
The Emergence of Penal Extremism in California: A Dynamic View of Institutional Structures and Political Processes

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This article examines legal and political developments in California in the 1970s and early 1980s that led to extreme changes in the state's use of imprisonment. It uses historical research methods to illustrate how institutional and political processes interacted in dynamic ways that continuously unsettled and reshaped the crime policy field. It examines crime policy developments before and after the passage of the state's determinate sentencing law to highlight the law's long-term political implications and to illustrate how it benefited interest groups pushing for harsher punishment. It emphasizes the role executives played in shaping these changes, and how the law's significance was as much political as legal because it transformed the institutional logics that structured criminal lawmaking. These changes, long sought by the law enforcement lobby, facilitated crime's politicization and ushered in a new era of frenetic and punitive changes in criminal law and punishment. This new context benefited politicians who supported extreme responses to crime and exposed the crime policy process to heightened degrees of popular scrutiny. The result was a political obsession with crime that eschewed moderation and prioritized prison expansion above all else.

In a relatively short period, California lawmakers made a series of decisions that fundamentally transformed the state's approach to punishment and began a massive construction program that helped build one of the world's largest prison systems. At enormous cost, lawmakers and taxpayers agreed to borrow billions of dollars to build and operate an archipelago of prisons that now stretch across the state's hinterland. California's incarceration rate had ranked near the middle of all states in the United States (U.S.) in the mid-1970s, but by the mid-1990s, the Golden State imprisoned convicts at rates that rivaled many Southern states (Bureau of Justice Statistics 2000). Lawmakers from both parties abandoned whatever constraints might have moderated such a costly experiment, and

The author would like to thank Josh Page, Heather Schoenfeld, Phil Goodman, the editors, and the anonymous reviewers for their helpful and constructive comments in improving the article. Also, I would like to thank Chieh Tung for her research assistance.

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ignored warnings that increasingly long prison sentences and bulging prison populations were unsustainable. By the 2010s, California's overflowing prisons had become an intractable problem, costing the state over \$8 billion dollars a year to operate and consuming over 10% of the state's budget, up from 2% in 1981 (Anand 2012). The state continues to grapple with the consequences of federal court rulings that have condemned its prisons as unconstitutional.

The path from a reconsideration of the state's response to criminal offending to a prisons-first approach emphasizing mandatory sentencing laws and stringent parole revocation was not obvious when lawmakers debated changes to the state's sentencing laws in the mid-1970s. In fact, even conservative lawmakers held positions that would be extremely moderate today (Nejedly 1975). Yet, by the early 1980s, politicians from both parties proposed and advanced increasingly radical legislation that extended sentences for a variety of offenses and limited discretionary mechanisms that might have moderated increases in time served. Lawmakers placed waves of bond measures to fund prison expansion on California ballots, and most passed easily. Lawmakers and financiers formulated risky and expensive borrowing practices that allowed the state to borrow aggressively and the state's governor pushed emergency status that allowed the state to avoid environmental planning regulations to expedite prison expansion (Gilmore 2007). Expanding California's capacity to punish became a central political and state-building project in the 1980s and helped reshape California politics.

Crime's hyper-politicization ultimately culminated in the passage of one of the most remarkably punitive legal changes of the "get tough" era—California's Three Strikes law, which drastically increased sentences for certain repeat offenders. As Frank Zimring, Gordon Hawkins and Sam Kamin showed in their careful study of California's Three Strikes law, its rapid passage was "an extreme example of populist preemption of criminal justice policymaking" and that the processes that generated this legal change "produced structural changes in California's government that lessen the insulation between popular sentiment and specific criminal justice policy" (2001: 3). While the state's Three Strikes law has understandably received considerable scholarly attention, its passage did not represent a major turning point in California's crime politics. Instead, it *followed* over a decade of frenetic legal and policy changes that eroded institutional barriers to populist pressures and facilitated the onset of mass incarceration. When California's Three Strikes initiative passed in 1994 the state's incarceration rate had already increased by over 400% since the 1976 passage of its determinate sentencing law (see Table 1). The passage of

Table 1. California—Key Figures (1970–1995)

Year	Incarceration Rate*+	Prison Population	Homicide Rate*	Violent Crime Rate*	Year/Year % Δ in State GDP	Unemploy. Rate %	Partisan Control		Governor
							Assembly ^a	Senate ^a	
1970	125	25,033	6.9	474.8	5.0	6.0	49	48	Rep.
1971	86	17,474	8.1	518.6	7.5	7.0	54	53	Rep.
1972	82	16,970	8.8	540.7	10.6	5.8	54	53	Rep.
1973	95	19,794	9.0	565.8	10.6	5.2	63	50	Rep.
1974	103	21,897	9.5	610.6	9.9	7.3	61	50	Rep.
1975	80	17,296	10.4	655.4	10.2	9.9	69	63	Dem.
1976	83	18,113	10.3	669.3	10.6	9.2	69	63	Dem.
1977	80	17,338	11.5	706.0	16.3	8.2	71	65	Dem.
1978	88	19,550	11.7	742.9	14.5	7.1	71	65	Dem.
1979	93	21,260	13.0	811.1	11.7	6.2	63	63	Dem.
1980	98	23,264	14.5	893.6	11.7	6.8	63	63	Dem.
1981	114	27,913	13.0	863.0	12.5	7.4	60	58	Dem.
1982	135	33,583	11.2	814.7	6.8	9.4	60	58	Dem.
1983	150	38,025	10.5	772.6	8.2	9.7	60	63	Rep.
1984	162	41,652	10.6	763.4	13.1	7.8	60	63	Rep.
1985	181	48,326	10.5	765.3	8.7	7.2	59	63	Rep.
1986	212	57,725	11.3	920.5	7.5	6.7	59	59	Rep.
1987	231	66,975	10.6	918.0	9.3	5.8	55	60	Rep.
1988	257	76,171	10.4	929.8	9.1	5.3	55	60	Rep.
1989	283	87,297	10.9	977.7	7.7	5.1	59	60	Rep.
1990	311	97,309	11.9	1,045.2	7.0	6.9	59	60	Rep.
1991	318	101,808	12.7	1,089.9	2.1	7.0	59	65	Rep.
1992	339	109,496	12.7	1,119.7	2.2	9.1	59	63	Rep.
1993	368	119,951	13.1	1,077.8	2.4	9.2	60	58	Rep.
1994	384	125,605	11.8	1,013.0	4.2	8.6	58	55	Rep.
1995	416	135,646	11.2	966.0	5.8	7.8	49	53	Rep.

*Per 100,000 in population.

+Prisoners in state or federal custody (does not include jail populations).

^aRepresents % Democrats.

Prison Population source: Years 1970–1986 *Prisoners 1925–1986 Report*; 1987 stat from 1989 BJS Stats Abstract; 1988 stat from 1990 BJS Stats Abstract; 1989 stat from 1991 BJS Stats Abstract; 1990 stat from 1992 BJS Stats Abstract; 1991 stat from 1993 BJS Stats Abstract; 1992 stat from 1994 BJS Stats Abstract; 1993 stat from 1995 BJS Stats Abstract; 1994 stat from 1996 BJS Stats Abstract; 1995 stat from 1997 BJS Stats Abstract.

California's Three Strikes initiative was the culmination of stark changes in the Golden State's penal and political cultures.

This manuscript illustrates how the political stage was set in the 1970s and early 1980s for California's penological extremism. It focuses on the interaction between political context and state institutional structures and shows how legal and penal change in California was shaped by dynamic and recursive processes that simultaneously reshaped state and political institutions. Specifically, California's history reveals how the final form of the state's determinate sentencing law (DSL) was the product of extensive political deliberation and represented the outcome of intense conflicts between competing visions of a new approach to sentencing. The outcome of this struggle was partly determined by institutional arrangements that favored certain interests over others. The most important consequence of the DSL was not that it increased prison sentences, but that it dramatically altered the institutional logics that shaped how the state would establish sentencing ranges for offenders. While this power had been dispersed to judges and parole boards, it was now shifted to the legislature where criminal punishment became the focus of intense political and legislative activity. This had profound implications for politics and policy—it provided a new avenue for political gain for politicians who could successfully utilize crime's political appeal for electoral success, and helped set California on the path to mass incarceration.

