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Violent Crime And Punitiveness: An Empirical Study Of Public Opinion

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VIOLENT CRIME AND PUNITIVENESS: AN EMPIRICAL STUDY OF PUBLIC OPINION

MICHAEL O'HEAR* & DARREN WHEELOCK**

Evidence suggests that the public favors tough punishment for individuals who have been convicted of violent crimes, but why? In order to better understand the factors that contribute to punitive attitudes toward violent crime, or “V-punitiveness,” we analyze data from a recent survey of Wisconsin voters as a part of the Marquette Law School Poll. In sum, respondents generally supported prison terms for individuals convicted of violent crime, but this support was not unwavering and unconditional. While analysis of these data identified several variables that correspond with higher levels of V-punitiveness, neither fear of violent crime nor personal experiences were among them. Instead, V-punitiveness seems more closely tied to broader sets of social beliefs regarding individual responsibility, traditional values, and the like. Our results suggest that tough responses to violent crime may be supported more for expressive than instrumental reasons. Thus, efforts to change public policy in this area may need to contend with expressive considerations. If reformers wish to change minds about legal responses to violent crime, instrumental arguments based simply on “what works” in reducing violent recidivism may come up short.

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I. INTRODUCTION

Two decades of effort to roll back mass incarceration in the United States have achieved only modest reductions in the national imprisonment rate,¹ which remains more than four times higher than historic norms.² Reforms have been hampered by their tendency to focus on reducing the incarceration of “nonviolent” offenders.³ However, more than half of state prisoners—indeed, perhaps far more than half, depending on how the counting is done—have been convicted of violent crimes.⁴ Consequently, a true reversal of mass incarceration will almost certainly require changes in the way that the criminal-justice system responds to violence. Achieving such changes may, in turn, depend on the development of a deeper understanding of why the system has come to rely so heavily on long terms of imprisonment in cases of violent crime.

Much of the research on the causes of mass incarceration has focused on a late-twentieth-century surge in public punitiveness.⁵ This punitiveness has been expressed, for instance, in public opinion surveys in which large majorities indicate support for harsher sentences.⁶ A sizeable literature now provides much insight into the nature of public punitiveness as a general phenomenon.⁷ By and large, however, this literature does not distinguish between punitiveness toward all crime and punitiveness toward *violent* crime in particular. While some studies do indicate that public attitudes tend to be harsher toward violent than nonviolent crime,⁸ there has been little systematic effort to consider the sources of that harshness. Yet, it seems likely that public punitiveness toward

1. MICHAEL O’HEAR, *THE FAILED PROMISE OF SENTENCING REFORM*, at xiv–xv (2017) [hereinafter O’HEAR, *FAILED PROMISE*].

2. MICHAEL O’HEAR, *PRISONS AND PUNISHMENT IN AMERICA: EXAMINING THE FACTS* 167 (2018) [hereinafter O’HEAR, *PRISONS AND PUNISHMENT*].

3. O’HEAR, *FAILED PROMISE*, *supra* note 1, at 198.

4. *Id.*

5. Aaron Gottlieb, *The Effect of Message Frames on Public Attitudes Toward Criminal Justice Reform for Nonviolent Offenses*, 63 *CRIME & DELINQ.* 636, 637 (2017).

6. One leading national survey, the General Social Survey, regularly asks respondents whether they think that courts “deal too harshly or not harshly enough with criminals.” O’HEAR, *PRISONS AND PUNISHMENT*, *supra* note 2, at 206. Going back to the 1970’s, large majorities have responded “not harshly enough,” with figures ranging from 57% to 87%. *Id.*

7. *See infra* Section II.A.

8. *See infra* Section II.C.

violent offenses (“V-punitiveness,” by way of shorthand) has contributed to the severity of the sentences that are imposed for such crimes.⁹

In this Article, through original empirical research, we seek to elucidate the nature of V-punitiveness, teasing out similarities and differences in public attitudes toward violent and nonviolent crime. Our findings are based on a telephone survey of voters in Wisconsin, an important “swing” state whose political divides parallel those of the nation as a whole.¹⁰

In brief, we find that respondents’ punitiveness toward violent offenders is connected to broader ideas about social organization, individual responsibility,

9. Cf. Peter K. Enns, *The Public’s Increasing Punitiveness and Its Influence on Mass Incarceration in the United States*, 58 AM. J. POL. SCI. 857, 858 (2014) (“[T]he public’s increasing punitiveness has been a primary determinant of the incarceration rate and . . . shifts in the public’s punitiveness appear to have preceded shifts in congressional attention to criminal justice issues.”). There are at least two important vectors by which public attitudes toward crime can be translated into criminal-justice outcomes. First, legislators have electoral incentives to advance—or at least not oppose—general policies that conform to the preferences of their constituents. Second, prosecutors, judges, parole board members, and other discretionary actors in the criminal-justice system also have incentives to follow public preferences as they engage in case-by-case decision making. Some of these actors, especially the judges and head prosecutors in state systems, are also elected and thus face political pressures that are similar to those of legislators. See Justin T. Pickett, *Public Opinion and Criminal Justice Policy: Theory and Research*, 2 ANN. REV. CRIMINOLOGY 405, 418–19 (2019) (“Most states hold judicial elections Chief prosecutors . . . are elected in all states except Alaska, Connecticut, and New Jersey, but even in these states they are still appointed by an elected attorney general.” (citations omitted)). Other discretionary actors, such as line prosecutors and parole board members, may not themselves be elected, but they still work within government agencies that are subject to various forms of political oversight and accountability, in which a lack of sensitivity to public attitudes may prove quite damaging to one’s career prospects. O’HEAR, FAILED PROMISE, *supra* note 1, at 13. Additionally, it has been observed that “[l]egal decision makers drawn from jurisdictions with high levels of support for punitive sanctions may be more likely to hold such views themselves.” Eric P. Baumer & Kimberly H. Martin, *Social Organization, Collective Sentiment, and Legal Sanctions in Murder Cases*, 119 AM. J. SOC. 131, 143 (2013). Discretionary actors may also be motivated to follow public preferences in order to maintain the legitimacy of their institutions. Pickett, *supra*, at 419. Although legislators and the professionals who work in the system are probably the most important mediators between public attitudes and criminal-justice outcomes, we might also note the potential significance of direct democracy (ballot initiatives) in some states, as well as jury decision making. *Id.* For a recent summary of the research on “criminal justice responsiveness” to changes in public punitiveness, see *id.* at 419–21.

10. See, e.g., Michael O’Hear & Darren Wheelock, *Imprisonment Inertia and Public Attitudes Toward “Truth in Sentencing”*, 2015 BYU L. REV. 257, 260 n.15 (reviewing close elections in Wisconsin since 2000). In 2016, Republican presidential candidate Donald J. Trump eked out a narrow victory in Wisconsin, which helped to seal his national victory. John Nichols, *The States That Elected Trump Have Turned Against Him*, THE NATION (Nov. 8, 2018), <https://www.thenation.com/article/wisconsin-michigan-pennsylvania-ohio-midterms-trump-democrats/> [<https://perma.cc/6LBH-W68C>]. But, just two years later, Wisconsin elected a Democrat as governor and returned a Democrat to the United State Senate. *Id.*

and perceived group differences. More specifically, we find that V-punitiveness is associated with political conservatism, racial resentment, and authoritarianism. By contrast, we find no connection between V-punitiveness and prior victimization, fear of crime, or county-level crime trends. We find limited evidence of relationships between V-punitiveness and county-level demographics and respondent perceptions of community circumstances. On the whole, our findings tend to echo the prior research on general punitiveness. Similarly, we find that V-punitiveness shares much in common with punitiveness toward property crime (“P-punitiveness”), although our results do point to some differences between the two.

The Article proceeds as follows. Part II summarizes prior research on punitiveness and related topics. Part III presents our hypotheses. Part IV describes our methodology. Part V presents our results. Part VI considers implications of our findings. Finally, Part VII concludes.

II. PRIOR RESEARCH ON PUBLIC PUNITIVENESS

“Punitiveness” is not always clearly or precisely defined in the relevant social-science literature,¹¹ but the term is generally used to connote support for what most laypeople would recognize as “tough-on-crime” policies.¹² Thus,

11. See An Adriaenssen & Ivo Aertsen, *Punitive Attitudes: Towards an Operationalization to Measure Individual Punitivity in a Multidimensional Way*, 12 EUR. J. CRIMINOLOGY 92, 92–93 (2015) (“[T]here is no clear definition of what exactly punitivity means The concept of punitivity stays rather undertheorized, and different researchers give different meanings to the term.” (citations omitted)).

12. Cf. Edward Maguire & Devon Johnson, *The Structure of Public Opinion on Crime Policy: Evidence From Seven Caribbean Nations*, 17 PUNISHMENT & SOC’Y 502, 507 (2015) (“Punitive attitudes are those that support policies intended to punish offenders for their misdeeds.”). One uncertain question is how support for punitiveness should be conceptualized in relation to support for rehabilitation and reintegration of individuals who commit crimes, or support for policies that aim to prevent crime by alleviating socioeconomic disadvantage, mental illness, addiction, and the like. Policies that focus on rehabilitation, reintegration, and prevention are sometimes referred to collectively as “progressive.” It is not clear, though, whether punitiveness and progressiveness should be thought of as diametrically opposed attitudes. Some research on punitiveness is premised on the assumption that “people’s attitudes can be located on a unidimensional continuum, with punitive attitudes on one end and nonpunitive or progressive attitudes on the other end.” *Id.* at 503. Yet, in reality, “most people express strong support for punitive *and* progressive policies,” which suggests that public opinion on criminal justice may be multidimensional. *Id.* at 503–04. Indeed, and perhaps counterintuitively, some researchers have theorized that punitiveness and progressiveness may be positively correlated with one another. *Id.* at 510. They contend that both attitudes may be grounded in feelings of human sympathy—punitiveness in sympathy toward crime victims, and progressiveness in sympathy toward crime perpetrators. *Id.* If this is true, then a person with strong tendencies to feel sympathy for others might be predisposed to favor both punitive and progressive policies. Some

for instance, researchers commonly rely on public opinion surveys that ask about support for the death penalty, three-strikes laws, or harsher sentences in general.¹³

Aggregate responses to such questions suggest that American punitiveness reached a peak in the 1990s, but has diminished somewhat in more recent years.¹⁴ Nonetheless, in absolute terms, support for some punitive policies

support for this view has been found in a study of public opinion in seven Caribbean nations. *Id.* at 510, 519.

On the other hand, other researchers have suggested that concurrent support for both punitive and progressive policies may result from “acquiescence bias” among survey respondents—that is, the tendency for some individuals to respond favorably to questions without regard to their content. Justin T. Pickett & Thomas Baker, *The Pragmatic American: Empirical Reality or Methodological Artifact?*, 52 *CRIMINOLOGY* 195, 196 (2014).

Instead of focusing on policy preferences, some researchers study punitiveness by reference to preferred purposes of punishment. “In general, individuals who are supportive of retribution, incapacitation and deterrence are considered more punitive than people who are in favour of rehabilitation and restoration.” Adriaenssen & Aertsen, *supra* note 11, at 94.

