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ABSTRACT
Persistent racial inequality in the US criminal justice system is a significant challenge for policy-makers. Although scholarship has focused on policies that created a punitive criminal justice system and reforms that scale back criminal processing, little is known about policies that elected officials use to address racial issues in criminal justice. This article introduces the framework of ‘racial disparity reform’. Four types of criminal justice policies that seek to redress politically defined problems of racial inequality are presented. This framework is then used to explain race-targeted criminal justice reforms in US national politics. A qualitative analysis tests how distinct visions of racial inequality prompted US presidents and Congress to initiate a study of race in capital punishment, a ban on racial profiling, and a system-wide corrective to minority overrepresentation in youth confinement. Lessons are drawn concerning the potential of policy-making in forging a more racially egalitarian criminal justice system.

Introduction
Racial inequality in the US criminal justice system is a longstanding and contentious issue. From arrest to sentencing, overrepresentation of racial minorities in criminal processing has been established as fact for nearly a century. National efforts to address racial disparities in criminal justice have been ongoing since the end of the Civil Rights era (King and Smith 2011), yet policy-makers have not endorsed a singular reform strategy. For example, the Obama administration created the Task Force on 21st Century Policing to identify best practices for strengthening police–community relations in 2014 (President’s Task Force on 21st Century Policing’s 2015), Congress introduced federal funding requirements for states to reduce the disproportionate number of minorities coming into contact with their juvenile justice systems in 2002 (Leiber, Bishop, and Chamlin 2011), and the Bush administration issued a ban on racial profiling in routine federal law enforcement investigations in 2003 (U.S. Department of Justice 2003). Traditionally, scholars have focused on policies adopted by elected officials to create a more punitive criminal justice system (Beckett 1997; Murakawa 2014; Tonry 1995). More recently, scholars have explored policy initiatives that reduce criminal justice operations in response to race-neutral and economic cost arguments (Dagan and Teles 2014; Jacobson 2006). Yet, there is no clear statement of what policies have been developed for the sake of diminishing racial inequalities in the criminal justice system.

This article introduces the framework of ‘racial disparity reform’ to understand the ways that elected officials seek to address racial issues in criminal justice. A racial disparity reform is any policy that seeks...
to diminish unnecessary or adverse racial differences in criminal justice institutions’ treatment of individuals. A reform is marked by its focus on a racial subject matter and intent to mitigate disproportionate harms on minority groups (Amar and Caminker 1996). Policy responses vary in form and strength because elected officials construct distinct visions of inequality in criminal justice decision-making (Blumstein et al. 1983; Loury 2002; Rochefort and Cobb 1994).

This article applies this racial disparity reform framework to test why certain racial disparity reform enactments arose in three areas of criminal justice: capital punishment, racial profiling, and youth confinement. These case studies indicate US presidents’ and Congress’ understandings of racial inequality were shaped by (1) partisanship, (2) judicial rulings concerning the constitutionality of racial considerations, (3) controversial events, and (4) studies of race in criminal processing. When national elected officials saw racial inequality as a more glaring problem, more expansive reforms were formulated.

By focusing on the nature of criminal justice policies addressing racial inequalities, this article shows the possibilities and limits of policy-making in forging a more racially egalitarian criminal justice system. Elected officials can promulgate responses to racial inequality at seemingly less than opportune moments. These responses are not created equal, however, even when criminological evidence points to obvious problems of disparity and discrimination. Political and ideological dynamics encourage elected officials to deliberately design weak remedies. Various political interests can likewise underpin politicians’ decisions to take stronger or more comprehensive measures against racial inequalities. After policies are enacted, racial disparity reforms may or may not be effective in changing processing outcomes. Nevertheless, previous racial disparity reform enactments show racial justice advocacy must leverage different political resources so more sweeping and egalitarian criminal justice reform can occur.

Prior literature on criminal justice, race, and reform

Over the past 50 years, crime has become ‘a, if not, the defining problem of government’ (Simon 1996, 13). Criminal justice policy has served as a platform for elected officials to garner public support and highlight their commitment to solving societal problems (Beckett and Sasson 2000; Lyons and Scheingold 2000; Scheingold 1984). A large body of literature has described policies that created a more punitive criminal justice system. During the 1960s, the upheaval of civil rights protests and appearance of rising crime rates fuelled public cries for restoring order (Beckett 1997; Mauer 1999; Tonry 1995). Elected officials capitalized upon fermenting ‘law and order’ sentiments to revamp a putatively ineffectual criminal justice system (Weaver 2007). Beginning in the 1970s, Congress expanded federal controls over every sphere of criminal justice. Sentencing guidelines and mandatory minimum sentencing laws introduced longer, more certain prison sentences (Stith and Cabranes 1998). Under the Reagan administration, new drug enforcement initiatives increased arrests and prison populations (Tonry 1995). The death penalty was reinstated with a panoply of eligible offenses (Baldus and Woodworth 2004). While Republicans often led reform initiatives, Democrats began championing their own anti-crime efforts by the 1990s. President Clinton endorsed ‘three-strikes’ life sentencing laws, new federal crime prevention measures, and enlarged prison and jailing operations (Murakawa 2014). Such reforms decidedly expanded the scope of the criminal justice system. Between 1979 and 2009, the US penal population grew by 430% (Cole 2011). More than 2.2 million adults are behind bars today (Glaze and Herberman 2013).

