states, reform did not have the opportunity to occur until the start of the recession, when many states felt fiscal pressure to cut costs in prisons (Beckett et al. 2016). Media coverage of sentencing reform has shown that fiscal costs has been overwhelming the number one argument for reform from policy makers, editorial boards, and reform advocates (Opportunity Agenda 2014; Beckett et. al. 2016). Other arguments, like arguments based on human, moral, and social costs have been largely overlooked (Beckett et al. 2016). While the incarceration rate has been declining since 2007, this has largely been for the purpose of cutting costs and gives us little hope to believe that when cost is no longer an issue, arguments for the human cost of mass incarceration will continue to fuel the reform movement.

While Opportunity Agenda (2014) and Beckett et al. (2016) analyzed news coverage of criminal justice reform discussed generally in the news, these studies do not give us an idea of how the media covered specific reform legislation. The Sentencing Reform and Corrections Act

of 2015 introduced in the Senate (and its equivalent Sentencing Reform Act of 2015 introduced in the House) has been said to be the most important piece of legislation of our generation. This bill proposed lower mandatory minimums for non-violent drug offenders, broadening the federal “safety-valve” which gives more discretion to judges, and improved prison services and resources that prioritize rehabilitation and reentry among other things. Despite receiving overwhelming bipartisan support, it was nonetheless blocked to even come to a vote. The next section begins to discuss my research on newspaper coverage of these bills to explore arguments proposed for and against the bill, to gauge overall support and opposition to the bill, and to explore discussion around non-violent drug offenders versus violent offenders as well as other themes and patterns my findings introduced. I also look at how the media was used to gain public support for the bill.

## DATA AND METHODS

I used the Lexis Nexis archive to collect my content, limiting my results to newspapers, and used the search terms “sentencing reform act” OR “sentencing reform and corrections act” since 2010. Although the bill was introduced in 2015, I extended the time frame to begin in 2010 to allow for potential discussion in the media of the bill leading up to its introduction (although these were absent). The search came up with 90 newspaper articles mentioning the search phrases. After filtering out articles discussing the Sentencing Reform Act of 1984 rather than the Sentencing Reform Act of 2015, duplicates, articles only mentioning the act in passing, and articles after the lifetime of bill, my sample came out to be 50 articles. The earliest article was published on October 1st, 2015 when the Sentencing Reform and Corrections Act was introduced in the Senate, and the most recent one was published on September 23rd, 2016. Below I discuss themes I explored and coding systems I used. I used the qualitative data analysis software MaxQDA to code my pool of articles. To do so, I imported each article into MaxQDA and used its coding tools to create coding categories, and identify blocks of texts that fall under that category. This software allowed me to organize my codes into categories and subcategories to visualize both qualitative and quantitative data. I coded each article three times to ensure accurate coding.

### *Arguments in Support*

I coded arguments in support for the bill by flagging anytime the writer mentioned reasons for their support of the bill, mentioned reasons for why others support the bill, citing negative consequences of overcriminalization (like costs or overcrowding), citing positive

outcomes of past reforms, criticisms of the current system, and positive possible outcomes of reform efforts. I included repeated mentions of same arguments since these arguments received more weight in the writer's overall argument. I began by using Beckett et. al.'s (2016) categories for arguments in support of the bill as a guide for my coding. Arguments included fiscal cost, public safety, rehabilitation/collateral consequences, fairness/proportionality, racial justice, overcrowding, human rights, forgiveness/redemption, mental illness/addiction, and system mismanagement. While these categories guided my categories, my final categories were modified to better fit arguments presented in my sample by eliminating some arguments that were not present in my analysis, and adding other arguments that did appear.

#### *Arguments Against*

I coded arguments against the bill by flagging anytime the writer mentioned reasons why they oppose the bill, reasons why others oppose the bill, mentioning potential negative outcomes of reform efforts, and citing negative outcomes of past reform efforts. Similarly, I included repeated mentioned of same arguments since these arguments received more weight in the writer's overall argument.