13. Mark D. Ramirez, *Punitive Sentiment*, 51 *CRIMINOLOGY* 329, 336 (2013). These common questions do reflect an ambiguity in the way that “punitiveness” is conceptualized in the research: that is, whether punitiveness should be thought of as an absolute preference for certain kinds of penal outcomes (e.g., imposition of the death penalty on murderers) or as a preference for change in the direction of greater severity (e.g., harsher sentences in general). To the extent that punitiveness implies a preference for change, then it is important to note that relative differences in punitiveness between individuals or over time may result from differences in the perceived penal baseline, rather than differences in absolute preferences. For instance, if person *X* indicates support for harsher sentences, while person *Y* does not, it may be that *Y* is simply better-informed about the severity of current sentencing practices, rather than that *Y* is more lenient than *X*. Cf. Kevin M. Drakulich & Eileen M. Kirk, *Public Opinion and Criminal Justice Reform: Framing Matters*, 15 *CRIMINOLOGY & PUB. POL’Y* 171, 172 (2016) (“We know . . . that support for punitive measures is . . . often based on an overestimation of the lenience of the current system.” (citations omitted)); Adriaenssen & Aertsen, *supra* note 11, at 97 (“[P]ublic sentencing preferences are very similar to those expressed by the judiciary or actually used by the courts.”). The questions in our own study blend absolute preferences and change preferences.

Although public opinion surveys, typically administered by telephone or on-line, are commonly utilized to study punitiveness, it is important to bear in mind that they are subject to a variety of limitations and pitfalls as a means of discerning attitudes. See *id.*; Drakulich & Kirk, *supra*, at 172 (“Our understanding of public opinion is also shaped in powerful ways by the choice of topics and questions, as well as the wording of the questions themselves.”); Pickett & Baker, *supra* note 12, at 196 (discussing acquiescence bias). For a discussion of other methodologies used to study public attitudes, see Adriaenssen & Aertsen, *supra* note 11, at 95–97.

14. For instance, in one series of polls, support for harsher sentencing dropped from 85% in 1994 to 62% in 2012. Mark D. Ramirez, *Americans’ Changing Views on Crime and Punishment*, 77 *PUB. OPINION Q.* 1006, 1011 (2013). Note, however, the theoretical possibility that this trend could result from shifting perceptions of baseline severity, rather than reduced punitiveness in absolute terms. See *id.* at 1011–12 (“The decline in support for tougher sentencing could be a reaction to the growing number of conservative judges on both federal and state courts . . .”). On the other hand, the decline

remains substantial,¹⁵ which may serve as an impediment to further reform and greater reductions in the national imprisonment rate.¹⁶ In any event, punitiveness continues to attract considerable interest from social scientists, with several notable new articles continuing to appear annually.

A. Predictors of Punitiveness

A large body of scholarship attempts to identify attitudes and demographic characteristics that are associated with punitiveness. Researchers typically use multivariate regression analysis to test whether there is an association between punitiveness (dependent variable) and other specific factors (independent variables) and estimate the magnitude of the relationships.¹⁷ For instance, one consistent finding is that individuals who have a conservative political orientation are more likely to express support for punitive criminal-justice policies, even after statistically controlling for a variety of other individual and aggregate level characteristics.¹⁸ Likewise, related work shows that authoritarian values are also associated with punitiveness.¹⁹

in support for harsher sentences in general parallels a similar drop in support for capital punishment for murderers. *Id.* at 1012. This suggests that the apparent diminution in American punitiveness over the past quarter-century has not been entirely caused by changing perceptions of current sentencing practices.

15. *See id.* at 1011–12 (indicating that, in 2012, 62% of respondents favored harsher sentences in general, while 63% favored the death penalty in cases of murder). More recent estimates of capital punishment support indicate that the proportion of respondents that report supporting the policy has fallen to 49% in 2016 and 54% in 2018. J. Baxter Oliphant, *Public Support for the Death Penalty Ticks Up*, PEW RES. CTR: FACTTANK (June 11, 2018), <https://www.pewresearch.org/fact-tank/2018/06/11/us-support-for-death-penalty-ticks-up-2018/> [<https://perma.cc/4BVL-VG4D>].

16. At the same time, it must be acknowledged that there is some uncertainty about the extent to which political and media leaders follow, as opposed to shape, public punitiveness. *See* Drakulich & Kirk, *supra* note 13, at 172–73 (summarizing research supporting view that “punitive attitudes are a social construction”). *But cf.* Pickett, *supra* note 9, at 422 (“[T]he amount of [traditional media] coverage closely follows the crime rate. As a consequence, people receive a greater number of punitiveness-inducing media frames as crime increases.”)

17. Unless otherwise indicated, the findings discussed in this Article are based on multiple regression analyses employing an appropriate array of control variables, with “statistical significance” denoting a likelihood of under 5% that findings result from random variation ($p < 0.05$).

18. James D. Unnever & Francis T. Cullen, *The Social Sources of Americans’ Punitiveness: A Test of Three Competing Models*, 48 CRIMINOLOGY 99, 112 (2010). This finding might be explained by reference to the conservative emphasis on individual responsibility. *See* Steven Stack, Liqun Cao, & Amy Adamzyck, *Crime Volume and Law and Order Culture*, 24 JUST. Q. 291, 295–96 (2007) (“Conservatives tend to see criminals as individuals who are responsible for their acts and, therefore, deserve to be punished.” (citation omitted)).

19. Unnever & Cullen, *supra* note 18, at 112. Individuals with authoritarian tendencies are said to “place more importance on submitting to figures of authority and following traditional arrangements as opposed to valuing individual autonomy and principles of fairness.” Carolyn Côté-Lussier & Jason

Attitudes toward race also seem connected to punitiveness. In particular, white feelings of resentment toward blacks have proven an especially robust predictor of white punitiveness.²⁰ Racial resentment is typically measured using a standard set of questions asking whether respondents agree with statements like, “Irish, Italians, Jewish, and many other minorities overcame prejudice and worked their way up. Blacks should do the same without any special favors.”²¹ Such views are sometimes termed “modern racism,” as contrasted with the more virulent and explicit forms of racism that seem to have been more prevalent in earlier eras.²² It is thought that modern racism is associated with punitiveness because of widespread assumptions about which people will bear the brunt of tougher criminal-justice policies: that is, since African-Americans are commonly seen as responsible for a disproportionate

T. Carmichael, *Public Support for Harsh Criminal Justice Policy and Its Moral and Ideological Tides*, 24 PSYCH., PUB. POL'Y & L. 235, 235 (2018). “[T]hreat and fear have been theorized to play an important role in the activation of authoritarian behavior and the expression of authoritarian attitudes.” Matthew C. MacWilliams, *Who Decides When The Party Doesn't? Authoritarian Voters and the Rise of Donald Trump*, 49 PS 716, 717 (2016) (citations omitted). However, researchers are divided over whether “[a]uthoritarian behavior is activated ‘when needed’ in reaction to a particular threat,” or whether “authoritarians are in a state of constant hypervigilance and hold authoritarian attitudes even when physical or normative threats are not extant.” *Id.*

20. James D. Unnever, Francis T. Cullen, & Bonnie S. Fisher, “*A Liberal Is Someone Who Has Not Been Mugged*”: *Criminal Victimization and Political Beliefs*, 24 JUST. Q. 309, 315 (2007). Some research suggests that racial attitudes are more important in predicting punitiveness among political liberals and moderates than conservatives. Elizabeth K. Brown, Kelly M. Socia, & Jasmine R. Silver, *Conflicted Conservatives, Punitive Views, and Anti-Black Racial Bias 1974–2014*, 21 PUNISHMENT & SOC'Y 3, 19 (2019) (“These findings are consistent with a threshold effect in which conservatives are most likely to be more punitive regardless of other factors” (citation omitted)).

21. Unnever & Cullen, *supra* note 18, at 111. Although this battery of questions is commonly used as a measure of racial resentment or animus, some scholars believe that the significance of these questions has been mischaracterized. Riley K. Carney & Ryan D. Enos, *Conservatism and Fairness in Contemporary Politics: Unpacking the Psychological Underpinnings of Modern Racism 2* (2017), <https://scholar.harvard.edu/files/rkcarney/files/carneyenos.pdf> [<https://perma.cc/SFN9-VLAA>]. One recent study explored the significance of high and low scores on the resentment questions by asking respondents the same questions about a variety of non-black racial and ethnic groups. *Id.* at 10. For instance, some respondents were asked if they agreed that “Irish, Italian, Jewish, and many other minorities overcame prejudice and worked their way up. The Bhutanese should do the same without any special favors.” *Id.* at 9. Conservatives proved to have high resentment scores across the board, *id.* at 17, suggesting that high scores may have less to do with animus toward African-Americans per se than more general feelings of resentment toward out groups and a conservative ideological preference for personal responsibility. Conversely, liberals tended to respond quite differently when asked about blacks than they did when asked about other groups, *id.*, suggesting that low resentment scores in the conventional black-only battery may indeed be tied to particular (liberal, sympathetic) attitudes about African-Americans.

22. *Id.* at 2.

share of crime,²³ it is likely assumed that they will experience a disproportionate share of harsher punishments, too.²⁴ Thus, supporting punitive policies may be seen as an indirect way to inflict greater penal harm and more rigorous social control on African-Americans.²⁵ Indeed, one experimental study found that respondents were more likely to support punitive policies when they were led to believe that African-Americans comprise a larger share of the prison population than was actually the case, as compared to other respondents who were given a more accurate sense of the racial demographics of the prison population.²⁶

Complementing modern racism may be the perception among some white people that their socioeconomic status or safety is threatened by African-Americans. More specifically, the racial threat hypothesis predicts that as the black population in a community or jurisdiction grows relative to the white population, whites will feel threatened by perceived risks of inter-racial crime and violence or by inter-racial economic competition and black demands for limited public resources.²⁷ These perceptions of threat, in turn, may fuel increased demands by whites for social control—i.e., punitiveness. The racial threat hypothesis has found some support in the empirical literature. For instance, one national study found a statistically significant association between punitiveness and growth in the African-American population of the

23. This misperception has been found in many public opinion surveys. See NAZGOL GHANDNOOSH, THE SENTENCING PROJECT, RACE AND PUNISHMENT: RACIAL PERCEPTIONS OF CRIME AND SUPPORT FOR PUNITIVE POLICIES 13–14 (2014) (summarizing research and observing, “[r]acial minorities commit certain crimes at higher rates than whites, but whites overestimate these differences.”).

24. See Unnever & Cullen, *supra* note 18, at 119 (“[T]his finding suggests that a prominent reason for the American public’s punitiveness—including the embrace of mass imprisonment and the death penalty—is the belief that those disproportionately subject to these harsh sanctions are people they do not like: African American offenders.”).