Punitive criminal justice reforms have had profound impacts on racial minorities. Nearly 1 in 11 African-Americans and 1 in 27 Hispanics are currently under correctional supervision at any given time (Pew Center on the States 2009, 7). Under current laws, incarceration disparities are expected to worsen for African-American and Latino males born in the 2000s (Mauer and King 2007). The collateral consequences of interacting with the criminal justice system are steep: offenders are disadvantaged with respect to employment, earnings, access to social services, political representation, and most other life course factors (Clear 2007; Pettit 2012; Western 2006). Some scholars portray the criminal justice system as the latest ‘peculiar institution’ descended from slavery and Jim Crow segregation that controls non-white populations (Alexander 2010; Wacquant 2001). Others contend criminal processing has forged a new ‘racial order’ (Omi and Winant 1994). Crime has become a means to shape the rights,
status, and meaning of being a racial minority in a post-Civil Rights era America (Hochschild, Weaver, and Burch 2012; King and Smith 2005).

In the past decade, criminal justice policy has moved away from an unwavering commitment to tougher social controls (Gottschalk 2010; Greene and Mauer 2010; Jacobson 2006). Crime rates have steadily decreased, public opinion is less concerned about crime, and economic recession has tightened government budgets. Elected officials, especially libertarians and Tea Party activists, have begun framing criminal justice as a pressing and unsustainable fiscal problem (Dagan and Teles 2014). Given these race-neutral and economic concerns, various policies have been adopted to cut down states’ massive correctional populations. Graduated sanctions for probation violations, alternatives to incarceration for non-violent offenses, and increased access to parole and probation have emerged as common prescriptions for sanctioning adults and juveniles (Lerman and Weaver 2014; Weisberg and Petersilia 2010). More diversionary and treatment-based sentences are available for low-level drug offenders (Cole 2011). Approximately half of the US states are experimenting with ‘justice reinvestment’ programs aimed at reducing spending on incarceration and increasing public safety (Clear 2011).

While prior scholarship provides compelling discussion of the punitive policies that built up a large and racially disparate criminal justice system, much less is known about reforms that might foster its dismantling. Recent literature suggests policies driven by need-based arguments may begin to scale back massive criminal justice operations. Yet, extant research says little about the policies that elected officials use to address racial inequalities in criminal processing. Identifying these measures is crucial as even the most durable racial orders are marked by a struggle between discriminatory, anti-transformative and progressive, egalitarian ideologies (King and Smith 2005). A framework of racial disparity reform elucidates various policies that seek to improve the treatment of racial minorities in the US criminal justice system.

### A theory of racial disparity reform

Since the end of the Civil Rights era, national and state elected officials have developed policies to reduce racial inequalities in criminal justice (King and Smith 2011). A racial disparity reform is a proposal, decision, or enacted measure by the government that seeks to diminish racial distinctions in criminal processing. A racial disparity reform has two defining characteristics. First, it must address a racial subject matter. Second, it must aim to reduce differential treatment, disproportionate impact, or other harms incurred by minority groups. A reform must first respond to an issue affecting racial minorities. While any policy change is motivated by multiple interests, racial disparity reform makes racial problems its primary focus. Such consciousness of race is apparent in the political rhetoric surrounding a reform and typically appears in the language of the reform itself. To illustrate, the proposed congressional Traffic Stops Statistics Act of 1998 called for the mandatory collection of race and ethnicity information for all individuals stopped for traffic violations. Its proponents made clear the bill was meant to extinguish ‘driving while black’ as a ground for stops (H. Rep. No. 105-435, 1998).

The fundamental purpose of solving racial inequality separates racial disparity reforms from other criminal justice reform initiatives. Racial disparity reform differs from ordinary disparity reform seeking to eradicate distinctions in criminal justice institutions’ processing of individuals without regard to identity, social status, or group affiliation. Federal sentencing guidelines embody this type of disparity reform. Unwarranted disparity was a ‘rallying cry’ for proponents of the US Sentencing Commission (Stith and Koh 1993; 105). Advocacy for federal sentencing reform did have a racial dimension, as minorities often received longer sentences than whites committing similar offenses (Frankel 1972). Concerns for consistency and unjustified leniency ultimately took precedence over racial considerations, however. This is evidenced by the Sentencing Reform Act of 1984’s lack of racial language and subsequent congressional interest in more certain punishments like mandatory minimum sentences (Stith and Cabranes 1998).

Racial disparity reform also stands in contrast to race-neutral reforms that may have significant effects on the treatment of minorities. Consider again movements to deescalate sentencing policies. Redefining imprisonment in terms of months for most offenses and single-digit years for more serious
crimes would shrink the nation’s enormous incarcerated population and simultaneously cut its high African-American imprisonment rate (Raphael and Stoll 2013; Tonry 2011). But efforts to deescalate criminal processing are primarily driven by non-racial reasons like economic cost, public safety, and rehabilitation (Gottschalk 2006).

The second hallmark of racial disparity reform is its egalitarian aims, or at least the appearance of a commitment to more fair and equal ends. Reforms strive to revise a status quo practice by eliminating or moderating its detrimental consequences for minorities. Similar initiatives can proactively limit racial inequality by outlining undue racial effects of extant or proposed statutes, as recently seen in racial impact statements (Mauer 2009). This aim helps to unite a range a corrective efforts from studies to interventions throughout a justice system, as discussed in the following.

Whether racial disparity reforms actualize their goals of creating more equality among racial groups is a separate, but pressing question. Some reforms like racial impact statements do not directly change criminal processing practices. Watershed measures like Kentucky’s Racial Justice Act can clearly state their intentions of erasing racial differences and introduce enforcement mechanisms, but these policies become symbolic without rigorous implementation (Neal 2004). Even when policy-makers faithfully alter their criminal processing practices in hopes of promoting more racially just outcomes, the effects of the corrective may be difficult to discern empirically. The challenges of policy evaluation in a non-experimental context become magnified when the outcome of interest could be preventing racially biased decision-making (Liederbach et al. 2007). Distinguishing racial disparity reforms as a distinct type of criminal justice policy is then a different task from finding effective racial disparity reforms that substantively change processing practices. Like policies that do not have to demonstrably reduce poverty to be called antipoverty strategies, a policy with the aim of addressing racial distinctions in criminal justice is classified as a racial disparity reform.