#### *Overall Support/Opposition to Bill*

Articles were either opinion pieces (from editorial boards and community members), or news pieces. For opinion pieces, I coded them as in support of the bill if the writer explicitly expressed support of the bill, and coded them as opposed to bill if the writer explicitly expressed opposition to bill. For news pieces, I coded them as "support-learning" if they only

cited arguments and quotes in support of the bill. I coded them as “neutral” if they offered arguments and quotes both for and against the bill. And finally, I coded them as “opposed-leaning” if they only cited arguments and quotes opposed to the bill.

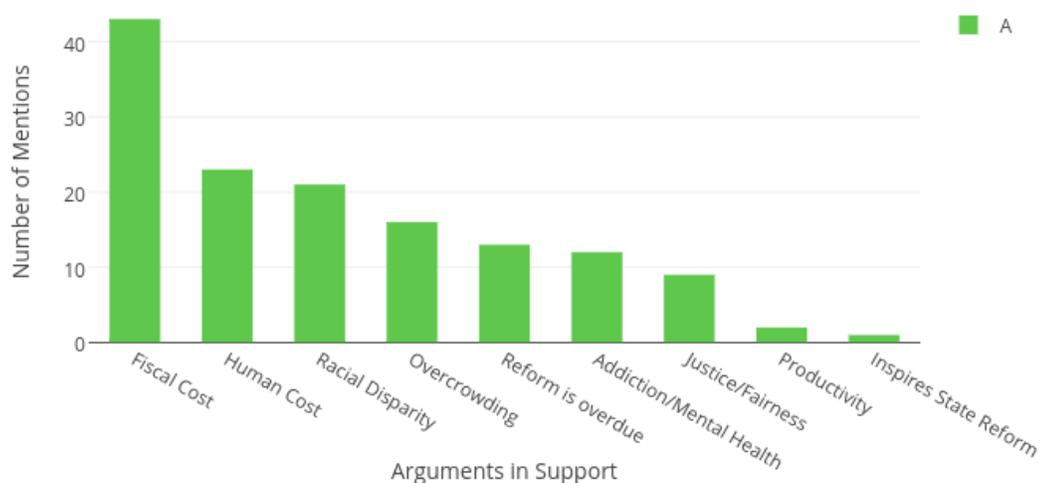
## FINDINGS

Prior research has found that when looking at criminal justice reform stories in the media, fiscal concerns are found to be the primary reason for effort to reduce the prison population. They also find that there is an overwhelming focus on non-violent drug offenders as those who sentencing reform should benefit (Opportunity Agenda 2014; Becket et al. 2016). My findings support these claims, but offer some special insight into how congressional bills are specifically tackled in the media. One thing that prior research has not adequately explored is the dominance of opinion articles as the medium of choice for discussing congressional bills, at least in this case. Furthermore, there is evidence in my research that the news media can be used by political actors as a tool to achieve public support of their agenda.

### *Arguments in Support of Bill*

As shown in Figure 2, fiscal costs outnumbered other arguments in support of the Sentencing Reform and Corrections Act of 2015 by an overwhelming plurality.

Fig. 2 Arguments in Support of Bill.



Fiscal costs were suggested as an argument through both explicit and implicit expressions. Fiscal cost was mentioned as a reason 43 times in 29 articles out of 50 total articles. Mentions of fiscal cost varied in method of deliverance. While some explicitly mentioned cost as a reason that many are pursuing reform, many cited statistics about the cost of our prison system, others mentioned how reform has been beneficial in some state governments, and a common theme was that the prison system is an ineffective burden to taxpayers. Here are some examples of how fiscal cost appeared as a reason for reform in the findings:

David Vandercoy, a defense attorney and professor at Valparaiso University Law School, noted that the growing support for sentencing reform is likely because of the expensive costs of incarcerating so many people, which resulted from tougher drug penalties imposed in the 1990s.<sup>1</sup>

Reducing the number of nonviolent drug offenders in the prison system not only strikes a blow for justice and humanity but also makes fiscal sense.<sup>2</sup>

North Carolina has already shown the way with its 2011 sentencing reform law. The state has since closed 10 prisons and saved some \$560 million with no increase in crime.<sup>3</sup>

The cost of our prison population is staggering — about \$30,000 a year for each federal inmate. For 219,000 federal inmates that comes to more than \$6.5 billion annually. Does anyone think we are winning the "war on drugs" with this cost?<sup>4</sup>

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<sup>1</sup> Schultz, Teresa Auch. 2015. "National reform effort could lower sentences for local defendants." *Post-Tribune*, November 14.