25. See *id.*

26. Rebecca C. Hetey & Jennifer L. Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 PSYCHOL. SCI. 1949, 1950–51 (2014). Similarly, in another study, researchers found that “stating that the death penalty is disproportionately applied to African-Americans induced a 12 percentage point increase in support for capital punishment among whites.” Ryden Butler, Brendan Nyhan, Jacob M. Montgomery & Michelle Torres, *Revisiting White Backlash: Does Race Affect Death Penalty Opinion?*, RES. & POL., Jan.–Mar. 2018, at 1, 1 (emphasis in the original). However, a more recent study with a larger number of respondents failed to find this “white backlash” effect. *Id.* at 2–4.

27. Ryan D. King & Darren Wheelock, *Group Threat and Social Control: Race, Perceptions of Minorities and the Desire to Punish*, 85 SOC. FORCES 1255, 1260 (2007).

respondent's county of residence.²⁸ The researchers also found that punitiveness was associated with perceptions that African-Americans pose a greater threat to public order and safety than other groups, and that African-Americans take away resources that should go to others.²⁹ Indeed, these perceptions seemed to account for much of the association between punitiveness and African-American population growth.³⁰

Some researchers have also explored whether punitiveness is tied to one's attitudes about the moral quality of one's community, which may be understood on either a neighborhood level or higher (e.g., city, state, or nation). For instance, one study included a battery of questions about the perceived direction of the *nation's* moral climate; higher values on the resulting scale "indicate[d] that individuals felt a greater angst about whether their society was in a state of moral decline."³¹ The researchers did find an association between perceived moral decline and punitiveness, even after statistically controlling for political conservatism and authoritarianism.³² However, when researchers added other variables to the regression analysis—most notably, racial resentment—moral decline was no longer statistically significant, which suggests that racial attitudes may play a more fundamental role in driving punitiveness.³³

28. *Id.* at 1268. Interestingly, though, there was no such association between punitiveness and static percent African-American. "This finding is consistent with prior work suggesting that intergroup conflict is a function of relative change in social circumstances as opposed to static, contemporaneous conditions." *Id.* at 1272 (citation omitted). While the King and Wheelock study explored the relationship between minority threat and punitive attitudes, several other studies have looked for a relationship between minority threat and punitive outcomes in the criminal-justice system, with mixed results. Steven N. Zane, *Exploring the Minority Threat Hypothesis for Juveniles in Criminal Court: Static Versus Dynamic Threat and Diffuse Versus Targeted Effects*, 16 *YOUTH VIOLENCE & JUV. JUST.* 418, 420–21 (2017).

29. King & Wheelock, *supra* note 27, at 1268.

30. *Id.* at 1269. Although most of the minority threat research has focused on African-Americans as the perceived threat, a small but growing literature finds that similar dynamics may also exist as to Latinx individuals. Eric A. Stewart, Ramiro Martinez Jr., Eric P. Baumer, & Marc Gertz, *The Social Context of Latino Threat and Punitive Latino Sentiment*, 62 *SOC. PROBS.* 68, 72, 82 (2015).

31. Unnever & Cullen, *supra* note 18, at 111.

32. *Id.* at 115.

33. *Id.* at 116–17. Although moral decline lost its significance as a predictor of general punitiveness, it remained significant with respect to support for the death penalty. In an older, much-cited study, researchers attempted to determine the attitudinal "antecedents" of support for California's notoriously draconian "three strikes and you are out" law. Tom R. Tyler & Robert J. Boeckmann, *Three Strikes and You Are Out, But Why? The Psychology of Public Support for Punishing Rule Breakers*, 31 *L. & SOC'Y REV.* 237 (1997). They found that support for three strikes was associated with perceptions of declining "moral cohesion" in society, as reflected in views about the family and about the impact of diversity. *Id.* at 253–55.

Research is also mixed on the effects of exposure to crime or fear of crime as predictors of punitiveness. Perhaps counterintuitively, past victimization, in and of itself, is *not* associated with increased punitiveness.³⁴ However, there is some support in the literature, albeit inconsistent, for the hypothesis that personal fear of crime or perceived risk of future victimization contributes to punitiveness.³⁵ There is also some research to suggest that an elevated or increasing crime rate in a community—whether actual or just perceived—may lead to increased punitiveness among residents.³⁶

34. See Gary Kleck & Dylan Baker Jackson, *Does Crime Cause Punitiveness?*, 63 CRIME & DELINQ. 1572, 1577 (2017) (“There has been far more agreement regarding the influence of individuals’ personal victimization experiences—researchers generally find no impact.”). Some studies consider the impact of “vicarious victimization,” that is, victimization of a respondent’s family members or acquaintances, with mixed results. Matthew J. Dolliver, Jennifer L. Kenney, Lesley Williams Reid, & Ariane Prohaska, *Examining the Relationship Between Media Consumption, Fear of Crime, and Support for Controversial Criminal Justice Policies Using a Nationally Representative Sample*, 34 J. CONTEMP. CRIM. JUST. 399, 404 (2018).

35. See, e.g., Kleck & Jackson, *supra* note 34, at 1577 (summarizing prior research on impact of fear and perceived risk, and observing inconsistent results from study to study); Unnever, Cullen, & Fisher, *supra* note 20, at 325 (finding association between respondent’s punitiveness and respondent’s fear of walking in neighborhood at night). *But see* Kleck & Jackson, *supra* note 34, at 1590 (finding no association between level of fear or perceived risk and preferred sentence lengths for four crimes). Fear of crime and perceived risk are related, but potentially distinguishable, concepts. See Dolliver, Kenney, Williams Reid, & Prohaska, *supra* note 34, at 406 (“Fear of crime is considered more emotionally driven, whereas perception of risk is more of an intellectual process.”).

36. See, e.g., Kleck & Jackson, *supra* note 34, at 1578 (“[T]here is some evidence that attitudes favoring harsher punishment of criminals are affected by the perception—accurate or not—that crime is increasing.”); Unnever & Cullen, *supra* note 18, at 110 (explaining “higher crime rate” variable in study as indicating respondent’s belief that the U.S. crime rate had worsened over previous eight years), 117 (in final regression model, showing that “higher crime rate” was associated with punitive attitudes); Stack, Cao, & Adamzyck, *supra* note 18, at 304 (“A multivariate analysis of data from 14 nations . . . finds that the higher the homicide rate, the higher the individual’s support for both [the death penalty and harsher sentences].”). However, a recent study by Professors Kleck and Jackson casts doubt on the significance of actual or perceived *local* (here, county-level) crime rates as contributors to punitiveness. Kleck and Jackson found no association between a respondent’s perception that crime in his or her county was high or increasing and the respondent’s preferred sentence lengths for homicide, robbery, assault, or burglary. Kleck & Jackson, *supra* note 34, at 1590. Nor did they find consistent, statistically significant relationships between the county’s actual crime rates and preferred sentence lengths. *Id.* “Theoretically,” it has been observed, “one would expect an association between the crime rate and opinions on criminal justice . . . [H]igh crime volume is seen as prompting a practical need for greater social control.” Stack, Cao, & Adamzyck, *supra* note 18, at 293. In addition to this direct, instrumental connection between crime rates and punitiveness, it has also been suggested that the relationship may be mediated through social capital. “[H]igh levels of fear can degrade social trust and promote withdrawal from participation in civic life, two of the stalwarts of social capital. In turn, levels of social capital are potentially important for explaining jurisdictional variability in the severity of sanctions applied to law violators.” Baumer & Martin, *supra* note 9, at 137 (citations omitted). On the other hand, in considering the importance of crime rates, it

Some researchers have also identified relationships between punitiveness and a variety of demographic characteristics, although these relationships have not necessary been found consistently across the empirical literature.³⁷ Some of the pertinent characteristics include:

- Education³⁸
- Income³⁹

is important to bear in mind that members of the public may have inaccurate views of crime frequency and trends. *See* Adriaenssen & Aertsen, *supra* note 11, at 98 (summarizing research on public's lack of accurate knowledge about crime and the criminal-justice system). Thus, for instance, if high levels of mass media attention are given to crime, the public may think crime to be getting worse even if it is dropping. Stack, Cao, & Adamczyk, *supra* note 18, at 294. *But cf.* Pickett, *supra* note 9, at 422 (“[T]he amount of [traditional media] coverage closely follows the crime rate.”). For this reason, it is possible that perceived crime rate plays a more important role than actual crime in driving public punitiveness. *Cf.* Adriaenssen & Aertsen, *supra* note 11, at 103 (“High estimations of the prevalence of crime in society are related to higher levels of punitivity, and vice versa.” (citations omitted)). Not surprisingly, then, some research suggests that media consumption may play an important role in driving fear of crime and punitiveness. *See* Dolliver, Kenney, Williams Reid, & Prohaska, *supra* note 34, at 414 (“We found a strong connection between media consumption and fear of crime, and evidence that both impact support for certain defensive and punitive policies.”); Adriaenssen & Aertsen, *supra* note 11, at 103 (“The more hours of television watched, the higher the scores on the punitiveness scale.” (citations omitted)). It is not clear, however, whether this pattern will hold as people increasingly rely on Internet news sources in lieu of traditional media. Pickett, *supra* note 9, at 422.

37. Nor, even when statistically significant relationships are found, do demographic variables necessarily serve as especially robust predictors of punitiveness. *See* Adriaenssen & Aertsen, *supra* note 11, at 102 (noting that such variables have been found to account for 15% or less of differences in punitiveness).

38. Some studies find a negative correlation between education level and punitiveness, that is, individuals with higher levels of education are found to be less punitive. *See, e.g.,* Stack, Cao, & Adamczyk, *supra* note 18, at 303 (finding lower education to be statistically significant predictor of support for stiffer sentences); Unnever & Cullen, *supra* note 18, at 117 (same). This relationship has been explained by characterizing education “as a process that questions traditional/conservative beliefs while strengthening a liberal perspective on crime and other social issues.” Stack, Cao, & Adamczyk, *supra* note 18, at 296. While other studies find no relationship between education and punitiveness, *see, e.g.,* Kleck & Jackson, *supra* note 34, at 1589, the weight of the extant research supports the notion that higher education has a “tempering effect on levels of punitivity.” Adriaenssen & Aertsen, *supra* note 11, at 101 (citations omitted).

39. *See, e.g.,* Dolliver, Kenney, Williams Reid, & Prohaska, *supra* note 34, at 414 (finding statistically significant relationship between income and punitiveness, as well as between income and fear of crime and media consumption, both of which were also statistically significant predictors of punitiveness); Unnever, Cullen, & Fisher, *supra* note 20, at 325 (finding statistically significant relationship between income and support for both death penalty and harsher local courts). *But see* Kleck & Jackson, *supra* note 34, at 1589 (finding no statistically significant relationship between income and punitiveness). As an alternative measure of economic status, some studies use full-time employment in lieu of income level, and also find a statistically significant relationship with punitiveness. Stack, Cao, & Adamczyk, *supra* note 18, at 303. It is theorized that individuals who are employed and satisfied with their financial situation tend to be “more bonded to the social order than

- Marital status⁴⁰
- Age⁴¹
- Sex⁴²
- Race⁴³
- Urban residence⁴⁴

We use all of these characteristics as control variables in the current study.⁴⁵

the unemployed and the financially dissatisfied,” and, in turn, that “[p]ersons with strong bonds to conventional society” tend to have a particular “stake in the social order” and are more inclined to hold “conventional beliefs regarding the criminal justice system including the harshness of punishment.” *Id.* at 296.