**Types of racial inequality and racial disparity reforms**

A framework of racial disparity reform must also distinguish elected officials’ different policy approaches to racial inequality. Racial disparity reforms are designed to respond to problems of inequality in criminal processing defined by policy-makers (Blumer 1971; Rochefort and Cobb 1994; Schattschneider 1960). As Loury (2002) observes, policy-makers confronted with racially disproportionate transgressions of the law ‘need to tell themselves a “story,” to adopt some “model” of what has generated their data, to embrace some framework for gauging how best to respond’ (158).

Two fundamental principles underlie their perceptions of inequality in criminal justice decision-making: consistency and legitimacy (Blumstein et al. 1983). These ideals are distinguished by Blumstein et al. (1983) with respect to any inequalities in sentencing by judges. This article expands on this framework by (1) extending it to all forms of criminal processing by any criminal justice official and (2) focusing on inequality with respect to race. Consistency refers to the expectation that a criminal justice official will handle an individual’s case in manner that accords with the approaches to others facing comparable circumstances (Tyler 1990). Legitimacy refers to the legal permissibility of the criteria used in a decision to enforce a law or policy. Legitimate factors are attributes of a case that characterize an offense, an offender’s culpability, or an offender’s potential for future criminality (Blumstein et al. 1983; Tyler 1990). Inappropriate and morally objectionable decision-making factors include race and/or socioeconomic status.

Interacting the principles of consistency and legitimacy gives rise to four types of racial inequality and corresponding reforms. Racial inequality is broken down into issues of disproportionate impact, discrimination, and disparity. While the legitimacy and consistency of criminal justice operations can be seriously contested (Tyler 1990), political consensus about what problem of inequality exists can be approximated by the views of the median elected official in the simplest theoretical model of policy-making (Downs 1957). Racial disparity reforms address these problems in four forms: exploratory, prohibitory, policy-specific, and comprehensive reform. Each problem–solution, policy-making scenario is represented by a distinct quadrant in Table 1.
Exploratory reforms develop when the median elected official believes racial inequality may be a problem of disproportionate impact. In Quadrant I, disproportionate impact originates from the assumed legitimate and consistent application of the law. Racial inequalities in criminal processing will only appear if certain racial groups are differentially involved in proscribed acts. Disproportionate impact is legally permissible so long as legal factors are solely responsible for these imbalances (Bridges, Crutchfield, and Simpson 1987; Durkheim 1997; Engen, Steen, and Bridges 2002).6

Exploratory reforms determine to what extent disproportionate impact exists and whether these racial imbalances are normatively acceptable. These measures illuminate differences among racial groups by requiring the collection of data and/or additional study of racial influences in criminal justice decision-making. An example is President Clinton's directive to federal law enforcement agencies to track their activities with statistics relating to race, ethnicity, and gender (Holmes 1999). The motivation behind such reform is two-fold: policy-makers get a better understanding of the racially disproportionate impacts of current policies and public awareness of racial differences can encourage more critical assessments of the criminal justice system.

Next, prohibitory reforms are the median policy-maker's answers to perceived issues of discrimination, or the steady illegitimate use of race as a decision-making factor (Quadrant iii). Discrimination is expressed by the excessive discipline of a particular population to ensure its repression (Garland 2001; Soss, Fording, and Schram 2011). Racial discrimination may derive from a powerful majority continually trying to preserve its dominance over marginalized, non-white populations (Chambliss 1973). Similarly, it may stem from intensified conflict among racial groups as economic, political, and social differences narrow within society (Blalock 1967; Frazier, Bishop, and Henretta 1992; Hawkins 1987).

Prohibitory reforms aim to eliminate racial influences in criminal justice officials' decisions. Bans on the use of race as a category and other anti-discrimination measures are common solutions. For instance, the Kentucky Racial Justice Act bars the imposition of the death penalty if statistical evidence shows race may have influenced the decision to seek a capital sentence (Neal 2004). Prohibitory reforms also typically stipulate judicial recourse or funding sanctions for acts of discrimination.

Conversely, when the median elected official understands that enforcement of criminal justice policies is lawful, but inconsistent, disparity without discrimination exists (Quadrant ii). Disparity generally refers to differences among cases with similar attributes without regard to any specific reason for such distinctions (Blumstein et al. 1983, 72; Spohn 2000, 432). Disparity without discrimination suggests legitimate factors are unevenly applied without prejudice, bias, or the influence of illegitimate factors like race. Disparity is usually a consequence of criminal justice bureaucracies accommodating their decision processes to their present conditions and local settings (Nardulli, Flemming, and Eisenstein 1985; Scheingold 1984, 230; Wilson 1968). These disparities in criminal justice decision-making can become problematic under the guarantee of equal protection, particularly if they inadvertently map onto racial lines.