<sup>2</sup> Editorial. 2016. "Wise mercy; commuting drug sentences must inspire reform." *Pittsburgh-Gazette*, April 4.

<sup>3</sup> Editorial. 2015. "6,000 inmates about to be released? That's a good thing." *The Herald-Sun*, October 9.

Locking up low level offenders has put a significant strain on our prison resources and on the taxpayer.<sup>5</sup>

While my findings on fiscal cost as the primary argument used for reform supports prior research, what differs is the significantly more consideration to human costs and racial disparities in my sample compared to prior research. However, I argue that although human costs and racial disparity are mentioned to a significant degree (summed up they amount to 44 mentions, just over the 43 mentions of fiscal cost), the manner in which they are discussed are often underdeveloped and as an additional rather than a primary reason for reform. Here are some examples:

This system of decades-long incarceration for non-violent drug crimes doesn't make us any safer and to make matters worse, it tears apart families and entire communities.<sup>6</sup>

The cost of keeping so many people behind bars is damaging enough to state budgets. Greater still is the social cost, measured by sundered families and broken local communities.<sup>7</sup>

Mandatory minimums have forced thousands of non-violent offenders into excessive and unnecessary sentences, ripping apart communities and preventing people from a second chance at a productive life, all at the taxpayers' expense.<sup>8</sup>

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<sup>4</sup> Parks, Andi. 2016. "Justice about more than punishment." *Chicago Daily Herald*, February 29.

<sup>5</sup> Raemisch, Rick. 2016. "Smarter policies for safer communities." *The Denver Post*, May 15, p. 4d.

<sup>6</sup> Avery, Sara. 2016. "Sara Avery; Time for Congress to attack mass incarceration, inequality." *Daily Camera*.

<sup>7</sup> Cornwell, Rupert. 2016. "Republicans have ruined America's big chance for penal reform." *The Independent*, April 10, p. 28.

<sup>8</sup> Holden, Mark. 2016. "Op-ed: Lee shows principled leadership in criminal justice reform." *The Salt Lake Tribune*, May 19.

"The most important aspect of it isn't the financial cost of a very lengthy incarceration, it's the human cost," the senator added. "It's the fact we're taking fathers and sons and brothers, like Weldon Angelos, away from their families for years, for decades sometimes, and we're doing that where it's not warranted."<sup>9</sup>

While there are many promising examples of genuine priority in fixing the social consequences of mass incarceration, these findings have me questioning if human costs would even have the opportunity to be explored if fiscal costs were not in the equation in the first place.

Other reasons for reform included overcrowding of prisons, the idea that reform is overdue (suggesting that public opinion has shifted away from encouraging “tough on crime” legislation, the prison system has gone too far, and that is past time to seek change), addiction and mental health as better treated through rehabilitation and treatment rather than punishment, justice and fairness, productivity (referring to turning prisoners into more productive members of society and police more productive by focusing on more serious crimes, and reform as an inspiration for state reform since the majority of prisons are held in state rather than federal prisons.

### *Arguments Against Bill*

As shown in Fig. 2, the majority of arguments against the bill were related to public safety and the threat that releasing inmates into the public may have. Similar to prior research, arguments against reform are rare. While arguments against the bill make up a total of only 10 mentions, only 2 mentions were in line with the attitudes of the writer, and both were

