

Deterrence, Tough on Crime, and Links to the Prison Population Rate

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Abstract

This paper examines the relationship between different social factors, Tough on Crime Legislation and prison population rates in order to determine what factors affect prison population rates. The analysis of prison population rate at the state level found that all forms of tough on crime legislation in the purview of this study with the exception of Three Strikes You're Out laws increased the prison population rate. In addition this analysis used private prison population rate as a new measure of Tough on Crime legislation, finding increased private population rate relates to an increase in prison population rate. Social conditions within each state were also found to contribute to the prison population rate within each state, with increased inequality and public conservatism being related to increases in prison population rate, while increased education was related to a drop in prison population rate. Overall this study falls into the niche of previous studies, which found that prison population rate was effected at the state level by legislation and social factors.

Key Words: Tough on Crime, Prison Population, Social Conditions and Incarceration, Public Policies Effects

Introduction

Over the past half century, the United States criminal justice system has seen a major shift in purpose. The United States system of criminal justice has shifted from a system based on rehabilitating offenders to one based on the punishment of offenders (Petersilia 1992; Mauer, 2001; Gottschalk, 2011, Thompson, 2012). This turn from rehabilitation to punishment in the criminal justice system is most noticeable through the development of deterrence theory and its policy creation, Tough on Crime laws (Haney, 2012; Harty, 2012). The implementation of Tough on Crime laws have coincided with large increases in the United States prison population at both the federal and state level (Blumstein & Beck, 1999; Sorensen & Stemen, 2002; Gottschalk, 2009). In recent years, the public expenditures on this bulky penal system have become an issue for debate as citizens try to determine the costs and benefits of the system (Gottschalk, 2009; Simon, 2012). This trend is noticeable through the media, but also through academic research which has started to examine public opinion on the nature of prisons as a driver of Tough on Crime laws through the legislative process (Caplow & Simon, 1999; Lynch & Sabol, 1997; Enns, 2014). This paper will sort through the development of deterrence and Tough on Crime laws, while also addressing their effects on incarceration rate and social conditions.

Deterrence Theory and Tough on Crime policies in the Literature

Prisons began their change in the 1970's from rehabilitative institutions into punitive ones due, in part, to the popularity of deterrence theory in academic and policy making circles. Deterrence theory is based on the ideas of rational actor theory, and the idea that a criminal is a rational actor like any other man, meaning he will weigh the costs and benefits of his actions (Kovandzic & Vieraitis, 2006). In its essence then, deterrence theory revolves around increasing

the punishment for an action to the level where it no longer benefits the actor to pursue the out of norm action (Petersilia & Greenwood, 1978; Spohn & Holleran, 2002). In theory, this means that in the example of criminal justice policy, if you increase the sentences and enforcement rates for crime, it will lead to a decreased crime rate (Langan, 1991; Nagin, 1998). This is in part due to the effect of increased enforcement, which is deterring criminals from committing a crime due to the rising risk associated with crime (Spohn & Holleran, 2002; Kovandzic & Vieraitis, 2006). Deterrence theory can then be split into two sectors to help explain different policies theoretical effects, those sectors being general deterrence theory and specific deterrence theory. General deterrence theory refers to the deterrent effect of policy on potential offenders, simply meaning how much a policy deters those who might have otherwise committed crimes from doing so (Andenaes, 1968; Spohn & Holleran, 2002). Specific deterrence on the other hand refers to the deterrent effect of a punishment such as imprisonment on an offender (Andenaes, 1968; Spohn & Holleran, 2002). This means that, in theory, a punishment such as imprisonment would reduce the likelihood of another criminal act being committed by a former prisoner (Andenaes, 1968; Spohn & Holleran, 2002). This idea of the deterrent effect of punishment led to an increase in public punitiveness (Enns, 2014), which in turn helped to lead to the development of Tough on Crime legislation (Harty, 2012; Enns, 2014)