Policy-specific reforms intend to promote consistency by revising the practices of criminal justice bureaucracies. The scope of such reform is usually narrow, obtaining to only a certain subset of offenses, penalties, or criminal processing stages. In this regard, these policies make more technical and incremental changes rather than overhaul an entire criminal processing system. The Fair Sentencing Act of 2010 typifies policy-specific reform.7 The law reduced the 100:1 crack and powder cocaine federal sentencing disparity that sought to deter rising crack use, but resulted in longer sentences for African-Americans.

| Legitimacy of criteria in decision to apply laws and criminal justice policies | Consistent | Inconsistent |
|------------------------------------------------}|------------------------------------------------|------------------------------------------------|
| Legitimate | Problem: disproportionate impact | Reform: exploratory (i) | Problem: disparity |
| Illegitimate | Problem: discrimination | Reform: prohibitory (iii) | Problem: disparity and discrimination |
| | | | Reform: comprehensive (iv) |

Table 1. Types of racial inequality and racial disparity reforms in the criminal justice system in terms of consistency and legitimacy.
as the primary users of crack. The new 18:1 statutory ratio has made sentencing fairer, but it has not eliminated a disparity in sanctions for two forms of the same drug (Mauer 2011).

Lastly, when the median elected official believes in problems of discrimination and disparity, comprehensive reforms advancing more systematic changes in criminal processing are developed. Today, the preponderance of criminological research acknowledges some combination of these two issues (Blumstein 1982; Tonry and Melewski 2008). Race continues to exert direct influence over processing outcomes, but differences in treatment exist within racial groups, between ‘like’ cases, and among sociopolitical contexts (Crutchfield, Fernandes, and Martinez 2010; Mitchell 2005; Spohn 2000). The net result is complicated forms of racial inequality, suggesting the criminal justice system is not overtly or consistently racist in its decision patterns (Pope and Feyerherm 1990, 328).

Comprehensive reforms call for regular assessments of racial difference within an entire system, intervention based on these findings, and evaluation of introduced correctives (Johnson 2007). An emphasis is placed on the reform’s system-wide focus that holds numerous agencies and services responsible for shifting their approaches to criminal processing. These policies thus motivate institutional changes within multiple criminal justice bureaucracies, such as providing cultural sensitivity training to probation officers, redefining detention policies, and improving local courts’ data collection practices (Coggs and Wray 2008). Sometimes, comprehensive reforms also incorporate local community institutions like faith-based organizations and schools into reform initiatives (Griffith, Jirard, and Ricketts 2012). Since 2003, seven states have initiated comprehensive reform processes by establishing government commissions tasked with making reductions in racial inequality across the criminal justice continuum.8

Exploring racial disparity reform in US national politics

To understand racial disparity reform in practice, this article analyzes policies enacted by US presidents and Congress that attempt to mitigate racial inequalities. It uses the racial disparity reform framework to test why national reforms developed in capital punishment, racial profiling, and youth confinement. Theses analyses focus on problem definition processes rather than fully trace all national policy-making processes (e.g., interest group mobilization or coalition-building among elected officials). The selected issues first capture different aspects of criminal processing. Interactions with the criminal justice system for adults and youths begin with law enforcement contact. Racial profiling, or selection by law enforcement for stops or searches that relies on an individual’s presumed race, is then an early form of processing in which minority overrepresentation can occur (Fagan 2002; Ramirez, McDevitt, and Farrell 2000). Youth confinement and capital punishment involve decision-making at later criminal processing stages. The former concerns the jailing, detention, confinement, and other commitments of youths to secure public facilities during or after determinations of delinquency (Hsia, Bridges, and McHale 2004). The latter concerns the sentencing of the convicted to death in the federal or state court systems (Baldus, Woodworth, and Pulaski 1994).

Additionally, these three areas of criminal justice reflect a variety of established reforms. As shown in the following, national elected officials had different understandings of racial inequalities at these processing stages. Such constructions were crystallized by four factors: partisanship, judicial decisions regarding the constitutionality of racial considerations, controversial events, and studies of race in criminal processing. An exploratory reform calling for additional study of race and the death penalty was established because national legislators believed capital sentencing was marked by disproportionate impact. A prohibitory reform banning racial profiling by federal law enforcement arose as Congress and the President came to accept the ubiquity of discrimination in law enforcement. A comprehensive reform was promulgated when national policy-makers recognized continuing discrimination and disparity in youth confinement after policy-specific reform had taken place.
Capital punishment

Racial inequality in the imposition of the death penalty emerged on Congress’ agenda in 1988. After Furman v. Georgia (1972) that required the consistent application of the death penalty and led to a de facto moratorium on capital punishment, Republicans and Southern Democrats were eager to reinstate federal death sentences with new procedures in an omnibus crime bill. Until the 1980s, national death penalty advocates were unsuccessful in generating capital punishment policy. Interest in the death penalty surged when courts gave Congress additional responsibilities in defining what consistent and non-arbitrary capital sentencing looked like in McCleskey v. Kemp (1987). The Supreme Court ruled that statistical evidence of racial bias did not prove the inconsistent and unconstitutional application of the death penalty. Only legislatures could evaluate such evidence and redesign any penalty with disparate impacts. Senator Edward Kennedy (D-MA), death penalty opponents, and other liberals took this opportunity to assert racial minorities were disproportionately sentenced to death without any sign of relief. ‘Racial discrimination is intolerable,’ Senator Kennedy proclaimed, ‘… it is a wrong that cries out to be remedied by the Congress’ (134 Cong Rec. 13978, 1988).

In the death penalty deliberations that followed, members of Congress accepted well-established statistics showing the death penalty was more often applied to blacks defendants, especially in cases involving white victims (134 Cong Rec. 13978–80, 1988). Yet, conservatives disagreed with liberals’ conclusion that such disproportionate impacts demonstrated the illegitimate or inconsistent application of capital punishment. Senator Alfonse D’Amato (R-NY), who supported additional guarantees for the just application of the death penalty, noted differential involvement in crime could easily drive these racial statistics. He observed it would be fallacious to assert prejudice affects the prosecution of those engaged in securities fraud because such offenders are disproportionately white. ‘I do not believe you can simply take a statistic and say that because there are more people of one race who have the death penalty applied to them…it is discrimination,’ he concluded (134 Cong Rec. 13980, 1988).