The resulting dynamic helped create a frenzied lawmaking atmosphere where politicians from both parties duelled to write and advance ever-more draconian policies. Crime's politicization gained momentum and calls for moderation and policies that focused on prevention or alternatives to incarceration (such as those currently gaining favor in U.S. states) were marginalized. Lawmakers increasingly embraced extreme positions whatever the cost and by the mid-1980s were "governing through crime," passing ballot propositions to voters that funded prison expansion, enhanced sentences, and emphasized victims' rights. Though not inevitable or even likely a decade earlier, by the mid-1980s California was firmly on the path to mass incarceration.

Explaining Penal Change

Understanding why California and other states in the U.S. embarked on an unprecedented and costly prison expansion program with such zeal is challenging. The nation's incarceration rates had remained relatively stable throughout much of the twentieth century at levels that were somewhat higher than but relatively comparable to other advanced democracies (Walmsley 2005).

But California and the nation as a whole departed from these trends in the latter twentieth century. Attempts to explain this departure have emphasized broad social and cultural changes in the latter twentieth century (Garland 2001), shifting technologies in politics and government that stir fear of crime (Simon 2007), political strategy and racial politics (Beckett 1997), and institutional structures prone to politicized policy making (Savelsberg 1994). Recent scholarship has explored how well these accounts explain developments at the state level where most penal policy is formed, providing essential empirical depth and key theoretical insights into our understanding of legal and penal change.

The specific configuration of state institutional structures seems to be an important factor in explaining penal change and broader social relationships. John Sutton's (2004) analysis of advanced capitalist democracies demonstrates an inverse relationship between certain institutional configurations that empower workers and higher incarceration rates. His work suggests that closer examination of state structures and their relationship with political and economic institutions helps explain trends in imprisonment. Ruth Wilson Gilmore's (2007) analysis of California's imprisonment binge also points to the ways that political and institutional arrangements facilitating capital accumulation helped drive prison expansion as a response to rapid socioeconomic change. Higher imprisonment emerges, according to these accounts, from broader contradictions and inequities embedded in capitalist political economies and the institutions that sustain them.

Some research has focused on how state-level structures in the U.S. have shaped political processes and penal outcomes. Vanessa Barker's (2009) research analyzed penal changes in Washington, California, and New York and suggested that certain types of state structures generate differing degrees of deliberate democracy. She argued that states like Washington have more moderate penal regimes because Washington's more centralized state generates a more inclusive political culture that moderates extreme responses (Barker 2009). New York's state government largely excludes public input and populist pressures, relying instead on elites and experts to manage penal policy. In her take, California's decentralized state structure and proposition process expose politics to populist pressures that fail to generate healthy democratic approaches to social problems and are more prone to extremism and policies that exclude minority groups (Barker 2009). This explanation of penal change provides a useful emphasis on the complex relationship between state institutions and political culture.

However, Barker's explanation of the role of state institutions in shaping the more proximate developments that shaped legal

change does not adequately explain why advocates of populist policies were so much more successful in the latter 1970s and 1980s than they had been in previous eras when concerns about disorder and crime were also high. Though California's political structure made ballot propositions relatively easy to place before voters, prior to the late 1970s, many were unsuccessful, and as late as 1974, some propositions even implemented progressive legal changes (Campbell 2007).

State studies have also suggested that states with histories of intense racial conflict were more prone to penal extremism (Barker 2009; Campbell 2011; Lynch 2010; Schoenfeld 2010). Like most states, California's racial history was mixed. Racial politics were central to the state's early history (Keyssar 2000), but the state's growing diversity and no history of slavery differed markedly from Southern states that historically sustained higher incarceration rates. California lawmakers outlawed racial discrimination by businesses in 1959, but urban riots in the 1960s reflected ongoing racial tension. California voters overwhelmingly approved the repeal of the state's equal housing law in the late 1960s (McGirr 2001), but the state never lodged wholesale opposition to Civil Rights reforms, and voters approved a proposition couched in civil rights terms that expanded voting rights for ex-convicts in 1974 (Campbell 2007).

Other researchers have shown that the once-assumed faith in rehabilitation that seemed to sustain more moderate incarceration rates never took hold in some states. Mona Lynch's (2010) work shows that corrections officials and lawmakers in Arizona had historically pursued penal strategies that kept costs low and imposed brutal modes of punishment that disproportionately targeted minorities. Federal courts unsettled these penal systems and required states to adapt to new standards of racial justice and humane treatment (Schoenfeld 2010). Rather than reconsider the use of prisons for minor offenders, states like Arizona, Florida and Texas with histories of brutal prison systems, responded by drastically expanding prison capacity (Campbell 2011; Lynch 2010; Perkinson 2010; Schoenfeld 2010). This suggests that the interaction between state histories of severe penal regimes and new political contexts imposed by federal courts, inadvertently helped drive incarceration rates higher. But California's penal system was hailed as a model of the rehabilitative ideal even if this was never a reality in practice. The Golden State's penal history always incorporated competing logics that sustained its penal regime that emphasized rehabilitation, labor, and retribution (Goodman 2012). No singularly punitive ethos characterized the state's corrections system in the early 1970s as it did in Arizona, Texas, and Florida.

State-level accounts have also revealed the important role that interest groups played in shaping penal change. As long-standing penal regimes were unsettled by concern over crime, questions of fairness in sentencing, declining faith in government, and federal court activism, new ideas emerged and were driven by groups that struggled to shape a new penal order. Law enforcement interest groups in particular played a central role in this struggle. Besieged by an inability to effectively respond to rising crime rates, and by the perception that the courts were imposing unfair limits on police power, law enforcement organizations became an increasingly active political force (Berk, Brackman, & Lesser 1977; Campbell 2011; Miller 2008; Page 2011). Many groups pressed for a distinctly punitive response to crime, contending that crime's rise reflected the insufficient costs of arrest and conviction (Campbell 2012; Page 2011; Schoenfeld 2010). Law enforcement's interests increasingly overlapped with calls from politicians pressing more militant responses to crime (Beckett & Sasson 2000; Campbell 2011; Simon 2007). Gubernatorial candidates and governors, especially Republicans, were key advocates for harsher penalties, and they received support from victim's groups and feminist organizations (Gottschalk 2006; Simon 2007). Political conflicts over the scale and form of criminal justice systems emerged as a central feature of state building in the twentieth century (Gottschalk 2006).

State-level political developments in crime politics generated momentum for profound changes to crime and punishment policy that ultimately swept the entire nation toward mass incarceration. Analyzing state- and national-level developments over time, Michael Campbell and Heather Schoenfeld (2013) argue that these shifts unfolded in three distinct periods in which the old penal order was unsettled, the direction of a new order contested, and the reconstruction of a new penal order was increasingly dominated by a prisons-first ethos. Their account emphasizes the power of interaction effects between state and national political and legislative developments that amplified punitive policy responses to offending (Campbell & Schoenfeld 2013). They note that the relative explanatory power of higher crime rates, political strategy, and interest group influence is partly contingent on the specific historical conditions of each period. They suggest that historical changes in the nature of crime politics established new problems and opportunities that, over time, helped drive incarceration rates higher.

These accounts of penal change are characterized more by agreement than contention. As David Garland (2012: 481) recently noted in addressing the sociology of punishment, ". . . considered from the point of view of the field as a whole, their competing claims seem complementary rather than mutually exclusive." Garland suggests that future research, ". . . should recognize that

the proximate causes of changing patterns of punishment lie not in social processes but in state and legal processes: chiefly in legislative changes made to sentencing law . . .” (Garland 2012: 484). In other words, we must better understand changes in the state to fully understand how and why American penalty has taken certain forms in specific historical periods.

