Punitive Views and Punishment Decisions: Representative Bureaucracy in US State Prisons

Abstract

With over two million inmates, the United States has the largest prison population in the world. While social science explanations have examined the growth in incarceration, little work examines the treatment of inmates inside prisons. Correctional officers, like other bureaucrats, exercise a great deal of discretionary decision making authority in deciding the severity of sanctions to impose on inmates who break prison rules. Guided by theories of bureaucratic representation, I examine the role of staff diversity on punishment decisions. First, I find that minority and better educated correctional workers express more support for rehabilitation policies and less support for punitive policies for dealing with crime than their white and less educated counterparts. I also find, consistent with theories of bureaucratic representation, that prisons with higher proportions of minority correctional officers are much less likely to punish inmates with solitary confinement and various disciplinary actions. In an additional analysis, I find that those preferences appear to translate into changes in policy treatment. Simulations indicate, for example, that an inmate in a prison with minimal black staffing is 10 times more likely to be placed in solitary confinement than an inmate in a prison with maximum black staffing.

With over two million inmates, the United States’ prison population is the largest in the world (Walmsley 2007). Nearly one in one hundred Americans are behind bars, either in prisons or pre-trial detention facilities (Pew Center for the States, 2008). The rapid growth in
incarceration is well-documented (Alexander 2010; Western 2005; Yates and Fording 2005). Social science explanations often stop at the prison gates, with little work exploring treatment inside prisons (but see Percival 2009). Such a “black box” approach to prison policies largely ignores key bureaucratic decisions about whether and how to punish inmates. The handful of studies that do examine prison conditions found that harsh prison conditions foster future criminal activity and recidivism (Chen and Shapiro 2007; Drago, Galbiati and Vertova 2008). This research is limited in two important aspects. First, the findings are from non-US prisons. Second, the previous research used security level, inmate deaths or overcrowding as a proxy for the harshness of prison conditions. I use a more nuanced and direct measure: official prison punishments of inmates.

Drawing from theories of bureaucratic representation, I focus on two questions related to inmate punishment; first, whether staff members vary on their punishment preferences, and second, whether those preferences appear to translate into differential policy outcomes. I find that staff members vary on their punishment preferences, with minority correctional workers and better educated correctional workers expressing less support for more punitive policies for dealing with crime. These preferences appear to translate into policy differences at facilities with larger proportions of black inmates. While facilities with higher percentages of black inmates utilize punishment more, facilities with higher percentages of black staff members utilize inmate punishment less. This suggests that part of the variation in punishment can be explained by disparate treatment of minority inmates, but that minority staff members can help reduce this discrimination. Given evidence of discrimination of blacks in other areas of criminal justice policy, this paper raises important concerns about the equality of treatment inside prisons and suggests a way to address those concerns. In addition to reducing discrimination, a focus on
workforce diversity may offer a cost-effective tool to lessen recidivism and other negative outcomes.

The paper proceeds as follows. The next section examines theoretical and empirical support for expecting a more diverse workforce to influence policy outcomes. Then I discuss why state prisons offer an excellent venue for studying the effects of workforce diversity. Next, empirical evidence is presented for varying punishment preferences among correctional workers. Once differences in punishment preferences are established, I test the link between preferences and punishment outcomes. Finally, I consider the policy implications of a diverse workforce in the correctional environment.

Representative Bureaucracy and Policy Implementation

When political actors design public policy, authority is delegated to agencies. Bureaucratic discretion refers to the range of policy options available to the bureaucracy. Two types of discretionary authority are available to agencies; the “authority to make legislative-like policy decisions” and “authority to decide how general policies apply to specific cases” (Bryner 1987 p. 6). The potential power of unelected bureaucrats is significant. When it comes to implementing public policy, administrators are policy makers in their own right (Shumavon and Hibbeln 1985).

Bureaucratic discretion operates at two different levels; agency level policy, and the policy decisions of street level bureaucrats (for reviews of the top-down versus bottom-up approaches, see Matland 1995 and Sabatier 1986). There are practical advantages to delegating authority to agencies and street-level bureaucrats. Agencies have expertise and are able to respond quickly to unexpected situations (Kerwin, 2003, p. 30). Agencies have organizational resources that are
not available to legislative or executive decision makers and agencies have the ability to concentrate sustained attention to a single problem (Rourke, 1969, p. 39). Agencies have access to policy networks, through which ideas are exchanged and policies diffused (Mintrom and Vergari, 1998). Some policies are capable of rapid diffusion, and bureaucrats are likely to be aware of the latest trends (Makse and Volden 2011). By allowing discretion, policy experimentation can take place rapidly. Overall, bureaucratic discretion is defended as “a means of reducing conflict, reducing the coercive nature of government, permitting Congress to take on an increasingly larger policy agenda, and providing a process of decision making that champions bargaining and negotiation in administration” (Bryner, 1987, p. 5).