Death penalty advocates in Congress also pointed to judicial precedent that statistics could not prove discrimination in death sentencing. Many invoked the Supreme Court’s decision that the unprecedented Baldus study presented in McCleskey was detailed, but ‘far from conclusive’ (134 Cong Rec. 14098, 1988). It would be a leap to say statistical evidence could illuminate racial bias in specific cases when courts heavily scrutinize any claims of discrimination (134 Cong Rec. 13988, 1988). Others cited cases like Spinkellink v. Wainwright (1978) that highlighted the possibility that omitted factors may account for differences in outcomes between death-eligible black victim and white victim cases (134 Cong Rec. 14097, 1988). In light of these immeasurable conditions, the court could not firmly say a deleterious racial effect was real. Senator Orrin Hatch (R-UT) urged his colleagues to follow judicial approaches to statistics by succinctly stating, ‘The courts have been unanimous: statistical justice is no justice’ (134 Cong Rec. 13988, 1988).

As Quadrant I of Table 1 predicts, acceptance of disproportionate impact in capital punishment led to exploratory reform as Congress’ preferred policy solution. On 9 June 1988, Senator Kennedy offered a two-part amendment to reduce racial inequality in the state and federal capital punishment systems. The amendment first introduced the Racial Justice Act that banned the racially disproportionate application of the death penalty. This prohibitory measure effectively overruled McCleskey by allowing statistical analyses that showed racial imbalances to establish a prima facie case of racial discrimination. Second, the amendment required the Comptroller General to conduct a study that investigated whether race represented a ‘significant risk’ that influenced sentencing outcomes. Race of victim and race of defendant effects would be thoroughly examined using ordinary statistical methods. The amendment went nowhere.

The following day, Senator Kennedy reintroduced his amendment without the Racial Justice Act. Moreover, he emphasized the commissioned General Accounting Office (GAO) study was purely exploratory. The study could only assist Congress in ‘studying’ and ‘fashioning appropriate responses’ to any revealed racial inequalities (134 Cong Rec. 14096, 1988). It could not be used for legal proceedings concerning discrimination and otherwise would have no effect beyond gathering more information. This revised, exploratory amendment passed the Senate with little fanfare. In turn, this racial disparity
reform in capital sentencing was enacted in the Anti-Drug Abuse Act of 1988. Findings from this mild, ‘first-step’ reform later inspired the reintroduction of Racial Justice Act in the 1990s. Specifically, proponents of the prohibitory measure asserted that the GAO’s findings of unexplainable racial disproportionalities illuminated illegitimate racial influences in post-\textit{Furman} capital sentencing (Edwards and Conyers 1994). Continued partisan and ideological divisions over the death penalty, however, have prevented national elected officials from addressing disparities or discrimination in the capital punishment system (Johnson 2007).

\textbf{Racial profiling}

In 2001, Congress and the President identified racial profiling as one of the nation’s most important problems. Bipartisan impetus for addressing racial profiling first came from state courts and accompanying criminological research. In Maryland and New Jersey, civil lawsuits contested enormous racial differences in stops and searches by state highway patrol agencies. These cases relied upon the first systematic assessments of racial profiling conducted by John Lamberth. The premise of Lamberth’s studies was simple: compare the racial composition of motorists detained and searched by law enforcement to the racial composition of motorists and of motorists violating traffic laws. Gross imbalances in the treatment of drivers were unmistakable and unexplained by legal factors (Lamberth 1998). These state-specific lawsuits could not reduce unwarranted racial differences in other parts of the country, however, prompting Democrats in Congress to agitate for anti-racial profiling reform (H. Rep. No. 105-435, 1998).

The Supreme Court’s unwillingness to proscribe racially biased law enforcement also signaled to national policy-makers that racial profiling was an unchecked problem. \textit{Whren v. United States} (1996) affirmed that pre-textual stops and searches, including those motivated by race, were constitutional under the Fourth Amendment. The ruling likewise distinguished the Fourteenth Amendment as the sole constitutional means for objecting to discriminatory treatment by police. The courts could not then relieve racial inequalities based on criminological evidence without proof of discriminatory intent (Alexander 2010; Fagan 2002). Democrats thus saw \textit{Whren} as giving police unlimited discretion with little recourse for ensuring equal protection of the law (H. Rep. No. 105-435, 1998).

Although anti-racial profiling bills passed the House and stalled in a Republican-controlled Senate, current events underscored growing public acceptance of the pervasiveness and abhorrence of racial profiling. By 1999, ‘driving while black’ had decidedly captured public attention. Popular magazines like \textit{Time} and \textit{People} exposed police harassment of minorities across the country (U.S. Congressional Research Service 2004). Gallup polls reported an increasing percentage of African-Americans citing unfair treatment by police. A majority of Americans (59\%) believed racial profiling was widespread (Gallup and Gallup 1999). The killing of West African immigrant Amadou Diallo and sexual assault of Haitian immigrant Abner Louima by New York City Police Department officers incited additional interrogation of the racial neutrality of police–citizen interactions (Holmes 1999).

In a context indicating the consistent mistreatment of minorities by law enforcement, a divided Congress and a Republican president cast racial profiling as an issue of discrimination. ‘We no longer need just a study. We now have the facts that show us racial profiling is … a real and measurable phenomenon,’ Senator Russ Feingold (D-WI) observed on the floor (147 Cong Rec. S5892, daily ed. June 6, 2001). In his 2001 State of the Union Address, President George W. Bush shared that ‘too many citizens have cause to doubt our Nation’s justice when the law points the finger of suspicion on groups instead of individuals.’