Tough on Crime legislation can then be divided into several eras of development within legislation, which all revolve around different types of policy. The first type of policy enacted under the Tough on Crime banner being Determinate sentencing, which was adopted by 17 states over the Tough on Crime period (Harty, 2012). Determinate sentencing refers to sentencing legislation which takes power away from parole boards, ensuring that prisoners serve a certain amount of their sentence before parole. Sentencing guidelines were also introduced which sought

to decrease judicial power over sentencing (Mauer, 2001; Harty, 2012). The next major type of sentencing reform developed was that of Mandatory Minimums which work to decrease a judicial power in sentencing discretion, often by forcing judges to give a minimum amount of jail time for certain offences or by giving the judge a range from which he can choose a sentence length (Harty 2012). Mandatory Minimums encompass many types of laws, such as Three-Strikes You're Out laws, which served to sentence repeat offenders to life in prison (Harty, 2012). Mandatory Minimums have been enacted in some form in all fifty states (Harty, 2012). The final development of Tough on Crime laws, truth in sentencing law worked to cement the amount of time a prisoner served from his sentence, the official bar being set at eighty-five percent (Shepherd, 2002; Harty, 2012). Truth in sentencing laws were part of the 1994 Violent Offender Act which enacted them in some form across all fifty states (Shepherd, 2002; Harty, 2012). The development of tough on crime policy over the last five decades and its implementation since the 1970's has coincided with the development of mass incarceration, that being the systematic rise of prison populations over the last forty years.

The Effects of Tough on Crime on Prison Population

As the United States prison population has skyrocketed over the past forty years several explanations have developed in order to explain this trend. One of the leading theories within the field of criminology is that prison population increases are directly related to sentencing policy changes which occurred over the same period of time (Lynch & Sabol, 1997; Blumstein & Beck, 1999; Mauer, 2001; Clear & Austin 2009). Further research indicated that sentencing reform also increased prison population by changing parole regulations, increasing the amount of criminals who would have been paroled in the past, but who were ultimately incarcerated (Koppel, 1994; Harty, 2012). Similarly other studies found that the drug war and Tough on Crime measures

played a multi-variate role, influencing the increase in prison population rates (Blumstein & Beck, 1999; Harrison 2001; Tonry & Melewski, 2008). Additional study of the relations of tough on crime to prison population rates found that all types of tough on crime laws had an effect on prison population rate from Mandatory Minimums (Petersilia & Greenwood 1978; Harrison 2001) to Determinate Sentencing (Petersilia 1992; Ball 2012). However, some disagree with Tough on Crimes effect on incarceration rate contending that sentencing policy had little to do with the rise in prison populations (Sorensen & Stemen, 2002). Within academia, those who agree with the analysis that tough on crime laws cause prison population increases have developed several different approaches to study the issue. Some authors looking at Tough on Crime laws as a control policy that was designed to help control society, possibly as a replacement for welfare (Caplow & Simon 1999; Beckett & Western 2001; Harty 2012). Others though have seen it in a racial control vein, as a reaction to the civil rights era and sentencing reform being used to control minority races (Tonry & Melewski, 2008; Thompson 2012; Newell 2013). Academics have also looked at the influence of public opinion on imprisonment through the legislative cycle and how they can be related to Tough on Crime laws and mass incarceration (Harty, 2012; Enns 2014). Overall, the general consensus of the academic literature has been that Tough on Crime laws had an effect on the explosion in prison population that took place at the same time.

Sentencing Policy and Mass Incarcerations effect on Social Conditions

One of sentencing policies' biggest effects has been the creation of large prison populations (Lynch & Sabol, 1997; Blumstein & Beck, 1999; Mauer, 2001; Clear & Austin 2009). Another effect that helps explain the phenomenon of mass incarceration is that of sentencing polices effects on social conditions in the United States of America. The effect of

incarceration rate on crime rate has been a center point of the arguments about the social effectiveness of sentencing policy. This is due to crime rates being used as a measure of how safe people are across the country. Through study of this issue, there has been much debate as different levels of analysis have produced different results (Kovandzic & Vieraitis, 2006). As studies on the national level found a higher correlation between higher incarceration rates and lower crime rates (Devine, Sheley, & Smith, 1988; Marvell & Moody, 1997) and those at a state level found lower correlations between higher incarceration rates and lower crime rates (Marvell & Moody, 1994; Defina & Arvanites, 2002). Finally, at the county level, results have been mixed with findings supporting increased incarceration, (Sorensen & Stemen, 2002) and others finding no relationship between increases in incarceration and lower crime rates (Kovandzic & Vieraitis, 2006). The lack of consensus on the impact of rising prison populations has led many to have a disdainful view of the theory that rising prison population rates are responsible for decreased crime rates (Koppel 1994; Blumstein & Beck, 1999; Caplow & Simon, 1999; Defina & Arvanites, 2002; Kovandzic & Vieraitis, 2006). The increase in disparity of prison population with a tendency towards the imprisonment of minorities and the poor has led to stigmatizations of these groups as criminal actors (Hagan & Dinovitzer, 1999; Harrison, 2001; Pettit & Western, 2004; Tonry & Melewski, 2008; Thompson, 2012; Newell, 2013). The disenfranchisement of these segments of the population is most recognizable in the area of employment, “In fact, even whites with criminal records received more favorable treatment (17%) than blacks without criminal records (14%)” (Pager, 2003, 958). The issue of a former prisoners’ employment prospects has been researched thoroughly, with a multitude of studies concluding that it is harder for those with criminal records to obtain work (Petersilia, 2001; Freeman, 2003; Pager, 2003; Mauer, 2004; Wienman 2007; Gottschalk, 2009; Gottschalk, 2011; Newell 2012). This inability