There are advantages to delegating authority from agencies to street level bureaucrats. While a state legislature may set a speed limit and a state agency may prioritize law enforcement objectives, it is the decision of an individual police officer whether to write a ticket or give an offending motorist a warning. In this context, street level bureaucrats have “considerable discretion in determining the nature, amount, and quality of benefits and sanctions provided by their agencies” (Lipsky, 1980, p. 13). Bureaucrats receive discretion for two main reasons; first, work situations can be complicated and flexibility may be necessary. Second, there are human dimensions of a situation that may require more lenient or stringent responses, based on the circumstances (Lipsky, 1980, p. 15). As a practical matter, street level bureaucrats receive a certain level of discretion because the agency is unable to control every action of its employees. Discretion gives front-line workers flexibility and the ability to exercise their best judgment.

Since agencies and front-line workers have considerable discretion, it is important to consider the demographics and backgrounds of these workers. Donald Kingsley first developed the theory of representative bureaucracy. Kingsley studied the British civil service and argued that bureaucrats should reflect the values of the ruling class. Kingsley reasoned that “no group can safely be entrusted with power who do not themselves mirror the dominant forces in society”
According to Kingsley, the British had a representative bureaucracy when “Ministers and Civil Servants share the same backgrounds and hold similar social views” (1944, p. 273). For Kingsley, it was important that the dominant forces, not all groups were represented. In the United States, a more pluralistic approach to representative bureaucracy developed.

The beginnings of a representative bureaucracy can be traced back to President Andrew Jackson. Jackson attempted to move from the elitist composition of previous administrations to a more inclusive bureaucracy (Meier 1975). From Jackson’s presidency until after the Civil War, patronage arrangements between political machines and citizens developed. By giving jobs to previously excluded groups, including immigrants and the poor, a more representative bureaucracy and a more responsive bureaucracy was established (Gottfried 1988, p. 3-4). Concerns over corruption and unqualified bureaucrats led to a backlash in the form of the Progressive movement.

Many of the Progressive reformers sought to limit political participation to those who could exercise their franchise responsibly. It was thought that political machines thrived on “an ignorant and corruptible populace”. Immigrants, African Americans and the poor were not seen as properly prepared to participate (Stromquist 2006, p.67). The Progressives championed civil service reform, restricting access to the bureaucracy in similar ways to their restrictions from political participation. After the Civil War, reformers gained their first federal victory, with the Civil Service Act of 1871. The Act was short lived, however, with Congress denying funding after 1873. Reformers gained a larger victory in 1883, with the Pendleton Civil Service Act. Spurred by the assassination of President James Garfield by a disgruntled office seeker, the Pendleton Act established a merit system for the federal civil service. The merit system was
characterized by “competitive examinations, relative security of tenure, and political neutrality” (Gottfried 1988, p. 5-6).

As access to political participation was expanded, access to government employment also expanded. The Civil Rights Act of 1964 and multiple executive orders from President Lyndon Johnson attempted to eliminate employment discrimination (Gottfried 1988, p. 55-56). In 1970, the United States Civil Service Commission stated that “the Federal Government should in their employment mix, broadly reflect, racially and otherwise, the varied characteristics of our population” (Krislov and Rosenbloom, 1981, p. 23) while the 1978 Civil Service Reform Act also called for “a work force reflective of the Nation’s diversity” (Selden, 1997, p. 38). The historical trends beg an important question; why would the government want to encourage a diverse bureaucracy?

Governments encourage diversity because diversity impacts implementation (Bradbury and Kellough 2011). Although an ideal is apolitical administration, (Wilson 1887), that ideal may be impossible to attain. Each member of the bureaucracy brings their own personal life experiences, unique socialization and preferences to their job. The crux of diversity, the reasoning behind inclusiveness, is that experiences vary based on race, ethnicity, class, religion, gender, socio-economic background, occupation, immigrant status, region and many other factors. Those different experiences lead to different preferences. Bureaucrats may prefer certain outputs and/or certain clients. Treatment decisions are decided in part by expectations of client behavior and judgments of client worth (Barrilleux and Bernick, 2003; Maynard-Moody and Musheno 2003; Schneider and Ingram 1993). Expectations of client behavior and client worth vary along with the experiences of different bureaucrats.
Government employees are not apolitical actors. The bureaucrats within agencies have preferences and seek to implement those preferences. A diverse bureaucracy is likely to be more inclusive in its decision-making, especially towards traditionally disadvantaged groups. Diverse bureaucracies are more egalitarian because of the link between passive (descriptive) and active representation. Passive representation becomes active representation, when the views of minority bureaucrats are different than the views of other bureaucrats, and those differences manifest in treatment decisions (Bradbury and Kellough 2008, 2011). Active representation, whether caused by the adoption of a ‘minority representative role’ (Selden 1997) or simply a difference in preferences between minority and other bureaucrats, can lead to positive policy outcomes for minority clients. An opportunity to achieve equity outside the bureaucracy (i.e. to address discrimination in society) is enhanced by equity within the bureaucracy (Kranz, 1976, p. 116-118).