40. *See, e.g.*, Stack, Cao, & Adamczyk, *supra* note 18, at 303 (finding statistically significant relationship between marriage and punitiveness). *But see* Kleck & Jackson, *supra* note 34, at 1589 (finding no statistically significant relationship). It is theorized that marriage ties individuals to conventional social institutions and thus enhances support for “law and order” policies. Stack, Cao, & Adamczyk, *supra* note 18, at 297.

41. *See* Adriaenssen & Aertsen, *supra* note 11, at 101 (“Most of the findings show a positive relationship between the two variables: younger people tend to be less punitive, compared with older people. However, some studies have found younger respondents to be more punitive or have found no relationship.” (citations omitted)). *Compare* Stack, Cao, & Adamczyk, *supra* note 18, at 303 (finding statistically significant relationship between age and punitiveness), *with* Kleck & Jackson, *supra* note 34, at 1589 (finding no statistically significant relationship between age and punitiveness).

42. The results of research concerning the impact of gender on punitiveness have been especially inconsistent and hence difficult to decipher. *See* Adriaenssen & Aertsen, *supra* note 11, at 101 (noting that some studies find men more punitive, some women, and some no statistical significance either way). *Compare* Dolliver, Kenney, Williams Reid, & Prohaska, *supra* note 34, at 412 (finding females to be more punitive), *with* Unnever, Cullen, & Fisher, *supra* note 20, at 325 (finding males to be more punitive).

43. Several studies find whites to be more punitive than blacks. *See* Adriaenssen & Aertsen, *supra* note 11, at 101 (summarizing research). However, other studies find no statistically significant relationship between race and punitiveness. *Compare* Unnever, Cullen, & Fisher, *supra* note 20, at 325 (finding African-Americans to be less punitive), *with* Dolliver, Kenney, Williams Reid, & Prohaska, *supra* note 34, at 412 (finding no statistically significant relationship between race and punitiveness).

44. This is not routinely included among demographic control variables, but at least one study finds urban residence to be positively correlated with punitiveness. Unnever & Cullen, *supra* note 18, at 117.

45. One notable variable that we have *not* utilized is religiosity. Research on the relationship between punitiveness and religious beliefs and practices has yielded mixed results, Unnever & Cullen, *supra* note 18, at 112, but it “has repeatedly been found that traditional Christian fundamentalists are more punitive overall, compared with other religious people or atheists.” Adriaenssen & Aertsen, *supra* note 11, at 102 (citations omitted). *Compare* Unnever & Cullen, *supra* note 18, at 117 (finding statistically significant relationship between multifactor religiosity index and punitiveness), *with* Stack, Cao, & Adamczyk, *supra* note 18, at 303 (finding no statistically significant relationship between church attendance and punitiveness). *See also* Unnever, Cullen & Fisher, *supra* note 20, at 325 (finding statistically significant relationship between church attendance and punitiveness, but no statistical significance in relationship between fundamentalism and punitiveness). Some research “points to the

B. Punitive Attitudes Research in Wisconsin

Since 2012, in collaboration with the Marquette Law School Poll, we have regularly surveyed Wisconsin voters to determine their attitudes and beliefs regarding crime and punishment. The Poll is a telephone-based survey (landline and cell phone) that employs conventional random-digit dialing techniques.⁴⁶ While we have covered a wide range of criminal-justice topics in the Poll, three areas of inquiry have particular relevance for the present Article.

First, we have studied support for truth in sentencing (“TIS”). TIS requires prisoners to serve most or all of their judge-imposed sentences; early release mechanisms like parole are either severely restricted or entirely eliminated.⁴⁷ In some respects, TIS appears similar to other tough-on-crime measures like “three strikes and you are out” laws that are conventionally classified as punitive.⁴⁸ In any event, a large majority (71%) of our respondents endorsed TIS for Wisconsin. The following associations reached statistical significance:

- Conservatives tended to be more supportive of TIS
- Men tended to be less supportive of TIS
- Whites tended to be less supportive of TIS
- Residents of Milwaukee, Wisconsin’s largest urban area, tended to be less supportive⁴⁹

tendency for religious fundamentalists to hold a negative view of human nature, which in turn leads to support for rigid adherence to the law and a concomitant emphasis on extreme punishment as a method of crime control.” Baumer & Martin, *supra* note 9, at 139 (citation and internal quotation marks omitted). On the other hand, “simple comparisons for punishment attitudes among persons who adhere to different religions (e.g., fundamentalists vs. others) may confound conclusions because some features of Christian fundamentalist beliefs (e.g., having a harsh hierarchical image of God) are associated with heightened punitiveness while others (e.g., compassion) are linked to lower levels of punitiveness.” *Id.* at 140.

Perhaps related to certain forms of religiosity, a few studies find a relationship between punitiveness and belief in a just world, that is, the “belief that good things will happen to good people and bad things will happen to bad people.” Adriaenssen & Aertsen, *supra* note 11, at 102.

46. For background on the administration of the Marquette Law School Poll, see O’Hear & Wheelock, *supra* note 10, at 274–75.

47. *Id.* at 258, 264.

48. *Id.* at 259 n.12. On the other hand, we have hypothesized that TIS may not be only about increasing severity, but may also reflect a desire to enhance the legitimacy of the criminal-justice system by providing greater transparency regarding the practical significance of sentences and by shifting power from an unelected parole board to elected judges. *Id.* at 266–67.

49. *Id.* at 281–82.

On the other hand, we found no association between support for TIS and fear of crime, and mixed results as to our three measures of neighborhood cohesion, only one of which was a significant correlate of TIS support.⁵⁰

Second, we have studied support for flexibility with prison release dates. In principle, early release would seem to be the opposite of TIS. One would expect support for one to imply opposition to the other, and vice versa. Surprisingly, though, we found evidence of strong majority support for early release, just as we had for TIS. As to one version of the question, 55% of respondents agreed that “[o]nce a prisoner has served at least half of his term, he should be released from prison and given a less costly form of punishment if he can demonstrate that he is no longer a threat to society.”⁵¹ In another version, we raised the minimum that had to be served from one-half to two-thirds of the prison term, and we found an even higher level of support—66%.⁵²

The results of our models show the following trends:

- Married people tended to be less supportive of early release.

50. *Id.* at 282. We did, however, find a statistically significant correlation between TIS support and support for the idea that judges should have power over sentences, instead of a statewide sentencing commission. *Id.* This finding provides some support for the legitimacy view of TIS, as described above in note 48.

51. *Id.* at 288.

52. *Id.* at 289. We report here results from 2012 (halfway release) and 2014 (two-thirds release). More recently, in July 2018, we replicated the results for two-thirds release, finding once again that 66% of respondents agreed with early release. MARQUETTE UNIV. LAW SCH. POLL, MARQUETTE LAW SCHOOL POLL: JULY 11 – JULY 15, 2018, at 10 (2018), <https://law.marquette.edu/poll/wp-content/uploads/2020/04/MLSP46Toplines.pdf> [<https://perma.cc/P4B6-CMB7>] [hereinafter Toplines]. However, just six months later, in January 2019 our colleagues at the Marquette Law School repeated our early release questions and came up with somewhat different results. They found that only 42% supported halfway release, and only 51% supported two-thirds release. MARQUETTE UNIV. LAW SCH. POLL, MARQUETTE LAW SCHOOL POLL: JAN. 16–20, 2019, at 6, 7 (2019), <https://law.marquette.edu/poll/wp-content/uploads/2019/01/MLSP51Toplines.pdf> [<https://perma.cc/FKX9-JU2V>]. After we found no indications of change between 2014 and 2018, it seems unlikely that there was such a sharp shift in public opinion over the six months between July 2018 and January 2019. In our view, the different outcomes likely result in part from a difference in the way that potential answers were structured. In our version, we gave respondents the options of strongly agree, agree, somewhat agree, somewhat disagree, disagree, and strongly disagree; the first three answers were coded as “agree,” while the latter three were coded as “disagree.” By contrast, in the January 2019 administration, there was no “somewhat agree” or “somewhat disagree” options, which effectively forced respondents to take a stronger position on the issue or say “don’t know.” Not surprisingly, the “don’t know” percentage was considerably higher in January 2019 (13% as to two-thirds release) than in July 2018 (5%). Since there were many more “somewhat agree” than “somewhat disagree” responses in July 2018, respondents’ inability to similarly express weak support for (or opposition to) early release in January 2019 likely had a bigger impact on the overall agree percent than it did on the overall disagree percent.

- Conservatives tended to be less supportive of early release
- Men tended to be more supportive of early release.
- Residents of Milwaukee tended to be more supportive of early release.⁵³

However, we found no statistically significant association between early release support and either fear of crime or neighborhood cohesion.⁵⁴

It is not clear how to interpret the apparent inconsistency in our findings of strong majority support for both TIS and early release. Similar inconsistencies have also been noted in the national research, which has consistently found both overwhelming support for offender rehabilitation and alternatives to incarceration and similarly strong support for tougher sentencing.⁵⁵ On the one hand, such seemingly inconsistent views may be seen as an indication of American pragmatism, understood here as a resistance to broad, inflexible, ideologically driven policies, and a preference for flexible, context-sensitive policies that seek to balance competing social values. On the other hand, there are reasons to think that the apparent inconsistencies may simply result from methodological flaws or weaknesses in conventional survey techniques.⁵⁶

Third, and finally, we have studied support for offender rehabilitation. A large majority (74%) of our respondents agreed that “rehabilitating offenders and helping them to become contributing members of society” was either “absolutely essential” or at least a “very important” priority for the criminal-justice system.⁵⁷ In our final multiple regression model, we found that conservatives were less likely to support rehabilitation, as well as individuals

53. O’Hear & Wheelock, *supra* note 10, at 290.

54. *Id.* However, as with TIS, we did find a correlation between early release support and a preference for judges over sentencing commissions.

55. O’HEAR, PRISONS AND PUNISHMENT, *supra* note 2, at 209.

56. Inconsistencies may result, for instance, from acquiescence bias. *See supra* note 12. In our Wisconsin research, we have examined more closely the “swing voters” who support both TIS and early release. Our analysis pointed to a number of ways in which the swing voters differed from the consistent TIS supporters (i.e., those who support TIS and opposed early release): less likely to be married, less likely to be white, less likely to be conservative, more likely to live in Milwaukee, more likely to think that rehabilitative progress should be taken into account in release decisions, and more likely to think that imprisonment should be subject to cost-benefit balancing. O’Hear & Wheelock, *supra* note 10, at 296–98. Meanwhile, in comparison with the consistent TIS opponents (i.e., those who oppose TIS and favor early release), the swing voters are older, more religious, less educated, more conservative, and more punitive. *Id.* at 299–300.