Institutional Change and Crime Politics in California

This manuscript contributes to the sociology of punishment by highlighting the complex role state and institutional structures played in shaping the legal and political processes that helped transform California’s penal order. When California lawmakers restructured the institutional logics that determined how convicted prisoners would be sentenced, they also restructured how political conflicts over crime policy would operate. By concentrating the power over sentencing in the legislature, and establishing no institutional controls that might mitigate political pressure to increase punishment, lawmakers created an environment ripe for crime’s politicization. This new political context amplified political pressure to increase punishments, and generated rapid and often incoherent legal and policy changes that ignored or dismissed concerns about effectiveness or sustainability. Lawmakers willing to embrace extreme responses to crime thrived in this environment, and helped steer the state toward mass incarceration.

The following account highlights how political calls for legal change were initially moderated by institutional arrangements that diffused the power to set punishment ranges across less public and politicized correctional institutions and the judiciary. Legislative committees were the primary forums where calls for radical change were often moderated by diverse inputs and more tempered deliberation that emphasized the administrative and fiscal implications of legal change. However, political considerations that prioritized legal changes preferred by law enforcement created a new legal and political environment that resituated the power to establish sentence ranges into the legislature where they could be sensationalized in the media and criticized by those advocating for harsher crime policies.

Law enforcement interest groups had been working since the late 1960s to press criminal justice policy into the legislature and expose it to greater popular scrutiny (Berk, Brackman, & Lesser 1977). Law enforcement organizations were central players in shaping the form of California’s DSL because they were well organized, enjoyed an intricate understanding of the law’s technical implications, and because they were highly coveted political allies

whose support was courted by the state's executive. From the original bill's inception to its passage and subsequent modification, prosecutors and other law enforcement organizations were intimately involved in shaping its form and content (Messinger & Johnson 1978). Groups that might have moderated its changes and implementation or voiced direct opposition, such as the judiciary or representatives of California's poorest communities who were most likely to be affected by the law, were poorly organized or entirely absent from these deliberations. The final compromises that secured the DSL's passage were geared to placate law enforcement's concerns.

This new post-DSL political context was best characterized by the political successes of Republican Governor George Deukmejian, who helped drive and capitalized on crime's new prominence in California. The Republican Governor's success reflected a new political reality in state politics where crime was *the* central issue. This was possible in part because of national-level events—Ronald Reagan's successful 1980 presidential campaign and presidency propelled crime back to the national spotlight, aiding like-minded state-level political actors as well. The result was the solidification of a new penal order that readily translated law enforcement-centered policies emphasizing incarceration and that marginalized alternative approaches that addressed crime's roots in socioeconomic disadvantage. These changes set the stage for the state's notorious Three Strikes law and the perpetual institutional dysfunction that has gripped the state ever since. In the following historical account, I attempt to outline why California's DSL passed when it did, and why its passage came to have so much importance in reshaping crime policy and politics.

Methods

I use comparative historical research methods to construct a case study of changes in politics and crime policy in California during the key period when the state began prison expansion. This article focuses on changes in state incarceration rates rather than the overall incarceration rates that would also include jails. This is preferable because the state prison population is more directly linked to the state-level political processes that are of primary interest in this case study. California was selected for this case study because of the state's sheer size and importance in explaining the nation's shift to mass incarceration. California has often been described as a bellwether of penal policy developments, and its huge proportion of Electoral College votes and its large contingent of congressional representatives make it an important national-

level polity. California was also chosen because of the considerable variation in incarceration rates during the crucial period when crime policies trended toward mass incarceration nationally.

But California was also selected because certain developments seem to run counter to explanations of mass incarceration's rise. Some theories and analyses attribute considerable significance to the positive link between conservative ideology, Republican Party power, and higher incarceration (Jacobs & Carmichael 2001). But California provides what appears to be a deviant case, as Democrats established firm control of the state legislature in the period that preceded the sharp increase in imprisonment. Also, as noted above, California was not immune to racial conflict, but it did not demonstrate the scale of opposition to the Civil Rights movement and federal intervention to the same degree as states like Texas and Arizona. Also, California was hailed as one of the states most firmly committed to rehabilitative principles, and groups and institutions that upheld those ideologies might have helped moderate penal change. Initial calls for sentencing reform were modest, partly driven by liberal groups and did not suggest a radical shift to mass imprisonment. These factors seem to suggest that California deviates from theoretical expectations identified in other states. Such deviant cases are valuable in building theory; they provide opportunities to test how well explanations can account for specific cases and provide a basis for better theoretical specification (Lipset, Trow, & Coleman 1956).

Once California was selected, I established the time frame to be explained by examining incarceration rate data and targeting the primary period where California's prison population began to increase. Then, data were gathered from secondary sources such as the *Los Angeles Times*, *San Francisco Chronicle*, and *Sacramento Bee* and analyzed in order to identify the most important legislative and political developments that helped generate changes in punishment policy. These data helped create a rough timeline of key legislative sessions, campaigns, and issues in the administration of crime and punishment policy. Secondary sources were combined with quantitative data from the Bureau of Justice Statistics, U.S. Census Bureau, Bureau of Economic Analysis, and historical texts, to provide a thorough account of the state's socioeconomic and political context.

After establishing a timeline of important events, I gathered archival data associated with key developments, such as the state's determinate sentencing law, legislation increasing sentence lengths, responses to prison overcrowding, and political campaigns that affected crime and punishment policy. Much of these data were gathered from the California State Archives where data were collected from relevant archival collections and legislative files from

dozens of bills that did and did not become law. These data include personal correspondence, staff memos, procedural documents from the legislature, bill digests, legislative committee reports, press releases, personal notes, reports from various committees and commissions, press clippings, and numerous other forms of qualitative data. Data were also collected from the California State Library and from the offices of the Friends Committee on Legislation in Sacramento.

Once the data were organized and compiled, they were used to construct an historical narrative that addressed theoretically relevant themes, such as the importance of crime rates, partisanship, state structure, and interest group activity. The California case was then analyzed relative to theoretical predictions. The findings were used to critique the strength of key arguments and to present suggestions for theoretical integration and expansion.

Contestation and the Struggle to Shape Legal Change

Crime Politics and Moderating Mechanisms

In California's 1966 gubernatorial election, Ronald Reagan emphatically defeated Democratic incumbent Edmund "Pat" Brown in a campaign that promised to deal severely with student protesters and urban unrest that Reagan's campaign referred to as "the jungle" (McGirr 2001). Governor Reagan's campaign was followed by a mixed response to crime and unrest; National Guard troops were used to deal with student protesters, and the governor signed legislation increasing sentences for serious violent offenders (McGirr 2001). But his administration also used alternatives to incarceration to manage California corrections (Gartner, Doob, & Zimring 2011), and the state's prison population actually declined during Reagan's two terms, as Table 1 shows for 1970–1973. Governor Reagan's successful political focus on crime reflected broader currents that unsettled long-standing political and institutional arrangements in crime and punishment (Simon 2007).

Table 1 provides data on several theoretically relevant statistics for California during the period when crime politics changed dramatically. Several trends are worthy of note, especially the consistent power of Democrats in the legislature and the Republican domination of the executive branch before and after Brown's administration. Second, violent crime increased sharply throughout the 1970s and stabilized at rates much higher than the early 1970s. Third, the economic picture was mixed—state GDP grew markedly in the 1970s, but unemployment spiked repeatedly, in 1975–1976, 1982–1983, and 1992–1993 to levels 50% higher than 1970. Lastly, the incarceration rate fell overall from 1970 to 1977,

only to rise consistently and by more than 500% between 1977 and 1995. California's remarkable economic growth was accompanied by increases in serious crime that stabilized at high rates, stubborn unemployment rates, partisan dynamics that split control of state government, and a massive increase in incarceration rates and the number of prisoners. The political fortunes of Democratic legislatures and Republican governors did not seem to be seriously affected by short-term economic shocks, rising crime or a massive expansion in the state's use of prisons. Ronald Reagan's Republican colleagues did not replicate his electoral success in the legislature and his victory did not immediately help propel a new Republican governor to office. Democrat Jerry Brown Jr. (son of Pat Brown) narrowly defeated his Republican opponent in 1974 and then defeated the author of California's anti-tax Proposition 13 in a landslide in 1978 (Schrag 1998). In the immediate wake of Ronald Reagan's political success, California Democrats enjoyed a resurgence and commanding power in state politics.