Scholars have tested for the effects of representative bureaucracy across a variety of policy arenas. In the Farmer’s Home Administration minority bureaucrats were more likely to state that representing minorities was one of their roles in the organization. Bureaucrats who thought that extending access to minorities was part of the agency’s goals were also more likely to state that representing minorities was one of their roles. There was a direct impact on policy outcomes. Bureaucrats who valued representing minorities as one of their roles awarded more loans to minorities (Selden et al, 1998).

Increases in representative bureaucracy also affected educational policy outcomes. Increased representation was associated with increased performance. For example, an increase in the percentage of female math teachers led to an increase in the math scores of female students. An increase in the percentage of female teachers also led to higher SAT scores for female
students (Keiser et al, 2002). Similar findings existed for Latino students. A larger percentage of Latino teachers were associated with more Latino students in classes for gifted students and fewer punishments. After reaching a critical mass, the percentage of Latino principals in a school district was also associated with more Latino students in classes for gifted students and fewer punishments (Meier, 1993). There may also be an interaction between minority representation and agency discretion. Meier and Bohte found that minority student performance experienced greater increases in organizations that emphasized teacher discretion (2001). Finally, descriptive representation also affected policy outcomes in the realm of criminal justice. An increase in the percentage of female police officers was associated with an increase in the reporting of sexual assault victimization, and in arrests for sexual assault (Meier and Nicholson-Crotty, 2006). An increase in female staff members was also associated with an increase in child support enforcement (Keiser and Soss, 1998; Wilkins and Keiser 2006).

Two improvements can be made to the existing representative bureaucracy literature. First, studies often focus on either differences in views between minority and white bureaucrats or differences in policy outputs based on staff differences. An explicit link should be made, first establishing that bureaucrats have different preferences, and then testing to see if those preferences lead to different policy outcomes. Second, studies often focus on the treatment of a sympathetic clientele; i.e. students, loan applicants or crime victims. Are there similar treatment differences when dealing with a clientele with negative social constructions? In order to test these questions, I examine punishment preferences towards one of the most hated groups in American society, incarcerated prison inmates.
Representative Bureaucracy in the Correctional Context

The prison environment offers a great venue to test the impact of a diverse workforce. Correctional officers have similar reward and punishment powers as school teachers (Liebling 2000). Correctional officers also experience many of the same temporal, cognitive and financial resource constraints as other street-level bureaucrats (Brehm and Gates 1997; Lipsky 1980; Schaufeli and Peeters 2000). Individual correctional workers have high levels of discretion. Correctional workers have coercive power, which includes the ability to place inmates in solitary confinement, to take away certain privileges and to search the inmate. Correctional workers also have power to reward prisoners, including granting privileges, generating favorable reports and the selection to desired jobs within the prison. Corrections workers have less formal power, such as varying norms of enforcement and accommodation (Liebling 2000). Corrections workers also have the very real threat and actual occurrence of violence. Under certain conditions, corrections workers can use violence against inmates ranging from the use of pepper spray to lethal force.

Although correctional workers have numerous formal and informal powers, their power is not absolute. A correctional worker’s decision can become illegitimate, if inmates refuse to comply. Inmates can exert psychological and in some case physical pressures on staff members, and a staff member who attempted to enforce every regulation is unlikely to be successful. Rather than a hierarchical top-down model, the prison environment is better represented as a series of accommodations among inmates and between inmates and staff (Liebling 2000; Britton 2003 p. 64-65). Given the overcrowding prevalent in many American prisons, it is simply not possible to get all inmates to comply with every rule.
A personal example is useful in describing the importance of street-level bureaucratic discretion to the correctional context. While working as a detention officer for the Mecklenburg County (NC) Sheriff’s Office as a means of developing a greater understanding of the correctional environment, I was responsible for the direct supervision of between fifty and seventy inmates. It is physically impossible for one officer to keep visual contact with seventy inmates, let alone notice and enforce every rule violation. The interactions between officers and inmates necessarily focus on managing inmates rather than enforcing each infraction. The critical decisions for officers are which infractions to enforce and which inmates to punish. During my time as a detention officer, I witnessed multiple approaches to managing inmates.

While correctional workers share many similarities with other bureaucrats, one key feature stands out. Due to the negative social construction of prison inmates (Schneider and Ingram 1993), we might expect punishment preferences to be homogenous. I purposefully chose an environment that is less likely to confirm a null hypothesis that representative bureaucracy has an effect. I also chose an environment where treatment has important normative implications. Philosophers as diverse as Feodor Dostoyevsky, Mahatma Ghandi¹ and Jesus Christ² suggested that a society will be judged by how it treats its weakest members. Dostoyevsky said ‘The degree of civilization in a society can be judged by entering its prisons’.