57. Michael M. O’Hear & Darren Wheelock, *Public Attitudes Toward Punishment, Rehabilitation, and Reform: Lessons from the Marquette Law School Poll*, 29 FED. SENT’G. RPTR. 47, 48 (2016).

who scored high on the “modern racism” measure.⁵⁸ (Our earlier surveys on TIS and early release had not included questions on racial attitudes.) However, we found no statistically significant association between rehabilitation support and exposure to crime or the criminal-justice system.⁵⁹

Tying together our Wisconsin research on public support for TIS, early release, and rehabilitation with the national research on punitiveness, a few notable themes have emerged:

- Political conservatism consistently corresponds with staunch support for severe criminal-justice policies.
- Racial resentment (modern racism) also covaries with greater levels of punitiveness.
- Results are inconsistent when it comes to perceptions of community or societal cohesion and the desire to punish.
- Fear and personal experience with criminal victimization are not consistently associated with policy preferences.
- Standard demographic variables (education, income, marital status, religiosity, age, sex, race, and urban residence) are not consistently associated with policy preferences.

C. *Prior Research on Attitudes Toward Violent Crime*

In contrast to the voluminous research on punitiveness in general, there has been comparatively little academic work on attitudes toward violent crime in particular. However, a number of surveys do indicate that the public holds more punitive views toward violent than nonviolent crime.⁶⁰ For instance, in 2006,

58. *Id.* at 51. Surprisingly, when conservatism and racial attitudes were held constant, Republicans were actually more likely than others to support rehabilitation. *Id.*

59. Exposure was assessed by asking respondents whether they had a family member who had either been a crime victim or a criminal defendant. *Id.*

60. Another related line of research suggests that individuals who have been convicted of violent offenses face particularly high social stigma and barriers to employment. See Jessica A. Cerda, Douglas M. Stenstrom, & Mathew Curtis, *The Role of Type of Offense and Work Qualifications on Perceived Employability of Former Offenders*, 40 AM. J. CRIM. JUST. 317, 318 (2015) (summarizing research). For instance, in one recent study using a nationally representative sample, respondents perceived a higher recidivism risk among offenders convicted of violent than nonviolent offenses. Megan Denver, Justin T. Pickett & Shawn D. Bushway, *The Language of Stigmatization and the Mark of Violence: Experimental Evidence on the Social Construction and Use of Criminal Record Stigma*, 55 CRIMINOLOGY 664, 675–76 (2017). Not surprisingly, then, respondents were more supportive of denying employment on the basis of violent than nonviolent convictions. *Id.* at 677.

a survey commissioned by the National Center for State Courts⁶¹ included the following findings:

- 65% of respondents said that sentences for violent crimes are too lenient, as opposed to only 39% for property and drug crimes.⁶²
- 73% supported mandatory sentences for violent crime, as opposed to only 42% for property crime and 40% for drug crime.⁶³
- 51% said that alternatives to prison should *never* be used in cases of violent crime, as opposed to only 10% for property and drug crime.⁶⁴
- 72% said that it was “very important” to do more to keep violent offenders in prison longer.⁶⁵

Although the authors of the NCSC report offered a few intriguing findings,⁶⁶ their study lacked more sophisticated and nuanced analysis.⁶⁷

D. *Prior Research on Importance of Question Framing*

Research on criminal-justice attitudes indicates that the framing of questions sometimes matters a great deal—overall support for a policy may vary considerably depending on how the policy is explained or

61. PRINCETON SURVEY RESEARCH ASSOCS. INT’L, THE NCSC SENTENCING ATTITUDES SURVEY: A REPORT ON THE FINDINGS (2006).

62. *Id.* at 26.

63. *Id.* at 29.

64. *Id.* at 31.

65. *Id.* at 38.

66. On the question of whether the courts were too lenient in sentencing violent crime, higher levels of V-punitiveness were evident among the less well-informed, Republicans, and whites. *Id.* at 26–27. The racial dimension to V-punitiveness found in the NCSC survey may be related to the tendency of Americans to rate blacks as more violence-prone than whites and to overestimate the share of violent crime that is perpetrated by blacks. See GHANDNOOSH, *supra* note 23, at 13–14 (summarizing research).

67. Perhaps the study that is closest to ours in this respect was conducted by Professors Kleck and Jackson, whose survey of a nationally representative sample included questions about preferred sentence length for four different crimes: murder (median response = 476 months), robbery (147 months), assault (142 months), and burglary (106 months). Kleck & Jackson, *supra* note 34, at 1585. Kleck and Jackson then tried to determine whether these preferred sentence lengths were correlated with exposure to crime or any of a standard set of demographic variables. No variable was a statistically significant predictor of punitiveness with respect to all four crimes. *Id.* at 1587–89. The only variables that predicted punitiveness as to even three of the crimes were (1) frequent watching of local news and (2) percent Republican in the respondent’s county. *Id.* Each crime had its own unique set of punitiveness predictors. *Id.*

contextualized.⁶⁸ For instance, general questions (“Do you support mandatory minimum prison sentences for violent offenders?”) tend to produce more punitive responses than more specific questions (“Do you support a mandatory minimum prison sentence for a person with *X* characteristics who committed the crime of *Y*?”).⁶⁹ Additionally, providing respondents with accurate information about crime rates and punishment also tends to reduce punitiveness.⁷⁰ Some research suggests that feelings about punishment derive from the dynamic interplay between snap emotional responses to harm and more “top-down rational, cognitive processes.”⁷¹ It seems possible that different ways of framing survey questions may tend to activate the rational processes more powerfully than others, potentially leading to different responses to questions.

III. HYPOTHESES

Based on the research discussed above, we offer the following hypotheses as to “V-PUNITIVE,” our measure of punitiveness toward violent crime.⁷²

Hypothesis 1: Politically conservative respondents tend to manifest greater levels of V-PUNITIVE.

Conservatism has proven a consistently effective predictor of general punitiveness in the national research and has also figured prominently in our prior Wisconsin work.⁷³

Hypothesis 2: Respondents who express higher levels of racial resentment tend to manifest higher levels of V-PUNITIVE.

Racial resentment (modern racism) has also been found to be a predictor of criminal-justice attitudes in national studies and in some of our prior Wisconsin research.⁷⁴

68. See Pickett, *supra* note 9, at 407 (summarizing research).

69. See *id.*

70. See *id.* at 408 (summarizing research).

71. Mark R. Fondacaro & Megan J. O’Toole, *American Punitiveness and Mass Incarceration: Psychological Perspectives on Retributive and Consequentialist Responses to Crime*, NEW CRIM. L. REV. 477, 482 (2015).

72. The components of V-PUNITIVE are detailed in Part IV below.

73. See Unnever & Cullen, *supra* note 18, at 115.

74. See Unnever, Cullen & Fisher, *supra* note 20, at 315.

Hypothesis 3: Respondents who exhibit greater authoritarianism tend to manifest higher levels of V-PUNITIVE.

Authoritarianism has been associated with general punitiveness on the national level, although we have not previously included authoritarianism in our Wisconsin studies.⁷⁵

Hypothesis 4: Respondents who describe their “neighborhood” as having low levels of collective efficacy tend to manifest higher levels of V-PUNITIVE.

The sociological term “collective efficacy” has been defined succinctly as “social cohesion combined with shared expectations for social control.”⁷⁶ As noted above, some research suggests that punitiveness is associated with perceptions that social cohesion is fraying, although we have found at best mixed results when testing this proposition in our earlier Wisconsin work.⁷⁷ For purposes of this paper, we have modified our questions to get more directly at the related construct of collective efficacy, which involves trust that one’s neighbors will act to address shared neighborhood problems.⁷⁸ Intuitively, it seems plausible that individuals who do not perceive there to be effective mechanisms of informal social control in their communities will desire more vigorous formal social control from the criminal-justice system.

Hypothesis 5: Framing questions by providing specific illustrations of violent crime reduces V-PUNITIVE.

Some research indicates that greater specificity in questions reduces punitiveness.⁷⁹ Based on this, we hypothesize that respondents will be more punitive when asked about punishment for “violent crimes” in a general way than when specific illustrations of violent crime are utilized. We suspect that, when asked about “violent crimes,” respondents may tend to answer based on the worst sorts of violent crime that seem to spring to mind when the phrase is encountered, such as murder, and we think it possible that this tendency may be diminished if respondents are encouraged instead to think about less extreme, more common forms of criminal violence.

75. *See infra* Section IV.C.

76. ROBERT J. SAMPSON, GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT 27 (2012).

77. *See supra* Section II.B.

78. SAMPSON, *supra* note 76, at 156.

79. *See* Pickett, *supra* note 9, at 407 (summarizing research).

Hypothesis 6: Punitiveness toward violent crime exceeds punitiveness toward property crime.

Several national surveys have found more punitive attitudes toward violent crime than nonviolent property crime.⁸⁰ We hypothesize that Wisconsin voters will also exhibit greater V-punitiveness than “P-punitiveness.”

IV. METHODOLOGY

Our data derive from the administration of the Marquette University Law School Poll on July 11–15, 2018.⁸¹ Interviewed by cellphone and landline, our respondents numbered 800 registered Wisconsin voters, giving us a margin of error of +/- 4.1 percentage points.⁸² Responses were weighted to compensate for the under-representation of some demographic groups in our sample.⁸³ Table 1 sets forth basic demographic and other information regarding the sample, as well as the average (mean) response to our criminal justice questions.⁸⁴

80. *See supra* Section II.C.

81. LHK Partners Inc. managed the data collection, with telephone interviews conducted by SHC Universal. MARQUETTE UNIV. LAW SCH. POLL, METHODOLOGY: MARQUETTE LAW SCHOOL POLL, JULY 11–15, 2018, at 1 (2018), <https://law.marquette.edu/poll/wp-content/uploads/2018/07/MLSP46Methodology.pdf> [<https://perma.cc/RC78-ANMV>].

82. *Id.*

83. *Id.*

84. *Id.* For topline results for all questions, see Toplines, *supra* note 52.

