

Evaluation of mandatory sentencing laws in the us



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Literature Review

Background

The United States currently leads the world in the creation of mandatory sentencing laws which promise not only certainty, but consistent severity in sentencing (Roberts, 2003). Mandatory minimums are federal criminal statutes that require a specified minimum term of imprisonment, ranging anywhere from two years to life in person (United States Sentencing Commission, 1997). However, these statutes come at the expense of judicial discretion, disproportionately affect minority groups, especially African Americans, and has a large effect on drug offenders. According to the United States Sentencing Commission, in 21.8% of all cases the offender was convicted of an offense which carried a mandatory minimum penalty with drug-trafficking offenses counting for almost two-thirds of these. There is fervent political opposition and support for these statutes on both sides of the aisle. In support, those in favor argue that mandatory minimums address the sentencing disparity within the criminal justice system and guarantee uniform sentences (Bernick & Larkin, 2014). For the opposition, critics claim that mandatory minimums in fact do not reduce crime, are not-cost effective, and give out unduly harsh sentences for drug offenses. While public officials draw clear cut lines in the sand regarding their opinions, where the public stands on this issue is more complex (Bernick & Larkin, 2014).

At face value, it seems like public opinion is invariably in favor of these statues. An article written by Julian Roberts found that the public sees the sentencing system as too lenient with a majority of the population believing

that sentencing severity, i. e., giving out lenient sentences, is an issue.

However, this same study found that when asked to choose between mandatory minimums and allowing judges to decide sentences, respondents split almost equally. This research, along with others, implies that there is no clear consensus of public opinion in regard to mandatory minimums and other punitive policies.

Question wording is one of the major issues facing research of the criminal justice system. Multiple studies have shown that how questions are asked, whether in a globalized or a specific manner, has a profound effect on respondents' opinions (Danner, Gainey, Payne, & Triplett, 2010; Frost, 2010). Across demographics, people tend to be more punitive when asked about their general opinions regarding policies, a global question, because respondents tend to think of the most violent types of offenders when given no premise. However, when respondents are given specific situations regarding offenders, they tend to be less punitive. This phenomenon may explain how the gender difference in policy views, which is greatest when global questions are asked, all but diminishes when asked about specific punitive policy views (Applegate, Cullen, Turner, & Sundt, 1996). Several researchers have started using vignettes of different specific offenses/offenders to measure respondents' attitudes towards sentencing policies and severity which captures a more accurate measure of public opinion (Applegate et al., 2010; Danner et al., 2010). Regardless of the types of questions asked, there are multiple demographics, namely gender, race, and political ideology, that research has consistently found to have an effect

on views of the criminal justice system and more specifically, punitive policies such as mandatory minimums.

Race

As of 2014, African Americans made up nearly 40% of the nation's inmate population, even though they comprise only 12% of the United State's population (Hetley & Eberhardt, 2014). The disproportionate number of African Americans in the criminal justice system is a main contributor to why their views towards the system and punitive policies differ from those of white Americans. The majority of African Americans believe that the police and courts discriminate against minorities, whereas less than one-third of Caucasians believe that African Americans receive harsher treatment within the system (Hough, Indermaur, Roberts, & Stalands, 2002; Roberts, 1992). However, the opinion gap between Hispanics and Caucasians is less significant as these two groups tend to have more similar views of police on some dimensions and Hispanics tend to fall between African Americans and Caucasians on their views of punitive and rehabilitative policies (Roberts, 1992). The NCSC's Sentencing Attitudes Survey also found that minorities do not fall into the public who believes that sentencing is too lenient and almost half of African Americans would support using alternate sentencing programs even for violent offenders.

The disparity in sentencing views between racial and ethnic groups really becomes apparent in their views of punitive sentencing, such as mandatory minimum sentences, as a result of their opinions on the effectiveness of the criminal justice system and its laws. Whereas Caucasians are more likely to

believe that current sentencing practices are too lenient, minorities are more critical of the system and its fairness to minority groups (National Center for State Courts, 2003). The National Center for State Courts' Sentencing Attitudes Survey also found that African Americans are more likely than both Hispanics and Caucasians to say that the criminal justice system should do more to ensure fairness and equality in sentencing and favor treatment programs over prison for non-violent offenders. Previous research invariably shows that Caucasians tend to be much more punitive than minority groups and favor harsher sentences over rehabilitative programs for offenders (Dowler, 2003; Ghandnoosh, 2014; Roberts, 1992). In the context of mandatory minimum sentencing, we would expect to see minority groups more opposed to these laws than Caucasians. A report by the United States Sentencing Commission validates this theory, stating that Caucasians favored sentences for drug trafficking and street crimes that were much longer than the sentences given by African Americans and Hispanics. These views may also be an effect of the intersection between race and political ideology as minorities are more likely to identify as liberal than white Americans.

Political Ideology

Mandatory minimum statutes have landed in the middle of the fierce debate between liberals and conservatives over the role of the justice system and have become a very politically charged issue over the past several years. Several studies find that ideology is one of the most prominent factors affecting punitive attitudes, with liberal ideology being negatively related and conservative ideology being positively related to it (Danner et al., 2004).

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These sociopolitical ideologies tend to be associated with the differing viewpoints about the roots of criminal behavior and how best to combat and prevent it (Carroll, Lurigio, Perkowitz, & Weaver, 1987). Conservatives tend to have a “moralistic” outlook on crime, holding the view that offenders lack self-control and a moral conscience and advocate for punishing offenders with longer sentences (Carroll et al., 1987; Percival, 2010). On the other side, the liberal left attributes more of the social problems of inequality and discrimination against minorities as the main source of crime, resulting in being proponents for rehabilitation programs and using alternatives to prison.