Because constructed problems of discrimination motivate prohibitory reform (Quadrant III in Table 1), national policy-makers pursued new restrictions on the use of race in law enforcement. Some legislators sought to ban racial profiling at all levels of government through proposals like the End Racial Profiling Act (H.R. 2074; S. 989). Others like Representative Eleanor Norton (D-DC) sought to eliminate ‘this last disgraceful scar of overt discrimination’ by creating new anti-racial profiling standards for receiving federal funding (147 Cong Rec. E833, daily ed. May 17, 2001). The executive branch assumed a similar
approach. In February 2001, President Bush ordered the Attorney General to develop recommendations to end racial profiling by federal law enforcement agencies and coordinate with states and localities to extend these efforts everywhere.

Just as a national bipartisan, prohibitory solution to racial profiling seemed possible, policy-makers backed away from completely rejecting race as a decision-making factor. The terrorist attacks of 11 September 2001 fractured American perspectives on the proper scope of law enforcement activities. Among the public, polling evidence indicated nearly 70% of the respondents approved of racial profiling as a tool to prevent terrorism. Over 50% of Americans supported requiring those of Arab descent to incur ‘special, more intensive security checks’ and carry ‘special I.D.s’ (Higgins 2003). ‘Politely and respectfully’ using race in investigations was politically accepted as a means to prevent future tragedies. Public opinion and subsequent political debate did not make clear distinctions between the justifiable use of racial profiling in homeland security and domestic law enforcement (U.S. Congressional Research Service 2004). Because race could be a legitimate factor, the consistent use of racial considerations did not always make law enforcement illegitimate or discriminatory.

The resultant US Department of Justice’s 2003 guidance on racial profiling internalized two reform sentiments. On the one hand, the directive reflected a national consensus to stop racial profiling as a widespread and discriminatory criminal justice practice. The document stipulated that race and general stereotyping could not be used ‘to any degree’ in a routine law enforcement activity. On the other, it conceded race could be considered in national security investigations ‘in accordance with Constitution and law of the United States.’ Effectively, the policy allowed federal law enforcement to retain discretion that Whren, many Republicans, and post-9/11 public opinion had already endorsed. While moderated by the events of 11 September, this prohibitory reform has served as a baseline for national policy-makers in their attempts to extinguish racial profiling as a form of discrimination. Recently, the Obama administration’s revised racial profiling guidelines have expanded on the 2003 guidance, though these new standards have been criticized for not going far enough to eliminate illegitimate racial considerations in law enforcement (Associated Press 2014).

**Youth confinement**

When Congress revisited its youth confinement policies in the late 1990s, efforts to address minority overrepresentation in secure public facilities had been ongoing for nearly a decade. In 1988, Congress responded to soaring rates of minority confinement after the ‘due process’ revolution in juvenile justice. While community-based alternatives to incarceration proliferated for white youths who were eligible for secure confinement, these sanctions were not consistently extended to similarly situated minority youths (Krisberg et al. 1987). To prevent the emergence of a ‘two-tiered’ juvenile justice system created by these disparities (Oversight Hearing on the Juvenile Justice and Delinquency Prevention Act, 1986), Congress established the Disproportionate Minority Confinement (DMC) mandate. Following Quadrant II of Table 1, this policy-specific reform compelled a state to decrease the proportion of minorities placed in secure facilities if this amount exceeded their representation in the general population. Congress hoped the mandate would lead practitioners and researchers to identify, publish, and replicate interventions that produced more race-neutral results (H. Rep. No. 100-605, 1988, 10). Yet, several factors would inspire revision of this policy-specific measure.

First, Democrats began to reevaluate the congressional youth confinement law because criminological research continued to reveal severe minority overrepresentation among securely confined youth populations. By 1999, 7 out of 10 juveniles in confinement were non-white (145 Cong Rec. S5560, daily ed. May, 1999). Unexplainable racial inequalities were also remarkable at prior decision points like referral to juvenile court and adjudication (Pope and Feyerherm 1990). Findings of enduring racial imbalances in youth confinement irked national legislators. For instance, a fourfold disparity in the racial composition of California’s general and confined youth populations prompted Representative Matthew Martinez (D-CA) to sigh, ‘You know, I imagined that because this is a mandate, a study would be done...
and something constructive would be done about disproportionate minority confinement’ (Proposed Legislation for the Juvenile Justice and Delinquency Prevention Act, 1997, 45).

Second, policy developments in affirmative action raised doubts among Republicans that the Disproportionate Minority Confinement mandate could lawfully produce more racially equal processing practices. In Adarand Constructors, Inc. v. Pena (1995), the Supreme Court designated race as a category whose use requires strict scrutiny by the courts. The federal government could only rely on racial classifications to further a ‘compelling state interest.’ A month later, President Clinton directed executive agencies to eliminate any program that created racial quotas or reverse discrimination (1995). These events figured prominently into political views of Congress’ minority youth confinement corrective. Republicans complained the DMC mandate’s imperative to reduce disparities in the racial composition of securely confined youth populations effectively amounted to an unconstitutional quota that promoted more disparity and discrimination (H. Rep. No. 107-203, 2001). Some Democrats, who originally supported the DMC measure, joined Republicans in contending the policy would inspire states to make illogical interventions like ignore racial inequalities at previous processing stages or release minority offenders without regard to their crimes (H. Rep. No. 105-155, 1997).