to get a job has had harsh consequences for those with a criminal record, as many are forced back into old habits even though “most inmates, at the point of release, have an initial strong desire to succeed” (Petersilia, 2001, 1). Employment issues for former prisoners have contributed to the development of a “revolving door”, where former prisoners return to prison due to a lack of opportunity and high scrutiny after release (Harrison, 2001; Pew Center on the States, 2011). This flow of prisoners to and from prisons has also had a negative effect on families and communities with high levels of incarceration, leading to the formation of different social structures within communities (Lynch & Sabol, 1997; Hagan & Dinovitzer, 1999; Petersilia, 2001), as family structures shift and more of communities are seen as unfit partners for marriage (Lynch & Sabol, 1997). This change in social structures and disorganization of communities has helped lead to the cycle of the “revolving door” and has led some to speculate that the prison population will continue to rise unless policies are changed (JFA Institute, 2007). One other topic looked at through the lens of sentencing reform’s relation to social issues is that of voting and how the surge in imprisonment has led to changes in voting patterns. With several authors taking a specific look at how the demographics of those imprisoned and the lack of felony voting rights may relate to the use of prison as a control over populations (Caplow & Simon 1999; Petersilia, 2001; Mauer 2004; Gottschalk, 2009; Gottschalk, 2011). Finding that voting restrictions only served to further alienate offenders, which could be a factor in the higher incarceration rate (Caplow & Simon 1999; Petersilia, 2001; Mauer 2004; Gottschalk, 2009; Gottschalk, 2011). The upward shift in U.S. prison population over the last 40 years has helped lead to a state of felon disenfranchisement whereby felons are excluded from parts of society. This has contributed to the increased rate of recidivism in the US (Beck & Shipley, 1989; Langan & Levin, 2002). Disenfranchisement of prisoners, the effects of sentencing legislation on social life and the

limited scope of the effect that increased prison population has had on crime rates have led some to speculate that the sentencing reforms of the tough on crime era made the US less safe (Koppel 1994; Mauer 2004).

Data Analysis and Methods

Hypotheses

- 1: In a Comparison of States, those having three strikes you're out laws are more likely to have higher prison population rates.
- 2: In a Comparison of States, those having truth in sentencing laws are more likely to have higher prison population rates.
- 3: In a Comparison of States, those with higher private prison population rates are more likely to have higher prison population rates.
- 4: In a Comparison of States, those with a more conservative public are more likely to have higher prison population rates.
- 5: In a Comparison of States, those with a more inequality are more likely to have higher prison population rates.
- 6: In a Comparison of States, those with a more education are more likely to have lower prison population rates.

Variables and Methods

The dataset used in this analysis is a mix of the States dataset from (Pollock, 2016) and data added in order to be able to measure prison population rates, tough on crime legislation, and inequality in all 50 states. This dataset measures different values across the fifty states of the United States of America, ranging from states political party sway to states demographics. The

dependent variable in this analysis is prison population rate per state (The Sentencing Project, 2016). It is measured on the ratio level as it measures the rate of incarceration per state, controlled for state population at the level of prisoners per 100,000 residents of a state. Also used was data with raw numbers on private prison population per state (The Sentencing Project, 2016), which was turned into a rate using the state datasets population data, at the level of private prisoners per 100,000 residents. The rate of private prison population will serve as an independent variable, measured on the ratio level, serving as a measure of states tough on crime legislation. Private Prison Population rate serving as a measure of Tough on Crime law, due to the nature of interest groups influence in pushing for Private Prisons. As corporations are rational actors and the more expansive the Private Prison system is the more incentive they have to try and increase the prison population. One variable taken from the States dataset is the percent of the mass public which is conservative (Pollock, 2016). This variable is measure on a ratio level, state by state, it will be used as an independent variable, both as a control variable and to test the effects of conservatism on the prison population rate. The second variable from the states dataset used in this analysis is the percent of people in each state have a high school degree or higher (Pollock, 2016). This is measured on a ratio level and will be used and independent variable in order to control for the effects of education and measure educations effect on prison population rate. GINI coefficient for each states in 2013 is also used as an independent variable in this analysis (Frank, 2013). It is measured on the ratio level and will be used to control for and test the effect of income inequality on prison population rate. Another measure of tough on crime legislation within each state is that of Three Strikes laws, which measures on a yes or no basis, whether or not a state has Three Strikes you're out legislation (Walsh, 2007; California Center for the Prevention of Crime and Violence, 2010). This variable is measured on the nominal level