While fellow Republicans did not immediately follow Governor Reagan's political successes, a powerful constellation of political forces unsettled California's penal order. Sentencing practices still rested on indeterminate sentencing, which since 1917 had allowed considerable discretion for judges and parole boards in determining how long prisoners served (Messinger & Johnson 1978). Judges sentenced inmates to wide-ranging penalties that generally had very long maximums; the Adult Authority then had discretion to choose when an inmate might be ready for parole, but "Until it acted the prisoner was considered to be serving the maximum sentence provided by statute, frequently life" (Messinger & Johnson 1978). From 1944 on, California's corrections system was a bifurcated mix of the Adult Authority, which consisted of appointed board members who essentially determined sentences, and the Director of Corrections, who managed prisons and parole. By the early 1970s, attempts to establish greater determinacy in sentencing within the corrections department had failed, and political momentum grew for legislative reform (Messinger & Johnson 1978). Critics from across the political spectrum attacked indeterminate sentencing. The Prisoners' Union assailed the uncertainty and wide discretion it placed in corrections officials, while law enforcement groups contended that time served was too short. These critiques, which had been mounting for some time, fatally undermined the half-century-old sentencing paradigm and created momentum for legal and policy change. But no clear model existed for constructing a new system and uncertainty pervaded discussions about what direction California should take.

The creation of a new penal regime was a highly contested process fraught with uncertainty and conflict over who would ulti-

mately have the power to establish sentencing ranges. In 1974, Republican Senator and former prosecutor John Nejedly's staff consulted with "legislative lobbyists for district attorneys, police, correctional officers, and the Department of Corrections . . . law professors at (UC) Davis, and a Corrections Department researcher, among others" to explore possible changes in sentencing (Messinger & Johnson 1978: 18). Only meetings with Superior Court justices resulted in any open opposition, but staffers noted that the judges voiced "uninstructed" opposition to the prospect of determinate sentencing. Their work culminated in Senate Bill 42 (SB42), which would have established more precise sentencing ranges but would retain some judicial discretion (Nejedly 1975). Over the next 2 years, SB42 became a vessel for shifting alliances between interest groups from inside the state, including the law enforcement lobby, corrections officials and the Attorney General's Office, and from outside the state, including those representing prisoners and civil liberties organizations.

These initial moves to change California's sentencing regime hardly suggested a radical transition toward strict limits on judicial discretion and a hyper-politicized crime policy context. Democrats controlled the legislature and governorship, and many were long-time adversaries of "law and order" legislation (Berk, Brackman, & Lesser 1977). The national political context changed in ways that hardly favored law and order advocates as well. President Richard Nixon, who consciously nurtured his own political identity as a law and order crusader in Governor Reagan's mold, abruptly resigned amid the Watergate scandal and Republican candidates across the U.S. were defeated in state elections. The Republican Senator's modest proposals reflected competing voices over what direction legal change in California should take. At a time when imprisonment rates in many Southern states were already rising, California's prison population and incarceration rates both declined in the early 1970s.

Between 1974 and 1976, SB42 bounced back and forth between legislative committees and was radically altered multiple times. The law enforcement lobby, including the California Peace Officers Association and the California District Attorneys Association, objected to and successfully blocked changes that would retain judicial power to lower sentences (Nejedly 1976). This powerful lobby's long-term strategy for driving a more aggressive crime control strategy was to "take the fight directly to the people" (Berk, Brackman, & Lesser 1977). They supported making the legislature directly responsible for sentencing ranges and opposed legislation that would insulate sentencing policy from the direct control of the legislature. The law enforcement lobby was increasingly aggressive and viewed the power of liberal Democrats, with their support for

civil rights and opposition to aggressive law enforcement power, as a direct threat to the criminal justice system (Berk, Brackman, & Lesser 1977).

But their efforts to increase sentences by shifting the power to establish ranges to the legislature were thwarted by liberal Democrats who controlled the Assembly's powerful Criminal Justice Committee (CJC). The committee's opposition rested on two principles. First, the CJC cited research and testimony that questioned whether longer sentences actually reduced crime (Staff 1976a). They cited research that showed how California inmates already served sentences that were among the longest in the country for serious offenses, potential problems with overcrowding, the negative consequences of incarceration, and the immense costs (Sieroty 1976). Second, the committee objected to a new sentencing regime that would allow the legislature to set and reset sentencing ranges. As committee chair Alan Sieroty noted:

The Legislature is a poor choice for the task of establishing fixed sentences. The Legislature has neither the expertise, the temperament, the continuing interest, nor the insulation from political pressures that are necessary to establish—and to maintain over the years—a rational sentencing structure . . . It would be preferable to delegate the task to a Commission on Criminal Penalties, perhaps appointed jointly by the Governor and the Legislature, with the sentences and standards for implementation ultimately adopted (or ratified) by the Judicial Council . . . (Staff 1976a)

In fact, the committee's leader insisted that the threat of constant changes in sentencing for political purposes was the committee's biggest objection; Sieroty suggested that if SB42 were to be passed "[it] be given the opportunity to operate without further legislative changes. There should be an understanding between the policy committees of the Legislature, the interested lobbying groups, and the Governor that there will be a moratorium on changes in SB 42 over the next five years" (Sieroty 1976). For nearly 2 years, the committee blocked changes to SB42 favored by the law enforcement lobby, suggested alternative sentencing regimes that insulated sentencing from popular pressure, and pressed for alternatives that retained judicial discretion.

As competing interests battled over what form changes in sentencing would take, there was still no clear sense that the state was on the verge of eschewing judicial discretion, mandating long prison terms, and embarking on the largest prison construction project in U.S. history. The Democratic governor at first seemed reluctant to become directly involved with the bill, and powerful liberal Democrats in the legislature identified its penal and political implications and lodged persistent opposition. Overall, SB42 gar-

nered some attention in newspapers, but discussions over its form hardly reflected the visceral appeals to victim pain and suffering that would soon characterize discussions about crime policy. Debates over the bill (in its various forms) reflected more confusion and uncertainty than a groundswell in popular demands for punitive action.

Executive Influence and Uncertain Consequences

This gridlock over SB42 was broken in the waning hours of the 1976 legislative session when Governor Brown's staff negotiated changes that swung the bill to law enforcement's favor, retaining mandatory enhancements, limiting judicial discretion, and making the legislature responsible for setting sentencing ranges (Nejedly 1976). The Governor's staff overcame Sieroty's opposition and gained the support of every major interest group affiliated with law enforcement except the California Probation, Parole and Corrections Association. California Attorneys for Criminal Justice, the American Civil Liberties Union, Friends Committee on Legislation (Quaker organization opposed to imprisonment), and representatives of the city of Los Angeles and other lawyer's organizations lodged sharp opposition (Staff 1976b). The Governor's Legal Affairs Department summarized concerns of opponents in the Assembly, "... the Legislature will have the power to lengthen sentences for particular crimes. Certain legislators ... opposed SB42 because they believe the Legislature will abuse this power when the media sensationalizes a crime" (Kline 1976).