These central ideological beliefs translate to the different critiques of the criminal justice system by either group. Conservative’s traditional complaint is that the system is too lenient with its sentencing and generally support more punitive measures with about half approving mandatory sentences for even non-violent crimes (Carroll et al., 1987; Miller, 1973; NCSC, 2003). Contrariwise, liberals believe that “overcriminalization, overinstitutionalization, and overcentralization” are the main issues within the criminal justice system and have resulted in a biased system (Miller, 1973). In regards to punishment and combatting crime, the conservative Republican “tough on crime” agenda is based on the belief on individual causation of crime and advocacy of punishment by fear. This results in the Republican party being disproportionately more in favor of punishing violent offenders than their counterparts (Carroll, 1987; Gerber & Engelhardt-Greer, 2018). Liberals, especially those of the Democratic party, are more likely to endorse using various alternatives to prison and put more emphasis on the

rehabilitation of offenders (NSCS, 2003). According to an article by Gerber and Engerhardt-Greer, Democrats were more likely to support giving judges more leeway in sentencing offenders, the opposite of the basis of mandatory minimums. However, an important note is that this stark gap in policy views is only seen on extreme ends of the ideological scale, those who identify as extremely conservative or liberal, and become much less significant within the intermediate groups (USSC, 2013).

Gender

While the research around race and political ideology in regards to their relationship to views of the criminal justice system and sentencing yield consistent results, the research around gender is much more varied. Multiple studies have shown that women are less punitive than men, most notably regarding capital punishment, but other research has shown that women can actually be more punitive than men (Danner et al., 2004; Frost, 2010; Hurwitz & Smithey, 1998). For example, the United States Sentencing Commission found that women gave longer prison sentences but less death sentences than men. Overall, gender differences in policy views seem to be small, inconsistent, and vary by survey (USSC).

Despite the different results surrounding gender differences on crime and punishment, many researchers can agree that this difference may likely result from differences in women and men's psychology (Applegate et al., 2002; Frost, 2010; Hurwitz & Smithey, 1998). In her book, *In a Different Voice*, Carol Gilligan suggests that women's psychology is based on an "ethic of care" rather than on an "ethic of justice," which relies of absolute

rules of truth and fairness, in which men's psychology is premised on. The basis of an ethic of care is an overt concern for protecting the vulnerable and this is furthered by female socialization which stresses connection and concern for others over self at an early age (Gilligan, 2016). This is reflective in criminal justice policy views as women are consistently more supportive of "compassionate" policies, like rehabilitation programs and preventative plans, over men, especially in regards to disadvantaged groups such as minorities (Appelgate et al., 2002; Hurwitz & Smithey, 1998). We can also see this in an intersectional view between gender, party affiliation, and political ideology as American women have consistently identified as part of the Democratic party and liberal more than men. The liberal principle of rehabilitation being the goal of the criminal justice system aligns strongly with female beliefs in this context. Like previously stated, men's psychology tends to rest on an ethic of justice. Men's socialization stresses separation, independence, and autonomy, which can be related to crime being a result of individual causation (Gilligan, 2016). Through this lens, we can see how the differences in psychology by gender can be translated into different views of policy.

While previous research shows that women consistently are more supportive of preventative policies, the gender differences start to diminish in response to punitive policy views. A study done by Natasha Frost in 2010 found that women's concern for alleviating harm, a tenant of the ethic of care theory, may have a two-fold effect on their sentencing preferences. Compared to men, women almost invariably oppose capital punishment, but women may actually be more punitive than men if the deterrence of criminals is seen as

a means of protecting any potential victims (Frost, 2010). Women may also exhibit more punitive attitudes in regards to crimes against children (Hurwitz & Smithey, 1998). Some research has also suggested that women have a greater sense of vulnerability which could make them more punitive than men, but this link is based more on assumption than empirical evidence (Hurwitz & Smithey, 1998). These studies indicate that outside of almost invariable support for rehabilitation policies, the gender gap in other areas of crime attitudes is largely inconsistent. This also makes it difficult to predict about gender differences in support or opposition for other types of punishment outside of capital punishment.

Theory

This survey will measure attitudes regarding mandatory minimum sentencing laws and determine if the demographics of race, political ideology, and race have any significant effect. The question used to measure respondent opinion is a global question, asking respondents what their general opinion is of mandatory minimums. Reflecting on previous research of global and specific attitudes, I expect will cause my research to be slightly skewed more in favor of mandatory minimums. Further, due to the makeup of the TCU population whose students, on average, tend to come from more affluent backgrounds regardless of race, I believe that political ideology will be show the greatest relationship to views on mandatory minimums.

My first hypothesis is that respondents who identify as Caucasian will be more in favor of mandatory minimum sentences than those who identify with a minority race or ethnicity, namely African American or Hispanic. I expect to

see the beliefs of Hispanics align more closely to the beliefs of Caucasians and the biggest disparity between Caucasians and African Americans.

Second, I hypothesized that those who identify as more conservative on the political ideology spectrum will also be more in favor of mandatory minimums than those who identify as more liberal. After reviewing the literature discussed above, I expect to see this biggest difference in opinions between the extreme ends of the spectrum, i. e. between those who identify as extremely conservative versus those who identify as extremely liberal, and for it to minimize as ideology gets less extreme.

Lastly, I initially hypothesized that women would be more lenient in sentencing and oppose mandatory minimums more than men. Previous research However, drawing on the theoretical and empirical discussions of gender differences from above, I expect to see minimal differences based on gender and for gender to be the least significant relationship of the three. Further, I hypothesize that after controlling for ideology, the effect of gender all but diminishes.

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