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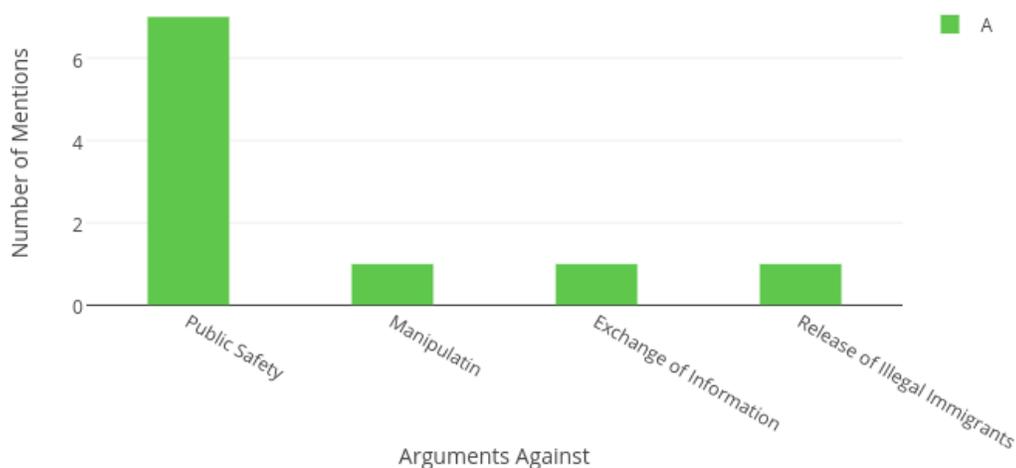
<sup>9</sup> Burr, Thomas. 2016. “Now free, Angelos turns to lobbying Congress against unfair federal sentences.” *The Salt Lake Tribune*, June 29.

mentioned in the same article. Others were only mentioned when discussing why others oppose the bill, often followed by disputing claims. Here are some examples:

Sen. Ted Cruz of Texas, a candidate for president who voted against the bill in committee, has claimed that its enactment "could result in more violent criminals being let out on the streets, and potentially more lives being lost."<sup>10</sup>

The other obstacle to the reform bill's passage is old-fashioned scaremongering about the release of "violent criminals" into the streets. This is simply not true: Most of the provisions are focused on low-level, nonviolent drug offenders, who make up nearly half of all federal inmates.<sup>11</sup>

Fig. 3 Arguments Against Bill



<sup>10</sup> Editorial. 2016. "Other Views." *Charleston Gazette-Mail*, February 21, p. P2C.

<sup>11</sup> Editorial. 2016. "Holding Sentencing Reform Hostage." *The New York Times*, February 7, Section SR, Column 0, p. 10.