In pondering the fate of the DMC mandate, Democratic and Republican members of Congress invoked issues of disparity and discrimination in the juvenile justice system. Following expert testimony that inequalities in confinement partly derive from crime and partly from race, Representative Michael Castle (R-DE) proclaimed, ‘This is a fact which I think I can understand’ (Juvenile Justice and Delinquency Prevention Act, 1999, 50). Senators like Paul Wellstone (D-MN) drew more detailed conclusions from disproportionate minority confinement studies and congressional discussion on the topic. ‘I do not think this whole problem of disproportionate minority confinement is the product of bigoted or racist authorities, though there is too much bigotry and there is too much racism,’ he observed. Differences in poverty, education, and political connections created ‘unconscionable’ racial distinctions as well (145 Cong. Rec. S5560, daily ed. May 19, 1999). Senator Kennedy added an ideal response to minority youth confinement should make states ‘more sensitive’ to the everyday socioeconomic and racial challenges individuals face in American society (145 Cong. Rec. S5565, daily ed. May 19, 1999).

With a vision of racial inequality in youth confinement as a problem of disparity and discrimination, Congress expectedly developed a comprehensive reform (Quadrant IV of Table 1). It expanded the DMC mandate from ‘confinement’ to ‘contact’ with the juvenile justice system. Addressing disparities and Republicans’ interests in eliminating any special treatment for minority youths, the Disproportionate Minority Contact mandate intended to ensure individuals charged with the same crime and same circumstances would be treated uniformly without numeric standards. Tackling discrimination and Democrats’ goals of non-discrimination at every processing point, the measure promised to ‘eliminate true bias’ throughout the juvenile justice continuum (H. Rep. No. 107-203, 2001, 29). The comprehensive DMC mandate was enacted in the reauthorized Juvenile Justice and Delinquency Prevention Act of 2001. The provision requires federally funded states to reduce the disproportionate number of minorities handled at all decision points in the juvenile justice system without the use numeric standards or quotas.

The DMC mandate became the nation’s first racial disparity reform to tackle inequalities throughout an entire justice system. While the policy is mandatory and aims to introduce system-wide interventions, this comprehensive reform has had uneven impacts. Ten years since the policy’s passage, only 34 of the 49 states receiving federal juvenile justice funding have implemented at least one DMC reduction intervention (Hanes 2012). A few states have yet to measure or assess problems of disparity in their juvenile justice systems (Leiber and Rodriguez 2011). Today, racial disparity remains a problem in the most active and least active DMC intervention states (Sickmund, Sladky, and Kang 2014). The DMC mandate has still produced promising results, such as decreasing racial disparities in national placement rates (Davis and Sorensen 2013), reducing the size of a state’s processed youth populations (Donnelly 2015), and diminishing the significance of race as a decision-making factor in local jurisdictions (Leiber, Bishop, and Chamlin 2011). While far from a panacea, the DMC mandate currently stands as a model for comprehensive reform proposals for adult criminal processing (Racial Disparities in the Criminal Justice System, 2009).
Conclusions

Racial inequality in the US criminal justice system is a significant policy challenge for elected officials. While prior literature has examined policies promulgated by elected officials to make more punitive crime controls and to possibly contract the criminal justice apparatus, this article has distinguished policies that attempt to ameliorate racial inequalities in criminal justice. It defined a racial disparity reform as any policy that aims to diminish racial differences in criminal processing. Reforms are characterized by their focus on a racial problem and aims of reducing harms minorities face. It then argued reform could take different shapes. Elected officials’ beliefs concerning whether or not the criminal justice system is legitimately and consistently applying the law signal issues of disproportionate impact, disparity, or discrimination (Blumstein et al. 1983). These politically defined problems of racial inequality motivate distinct policy solutions.

The article then applied the racial disparity reform framework to explain why US presidents and Congress adopted specific policies that addressed race and justice involvement concerns. Case studies of national reforms in capital punishment, racial profiling, and youth confinement revealed two findings. First, policy-makers’ portrayals of racial inequality are based on partisanship, judicial decisions concerning the constitutionality of racial considerations, controversial events, and studies of race in criminal processing. Second, different understandings of racial inequality generate distinct policy solutions. An exploratory reform was adopted in capital punishment because national elected officials accepted the penalty’s disproportionate impacts. A prohibition on racial profiling developed as policy-makers came to believe in the prevalence of discriminatory law enforcement practices. Recognition of continuing disparities and discrimination in youth confinement ultimately prompted Congress to promulgate a comprehensive reform reducing disproportionate minority contact with juvenile justice structures.

Together, the racial disparity reform framework and these qualitative findings point to several policy implications. First, racial disparity reform in criminal justice is possible under seemingly less than favorable political conditions. If one views any enacted policy addressing racial inequalities as a gain, Congress adopted measures like the Disproportionate Minority Confinement mandate and the GAO study of race and the death penalty at the height of political calls to ‘get tough’ on crime (Tonry 1995). The Bush administration released an unprecedented ban on racial profiling after the 11 September attacks. At face value, these policies illuminate racially egalitarian, progressive ideals in a political context where crime contributes to contemporary racial order (Hochschild, Weaver, and Burch 2012; King and Smith 2011; Omi and Winant 1994).

Second, racial disparity reforms are shaped by political and ideological dynamics rather than criminological evidence alone. On the one hand, elected officials often design reforms as weak remedies because sociopolitical factors inspire faith in criminal processing practices. Partisanship and judicial precedent, as seen in the capital punishment reform debates, can especially entrench such visions of criminal processing problems and lead to exploratory measures as the preferred reform strategy. Popular demand and elite consensus for more racial justice cannot prevent the moderation of policy designs either. The first national ban on racial profiling shows elected officials can rail against discrimination with the public and prefer prohibitory reform as a response. As political contexts change, however, elected officials can build in too many exceptions that render potentially a strong type of corrective ineffectual.