Governor Brown might have been responding to changing political realities in the Golden State and an awareness of his own political vulnerability after his narrow electoral victory. The governor was well aware of Governor Reagan's successful political focus on crime and might have been aiming to stave off attacks that he was too liberal for a state that resoundingly supported Reagan. As his subsequent shift to support the anti-tax Proposition 13 in 1978 showed, Brown was aware of California's populist traditions and shoring up support from law enforcement might help solidify his political identity. The Governor's interest in passing a new sentencing law might also have been driven partly by recent appeals court decisions that seemed to question the constitutionality of indeterminate sentencing (Messinger & Johnson 1978). Whatever the motivation, the governor's intervention was a pivotal development that tilted changes in the crime policy field in ways that favored the law enforcement lobby and shifted the power to establish sentences firmly to the legislature.

While California's DSL is often cited as an explicitly punitive legal development, reactions to its passage reveal just how confus-

ing the legislation was even to those most intimately involved in its passage. Legislator John V. Briggs, a prominent law and order Republican, was particularly adamant in his opposition to SB42, stating to Governor Brown in a letter: "In my opinion, this legislation will cause the most violent crime wave California has ever experienced. As an architect of the bill, you are the most familiar with it" (Briggs 1976). One San Diego County judge sent a memo to the county's judges that stated the legislation would, "introduce a degree of leniency into the California criminal justice system that ought to frighten and appall every responsible citizen of the State," and declared the law "monstrous," "pernicious," and a "tragic legislative blunder" (Woodsworth 1976).

From the opposite end of the ideological spectrum, The Northern California American Civil Liberties Union was equally critical, stating

The role of your [Brown] administration in insuring passage of SB 42 in its present form is appalling to all of us who believed you would bring enlightened government to the state of California . . . All studies show that increased prison sentences have no effect in curbing criminal acts. But a "get-tough" attitude makes good press, and in the short run provides immediate political capital. (Barnhart 1976)

These conflicting responses highlight the uncertainty associated with the DSL's passage; though often cited for its explicit endorsement of punishment for punishment's sake, the legislation's consequences for time served and incarceration in California were unclear. But as members of the Assembly, CJC and interest groups concerned about incarceration suggested, by shifting the power to establish sentencing ranges to the legislature, California's DSL was certain to heighten the political focus on crime, which it did.

Destabilization and Theoretical Expectations

Explanations of penal change that emphasize the influence of special interest groups in shaping crime policy and the influence of the executive branch provide particularly accurate frameworks for understanding the DSL's passage. Consistent with findings from other states, the law enforcement lobby's influence on changes in punishment was central (Campbell 2012; Lynch 2010; Schoenfeld 2010). Law enforcement groups pursued a long-term strategy of exposing sentencing practices and crime policy to increased public scrutiny (Berk, Brackman, & Lesser 1977; Page 2011), and the DSL represented a major success in that strategy because it shifted the power to punish to the state legislature where political figures could

be subjected to public pressure to increase penalties. Institutional arrangements prior to the passage of SB42 relegated this responsibility to nonpartisan judges and appointees in the Adult Authority.

These institutional changes helped transform the political and lawmaking playing fields in ways that benefited those pressing a prisons-first approach to crime. Now lawmakers would be forced to publicly support or oppose sentencing legislation piecemeal, and potentially faced being labeled soft on crime by political opponents and interest groups. This context quickly eroded the power of insulating institutional factors, such as legislative committees, to temper populist demands by placing discussions of crime policy change within the broader context of the limits of the criminal justice system, broader concerns about racial fairness and justice, or cost and sustainability. While there were few hints of spiraling punitiveness prior to the DSL's passage, this new context opened up new avenues for policy change that were quickly exploited by pro-prison interests.

Events during this period do not comport as well with explanations that emphasize partisanship or deliberate political efforts to construct an increasingly oppressive penal regime that targeted racial minorities. Republican Nejedly's original proposals were quite moderate compared with the bill's final form, and the Senator noted during deliberations that he had marshaled support among inmates and their interest organizations for his proposals. In the pre-DSL era, political strategy (Beckett & Sasson 2000) and deliberate efforts to exploit fear of crime (Simon 2007) were not as important as they would become in the post-DSL context. Instead, these early developments reflected a fluid and contested legal and political context in which the final outcome was shaped in important ways by political considerations and executive influence. In the long run, these steps were essential in facilitating crime's later politicization in the legislature and eventually to great affect in gubernatorial campaigns and administrations.

The passage of California's DSL also does not seem to reflect a wave of public demands for longer sentences. This profound legal change confounded liberal and conservative experts alike, and its passage was not the fruit of extensive public campaigns as would be the case with Proposition 8 (the Gunn Amendment emphasizing Victim's Rights) in 1982, future gubernatorial campaigns or Proposition 13 in 1994. It also seems unlikely that some inherent aspect of California's state structure or deliberative democracy explain the law. Two years of deliberation, hearings, and study by state experts generated uncertain predictions about how such a major legal change might work, and it seems unlikely that public debate would yield a more moderate law. After all, the DSL did not radically

increase the amount of time prisoners were likely to serve. What was radical was that it restructured the institutional processes that would establish sentencing ranges into the legislature where they were immediately subject to interest group activism and, ultimately, populist pressures.

Crime's Hyper-Politicization

Institutional Reconfiguration

After the DSL's passage, liberal Democrats initially resisted demands for more aggressive "law and order" crime policies in the Assembly CJC, but mounting political pressure steadily eroded their power to do so. Before the DSL even took effect, law enforcement interest groups were already crafting legislation that would considerably enhance sentences (Messinger & Johnson 1978), and successive legislative sessions were marked by a steady march of ever-longer prison sentences. For example, in 1977 and 1978, the legislature passed bills that increased the middle and upper sentencing ranges for violent felonies and for crimes resulting in great bodily injury and for common crimes like burglary and vehicle theft (Lipson & Peterson 1980). Minority Republicans in the legislature persistently demanded action on crime policy but their weak representation limited their options (Luther 1981a).

But shifts in the national political context and major changes to the Assembly Criminal Justice Committee facilitated the passage of "law and order" legislation, drastically increasing political activity in crime policy (Luther 1981a). Ronald Reagan's sweeping victory in the 1980 presidential election infused state-level crime politics with new energy and his administration worked diligently to shape the public debate about drugs and advanced aggressive law enforcement-oriented policies (Campbell & Schoenfeld 2013). While presidential politics do not directly affect state political outcomes, they do create new political dynamics and affect public discourse about crime and justice at the state level. Reagan's success served as a warning to Democrats about crime's political utility, and provided a new model for political success that was emulated by many gubernatorial candidates across the nation (Campbell & Schoenfeld 2013). This heightened political attention on crime and helped frame the crime problem in militaristic terms that emphasized aggressive warlike responses (Hagan 2010).

Within this new context, Democratic leaders in the legislature capitulated to Republican and law enforcement demands to alter the Assembly CJC, nominating a new chair, expanding it considerably, and adding new members more amenable to law enforcement's interests (Luther 1981a). This eroded an important

legislative barrier that had limited Democratic legislators from being forced to vote on aggressive “law and order” legislation that would expose them to public scrutiny. A few months after these changes, a *Los Angeles Times* article captured the effect of the committee’s new structure, “Goggin (the new CJC Chair) said that lobbyists for police organizations and prosecutors, whose bills in the past have been killed by the Criminal Justice Committee, have told him of their ‘delight’ with the committee and the speed and efficiency with which it is operated” (Ingram 1981).

The political urgency associated with crime policy intensified when Governor Jerry Brown introduced a 14-point plan for fighting crime and toured the state touting the need for tougher measures (Luther 1981b). Legislators from both parties scrambled to push their own bills and crime became the primary political issue of the legislative session—at one point, nearly *one-third* of all bills introduced were crime related (Staff 1981), including measures targeting sex offenders, daytime burglary, proposing mandatory 15-to-life sentences for three time offenders, and many others (Ingram 1981). While the debate over the state’s DSL had primarily engaged special interest groups navigating the complex and insulated legislative processes with little public and media attention, this legislative session drew intense media scrutiny and led to frequent partisan accusations that Democrats were failing to act decisively to address crime.