If a society is judged by examining its prisons, the verdict for the United States may be harsh. With the world’s largest prison population, we are much closer to Russia and China than

¹ “A nation’s greatness is measured by how it treats its weakest members.” Mahatma Ghandi
² “They also will answer ‘Lord, when did we see you hungry or thirsty or a stranger or needing clothes or sick or in prison and did not help you?’ He will reply ‘I tell you the truth, whatever you did not do for one of the least of these, you did not do for me.’ Matthew 25:44-45
our traditional democratic allies (Walmsley 2007). Since the early 1970’s the American prison population skyrocketed, with thirty-six consecutive years of growth. The imprisonment rate in 2007 was over five times as large as the imprisonment rate in 1972. Between 1972 and 1988, the imprisonment rate in the United States doubled. Between 1988 and 2007, the imprisonment rate doubled again (Zimring 2010). Interestingly, the massive increase in incarceration cannot be explained by rises in crime rates (Alexander 2010; Tonry 2004; Western 2006; Yates and Fording 2005; Zimring 2010). Two examples include the Drug War beginning during a period of decline in drug use, and incarceration rates booming in the 1990s, at a time when crime rates fell dramatically (Alexander 2010; Zimring 2010).

While the increases in incarceration are well documented, less work has focused on treatment inside prisons. As American society became more punitive, American prisons followed suit. Prior to the 1970s, American prisons practiced a rehabilitative model, operating under the assumption that social reform could reduce the frequency of crime and that crime was in part a reflection of environmental factors. The state was viewed as responsible for the care and reform of inmates as well as their punishment and control (Garland 2002). The rehabilitative model fell out of favor, due to concerns about treatment effectiveness and a political move towards tough on crime policies (Logan and Gaes 1993; Western 2006). After the early 1970s, the goal for most prisons was punishment and segregation of inmates from the rest of society, not rehabilitation (Logan and Gaes 1993; Garland 2002). The most extreme form of segregation takes place in supermax facilities, where inmates are isolated for 22 to 23 hours a day and provided with minimal visitation, exercise and rehabilitative opportunities (Pizarro and Stenius 2004).

Support for stronger incarceration has generated bipartisan support. Although state incarceration rates are higher under Republican government (e.g. Jacobs and Helms 1996; Jacobs
and Carmichael 2001; Smith 2004; Yates and Fording 2005), Democrats have supported increasingly punitive criminal justice policies. Since the 1990s, Democratic members of Congress have been more supportive of punitive measures such as the death penalty, three strikes laws and increased prison incarceration. In some cases, the prison population has grown faster under Democratic state governors (Western 2006, p. 61). Public support for the death penalty has increased dramatically since the 1970s, in addition to support for harsher punishments and lower levels of support for rehabilitative measures (Cullen, Fisher and Applegate 2000).

Although correctional policy has trended towards harsher punishment, and a move away from rehabilitation, the trend is not complete. After nearly forty years of ever increasing prison populations, the overall prison population declined in 2009 and again in 2010 (Glaze 2011). The financial difficulties associated with the Great Recession have forced many states to re-examine sentencing policy and the length of incarceration. Conservative states such as South Carolina, Mississippi and Kentucky have instituted recent reforms to reduce their prison populations (Pew Center on the States). Although support for rehabilitative policies has declined, when asked about the purpose of prisons, twice as many respondents say that prisons exist to provide rehabilitation as say prisons exist to punish. Support for alternatives to incarceration is also high (Cullen, Fisher and Applegate 2000). There is a continuing debate between rehabilitative and punishment policies and these differing viewpoints may also exist among corrections workers.

Whether correctional officers vary in their views on inmates is an open question. There are reasons to expect correctional workers to have homogenous preferences. Correctional officers have an intense socialization process, both in training and then in official work. Most prisons have a paramilitary structure, and officers are expected to follow the hierarchy and to be loyal to their fellow officers. Officers are also expected to keep inmates at a distance, and often
develop a tendency to view inmates as threatening (Britton 2003). Studies of police and correctional officers have suggested that occupational norms are more important than an individual’s traits (Niederhoffer, 1967; Haney, Banks, and Zimbardo, 1973). Finally, there is the possibility of selection bias. The individuals who decide to go into corrections work may be very similar to each other, and not have the same diversity of views as the general public. If there is selection bias, we would expect all correctional workers to have similar punitive views.

However, there are compelling reasons why correctional workers, especially white and minority correctional workers, would have divergent views on inmates. As a group, blacks and especially black males receive disparate treatment in the area of criminal justice. Blacks are more likely to report unfair treatment by the police (Peffley and Hurwitz 2010) and police are more likely to punish black suspects (Close and Mason 2006, 2007; Ridgeway 2006). Blacks are more likely than whites to come into contact with police or other law enforcement officers (Alexander 2010). There is substantial evidence of racial discrimination in traffic stops, the most common interaction between police and the public (see Bradbury and Kellough 2011; Close and Mason 2006, 2007; and Theobald and Haider-Markel 2009).