and will be used as an independent variable, measuring states tough on crime legislation and how they affect the prison population rate. A third measure of tough on crime legislation is that of Truth in Sentencing laws, which is measured on a nominal level, using yes or no to denote whether a state has Truth in Sentencing laws (Ditton and Wilson, 1999). Truth in Sentencing laws in this case being limited to those states that meet the general requirement of forcing prisoners to serve at least 85 percent of their sentence. This variable is used in this analysis as a measure of tough on crime laws in each state and how tough on crime laws effect prison population rate laws. The final measure of tough on crime legislation used in this analysis is a Tough on crime index, which is measured on a nominal level. It was created by combining the data for the Truth in Sentencing variable and Three Strikes you're out variable, measuring what states had either example of tough on crime legislation. As with the two previous variables this will be used to measure the effect of tough on crime legislation on the prison population rate. Using linear regression in order to determine the relationships and significance of the relationships between prison population rate and each independent variable. A regression is appropriate in this studies case due to the ratio nature of the dependent variable, which is continuous.

Measures of Central Tendency of the Dependent Variable

These measures show that for all 50 states, the average prison population rate per 100,000 residents is around 380 prisoners. In addition, these state values range between a minimum of 153 prisoners per 100,000 residents and a maximum of 816 prisoners per 100,000 residents. These measures show that the prison population rate tends to deviate from its mean of 392.50 at a high level, and that the variables distribution is somewhat symmetrical as its skewness is in-

between -1 and 1 at .643. This shows that there are indications of unproblematic skewing as the mean and median are very similar.

Correlation Analysis of the Independent Variables

		Correlations						
		Prison Population Rate (Per Capita 100K)	Measure of 3 Strikes Your Out Laws (Yes/No)	Measure of Truth-In-Sentencing Laws (Yes/No)	Private Prison Pop Rate (Per Capita 100K)	Percent Mass Public Conservative (2013)	Inequality Measure Ratio	Percent HS educ or higher
Prison Population Rate (Per Capita 100K)	Pearson Correlation	1	-.002	.085	.402**	.502**	.115	-.599**
	Sig. (2-tailed)		.989	.558	.004	.000	.428	.000
	N	50	50	50	50	50	50	50
Measure of 3 Strikes Your Out Laws (Yes/No)	Pearson Correlation	-.002	1	.153	.081	-.003	.162	-.060
	Sig. (2-tailed)	.989		.288	.574	.982	.261	.678
	N	50	50	50	50	50	50	50
Measure of Truth-In-Sentencing Laws (Yes/No)	Pearson Correlation	.085	.153	1	-.053	-.080	.118	-.034
	Sig. (2-tailed)	.558	.288		.714	.582	.413	.816
	N	50	50	50	50	50	50	50
Private Prison Pop Rate (Per Capita 100K)	Pearson Correlation	.402**	.081	-.053	1	.267	.058	-.216
	Sig. (2-tailed)	.004	.574	.714		.061	.689	.133
	N	50	50	50	50	50	50	50
Percent Mass Public Conservative (2013)	Pearson Correlation	.502**	-.003	-.080	.267	1	-.192	-.155
	Sig. (2-tailed)	.000	.982	.582	.061		.183	.281
	N	50	50	50	50	50	50	50
Inequality Measure Ratio	Pearson Correlation	.115	.162	.118	.058	-.192	1	-.203
	Sig. (2-tailed)	.428	.261	.413	.689	.183		.157
	N	50	50	50	50	50	50	50
Percent HS educ or higher	Pearson Correlation	-.599**	-.060	-.034	-.216	-.155	-.203	1
	Sig. (2-tailed)	.000	.678	.816	.133	.281	.157	
	N	50	50	50	50	50	50	50

** . Correlation is significant at the 0.01 level (2-tailed).

This correlation analysis of the variables was undertaken to examine the relationship between the dependent variable and independent variables and to ensure that there were no multi-collinearity issues with the independent variables. As the table above shows, none of the independent variables are strongly and significantly related. Showing there is no multi-collinearity affecting the regression results. The statistically significant correlations furthering the robustness of the regression, as the results are similar to the regression below. As education has a negatively correlated relationship with prison population rate as hypotheses six predicts. Also private prison population rate and public conservatism have positively relationships with the prison population rate, supporting hypotheses four and five.