While there were few clear signs that profound changes in punishment were likely when SB42 was introduced in 1974, the same could not be said by the early 1980s. A new constellation of factors now structured lawmaking decisions. Ronald Reagan’s electoral success created a new national focus on crime, and the new institutional arrangements established by the DSL created exactly what some Democratic opponents and liberal interest groups had feared—continuous pressure for legislators to pass more punitive legislation. This new context created new avenues for political gain that helped the state’s Republicans return to the governorship.

“Law and Order” Politics

The 1981 legislative session marked a new level of political focus on crime that favored candidates willing to advocate extreme measures to deal with offenders. No one was more active in criticizing the Democratic governor and legislature’s approach to crime than Republican Attorney General George Deukmejian, despite Brown and the legislature’s willingness to expedite legislation that would have been unimaginable before the passage of California’s DSL. Deukmejian blamed Brown for ineffective leadership and rising crime as the state grappled with its most serious economic downturn

in a decade (Skelton 1981). In February of 1981 Deukmejian urged Brown to call a special session on crime, stating, "It (a special session) would highlight for the public and the criminal element that the state is going to get tough," and that "Criminals today believe crime pays" (Gillam 1981). Brown and Democratic legislators responded by expediting anti-crime legislation; still, Deukmejian accused the Governor of failing to support law enforcement, and called for legislation that would allow juveniles to be tried as adults, a doubling of residential robbery sentences, and measures to streamline the death penalty (Gillam 1981).

As Deukmejian's primary and gubernatorial campaigns ramped up, his anti-crime rhetoric intensified. Deukmejian made the front page of the *Los Angeles Times* under the headline, "Deukmejian Sees Return of Mafioso" (Farr 1981), and another in July, "Deukmejian Blames Rise in Crime on State's Judges" (Paddock 1981a). Deukmejian stated at a California District Attorneys Association meeting, "Criminals have more rights than their victims . . . the people are fed up. They want freedom to live out their lives in harmony and peace" (Paddock 1981b), and promised to prioritize empowering law enforcement over even the ailing economy. He stated that the courts "have grown arrogant in their self-decreed isolation," and cited rulings against the death penalty and search and seizure power for the police as key to the rise in crime (Paddock 1981b). He stated that a majority of the court, "came down on the side of the criminal defendant from 75% to 100% of the time," (Boyarsky 1982) and assailed the Court for prohibiting the use of hypnosis-aided testimony, stating that the prohibition "does far more to damage the criminal justice system than hypnosis ever could" (Hager 1982).

Deukmejian's focus on crime helped propel him to the governorship. He erased a deficit to defeat his Republican challenger in the primary, and though pollsters and Deukmejian's campaign managers indicated that he was trailing late in the gubernatorial race, Deukmejian won the general election by 1.2%, or by 100,000 votes out of the 7.5 million cast and was the only Republican to win statewide office (Mathews 1983). His victory over former police officer and Los Angeles Mayor Thomas Bradley was considered a major surprise, and studies of this campaign have suggested that race might have played a role in the outcome; Bradley was an African-American from Los Angeles, and Deukmejian won in an election where Democrats maintained strong majorities in the legislature.

The legislature's focus on crime and Governor Deukmejian's successful campaign reflected a new period of crime politics in California. The uncertainty of how best to replace indeterminate sentencing was replaced by frenetic political activity on crime,

even as crime rates dipped for the first time in a decade from 1980–1983. New pressures now bore down on California corrections—perpetual legislative sentencing enhancements and stringent limits on parole helped drive a 43% increase in the state’s incarceration rate from 1977–1981 (Bureau of Justice Statistics 2000). Also, Republican attacks on the judiciary reflected an ongoing assault on an important moderating institution in crime policy. Political attacks on judges came with little cost—they could be linked to higher crime, and as nonpolitical figures, they rarely launched counterattacks in the media or in campaign politics. This new context was characterized by ad hoc crime policy decisions, and ultimately led to the decline of two forces that could have mitigated mass incarceration in California—concerns about the effectiveness of imprisonment in reducing crime and concerns about cost.

Deukmejian’s victory is not easy to interpret. Did it represent a growing tide of public concern about crime or maybe general anxieties about slowing economic growth and higher unemployment? Or does his campaign’s success provide a vivid example of political strategies that exploited latent fears linked to race that were channeled through crime politics? If surging anxieties were the driving force, would we not expect other Democrats, who had controlled most of state government throughout the state’s sharp increase in crime and economic turbulence, to have lost as well? Or did his victory reflect changing ideas about government and the need for assertive executive action as Jonathon Simon suggests? After all, Republican presidential candidates won in California every year from 1968–1988, and Deukmejian’s campaign echoed Reagan’s successful presidential bid. While the answers to these questions are not clear, the implication of Deukmejian’s victory for crime policies was important and it added fuel to the political fire engulfing crime policy.

A New Political Context: “Biting the Bullet” on Prison Expansion

The new political context of crime politics in Sacramento was sharply different from the debates associated with the DSL just 7 years prior. Media reports on and responses to the form of the DSL were muted and mixed in 1976, but descriptions of crime legislation battles were explicitly political by the early 1980s.

This more politicized and streamlined crime policy context was important because lawmakers now faced new political pressures to increase sentences while simultaneously facing an overcrowding crisis partly driven by increased sentence lengths and new limits on parole. Supreme Court rulings against Texas and other states with overcrowded prisons provided a new impetus to reduce the state’s prison overcrowding problem (Campbell 2011). Activists also

increasingly turned to ballot initiatives to integrate direct voter action on crime. Initial efforts to fund prison expansion were thwarted by lawmakers concerned about cost in the midst of a sharp economic recession. But Robert Presley, a conservative Democrat and a champion of law enforcement issues, with Deukmejian's support and encouragement, successfully placed two propositions on the 1982 ballot—one that provided \$280 million in bonds for jail construction, and another that provided \$495 million in bonds for prison construction (California Secretary of State 2003). Presley stated in a letter that building prisons might be expensive and unappealing, but “sometimes we just have to bite the unpalatable bullet on essential issues” (Presley 1982).

This marked the collapse of fiscal conservatism as a brake on prison expansion. The bond initiative provided alternative financing that avoided the state's huge budget deficit and circumvented legislative concerns about funding. Over the next decade, California voters passed bonds funding prison construction in nearly every election for a decade for a total of over \$2.5 billion (California Secretary of State 2003). Unlike Republican Governors in Florida and Texas, who initially refused to invest heavily in prison construction, Deukmejian supported any means possible for procuring the resources to build prisons. The administration rejected alternative courses that other states pursued that moderated imprisonment. This approach was only possible due to Deukmejian's willingness to abandon his commitment to fiscal conservatism and smaller government. This was an important departure from the Reagan administration from a decade ago; Deukmejian supported billions in bond financing, tapped emergency funds to finance expansion, and oversaw one of California's most ambitious state-building projects (Gilmore 2007; Gottschalk 2006). From 1981 to 1991, the proportion of the state's general fund allocated for corrections increased from under 3% to approximately 6% while the proportion of spending on higher education declined by approximately 3% (by the late 2000s corrections spending surpassed higher education) (Anand 2012). The primary proximate causes of California's sharp increase in incarceration must be understood as the extended sentences that followed the DSL, Deukmejian's willingness to embrace liberal borrowing, and of California's proposition process that allowed lawmakers to avoid direct responsibility for heavy borrowing.

Also, the use of ballot propositions to advance “law and order” policies marked a new degree of success in law enforcement's long-term strategy of driving crime policy decisions into highly politicized public debate. The 1982 Victim's Rights proposition and the many prison and jail bond measures foreshadowed California's Three Strikes law in 1994. The campaign to pass Proposition 8 was

imbued with feverish rhetoric describing California as an unsafe jungle and the measure added even more enhancements to the growing wave of legal change (Barker 2009). But it is important to note that the first ballot proposition to have a serious effect on sentencing and the state prison population passed half a decade *after* the DSL first opened crime policy up to intense politicization. Ballot measures mattered in California's turn to mass incarceration, but the legislature and the Brown and Deukmejian administration's efforts had already driven imprisonment rates up sharply before any ballot propositions that seriously affected incarceration rates were passed. The propositions in the 1980s help explain the *speed and magnitude* of California's imprisonment binge more than its root cause.