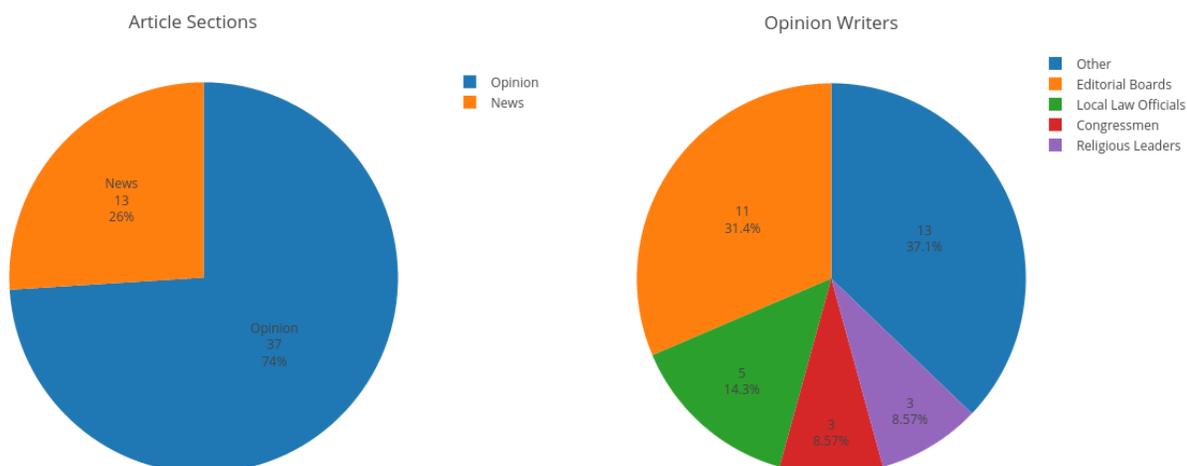
### Opinion vs News Articles

What I did not expect to find in my research was that the majority of coverage of the Sentencing Reform and Corrections Act of 2015 would be in the form of opinion articles. As shown in Figure 4, 74% of news coverage of the bill were opinion articles. These findings may indicate two things: first that criminal justice legislation, at least in the case of this bill, is not deemed as “news” worthy, and second that the opinion section of media is an additional way the media can be used to influence public opinion outside of framing.

These findings encouraged me to look at *who* was writing these opinion articles. Figure 5 shows the distribution of opinion writers. While the plurality of opinion articles were written by non-political or religious community members, findings show that there is still very significant use of the Opinion section by Editorial Boards, local and federal political actors, and religious leaders to influence public opinion. In fact, all of the articles written by newspaper Editorial Boards, local law officials, congressmen, and religious leaders were in support of the bill, urging the public to join them in encouraging their representatives to vote in favor of the bill.

Fig. 4 (Left) Opinion vs News Articles

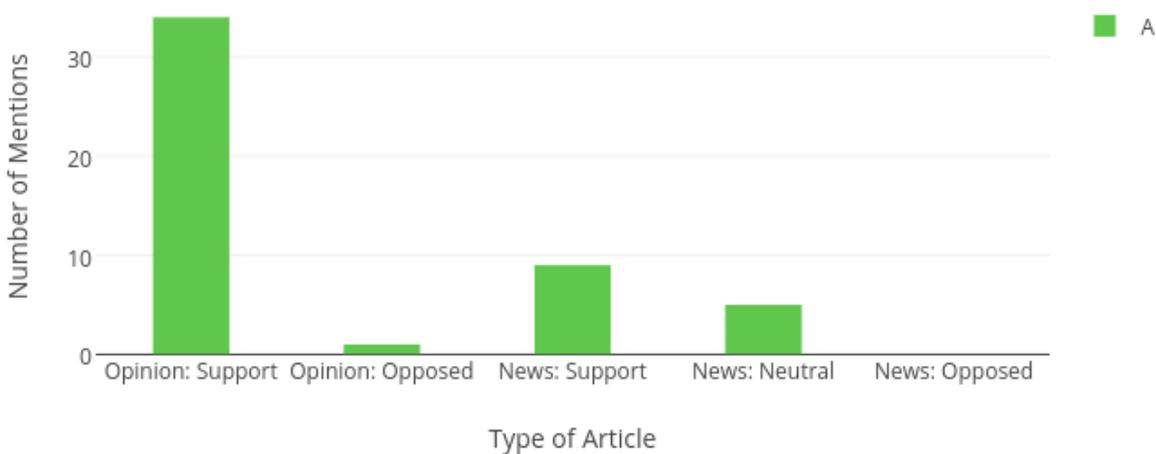
Fig. 5 (Right) Makeup of Opinion Writers



### *Support/Opposition in Newspaper Articles*

My research not only revealed very strong support among opinion pieces written on the Sentencing Reform and Corrections Act of 2015, but it also showed that news articles that are intended to be objective are largely support biased. As shown in Figure 5, only 1 out of 36 opinion articles opposed the sentencing bill, most news articles were support biased by exclusively including arguments and quotes that are in support of the bill, and no news articles were opposed biased.

Fig. 6 Support/Opposing News and Opinion Articles



### *Non-violent Drug Offenders vs Violent Offenders*

Non-violent drug offenders (also referred to as low-level or non-serious drug offenders) were discussed as benefactors of these reform bills. Although not surprising considering prior research on criminal justice reform and the media and that the primary goal of the bills were to decrease mandatory minimum sentences for these offenders, non-violent drug offenders were mentioned 44 times and often in contexts separating them from violent offenders. The articles

very frequently reiterated that reforms would only address these offenders that “do not belong” in prison, but require treatment instead, and that prisons should be reserved for violent offenders, or the “right people”. Here are some examples of the distinction between non-violent and violent offenders in the coverage of this sentencing reform bill:

The bill would apply only to nonviolent drug offenders. Violent criminals, sex offenders, organized crime figures, white-collar criminals and anyone convicted of terrorism-related charges are not covered.<sup>12</sup>

Wetzel believes the approach many states have taken “” working to divert drug offenders and lower-risk offenders away from prisons “” is a good strategy.