TABLE 1: SUMMARY OF DEMOGRAPHIC VARIABLES FOR TOTAL SAMPLE

Variable	Freq/N	%
Sex		
Male	412	51.5
Female	388	48.5
Age (Mean Years)	800	49.9
Education		
Less than college	413	52.0
College or greater	382	48.1
Race		
White	674	86.6
Other	104	13.4
Hispanic		
Yes	21	2.7
No	763	97.3
Political Orientation		
Very conservative	69	8.6
Conservative	231	28.9
Moderate	245	30.6
Liberal	151	18.9
Very liberal	61	7.6
Milwaukee County		
Live in Milwaukee County	116	14.6
Do not live in Milwaukee County	677	85.4
Violent Crime Victim		
Yes	163	20.8
No	622	79.2
Property Crime Victim		
Yes	57	7.3
No	729	92.8
I Feel Safe Walking Around Neighborhood		
Strongly Agree	369	46.9
Agree	252	32
Somewhat Agree	65	8.3
Somewhat Disagree	30	3.8
Disagree	44	5.6
Strongly Disagree	27	3.4

Variable	Freq/N	%
Violent Crime a Major Problem		
Strongly Agree	33	4.1
Agree	33	4.1
Somewhat Agree	70	8.8
Somewhat Disagree	117	14.6
Disagree	292	36.5
Strongly Disagree	247	30.9
Property Crime a Major Problem		
Strongly Agree	40	5.1
Agree	42	5.3
Somewhat Agree	116	14.7
Somewhat Disagree	86	10.9
Disagree	311	39.5
Strongly Disagree	193	24.5
One Right Way		
Strongly Agree	282	36.4
Agree	283	36.5
Somewhat Agree	109	14.1
Somewhat Disagree	38	4.9
Disagree	41	5.3
Strongly Disagree	22	2.8
Free Thinkers		
Strongly Agree	179	24
Agree	249	33.3
Somewhat Agree	175	23.4
Somewhat Disagree	56	7.5
Disagree	63	8.4
Strongly Disagree	25	3.4
Old Ways Are Best		
Strongly Agree	46	6
Agree	113	14.8
Somewhat Agree	80	10.5
Somewhat Disagree	170	22.3
Disagree	182	23.9
Strongly Disagree	172	22.5

Variable	Freq/N	%
Library Closing		
Very Likely	412	54
Somewhat Likely	236	30.9
Unlikely	71	9.3
Very Unlikely	44	5.8
Kids Hanging Out		
Very Likely	327	44.1
Somewhat Likely	240	32.4
Unlikely	119	16.1
Very Unlikely	55	7.4
Fighting Outside		
Very Likely	383	51.3
Somewhat Likely	225	30.1
Unlikely	93	12.5
Very Unlikely	46	6.2
Racial resentment (Mean, standard deviation)	646	9.38 (.17)
Homicide Rate (Mean)	793	3.15 (.20)
Violent Crime Rate (Mean)	793	310.34 (14.43)
Property Crime Rate (Mean)	793	1767.82 (30.73)
Percent Nonwhite (Mean)	793	12.10 (.46)
Poverty Rate (Mean)	793	16.18 (.24)
Unemployment Rate (Mean)	793	4.72 (.07)
1 Year Change in Homicide (Mean)	793	-.73 (.10)
1 Year Change in Violent Crime (Mean)	793	21.99 (2.28)
1 Year Change in Property Crime (Mean)	793	-125.32 (7.16)
1 Year Change in Percent Nonwhite (Mean)	793	.19 (.006)
1 Year Change in Poverty (Mean)	793	.06 (.12)
1 Year Change in Unemployment (Mean)	793	-.80 (.016)
Violent Crime Punitiveness Index	703	11.22 (.15)
Property Crime Punitiveness Index	678	10.5 (.15)

Our primary *dependent variable* is an index (V-PUNITIVE) based on responses to three questions that elicited agreement or disagreement with these propositions:

- In general, the courts are too lenient with individuals who are convicted of violent crimes.
- Individuals who have been convicted of a violent crime should normally be sentenced to prison, even if it is a first-time offense.
- Anyone who has been convicted of two or more violent crimes should have to spend the rest of his or her life in prison, with no exceptions.⁸⁵

Analysis suggests that these three items measure a similar underlying concept ($\alpha = .60$).

In asking about these propositions, we employed a split-sample research design in which respondents were randomly assigned to one of two subsamples. In order to test for possible framing effects, the respondents in sample A were given specific examples of violent offenses, while the respondents in sample B were not provided with any such illustrations.⁸⁶ For the most part we did not observe statistically significant differences in responses between the two subsamples.⁸⁷ We approached the analysis with care when we merged the subsamples and replicated each model with separate analysis for each subsample to detect whether the results were consistent.

Although V-PUNITIVE is our primary focus, we also performed an additional set of analyses focusing on punitiveness toward property crime (P-PUNITIVE). This variable was also based on agreement or disagreement with three propositions. The first two simply repeated the first two statements used for V-PUNITIVE, but with “property” substituted for “violent.”⁸⁸ The third proposition was modified to a greater extent, as follows: “Anyone who has been

85. MARQUETTE UNIV. LAW SCH. POLL, MARQUETTE LAW SCHOOL POLL – JULY 11–15, 2018, at Q46–48 (2018), <https://law.marquette.edu/poll/wp-content/uploads/2018/07/MLSP46Instrument.pdf> [<https://perma.cc/RC78-ANMV>].

86. Both groups were told, “The next few questions are about violent crime. By violent crime, I mean crimes in which the perpetrator physically injures or threatens to physically injure the victim.” *Id.*, preface to Q45–49. However, the respondents in sample A received this further instruction: “Some examples of violent crime include: Forcible sexual assault[;] Physical abuse within a marital relationship[;] Armed robbery of a convenience store.” *Id.* The order of the specific offenses was scrambled at random.

87. The exceptions are that respondents in subsample A were more likely to agree with the statements that there is no one right way to live, that property crime is a major problem where the respondent lives, and that violent crime is a major problem where the respondent lives.

88. *Id.* at Q51–52.

convicted of two or more property crimes should have to spend at least one year in prison, with no exceptions.”⁸⁹ Reliability analysis indicates that the P-PUNITIVE items measure a similar underlying concept ($\alpha = .68$). We also employed a split-sample design with the P-PUNITIVE questions.⁹⁰

Our *independent variables* include standard demographic characteristics: racial views,⁹¹ authoritarianism,⁹² collective efficacy,⁹³ recent victimization,⁹⁴ and fear and perceived risk of future victimization.⁹⁵ The models also include

89. *Id.* at Q53.

90. Each subsample was told, “The next few questions are about property crime. By property crime, I mean crimes in which the perpetrator enters, takes, or damages the property of another person without permission, but does not physically injure or threaten to physically injure the victim.” *Id.*, preface to Q50–54. However, the respondents in sample A received this further instruction: “Some examples of property crime include: Shoplifting[;] A person breaking into a garage at night looking for something to steal[;] An investment scam that targets the elderly.” *Id.* The order of the specific offenses was also scrambled at random.

91. For this variable, we used an index derived from responses to three of the standard “modern racism” questions ($\alpha = .75$). *Id.* at Q35–38.

92. We elicited agreement or disagreement with three statement that are conventionally used as measures of authoritarianism:

- There is no “one right way” to live life; everybody has to create their own way.
- Our country needs free thinkers who will have the courage to defy traditional ways, even if this upsets many people.
- The “old-fashioned ways” and “old-fashioned values” still show the best way to live.

Id. at Q38–40; Bob Altemeyer, *The RWA Scale*, <http://www.panojohnson.com/automatons/rwa-scale.xhtml> (last updated Nov. 25, 2018) [<https://perma.cc/MG67-97S3>]. In the present study, the three questions did not load into a single index, so we use each as a separate independent variable.

93. In order to assess respondents’ sense of collective efficacy in their neighborhoods, we used the following questions:

- Suppose that because of budget cuts the library closest to your home was going to be closed down. How likely is it that neighborhood residents would organize to try to do something to keep the library open?
- If a group of neighborhood children were skipping school and hanging out, how likely is it that your neighbors would do something about it?
- If there was a fight in front of your house and someone was being beaten or threatened, how likely is it that your neighbors would break it up?

MARQUETTE UNIV. LAW SCH. POLL, *supra* note 85, at Q42–44. These questions are based on a similar battery of questions utilized by Robert Sampson to assess collective efficacy. *See* SAMPSON, *supra* note 76, at 156. In the present study, the three questions did not load into a single index, so we use each as a separate independent variable.

94. More specifically, we asked, “Has anyone in your household or a close neighbor of yours been a victim of violent crime in the past year or so?” MARQUETTE UNIV. LAW SCH. POLL, *supra* note 85, at Q49. We also asked an analogous question about property crime. *Id.* at Q54.

95. More specifically, we elicited agreement or disagreement with the following statements:

several county-level measures to capture crime rates and trends, economic distress, and racial and ethnic demographics.

We specify two models for both V-PUNITIVE and P-PUNITIVE. Both models include all the individual-level covariates, but each model contains only a portion of the aggregate (county-level) measures. More specifically, Model 1 contains the crime indicators, while Model 2 contains the economic and demographic indicators. We have divided these aggregate measures in order to address multicollinearity. Most of Wisconsin's nonwhite population is concentrated in just a few counties located in the Southeast portion of the state, which tend to be the same counties that have the highest concentrations of inequality and crime.⁹⁶ The close relationship between these variables creates problems with analysis when they are included in a single model. By using two models, we are able to observe the unique impact of the various aggregate county measures in explaining variation across V-PUNITIVE and P-PUNITIVE.⁹⁷

V. RESULTS

A. Regression Models

Table 2 sets forth our regression models for V-PUNITIVE, and Table 3 for P-PUNITIVE.⁹⁸ The coefficient for each independent variable ("B") can be

-
- I feel safe walking alone at night around my neighborhood.
 - Violent crime is a major problem in the area where I live.
 - Property crime is a major problem in the area where I live.

Id. at Q41, Q45, Q50.

96. See *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/kenoshacountywisconsin,racinecountywisconsin,milwaukeecountywisconsin,WI,US/PST045219> [<https://perma.cc/7SKA-K4UD>] (using census data to compare Milwaukee, Racine, and Kenosha county's nonwhite population to Wisconsin's total nonwhite population).

97. In light of the multicollinearity problem, we have also combined African-American and Hispanic/Latinx populations into a single "Nonwhite" group.

98. Since individuals are nested within counties in our data structure, the use of Ordinary Least Squares regression with our data is potentially problematic. On average, there were 11.3 respondents per county (with a minimum value of one and a maximum value of 116 respondents). The potential for correlated errors is substantial with multilevel data so we corrected for the potential deflation of standard errors by estimating random effects models. While typically utilized for longitudinal panel data, numerous researchers have also employed random effects and other HLM procedures for cross-sectional data where cases nest in aggregate units. See, e.g., Ian Brunton-Smith, Patrick Sturgis, & George Leckie, *How Collective Is Collective Efficacy? The Importance of Consensus in Judgments About Community Cohesion and Willingness to Intervene*, 56 *CRIMINOLOGY* 608, 617 (2018); Darren Wheelock, Meghan Strohshine, & Michael O'Hear, *Disentangling the Relationship Between Race and*

interpreted as the amount that changes in the dependent variable for a one-unit increase in the independent variable.⁹⁹

TABLE 2: RANDOM EFFECTS MODELS WITH V-PUNITIVE

Variable	Model 1		Model 2	
	B	Stand Error	B	Stand Error
Demographic measures				
Men	-.75**	.26	-.74**	.26
Age	.005	.008	.005	.008
White	-.021	.38	-.040	.37
Hispanic	-1.13	.76	-1.08	.76
College degree	-.43*	.24	-.46*	.24
Political orientation	.48**	.15	.47**	.15
Crime related				
Fear of crime	-.04	.11	-.05	.11
Violent crime a problem	.20*	.11	.20*	.11
Property crime is a problem	.22*	.10	.23*	.10
Victim of violent	-.34	.31	-.40	.31
Victim of property	-.32	.49	-.32	.50
Collective Efficacy				
Library closing	-.10	.15	-.091	.15
Kids hanging out	.088	.14	.10	.14
Fight outside	.21	.14	.21	.15
Authoritarianism				
One right way	-.075	.096	-.074	.096
Free thinkers	.029	.10	.021	.10
Old ways best	.55***	.094	.57***	.094
Racial resentment	.10*	.045	.10*	.045
Aggregate measures				

Attitudes Toward the Police: Police Contact, Perceptions of Safety, and Procedural Justice, 65 CRIME & DELINQ. 941, 950–51 (2019). A random effects model contains properties useful for the present data because it accounts for the error structure better than OLS regression. Random effects models include an error term with two components. One component represents the traditional error term unique to each observation and a second error term represents the difference between the cross-sectional units (counties in our data) and the intercept. LOIS W. SAYRS, POOLED TIME SERIES ANALYSIS 32–51 (1989). The random effects model thus better accounts for within and across unit error relative to the basic OLS models.