Thwarting Moderation: Executive Veto Power

By 1983, even the staunchest law enforcement advocates were growing concerned about the relentless political pressure to pass ever-more punitive crime legislation. Legislator Robert Presley, architect of prison and jail bond legislation, introduced two measures that might have mitigated California's prison indulgence. The first was an emergency release measure similar to legislation used by former Governor Ronald Reagan in 1969–1970, and that had recently been passed in Michigan, Texas, and other states where overcrowding threatened systemic collapse and federal litigation (Feeley & Rubin 1998). Presley's bill was designed to give the executive the power to accelerate release for nonviolent offenders whose release dates were approaching, which would have included 6,300 prisoners in September of 1983, enough to scale back overcrowding from 138% to 120% of capacity (Staff 1983). This measure had broad bipartisan support and the backing of the Attorney General, the California Correctional Peace Officers Association, the Criminal Law Section of the State Bar, and the Commission on Corrections of the State Bar (Staff 1983). But the Governor refused to support it and by doing so maintained a constant state of overcrowding and crisis in the CDC, increasing pressure to streamline prison expansion (Bonien 1983).

This process was even more evident in Presley's efforts to establish a sentencing commission that could revisit the increasingly erratic layers of sentencing laws that were driving up the state's prison population. Senator Presley worked for 2 years and built a considerable base of support for Senate Bill 56 (SB56) by carefully studying sentencing commissions in other states that were also grappling with overcrowding, hosting a seminar in Sacramento, and garnering the support of many key law enforcement organizations (though, notably, not the prosecutor's association), and even-

tually even the American Civil Liberties Union (ACLU) (Presley 1983). Representatives of Arthur D. Little, an elite consulting firm hired to create a report on sentencing and public safety in California in the late 1970s, reached out to Presley in a letter suggesting he examine their report (Representatives of Arthur D. Little 1983). The firm conducted an extensive examination of California's determinate sentencing laws and sentencing commissions in the US. The report recommended California establish a sentencing commission because it could manage a coordinated, system-wide response to crime that could incorporate the criminal justice system's complexity, provide experts familiar with the implications, consequences, and costs of changes in sentencing, and because such a commission could operate without the constant political pressure that was generating contradictory and incoherent legislation (Arthur D. Little 1980). In his letter requesting the Governor's signature on SB 56, which passed through the legislature easily, Presley noted that there was, "Pressure on legislators to pass and the Governor to sign continued increased sentence lengths for crimes, with no coordinated approach and no way now for either legislators or the Governor to resist such pressures—whether they make sense or not" (Presley 1984).

Governor Deukmejian's response provides a telling example of how deeply committed the Governor was to continually expanding the range and scale of incarceration. In a letter to members of the California Senate indicating his unwillingness to sign SB42, the Governor stated that the DSL, which was largely responsible for the prison population explosion, was "working very well," and that, "There can be little doubt that determinate sentencing has also had a direct impact on the reduction in major crime in this state during the last three years" (Deukmejian 1984). He also voiced his approval for the fact that the legislature should directly determine criminal law because they are directly responsible to the voters (Deukmejian 1984). For a Governor whose political career was largely defined by his stance against crime, the existing institutional logics of punishment were perfectly suited to his goals. The creation of a new state institution that would insulate sentencing from constant political pressure was unthinkable. The Governor was able to sign punitive legislation regardless of its overall effectiveness, and in doing so demonstrate his ability to "get things done" and be "tough" on criminals.

Governor Deukmejian was elected primarily on the platform of imposing harsh penalties on criminal offenders, which made the cycle of ever-increasing penalties, more overcrowding, and more prisons, an indicator of political, if not social success. As the overcrowding crisis continued to mount in 1983, Deukmejian offered a special address to the legislature:

Protecting citizens from crime and the fear of crime is, in my view, government's paramount responsibility. For this reason, I have repeatedly expressed my satisfaction over the increasing percentage of convicted criminals who were being sentenced to state prison. I would rather have the state have the problem of housing criminals, than for citizens to have criminals entering their houses . . . We can be gratified by recent reports of a decline in the state's crime rate. I am convinced that our efforts to adopt stricter sentences and make some sentences mandatory played a major role in this improvement . . . Frankly, the impending crisis we face today is too urgent and the need for speedy bipartisan action too critical to concern ourselves with who to blame. This is not time for politics or delay. (Deukmejian 1983)

The Governor essentially redefined overcrowded prisons as indicators of success, not correctional failure or penal excess. Perpetual "crisis" and overcrowding amplified calls for prison construction and decisive "a-political" action, as though "biting the bullet" and building prisons were the only option. After Presley's proposal for a sentencing commission was defeated, he summed up California's predicament well, "I don't think you can solely build your way out of it (prison overcrowding) . . . I think there has to be a fairly extensive building program on the one hand, and on the other I think we have to continue to seek ways to shave this prison population. [But] The difficulty with it is political. It's pure and simple: Legislators are afraid to vote for it" (Hurst 1983). Far from being an apolitical issue, the growing focus on crime, as Deukmejian's gubernatorial campaign made clear, was *the* political matter of the day, and this cycle of overcrowding, crisis, and construction was a perfect motor for ensuring crime's continued politicization. This focus obviated discussions about incarceration's efficacy as an anti-crime policy choice, dismissed concerns about cost, and framed the terms of the crime policy debate around one of prison "beds."

Key institutional changes—the shifts in responsibility for sentencing ranges to the legislature, and changes to the criminal justice committee—eliminated moderating barriers that had once limited crime's politicization in California. High rates of serious violent offending intensified pressures to act in the legislature, and Deukmejian's deft politicking on crime solidified its position at center stage in California politics. As Governor, Deukmejian could successfully block institutional and administrative changes that might moderate political pressure to constantly increase penalties. The highly charged political context these conditions produced generated seemingly contradictory pressures—constant increases in sentence lengths and a perpetual overcrowding crisis. But these were only contradictory for the state's penal system, not for the

political fortunes of those who created them. Deukmejian claimed political success as California's homicide rate declined from 14.5 in 1980 (before Deukmejian took office, but after the DSL) to 10.5 in 1985 (see Table 1), and in the 1986 gubernatorial election, Deukmejian crushed Bradley by a record margin in a rematch of their razor thin 1982 contest. But the governor's claims about imprisonment's effectiveness in lowering crime were short lived. Despite *tripling* the state's prison population in a mere 9 years, California's homicide rates spiked from 1988 to 1993 to a post-1980 peak of 13.1 in 1993, approximately 30% higher than when Deukmejian took office (see Table 1). The crime fighting success of the law and order measures of the 1980s was dubious at best, but they were an unqualified political success for Deukmejian and the Democratic legislators who retained control of the assembly and senate throughout the 1980s.

Discussion

California's sharp turn away from indeterminate sentencing and rapid increase in its use of incarceration pose difficult theoretical challenges. No history of "cheap and mean" punishment existed in California as it did in other Southwestern and Southern states like Arizona, Texas and Florida that essentially expanded prisons to maintain harsh penal regimes (Lynch 2010). California certainly had its share of race problems, but California's mid-twentieth century political traditions related to race were mixed. And partisan politics in California overwhelmingly favored Democratic politicians in the mid-1970s, a factor that challenges explanations emphasizing partisanship and political strategy (Beckett & Sasson 2000; Jacobs & Carmichael 2001). It is also hard to attribute its passage to anxieties generated by economic uncertainty—despite considerable volatility and a national recession, California was in the midst of a stretch of astonishing economic expansion that was lifting all boats when the DSL passed.