"I think, in general, reserving prison beds for people who need them and for people who, putting them in those prison beds would lead to enhanced public safety, that concept translates to the federal system," he said.<sup>13</sup>

But it is long past time for more distinction to be made between nonviolent crimes and those involving violence; it is long past time for more distinction to be made in sentencing low-level drug dealers and those who oversee expansive enterprises. For three decades, Americans have been tough on crime. Now we need to be smart on crime.<sup>14</sup>

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<sup>12</sup> Ove, Torsten. 2015. “Bipartisan effort leads to comprehensive proposal for drug sentencing.” *Pittsburgh Post-Gazette*, October 3, p. A1.

<sup>13</sup> Andren, Kari. 2016. “Momentum strong for prison reform.” *Pittsburgh Tribune Review*, January 14.

<sup>14</sup> Editorial. 2015. “In our view: Get Smart on Crime.” *The Columbian*, November 20, p. A6.

## DISCUSSION AND CONCLUSION

Research on public opinion has shown that public punitiveness has been declining when looking at non-violent crimes, but punitiveness related to violent offenders has remained relatively the same (Opportunity Agenda 2014; Thielo 2016; Mellman Group 2016). My findings and prior research support these trends by showing how criminal justice reform efforts and media coverage of criminal justice reform have focused solely on non-violent drug offenders as the beneficiaries, to reduce fiscal costs. The narrative that advocates for reform and the news media have been telling is that prison beds do not belong to these offenders, and need to be left for the “right people”, the violent offenders. Previous studies have argued that although reform focused on non-violent drug offenders has slightly progressed sentencing reform towards declining incarceration rates, continued criminal justice reform intended to return the incarceration rate to rates comparable to other developed countries will require criminal justice reform efforts to extend beyond non-violent drug offenders (Beckett et al. 2016; Opportunity Agenda 2014; Eisenberg 2014; Drakulich and Kirk). Furthermore, the focus on fiscal costs as the main argument for reform makes the possibility of future reform questionable when the cost of the prison system is no longer in urgent need of reform. In order to continue to make progress on criminal justice reform, arguments for reform must extend beyond fiscal costs and emphasize human costs, a cost that will remain a consequence of the prison industry well beyond fiscal reforms.

My research also has me wondering *why* criminal justice reform has focused on non-violent drug offenders. While my review of earlier studies has suggested that the media’s coverage and distorted framing of crime and drugs in the 1980s caused a moral panic that

pushed the public to support sentencing policies that were tough against violent *and* non-violent drug offenders, I theorize that something similar might be happening influencing today's public opinion trends. Previous studies have argued that public opinion is a social construct (Drakulich and Kirk 2016). Future studies should look at the relationship between public opinion attitudes towards drugs and non-violent drug offenders. I expect that research might find increasing progressive attitudes towards drugs and drug offenders, and that these attitudes correlate to criminal justice reform efforts for non-violent drug offenders.

Furthermore, future research should then look at possible influences on public attitudes towards drugs and drug offenders. The current body of literature has not adequately looked at the news media's coverage of drugs. I expect that episodic framing of drugs have increasingly been framed as an addiction that requires medical treatment, compassion, and rehabilitation rather than episodic framing with ideas about blame and punishment, and how drug offenders are selfishly destroying communities like we have seen in coverage of crime and drugs during the "War on Drugs." Furthermore, looking into how drugs framed in relation to race can give us further insight into the media's influence on public attitudes towards drugs and drug offenders. Studies suggest that when arguments in support of sentencing reform are framed in a racial context, Whites are less likely to support the reform (Opportunity Agenda 2014). This may suggest that there may be a shift in the racialization of drugs in the news media towards a non-racialized framing, or framing within a "white" context.