99. The tables also include standard errors, which indicate the accuracy of a sample estimate based on sample characteristics including the standard deviation and the sample size.

Variable	Model 1		Model 2	
	B	Stand Error	B	Stand Error
Homicide rate	.047	.084		
Violent crime rate	.001	.002		
Property crime rate	-.0003	.0003		
Homicide rate change	.02	.072		
Violent rate change	.0002	.003		
Property crime change	.00001	.001		
Percent nonwhite			.036*	.015
Percent nonwhite change			-.86	.67
Unemployment rate			.025	.14
Poverty rate			-.047	.035
Unemployment change			-.055	.33
Poverty change			.04	.044
Constant	5.43***	1.17	5.67***	1.07
N	800		800	

♦ p < .1; * p < .05; ** p < .01; *** p < .001

TABLE 3: RANDOM EFFECTS MODEL WITH P-PUNITIVE

Variable	Model 1		Model 2	
	B	Stand Error	B	Stand Error
Demographic measures				
Men	-.17	.25	-.16	.25
Age	.018*	.007	.018*	.007
White	-.41	.37	-.38	.37
Hispanic	.69	.75	.61	.75
College degree	-.19	.24	-.17	.24
Political orientation	.51**	.16	.52**	.16
Crime related				
Fear of crime	.048	.11	.054	.11
Violent crime a problem	.05	.11	.038	.11
Property crime is a problem	.46***	.11	.47***	.11
Victim of violent	-.21	.33	-.21	.32
Victim of property	.22	.47	.23	.46
Collective Efficacy				
Library closing	-.14	.15	-.14	.15
Kids hanging out	.28*	.13	.30*	.15
Fight outside	-.11	.14	-.11	.15

Variable	Model 1		Model 2	
	B	Stand Error	B	Stand Error
Authoritarianism				
One right way	-.10	.094	-.11	.093
Free thinkers	-.02	.09	-.027	.089
Old ways best	.54***	.091	.54***	.089
Racial resentment	.13**	.043	.13**	.042
Aggregate measures				
Homicide rate	.10	.083		
Violent crime rate	-.0003	.002		
Property crime rate	-.0002	.0004		
Homicide rate change	-.093	.072		
Violent rate change	.0002	.002		
Property crime change	.0006	.001		
Percent nonwhite			.016	.017
Percent nonwhite change			.25	.75
Unemployment rate			.20	.15
Poverty rate			-.034	.041
Unemployment change			.70*	.35
Poverty change			.017	.05
Constant	3.90**	1.14	3.60**	1.12
N	800		800	

♦ p < .1; * p < .05; ** p < .01; *** p < .001

It is important to note that we faced issues with missing values. In the final models, we would have lost 343 cases due to listwise deletion.¹⁰⁰ Otherwise stated, we would have been utilizing 57% of the sample. We adopted the multiple imputation technique to address the missing values problem with STATA SE 14.¹⁰¹ Multiple imputation yielded a sample of 800 respondents for our final models.

100. Listwise deletion is one method of handling missing cases by removing the entire case when there is missing value on any variable included in the analysis.

101. For a description of this technique, see STATA CORP., STATA MULTIPLE-IMPUTATION REFERENCE MANUAL RELEASE 13, at 3–6 (2013).

B. *General Observations*

Several noteworthy patterns emerged in the regression models.¹⁰² The results indicate that two demographic background factors are statistically significant predictors of the V-PUNITIVE dependent measure. More specifically, in all the models, politically conservative respondents tend to manifest *higher* levels of V-PUNITIVE than respondents who identify as politically liberal, while male respondents tend to manifest *lower* levels of V-PUNITIVE than female respondents. As noted above, many of the prior studies on punitiveness have also found a relationship between conservatism and punitiveness, but they have reached inconsistent conclusions concerning gender effects.¹⁰³

Also consistent with some prior research, fear of crime and past experiences of criminal victimization are non-significant in all of our models. On the other hand, we do find an association between V-PUNITIVE and the perception that violent crime is a “major problem” where the respondent lives,¹⁰⁴ and similarly with the perception that property crime is a “major problem.”¹⁰⁵

102. We report the results of select models that produced the most consistent results, but we ran several others with different combinations of the aggregate measures. As previously discussed, multicollinearity was frequently an issue as economic inequality and minority populations in Wisconsin are intensely concentrated. For the results of these additional analyses please contact the authors.

103. *See supra* Part II.A. Our findings suggest that the existence and direction of gender on punitiveness may partly depend on the type of crime at issue. While we found men to be less punitive toward violent crime, we did not find a statistically significant difference between the sexes when it came to P-PUNITIVE. The results may not be surprising given the much greater tendency of men to perpetrate violent crime, O’HEAR, PRISONS AND PUNISHMENT, *supra* note 2, at 130, which may suggest a higher level of male acceptance of violence. By contrast, there is somewhat less disparity in male and female rates of property offending, *id.*, which may help to explain why sex did not seem particularly associated with P-PUNITIVE.

104. At first blush, it may seem that the “major problem” question is essentially duplicative of our fear question (whether the respondent feels safe walking alone at night in his or her neighborhood). However, there may be subtle differences between feeling fear and intellectually evaluating crime levels. *Cf.* Dolliver, Kenney, Williams Reid & Prohaska, *supra* note 34, at 406 (“Fear of crime is considered more emotionally driven, whereas perception of risk is more of an intellectual process.”). Additionally, while the fear question focuses attention on *public* spaces in the respondent’s neighborhood, the view that violent crime is a major problem may also be based on perceptions of violence in *private* spaces, e.g., domestic violence. Finally, we note that our contrasting findings as to the two questions may to some extent reflect the impact of acquiescence bias, *see supra* note 12, insofar as acquiescent answers to the fear and “major problem” questions would point in opposite directions (no to fear and yes to major problem).

105. It is not immediately clear what would account for a relationship between perceived levels of property crime and preferred policies toward violent crime. It seems plausible that sentiments towards violent offenses are so salient that understandings of any crime as a problem—violent or property—can lead to elevated levels of punitiveness.

Focusing on the county-level measures, we find that none of the aggregate crime measures shares a significant relationship with V-PUNITIVE, net of the other factors in the model. This is consistent with previous results that fail to uncover a connection between punitiveness and fear of crime or previous experiences with victimization. Similarly, none of the demographic or economic aggregate measures explain variation across V-PUNITIVE with one lone notable exception: respondents who reside in counties with greater concentrations of nonwhite residents are more likely to manifest higher levels of V-PUNITIVE. The results of Model 2 in Table 2 show an average increase of .036% in V-PUNITIVE when the nonwhite share of the population increases across counties by 1%.

The P-PUNITIVE models share strong similarities to the V-PUNITIVE models, but also a few notable differences. As to the demographic background covariates, gender is no longer correlated with punitiveness, but political orientation continues to be an important explanatory factor. As with the V-PUNITIVE index, respondents who identify as politically conservative tend to manifest more punitive beliefs than do political liberals toward individuals convicted of property offenses. In the P-PUNITIVE models we also observed college-educated respondents reporting lower levels of punitiveness than the non-college-educated. The crime-related perceptual measures also shift. The extent to which violence is viewed as a problem is no longer significant in either P-PUNITIVE model, but the extent to which property crime is viewed as a problem is significant in both models. More specifically, respondents who view property crime as a problem in their community tend to hold more punitive beliefs regarding property crime.

We also find the racial resentment index to be a significant predictor of P-PUNITIVE, but reach more mixed results as to our measures of collective efficacy and authoritarianism.¹⁰⁶ As will be detailed in the next Section, these findings closely, but not exactly, mirror our V-PUNITIVE findings.

Turning to the aggregate measures, we again find a high degree of similarity with the V-PUNITIVE results: almost none of the county-level variables achieve significance in Table 3. Indeed, as with V-PUNITIVE, we find only one statistically significant correlation. Here, that correlation is with change in the county unemployment rate. Model 2 in Table 3 shows an average increase

106. P-PUNITIVE correlated with only one of our three measures of collective efficacy, specifically, whether the respondent thought that his or her neighbors would do something to address a problem with kids skipping school and hanging out. *See supra* note 93. Similarly, P-PUNITIVE was correlated with only one of our three measures of authoritarianism, specifically, whether the respondent agrees that the “old-fashioned ways” and “old-fashioned values” still show the best way to live.” *See supra* note 92.

of P-PUNITIVE of 0.7% when the change in the unemployment rate increases across counties by 1%. We find it interesting that V-PUNITIVE is linked to the racial and ethnic demographic composition of a county, yet P-PUNITIVE is tied to economic conditions.¹⁰⁷ This final contrast further underscores that while V-PUNITIVE and P-PUNITIVE may be closely related phenomena in many respects, they do not appear to be grounded in an entirely identical set of perceptions, concerns, and values. This suggests the need for caution in generalizing from findings about punitiveness across crime types.¹⁰⁸

Other notable findings are discussed below in relation to our hypotheses from Part III.

C. Analysis of Hypotheses

Hypothesis 1: Politically conservative respondents tend to manifest greater levels of V-PUNITIVE.

Consistent with much prior research, we found that conservatives tended to be more punitive in their policy preferences. Indeed, this held across both models as to both V- and P-PUNITIVE.

Hypothesis 2: Respondents who express higher levels of racial resentment tend to manifest higher levels of V-PUNITIVE.

Once again, our results were as expected. We found an association between racial resentment and V- and P-PUNITIVE in both models. We also found evidence of a possibly related phenomenon insofar as residents of counties with higher nonwhite populations also tended to manifest higher levels of V-PUNITIVE.¹⁰⁹

Hypothesis 3: Respondents who exhibit greater authoritarianism tend to manifest higher levels of V-PUNITIVE.

Hypothesis 3 presents a difficulty: we attempted to assess authoritarianism based on responses to three questions, but the three did not load well into a single index ($\alpha = .367$). This result, which suggests that the three questions

107. It is possible that this contrast partly reflects particular associations that many people seem to make between African-Americans and violence. See ASHLEY NELLIS, THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 10–11 (2016) (discussing research). Additionally, it is possible that rising unemployment rates are seen as likely to increase economic desperation, which, in turn, may be seen more as a driver of property than of violent crime—perhaps explaining some of the enhanced P-PUNITIVENESS in the counties with faster-rising unemployment.