Explaining developments in California requires a dynamic view of how state institutions helped structure the political forces that shape their form and function than has sometimes been assumed. Vanessa Barker (2009) suggested that decentralized state institutions failed to generate deliberate democratic political cultures and led to higher incarceration. While propositions in the 1980s can help explain the speed and magnitude of California's imprisonment binge, they were not the root cause of penal extremism. It was the executive branch that played a central role in altering and then maintaining institutional arrangements that helped politicize crime and drive mass incarceration. In fact, California's decentralized

structure originally sustained a policy formation process that incorporated inputs from multiple interests and sustained a diverse and moderate penal regime. The broad political momentum for changes in sentencing laws ultimately reshaped the institutional logics that established punishment ranges in ways that facilitated crime's politicization. These institutional changes were an important catalyst that, over time, reshaped the legislative and political processes that determined crime policy.

These findings fit well with Josh Page's (2011) argument that the growing overlap between the penal and political fields created conditions favorable to harsher punishment policies by empowering certain actors and minimizing opportunities for others. Law enforcement's interests and positions were strengthened by the conditions of the DSL because they could now pressure and lobby legislators to act without the fear that judicial discretion would limit time served for offenders. Law enforcement organizations were strategically important—they were a permanent lobbying presence in the capitol and governors coveted their political support because executives (and governors' political fortunes) are intimately tied to the state's criminal justice bureaucracy and overall crime rates. As Berk, Brackman and Lesser (1977) found in their examination of legislative changes in California from 1955 to 1971, law enforcement's strategy was to take crime policy "to the people" and limit judicial and legislative mechanisms that stymied more aggressive legal and policy approaches. Despite the fact that many in law enforcement felt the DSL's sentencing ranges were too short, this marked a striking victory in their efforts to expose crime policy to public scrutiny. In the long run, this opened the door to populist extra-legislative ballot measures that could fund prison expansion and ratchet up sentences. California's proposition process made this easier and more extreme but California was already headed down the path to mass incarceration before ballot propositions had a serious impact on the state's incarceration rate.

This case highlights the difficulty in assessing the importance of public opinion in explaining the state's imprisonment binge. As Katherine Beckett and Theodore Sasson (2000) have shown, public concern about crime has often followed intense focus on crime and punishment by political and media claims makers. And as Frank Zimring and David Johnson (2006) suggested, public opinion polls show that the public felt the justice system was insufficiently punitive before states dramatically increased punishment and they still do today despite the massive expansion in imprisonment. Punitive attitudes might ebb and flow but they are consistently punitive and cannot account for the speed and scale of legal and institutional changes that abetted mass incarceration's rise. Attitudes and opin-

ions about crime are complex, often incorporating punitive and redemptive views of how the state should handle offenders (Sparks 2001). This manuscript highlights how institutional changes created conditions that made it easier to frame crime and punishment policy in reductionist zero-sum terms by focusing on the heinousness of criminal acts or offenders rather than crime's complexity and the limits of the criminal justice system, and especially incarceration, in responding to it.

What about the dogs that did not bark in the fight over the DSL? One notable absence was representatives from the judiciary who were not intimately involved in its creation and only became seriously involved after the DSL's passage (Messinger & Johnson 1978). Unlike prosecutors and other organizations representing law enforcement, groups associated with the state's judges avoided the political processes shaping changes in the state's criminal law or took neutral positions. While judges might be powerfully positioned actors within state institutions, their weak position within the political institutions and processes that shape the criminal justice system made them an easy target for "law and order" advocates. In contrast, prosecutors, prison guards, and other organizations were extremely politically active, and helped reshape the criminal justice playing field in ways that undermined the power of the judiciary to the benefit of prosecutors (Simon 2007; Stuntz 2008).

Similarly, interest groups representing the poor communities most often plagued by high crime rates seem to have played little role in the DSL's creation and the formation of laws that increased prison sentences. Like Lisa Miller (2008) found in Pennsylvania, state-level political processes favored long-term political interest groups like law enforcement in shaping policy, and the political interests of poor communities were notably absent. This provides ground-level support for John Sutton's (2004) findings that suggest incarceration is partly the product of specific institutional configurations that facilitate or inhibit the political mobilization of various social groups. Civil liberty interest groups voiced objections to the law, but no well-organized institutions with strong grassroots support sustained an active presence in the state's legislative debates. The prisoners' union certainly played a role in the pre-DSL period, but by the early 1980s, no group representing prisoners or poor urban communities seems to have regularly participated in the lawmaking process.

Lastly, why did the state's increasingly powerful Democrats support a new sentencing law likely to politicize crime, an issue that had benefited Republicans in the past? African-Americans in urban communities supported Democratic candidates at high levels, and powerful liberal Democrats had long opposed aggressive law enforcement policies (Berk, Brackman, & Lesser 1977). But the

state's Democratic Governor and legislators ultimately endorsed legal changes certain to politicize crime and then worked to outdo their Republican counterparts in drafting harsher laws. This might reflect the broader struggles Democratic candidates faced in coralling electoral majorities amid economic crises and as the political appeal of civil rights issues faded. This is an area in need of further study. Why were Democrats unable to shift the political focus from crime to other potentially mobilizing anxieties, such as concerns about access to education, health care, or income inequality? More work in this area might find the underlying importance of race and the effect of national-level processes on state politics important. Whatever the case, California Democrats never mounted serious opposition to punitive legislation in the post-DSL period, and their support became less relevant as activists turned to ballot propositions.

California's case illustrates the powerful role that the executive branch has played in shaping the state's penal trajectory. As the head of the state government's executive functions, governors are especially vulnerable to political attacks that they fail to act decisively to combat crime. Legislators might enjoy comfortable districts where minor shifts in public opinion or minor changes in crime rates are unlikely to threaten their electoral viability, and may craft themselves as insufficiently situated to significantly alter the criminal justice system. Conversely, governors are highly visible and as the state's executive are directly linked to its justice system, even though local prosecutors and criminal justice officials are largely responsible for charging and convicting offenders. As Jonathon Simon (2007) suggests, governors were increasingly viewed as "prosecutors-in-chief" and were especially vulnerable to accusations that they were "weak." This likely helps explain Governor Brown's willingness to embrace changes in the state's DSL that addressed law enforcement's demands. While these concessions might have been short-term political assets, the new arrangements the DSL established did not bode well for Democratic gubernatorial candidates in the long run (or for Brown who lost his Senatorial bid in 1982), as Deukmejian's surprising 1982 victory and commanding reelection illustrated.

The California case also supports central aspects of Campbell and Schoenfeld's (2013) argument that national-level developments amplified political attention to crime in the states. The post-DSL crime policy political context only reached fever pitch in 1981, after Reagan's successful campaign and focus on crime and drugs. Also, as Campbell and Schoenfeld suggest, the dynamics that shaped penal change were quite different in the early 1980s than the mid-1970s when changes in sentencing were considered. While uncertainty characterized discussions over changes to sentencing in

the early period, over time, crime's politicization limited options and dramatically tilted penal policy toward a prisons-first ethos.

My analysis points to three key factors that should inform our theoretical understanding of penal change and could be explored in other temporal and geographic contexts. First, we need to better understand how various forms of state and nonstate institutions, such as unions, religious groups, or organizations representing historically disadvantaged groups, might amplify or moderate calls for penal change in other political contexts. Second, we need a better understanding of the complex interaction between legal and penal change and the political forces that shape it. In California, legislative reforms *preceded* the political successes of politicians advancing the most punitive positions. This raises questions about how windows for legal change might have unexpectedly created political dynamics and opportunities that accelerated more punitive penal policies. Third, law enforcement groups played a central role in shaping legal and policy changes that increased popular scrutiny of law and policy and advanced an aggressive prisons-first policy response to crime. Future research might examine whether law enforcement organizations in different contexts adopted more moderate positions, or whether countervailing political forces or different state structures mediated their influence on penal policy.

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