In the United States, blacks and whites experience vast differences in incarceration. Eleven percent of black men aged 25 to 29 are incarcerated and a third is under some type of correctional supervision (Weaver and Lerman 2010). Bruce Western estimates that the cumulative lifetime risk of incarceration for black males is twenty percent, while only three percent for white males. Black males are more likely to be incarcerated than to receive a bachelor’s degree or serve in the military (Western 2006). Differences in incarceration rates cannot be explained by differences in criminal activity (Alexander 2010; Yates and Fording

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3 Correctional supervision includes those incarcerated in a prison as well as those on probation or parole.
2005; Western 2006). For instance, all racial groups have similar rates of drug use and drug dealing (Alexander 2010). Instead, one of the most consistent predictors of state imprisonment rates is the size of the state’s minority population (e.g. Beckett and Western 2001; Greenberg and West 2001; Jacobs and Helms 1996; Smith 2004; Sorensen 2002). This relationship is usually attributed to a combination of racial threat theory (Blalock 1967; Key 1949) and the use of a “law and order” strategy by conservatives to drive a wedge between black and white voters in the South (Beckett 1997; Beckett and Sasson 2000; Jacobs and Carmichael 2001). Race also has explanatory value for treatment while incarcerated (Percival 2009).

The views of correctional workers may match the views of the majority of Americans. Among the wider public, blacks are more likely to perceive unfairness in the criminal justice system and have lower levels of support for punitive measures (Engle 2005; Peffley and Hurwitz 2010). In a set of survey experiments when the race of a suspect varied, white respondents were more likely to view blacks as guilty of crimes, to envision that blacks would commit more crimes in the future and to suggest harsher punishments for blacks (Hurwitz and Peffley 1997; Peffley, Hurwitz, and Sniderman, 1997). Experimental studies with juvenile probation and police officers found that black faces were associated with crime-relevant objects (Eberhardt et al 2004) and that a black prime led to preferences for harsher punishments (Graham and Lowery 2004). It is possible that some of the views of the general public will carry over to corrections workers. In fact, there is evidence that minority corrections workers have less punitive views than their white counterparts (Jurik 1985).

Whether correctional workers have differing views on inmate treatment is an open question. In order to test for the effects of representative bureaucracy, I must first test for differing views among white and minority corrections workers. If there are not significant
differences in punitive views, any differences in treatment are likely to be random. Fortunately, a recent, large and nationally representative survey measuring views on rehabilitation, deterrence and punishment is available. I will now turn to this survey, and the first empirical test of this article.

**The Criminal Justice Drug Abuse Treatment Studies**

In order to measure preferences on rehabilitation, deterrence and punishment, I utilize the Criminal Justice Drug Abuse Treatment Studies (CJ-DATS), conducted by the National Institute on Drug Abuse between 2002 and 2008. Five separate surveys were conducted, and I focus on the Survey of Correctional, Probation and Parole Staff. The CJ-DATS first selected a nationally representative sample of 150 adult prison facilities. 58 facilities were chosen for their focus on drug and alcohol treatment, the other 92 prisons were selected randomly. From this set of 150 adult prison facilities, a random sample of front-line workers was selected. In all, 734 front-line workers from adult facilities responded to the survey. The CJ-DATS offers significant advantages over previous work (Jurik 1985) including a large sample of minority and female workers.

The CJ-DATS asked respondents about their punitive views towards inmates. Three measures are particularly important; the survey respondent’s support for rehabilitation, support for deterrence and support for “just desserts” punishment. These measures match previous studies of correctional workers’ views (Cullen, Fisher and Applegate 2000; Applegate, Cullen and Fisher 1997; Cullen et al 1993). I use three corresponding additive indices as my dependent variables. All three indices are included in the survey, constructed by the National Institute on Drug Abuse. Support for rehabilitation measures the respondent’s preferences for matching, providing and increasing treatment for offenders. Support for deterrence measures the
respondent’s preferences for deterring future criminals by punishing current offenders. Support for punishment measures the respondent’s preferences for punishing current offenders for their moral failings\(^4\).

Explanatory variables focus on the demographic and educational characteristics of the survey respondents. Race and ethnicity is coded as black, Hispanic and other race (with whites as the omitted reference category). I hypothesize that minority corrections workers will have less punitive views of inmates than white corrections workers. Gender is coded as a 1 for a female respondent and as a 0 for male respondents. In the prison environment, women are often stereotyped as weaker than their male counterparts. Female correctional officers often exhibit a tougher persona, both to assert authority over potentially larger male inmates and to discount rumors of fraternization (Britton 2003). Given the unique pressures that women face in a correctional environment, I hypothesize that female corrections workers will have more punitive views of inmates than male corrections workers. Education is measured by a series of dummy variables for associates degree, college degree, and graduate degrees (with a high school education as the omitted reference category). Age is also a series of dummy variables broken down into ten year increments, to capture cohort differences. I hypothesize that corrections workers with higher levels of education will be less punitive in their views of inmates than corrections workers with lower levels of education. Also, I hypothesize that older corrections workers will be less punitive in their views than younger corrections workers. Older corrections

\(^4\) Although deterrence and punishment are somewhat similar there are important conceptual distinctions. Deterrence is designed to prevent other people from becoming future offenders. Punishment is designed to penalize the current offender.
workers are likely to have experienced socialization at a time when the role of prisons focused more on rehabilitation.