Data Analysis Regression

Variable	B(SE)
(Constant)	1544.397 (521.369)***
Measure of Three Strikes You're Out Laws (Yes/No)	-21.488 (28.421)
Measure of Truth-In-Sentencing Laws (Yes/No)	35.482 (31.440)
Private Prison Population Rate	.583 (.304)
Public Conservatism	9.257 (2.457)***
Inequality (GINI Coefficient)	313.098 (404.499)
Education	-19.922 (4.329)***
N=50	
Adj R2=.527	
F=10.116, p<.000	
*<=.05, **<=.01, ***<=.001	

The regression analysis accounted for 52 percent of the variation within state incarceration rates, and was significant with an F-Value of 10.116. This model found that there was a negative relationship between Three Strikes You're Out laws and prison population rate, with the existence of Three Strikes You're Out laws being related to a 21 prisoner drop in prison population rate. Truth in Sentencing laws were found to have a positive relationship with prison population rate, with the implementation of Truth in Sentencing laws being related to a 35 prisoner increase in prison population rate. Private prison population rate was additionally found to have a positive correlation with prison population rate with a 1 prisoner increase in private prison population rate being associated with a .5 prisoner increase in prison population rate. The percent of the public that is conservative was found to have a positive relationship with the prison population rate, with a 1 percent increase in the public's level of conservatism being related to a 9 prisoner increase in prison population rate. In this model, inequality was found to

have a positive relationship with prison population rate, with a 1 number increase in inequality being related to a 313 prisoner increase in prison population rate. Education though had a negative relationship with prison population rate, with a 1 percent increase in education level being associated with a 19 prisoner drop in prison population rate.

Data Interpretation

This study attempted to ascertain the relationship between tough on crime laws and prison population rate, while also looking at other factors, both as controls and tests. In this test hypotheses one which purported that Three Strikes you're out laws would be related to higher prison population rates, was found to be unsupported, as the relationship found was negative. Hypotheses two on the other hand was found to be supported as the relationship between Truth in Sentencing laws and Prison population rate was positive. In the case of hypotheses three private prison population rate was used as a new measure of tough on crime style legislation. This study found a positive relationship in-between private prison population rate and prison population rate, supporting hypotheses three. Hypotheses four was supported, the percent of the public that is conservative had a positive relationship with the prison population rate. Hypotheses five in this study was supported, there was a continually positive relationship between inequality and prison population rate. On the other hand hypotheses six was found to be supported in this study, as education had a negative relationship with the prison population rate.

Conclusions

In sum this study finds that there is a positive relationship between tough on crime measures and prison population. With Truth in Sentencing laws and private prison population rates returning positive relationships to the prison population rate. The Tough on Crime measure of Three Strikes You're Out laws, though, was not positively correlated with the prison

population rate, leading to question about its relationship as a policy to the prison population rate. Further studies looking at this topic may benefit from further research on the legislature and the creation of more detailed indexes of Tough on Crime legislation. Furthermore, it would be useful to see county level studies of prison population rate in order to ascertain the different relationships laws have with prison population rates at different levels of analysis. Within the literature, this article sits in the camp of many of the articles on prison population rates which find less of a significant effect at the state level of measurement. The analysis of the 3 variables used both as controls and test variables found interesting correlations that should be further explored. As in the case of hypotheses four and six dealing with the percent of the public that is conservative and education, the hypotheses were supported. Showing that significant relationships exist between a state's political leanings and prison population rate. Secondly this study finds that increased levels of education help decrease the prison population rate. Inequality as looked at through hypotheses five proved to be supported, though other measures of inequality should be used to ascertain inequalities relationship to the prison population rate. This study recommends that a deeper look be taken at the social factors of imprisonment in the modern era, with possible other variables to consider being unemployment, poverty rate, crime rate, demographics and literacy rate. The analysis present in this study sits within the current niche of criminologists who have found that social factors are an important variable when looking at incarceration rates. Furthermore this study recommends that a possible re-study of inequalities effect on prison population rates may be necessary, possibly using better measures in order to better understand its effects on prison population rates.

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States With Truth in Sentencing Laws
<p>Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin</p>

States With Private Prisons
<p>Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maryland, Mississippi, Montana, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wyoming</p>

States With 3 Strikes You're Out Laws
<p>Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Indiana, Louisiana, Maryland, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin</p>