On the other, elected officials can create stronger or more system-wide remedies to disparity and discrimination, given different political discontents with the status quo. If elected officials followed criminological studies alone, racial inequality in criminal processing would always be framed as a pressing problem of disparity and discrimination. Comprehensive reform would then be the most probable policy response. The case of the Disproportionate Minority Contact mandate shows liberals’ dismay with persistent inequities originated from such research. Conservatives’ resistance to ‘quota-based’ incarceration of youths also motivated change. Without this additional frustration, reform might not have occurred. The policy illustrates different dissatisfactions can come together under the same problem frame of disparity and discrimination to expand policy-makers’ remedial efforts from one stage (e.g., confinement) to an entire justice system.
Third, the enactment of racial disparity reforms does not imply problems of racial inequality can be soon resolved. Initiatives with the primary goal of redressing racial differences represent a distinct form of criminal justice policy. These policies are more progressive than traditional punitive measures and more directly concerned with race than ordinary disparity correctives like sentencing guidelines. By design, a racial disparity reform can be more or less effective in changing criminal processing. Few national elected officials believed a capital punishment study would have much influence on racial disparities, but many thought a mandatory and systems-focused measure would have greater effects on juvenile processing. Policy implementation, however, determines whether the most promising policy enactments will actually transform criminal justice practices. Identifying policies as racial disparity reforms, understanding their political development, and determining their consequences are necessary steps for pursuing impactful, racially conscious criminal justice reform.

Taken together, acknowledging how racial inequalities have been constructed and resolved through a range of policies in the past can inform reform advocacy efforts today. Calls for reform should be connected to major events, criminological research, and judicial decision-making concerning race. Protests and mass demonstrations following the acquittal of George Zimmerman, the shooting of Michael Brown in Ferguson, Missouri, and the death of Freddie Gray in the hands of the Baltimore Police Department have created a context in which racial issues cannot be unknown (Pew Research Center 2015). Partisanship must be navigated, given longstanding divisions over crime controls and civil rights (Scheingold 1984), but new commitments by Democrats and Republicans to criminal justice reform might encourage elected officials to think more critically about issues of legitimacy and consistency (Belton 2015; Dagan and Teles 2014; Hulse 2015). Racial justice advocates should be prepared to see exploratory or weaker measures as potential policy responses by elected officials. Yet, reformers can encourage elected officials to move beyond extant racial disparity reforms toward more serious and possibly system-wide change by appealing to multiple reform interests under a singular problem frame of disparity and/or discrimination.

Looking ahead, complete abolition of racial inequities in criminal justice will require great reenvisioning of American law enforcement and punishment practices. Yet, exploration of previous racial disparity reforms in US national politics shows elected officials might be capable of introducing social change. Soss, Fording, and Schram (2011) observe, ‘racial disparities do not flow directly from social structures. They depend ultimately on what specific human agents decide and do in the process of governing’ (14). Racial disparity reform involves engagement in the politics of criminal justice, yet resultant policies can be key to changing the nature of American criminal processing.

Notes

1. This article hereafter uses the terms ‘criminal justice system’ and ‘criminal processing’ to describe government processing of adults and juveniles for criminal or delinquent acts. It also refers to racial and ethnic minorities under the term ‘racial minorities.’ This choice reflects policy-makers’ frequent treatment of racial and ethnic inequalities as a singular problem. It likewise responds to criminal justice record-keeping practices, as many agencies do not differentiate between racial and ethnic categories (Mauer and King 2007).

2. I follow Mayhew (2007) in defining a controversial event as an incident or occurrence that changes a political context by creating a new sense among policy-makers about the importance of certain ideas, the urgency of societal problems, and the desirability of proposed solutions (101).

3. Racial disparity reform is possible, but limited within the judiciary. Many state supreme court systems have developed racial fairness committees tasked with examining issues of racial inequality and designing appropriate interventions (Norris 2011). Courts may also issue rulings that seek to eliminate racial disparities. For instance, a federal court ruled that the New York City Police Department’s stop-and-frisk policies were unconstitutional due to their racial discriminatory nature (Goldstein 2013). Yet, these rulings are circumscribed by constitutional questions and precedents allowing for racially disparate impacts in criminal processing, as further described in the case studies in this article (Johnson 2007). Criminal justice bureaucracies, such as state police forces and juvenile probation offices, may likewise choose to revise their practices on behalf of promoting more racial equity. Because a bureaucracy is often protective of its existing practices without regard to their racial consequences (Wilson 1968), legislative and executive oversight typically drives bureaucratic racial disparity reform.
4. Racially conscious reform with anti-egalitarian ends is rare, but plausible. For example, Governor Susana Martinez of New Mexico rescinded Executive-Order 2005-019 that prohibited state law enforcement officials from inquiring about a criminal suspect's immigration status. Critics of Martinez's order have equated it with sanctioning racial profiling (McCoy 2011).

5. This problem–solution framework of racial disparity reform policy-making allows for considerations of other pivotal elected officials' understandings of racial inequality in the criminal justice system. These pivotal elected officials may be committee members, policy entrepreneurs, targets of interest group lobbying, or advocates for disadvantaged populations (Kingdon 1984; Krehbiel 2010).

6. Disproportionate impacts are assumed to occur in Quadrants II–IV, but these effects are a result of discrimination and/or disparity.

7. Also see the rollback of New York's Rockefeller Drug Laws, under which 90% of the state's drug offenders were black or Hispanic (Cole 2011).

8. These states include Arkansas, Colorado, Connecticut, Illinois, Minnesota, Virginia, and Wisconsin (Donnelly, 2016).

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