If future findings do find a relationship between the news media's framing of drugs, and drug offenders and increasingly progressive public attitudes towards them, this could offer important implications on the functioning of the news media. If the news media increases

coverage of the human costs of the criminal justice system, framing it as a systematic consequence of government actions rather than a blame to personal offenders, could this increase public support of reform based on arguments emphasizing human costs? Could this offer the possibility to continue the progress made in criminal justice reform after fiscal costs are no longer a strong driving argument? I can only hope that future research can clarify the answers to these questions and better guide the news media through evidence-based practice.

My findings also suggest that there are other ways to influence public opinion through the news media outside of framing. When it comes to coverage of congressional bills, at least in the case of the Sentencing Reform and Corrections Act and the Sentencing Reform Act of 2015, three out of four articles in newspapers are opinion pieces. Future studies can look into the use of the opinion section in newspapers from Editorial Boards and political actors to gain public support (or opposition) to congressional bills.

While my findings are significant for future conversations about criminal justice reform, one limitation of my study is that it is only conducted at the federal level, looking at a federal congressional bill as it relates to local and national news coverage in the United States and the general U.S. public opinion. I expect that findings may be different if this study was replicated to focus on criminal justice legislation within specific states. After all, only about one in eight prisoners are in federal prisons (U.S. Department of Justice 2016), so changes made at the federal level have only a limited impact to the overall incarceration rate. In fact, California alone was responsible for more than 50% of the recent decline in the prison population (Eisenberg 2014). Regardless of the relatively minimal impact of federal reform, I nonetheless believe that a look into federal reform can give us an idea of the overall progress of the nation as a whole

since reform that makes it to the federal level must typically receive significantly more support than state reforms. Furthermore, federal reforms, although not able to reduce the incarceration on their own, can inspire states to introduce similar legislation.

Furthermore, Dorfman and Schiraldi (2001) found that 76% of the public claim that they form their opinions about crime from what they read and see in the news. However, the news today looks very different from the news then. In the age of the internet, information is fragmented and the public is not necessarily getting their information solely from newspapers and broadcast news channels anymore. Today, the public increasingly gets information from social media sites like Facebook, Twitter and YouTube, where a plethora of online “news” websites compete for viewership. This may be a challenge moving forward in research about the news media’s influence on public opinion since “media” today is vast and diverse; I suspect it is nearly impossible to consider the influence of all media types so future researchers must find a way to navigate the internet and modern sources of information to better understand their influence on our society.

While I found that the rhetoric surrounding the Sentencing Reform and Corrections Act of 2015 was similar to other sentencing reform efforts that Opportunity Agenda (2014) and Beckett et al. (2016) looked at, the bill did not even come to a vote despite overwhelming bipartisan support. Now as I look at the bigger picture, I cannot help but agree with prior research that we have a long way to go with criminal justice and sentencing reform, and that we cannot recover from mass incarceration by focusing only on non-violent drug offenders for fiscal concerns. Although we cannot know, the future for criminal justice reform does not look too bright. Not only does the effort to remove non-violent drug offenders from prison have a

long way to go, the possibility of doing so and extending beyond so is slim with the current administration under President Donald Trump. The current Trump appointed Attorney General, Jeff Sessions, was mentioned several times in the newspaper coverage of the bills I looked at as one of the main opposers of the bill and one of the main obstacles to bringing the bill to a vote. With his conservative track record on criminal justice, it will not be surprising if the strides made under the Obama administration is put on hold with the current administration. However, this gives us even more reason to focus attention to state governments where reform may be more welcomed and have a greater chance of succeeding.

I am interested in pursuing this topic further, in hopes of establishing a clearer relationship between the news media and criminal justice policy. While we have become the most punitive country in the world, perpetuating a cycle of oppression of our people of color, better exploration of how we have gotten to where we are, and how we have been able to take the little steps we have taken to a future of reform, can guide us to take the necessary steps to right our wrongs, to hold our government accountable, and to reform the news media to better serve our public.

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