108. This cautionary note is also supported by the Kleck and Jackson study described earlier. See *supra* note 67.

109. This finding is consistent with the racial threat hypothesis. See *supra* Section II.A.

do not point to a single underlying construct, was surprising because the same questions have been used by many other researchers to measure authoritarianism. Our difficulty in utilizing this approach in Wisconsin may raise questions about the stability of the authoritarianism construct across time and place.

Although we were unable to test Hypothesis 3 using a single authoritarianism index, we did include each of the three underlying questions as separate independent variables in our regression models. In both models, we found a statistically significant association between V- and P-PUNITIVENESS and agreement with one of the authoritarianism statements: “The ‘old-fashioned ways’ and ‘old-fashioned values’ still show the best way to live.” However, there was no such association as to the other two statements. Thus, we have found, at most, partial support for Hypothesis 3 insofar as V-punitiveness was correlated with only one particular aspect or indicator of authoritarianism.¹¹⁰

Hypothesis 4: Respondents who describe their “neighborhood” as having low levels of collective efficacy tend to manifest higher levels of V-PUNITIVE.

As with authoritarianism, our three collective-efficacy questions failed to load into a single index ($\alpha = .499$), which complicated the analysis of Hypothesis 4. When we assessed each of the three questions as a separate independent variable, we did not find that any were correlated with V-PUNITIVE.¹¹¹ This result dovetails with our earlier study that found only weak and inconsistent relationships between support for truth-in-sentencing and a

110. It is possible that our mixed findings reflect distortions in the data created by “acquiescence bias” among survey respondents, that is, the tendency for some respondents to answer questions with agreement without regard to the substance of the question. *See supra* note 12. We note that the three statements that we used to assess authoritarianism were framed differently. Affirmative responses to the “old-ways” statement indicated authoritarianism, while affirmative responses to the other two pointed in the opposite direction. (*See supra* note 85 for the full text of the three statements.) Acquiescent answers would also tend to increase a respondent’s apparent punitiveness, so it may not be surprising that we found an association between support for old ways and support for tough-on-crime policies. On the other hand, the use of reverse-framed statements did not prevent our racial-resentment responses from loading onto a single index, which was correlated with punitiveness.

111. In this respect, there was a contrast with P-PUNITIVE, which was associated with one of the collective-efficacy questions. More specifically, those individuals who agreed that their neighbors would likely do something if kids were hanging out and skipping school in front of their house tended to be more supportive of punitive responses to property crime. Notably, the association is in the reverse direction from what was expected. An affirmative response to the question suggests that the respondent perceived some collective efficacy in his or her neighborhood, which we have hypothesized should be *negatively* correlated with punitiveness.

different set of measures of neighborhood cohesion.¹¹² These findings cut against suggestions that individuals may view informal, neighborhood-level social controls and formal, criminal-justice-based social controls as in some sense substitutes for one another.

Hypothesis 5: Framing questions by providing specific illustrations of violent crime reduces V-PUNITIVE.

We do not find support for Hypothesis 5 in these data. Based on the results of difference of means tests, respondent punitiveness did not differ significantly whether they were provided with specific examples of violent and property offenses or not. This held true regardless whether we conducted difference of means tests for the V-PUNITIVE index or for individual punitiveness measures. In sum, providing respondents with clear examples of violent offenses did not significantly shift respondents punitiveness towards violent offenses. It is possible, of course, that different results might have been reached if we had provided more or different illustrations.

Hypothesis 6: Punitiveness toward violent crime exceeds punitiveness toward property crime.

Hypothesis 6 finds some support in our data. Table 4 compares the levels of agreement with our V- and P-PUNITIVE statements.¹¹³ Statements 2(V) and 2(P) provide the most apt comparison. Between these two, we find almost three times as many people supporting a norm of imprisonment for violent as for property crime. Statements 1(V) and 1(P) also suggest greater punitiveness in response to violent crime, although the difference is within the margin of error. Additionally, the responses to 1(V) and 1(P) depend in part on the respondents' beliefs regarding actual sentencing practices. Since these beliefs are not known, it is hard to interpret the significance of a preference for tougher sentences. Finally, 3(V) and 3(P) were structured quite differently, with the former asking about life sentences and the latter about one-year sentences. In comparing 2(P) and 3(P), however, it is notable that the apparent lenience of respondents toward property crime seemed to evaporate when they were asked about repeat offenses. It may be that all individuals who commit violent offenses are seen as inherently belonging to the class of dangerous or hardened criminals, while property offenders are placed into that category only when they persist after an initial conviction.

112. O'Hear & Wheelock, *supra* note 10, at 282.

113. See Toplines, *supra* note 52, at 13–15.

TABLE 4: PERCENT OF THE SAMPLE THAT AGREED WITH THE FOLLOWING STATEMENTS FOR VIOLENT AND PROPERTY OFFENSES

Statement	Agreement
1(V) In general, the courts are too lenient with individuals who are convicted of violent crimes.	55%
1(P) In general, the courts are too lenient with individuals who are convicted of property crimes.	49%
2(V) Individuals who have been convicted of a violent crime should normally be sentenced to prison, even if it is a first-time offense.	69%
2(P) Individuals who have been convicted of a property crime should normally be sentenced to prison, even if it is a first-time offense.	24%
3(V) Anyone who has been convicted of two or more violent crimes should have to spend the rest of his or her life in prison, with no exceptions.	38%
3(P) Anyone who has been convicted of two or more property crimes should have to spend at least one year in prison, with no exceptions.	64%

VI. DISCUSSION

Research increasingly makes clear that long prison sentences are not normally necessary from a public-safety perspective for individuals who have been convicted of violent crimes.¹¹⁴ Yet, such sentences remain common in practice.¹¹⁵ Given the dynamics of democratic accountability in the United States, we suspect that *official* V-punitiveness may result in part from *public* V-punitiveness. Reformers who wish to moderate punishment for violent crime may thus need to take into account the existence, intensity, and sources of public V-punitiveness.

Our findings suggest several lessons for such reformers. First, our respondents did seem to recognize violent crime as a qualitatively distinct crime category, most starkly in relation to first-time offenses. Although members of

114. See, e.g., Michael O’Hear, *Third-Class Citizenship: The Escalating Legal Consequences of Committing a “Violent” Crime*, 109 J. CRIM. L. & CRIMINOLOGY 165, 231–32 (2019) (summarizing research).

115. See, e.g., BRIAN A. REAVES, U.S. DEP’T OF JUSTICE, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2009 – STATISTICAL TABLES, at 29 tbls.24, 25 (2013) (in study of felony cases in seventy-five large urban counties, finding that 83% of the defendants who were convicted of violent crimes received an incarcerative sentence, including the 57% who received a prison term; also finding that the mean length of prison terms was ninety-one months, or a little over seven and one-half years).

the public may be willing to indulge property offenders with second chances, public preferences seem to run in the opposite direction when it comes to those who have been convicted of violent offenses.

Second, although we suspect that V-punitiveness may result in part from a tendency to associate “violent crime” with some of its most outrageous forms, such as murder and predatory rape, we did not find any evidence that public preferences change when policy questions are explicitly framed by reference to less extreme forms of violence. This may suggest that the associations between “violent crime” and worst-case scenarios are simply too entrenched to be overcome by a few words from a survey-taker, or possibly that even the less extreme forms of violence also evoke powerfully punitive responses.

Third, we found little reason to think that V-punitiveness may be moderated through public education about the actual risk levels of violent offenders and research on the most effective ways of reducing violent crime. Public education on such topics might be a promising reform strategy if V-punitiveness were fundamentally *instrumental* in character—that is, if people supported punitive policies out of a belief that such policies would alleviate their risk of violent victimization. To the extent that is a mistaken belief, correcting the belief would presumably change the connected policy preferences. However, we did not find an association between V-punitiveness and our primary measure of fear of violent victimization, that is, perceived safety when walking alone at night. Nor did we find an association between V-punitiveness and a respondent’s past personal experiences with victimization, which would presumably tend to increase the respondent’s fear of future victimization. Nor did we find an association between V-punitiveness and county-level crime rate or crime trends. Nor did we find support for the hypothesis that V-punitiveness is related to a desire for stronger formal social controls in order to compensate for weak collective efficacy.

Our only finding that suggests an instrumental basis for V-punitiveness was the relationship between these policy preferences and a respondent’s perception that violent crime was a “major problem” in his or her area of residence. However, the overall weight of the evidence indicates that V-punitiveness is grounded less in instrumental than in *symbolic* considerations, particularly insofar as support for these policies is seen as a way of expressing a broader set of beliefs about social organization, individual responsibility, and perceived group differences.¹¹⁶

The latter observation points to a final lesson: in order to change the minds of people who are currently skeptical of reform, it may be necessary for

116. This symbolic-ideological interpretation of V-punitiveness finds support in our results as to Hypotheses 1–3.

reformers to ensure that alternatives to long prison terms are not seen as symbolically undercutting perceived traditional moral values like individual accountability for wrongdoing. This may be quite challenging at a time when life and near-life sentences have become such a normalized feature of our criminal-justice system¹¹⁷—in this context, nonincarcerative sentences, and even some years-long prison terms, may seem merely a “slap on the wrist.”

We do not see an easy solution to this dilemma. There may be some hope in targeting groups of violent offenders whose circumstances do not fully conform to the traditional assumptions in criminal law of a free and deliberate choice to do wrong, such as offenders who are youthful or mentally ill. Indeed, there are already substantial indications that punishment of young offenders in the United States is growing less severe.¹¹⁸ Reformers may also take some inspiration from the restorative justice movement, which has sought to develop alternative ways of holding offenders accountable that involve less coercion than traditional criminal-justice practices, but are actually more responsive to victim needs.¹¹⁹ Although “RJ” programs have typically focused on nonviolent offenses and youthful offenders, it may be possible to utilize the RJ approach regarding individual accountability more broadly. On the other hand, while focusing on young and mentally ill offenders, and drawing on RJ rhetoric and practices, may hold some promise, reformers should exercise caution when emphasizing racial justice as a primary justification for softening punishment insofar as their proposals may then be seen by some as a form of group favoritism that is inconsistent with individual responsibility.

VII. CONCLUSION

Survey research that elicits punitive responses to questions about crime in general may miss important distinctions in public attitudes toward different types of crime. In this Article, we have explored the nature of public punitiveness toward violent crime in particular and found some areas of contrast between punitive attitudes toward violent and property crime. In the end, we see little indication that V-punitiveness is grounded in a person’s immediate social circumstances, and more that this particular set of policy preferences is connected to broader ideological orientations. Greater appreciation of these dynamics may contribute to a more complete understanding of the rise and potential fall of mass incarceration in the United States.

117. See ASHLEY NELLIS, THE SENTENCING PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 5 (2017) (finding that 206,268 individuals are currently serving life sentences or sentences of fifty years or more).

118. O’HEAR, PRISONS AND PUNISHMENT, *supra* note 2, at 140.

119. *Id.* at 59–60.