*H1:* Minority corrections workers will have less punitive views than white corrections workers.

*H2:* Female corrections workers will have more punitive views than male corrections workers.

*H3:* Better educated and older corrections workers will have less punitive views of inmates.

**CJ-DATS Results**

Figure one provides summary statistics for the three dependent variables, support for rehabilitation, support for deterrence and support for just desserts punishment.

- Figure 1 about here-

Next, I estimate the results for all three dependent variables. I use ordinary least squares regression for each model.

- Figure 2 about here-

Support is evident for all three hypotheses. As expected, black corrections workers have higher levels of support for rehabilitation and lower levels of support for just desserts punishment. Hispanic corrections workers have lower levels of support for both deterrence and just desserts punishment. Those with higher levels of education, but especially bachelors and masters degrees, have higher levels of support for rehabilitation and lower levels of support for deterrence and just desserts punishment. Interestingly, being black has almost the same effect as earning a college degree. Older workers were also less punitive, perhaps because of their socialization in an era that was more supportive of rehabilitation. Female corrections workers were more punitive across all three measures.
Although there is variation in punitive views, it is unclear if those preferences translate into differential policy outputs. One of the drawbacks to previous research on representative bureaucracy was a focus on either differences in views or differences in policy outputs. Ideally, we would first test for differences in views and then test for differences in policy outputs. Fortunately, I am able to test both aspects of the passive-active representative bureaucracy link, using data from the Bureau of Justice Statistics. I will now turn to a test of differential policy outputs.

Staff Demographics and Punishment Decisions in Prison

The Bureau of Justice Statistics collects punishment statistics for all state and federal correctional facilities. My sample excludes federal and private facilities, in addition to facilities that do not report staff demographics. The data is from the 2005 Bureau of Justice Statistics Census of Federal and State Correctional Facilities. The sample for this part of the analysis includes approximately 522 state prisons included in the 2005 Bureau of Justice Statistics Census of Federal and State Correctional Facilities. The data span a wide variety of states and correctional institutions that housed state prisoners in 2005.

Dependent Variables

To determine whether enforcement is affected by the differential attitudes of corrections officers, two measures of disciplinary enforcement are included. The first indicator is labeled *Disciplinary Actions* and is measured as the percentage of inmates in the facility under a disciplinary infraction. Examples include disciplinary actions that take away commissary privileges, result in the loss of a prison job, or result in a visitation restriction. The second indicator is labeled *Restricted Population Rate*, and is measured as the rate at which inmates in the facility are subjected to restricted movement. The vast majority of prisoners subject to
restricted movement are in administrative segregation units (i.e. solitary confinement). However, some inmates are placed in restricted units for safety concerns. For example, a gang member may be placed in a restricted movement unit for being a gang member but not necessarily for any other infraction.

**Explanatory Variables**

The primary explanatory variables of interest are measures of the staff demographics of the facility. The percentage of black, Hispanic and female staff members are included. Facilities with higher percentages of minority staff members are hypothesized to utilize less punishment. The racial demographics of the inmate population are also included, measuring the percentage of black and Hispanic inmates. Dummy variables for security level are included. Medium and maximum security facilities are hypothesized to utilize higher levels of punishment.

*H1- The percentage of minority staff members will be associated with lower levels of punishment.*

*H2- The percentage of minority inmates will be associated with higher levels of punishment.*

Figure three provides summary statistics for the dependent and explanatory variables.

Next, I separately estimate the results for both dependent variables. I use ordinary least squares regression for each model, with standard errors clustered by state.

Figure 4 offers confirmation of both main hypotheses. An increase in the percentage of black inmates is associated with an increase in both the disciplinary action and the restricted population rate. An increase in the percentage of Hispanic inmates is also associated with an increase in the disciplinary action rate. Increases in representative bureaucracy, as measured by representative bureaucracy, as measured by

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5 Using only correctional officers, rather than total staff, produced similar results.
an increase in the percentage of black staff members is associated with a decrease in the use of both the disciplinary action and restricted population rates. The effects of greater minority representation are substantively important. Figure 5 presents SPost estimation of the predicted probabilities of the disciplinary action and restricted population rate. The probabilities are based on a medium security facility, with the racial demographics of both staff and inmates varied but all other variables set to their means. Each point along the X axis indicates a 10 point increase in the percentage of black staff members or black inmates. The Y axis presents the disciplinary action and restricted population rates. Coefficients for each prediction and the 95 percent confidence intervals are presented on the graph.

-Figure 5 about here-

Figure 5 shows that an increase in the black inmate population is associated with an increase in both the disciplinary action and restricted population rate. A twenty point increase in the black inmate percentage, from 10 to 30 percent, brings a .017 point predicted increase in the disciplinary action rate and a .033 point predicted increase in the restricted population rate. The increase in punishment for black inmates may be ameliorated by an increase in black staff members. A twenty point increase in the black inmate percentage, from 10 to 30 percent, brings a .018 point predicted decrease in the disciplinary action rate and a .026 point predicted decrease in the restricted population rate. While this may seem like a small difference, it is important to consider how large some prison facilities are. The average prison facility has 786 inmates. The previously discussed changes in the black inmate percentage would place an additional 13 inmates on disciplinary restrictions and an additional 26 inmates in a restricted population unit. If similar changes happened in all of the nation’s facilities, an additional 35,530 inmates would be placed on disciplinary restrictions and 68,970 additional inmates would be placed in a restricted
population units. In addition to the effects on inmates, restricted population units are more expensive to operate and function similarly to maximum security units. In one state prison system, maximum security units cost $22.25 per inmate per day more than their medium security counterpart. The financial burden of 68,970 additional restricted population inmates is $1,534,582.5 per day and $560,122,612.5 annually.

Although the implications of increases in the black inmate and black staff percentages are important separately, I also ran post estimation results on a mixture of scenarios. Figure 6 reports the results.

A medium security facility with the maximum percentage of black inmates and the minimum percentage of black staff members has the highest predicted probabilities of both disciplinary action rates (7.8 percent) and restricted population rates (14.4 percent). The same facility with the maximum black staff member percentage would experience a dramatic drop in punishment, with the disciplinary action rate falling from 7.8 to -1.1 percent and the restricted population rate falling from 14.4 percent to 1.4 percent. A prisoner at a facility with heavily unrepresentative staff can expect to be placed in a restricted population unit at over 10 times the rate as a prisoner in a facility with a heavily representative staff! It is important to remember that being placed in a restricted population unit is not a mild punishment. Our hypothetical inmate is 10 times more likely to be placed in solitary confinement! Other changes are less dramatic, but a switch from minimal to maximum representative bureaucracy reverses the disciplinary action

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6 In the state of Kentucky, the maximum security facility at Kentucky State Penitentiary has costs of $74.27 per inmate per day. Green River Correctional Complex, a medium security facility has costs of $52.02 per inmate per day, a difference of $22.25
rate and nearly eliminates the restricted population rate. It is important to note that even in a prison with a large black staff percentage but a low black inmate percentage, both the disciplinary action and restricted population rates are reversed.

**Discussion**

While vast research on the disparate treatment of minorities in the criminal justice system exists, very little work examines treatment inside prisons. We know that treatment inside prison effects recidivism, future criminal activity, future wages and future political activity (Chen and Shapiro 2007; Drago, Galbiati and Vertova 2008; Weaver and Lerman 2010; Western 2006). We know that racial minorities face disproportionate treatment during arrests, sentencing and post-incarceral experiences. When prisoner treatment, as measured by punishment inside prison is added, an already grim picture looks even worse. When minority interests inside prison are ignored, punishment occurs at a greater rate. Minority interests inside prisons are better met by minority corrections workers. An underrepresentation of minority corrections workers introduces greater bias and differential treatment into the law enforcement process. That differential treatment has real effects on inmates, in the form of lost wages, lost political capital and increased recidivism. Differential treatment also increases the financial costs of incarceration. Simply put, additional punishment is not free.

The picture is not completely bleak, however. In a time of difficult budgetary constraints, it is important to remember that states can influence policy outcomes by having a more diverse workforce. Not every correctional officer has a preference for punishment. Not every treatment staff member has given up on rehabilitation. The CJ-DATS survey suggests that minority, better educated and older workers are less punitive and more supportive of rehabilitation. A time of
fiscal constraint may be the perfect opportunity for competitive recruitment of better educated workers. Analysis of the Bureau of Justice Statistics 2005 Survey of State and Federal Correctional Facilities suggests that changes in staff demographics can translate into changes in inmate treatment. Correctional departments may be able to achieve more equitable results by transferring minority staff members to less diverse facilities. Substantial improvements may be possible by redistributing existing staff members.

Social science explanations should not stop at the prison gates. Prison is not a black box and the decisions made inside are not completely random. By understanding the correctional context, we can better understand other bureaucratic settings. Perhaps more importantly, by identifying disparate treatment, we can identify ways to improve our democracy. Disparate treatment is a threat to the norm of equality. Treatment decisions should be based on an individual’s behavior, not an individual’s race. With the world’s largest prison population, our treatment decisions have the potential to impact millions of people, not just the inmates themselves, but their families and everyone who comes into contact with a former inmate. An understanding of how those decisions are made and the impact of those decisions is critical. Hopefully this article, along with others, will form a foundation for understanding the largely unexplored phenomena of punishment inside prison.
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Pew Center on the States. “Corrections and Public Safety”.


### Figure 1

<table>
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<tr>
<th></th>
<th>Observations</th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Variance</th>
<th>Skewness</th>
<th>Kurtosis</th>
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<tbody>
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### Figure 2

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*p<.10, **p<.05, ***p<.01
### Figure 3

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<th>Variance</th>
<th>Skewness</th>
<th>Kurtosis</th>
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Figure 4

<table>
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<td>Pct Black Inmates</td>
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<td>Pct Hispanic Inmates</td>
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<tr>
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<td>(0.062)</td>
<td>(0.103)</td>
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<tr>
<td>Pct Black Staff</td>
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<td>-0.130 ***</td>
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<tr>
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<td>(0.048)</td>
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<tr>
<td>Pct Hispanic Staff</td>
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<td>Pct Female Staff</td>
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<tr>
<td>R-Squared</td>
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</table>

*p<.10, **p<.05, ***p<.01, standard errors clustered by state
Figure 5

Percent Black Inmates  Restricted Population Rate
0 Percent  10 Percent  20 Percent  30 Percent  40 Percent  50 Percent  60 Percent  70 Percent  80 Percent  90 Percent
-0.077   -0.049   -0.021   0.005   0.028   0.043   0.052   0.058   0.064   0.069
-0.023   -0.006   0.010   0.027   0.044   0.060   0.077   0.094   0.111   0.127
0.031    0.037    0.042    0.049    0.059    0.078    0.102    0.129    0.157    0.186

Disciplinary Action Rate by Percent Black Inmate

Percent Black Inmates  Disciplinary Action Rate
0 Percent  10 Percent  20 Percent  30 Percent  40 Percent  50 Percent  60 Percent  70 Percent  80 Percent  90 Percent
-0.048   -0.032   -0.016   0.000   0.014   0.021   0.023   0.024   0.025   0.026
-0.013   -0.004   0.004    0.013   0.021   0.030   0.038   0.047   0.055   0.064
0.023    0.023    0.024    0.026    0.029    0.039    0.054    0.069    0.086    0.102

Disciplinary Action Rate by Percent Black Inmate
Percent Black Staff Restricted Population Rate

0 Percent 10 Percent 20 Percent 30 Percent 40 Percent 50 Percent 60 Percent 70 Percent 80 Percent 90 Percent
0.052 0.046 0.037 0.022 0.026 -0.017 -0.038 -0.060 -0.082 -0.104
0.078 0.065 0.052 0.039 0.040 0.013 0.000 -0.013 -0.026 -0.039
0.103 0.084 0.067 0.056 0.048 0.043 0.038 0.034 0.030 0.026

Restricted Population Rate by Percent
Black Staff

Percent Black Staff Disciplinary Action Rate

0 Percent 10 Percent 20 Percent 30 Percent 40 Percent 50 Percent 60 Percent 70 Percent 80 Percent 90 Percent
0.028 0.025 0.019 0.009 -0.005 -0.019 -0.034 -0.049 -0.064 -0.079
0.044 0.035 0.027 0.018 0.009 0.000 -0.009 -0.018 -0.027 -0.035
0.060 0.046 0.034 0.027 0.022 0.019 0.016 0.014 -0.011 0.008

Restricted Population Rate by Percent
Black Staff
### Predicted Probabilities of Disciplinary Action Rate

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Lower CI</th>
<th>Prediction</th>
<th>Upper CI</th>
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<tr>
<td>Max Percentage Black Inmates, Min Percentage Black Staff</td>
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<tr>
<td>Minimum Black Staff Percentage</td>
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<td>0.044</td>
<td>0.060</td>
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<tr>
<td>Mean Black Staff Percentage</td>
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<td>0.024</td>
<td>0.032</td>
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<tr>
<td>Maximum Black Staff Percentage</td>
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<td>-0.044</td>
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<tr>
<td>Max Percentage Black Inmates, Max Percentage Black Staff</td>
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<td>-0.011</td>
<td>0.026</td>
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<tr>
<td>Min Percentage Black Inmates, Max Percentage Black Staff</td>
<td>-0.081</td>
<td>-0.159</td>
<td>-0.004</td>
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</tbody>
</table>

### Predicted Probabilities of Restricted Population Rate

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Lower CI</th>
<th>Prediction</th>
<th>Upper CI</th>
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<td>Max Percentage Black Inmates, Min Percentage Black Staff</td>
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<td>0.144</td>
<td>0.211</td>
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<tr>
<td>Minimum Black Staff Percentage</td>
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<td>0.103</td>
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<tr>
<td>Mean Black Staff Percentage</td>
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<td>0.049</td>
<td>0.064</td>
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<td>0.059</td>
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